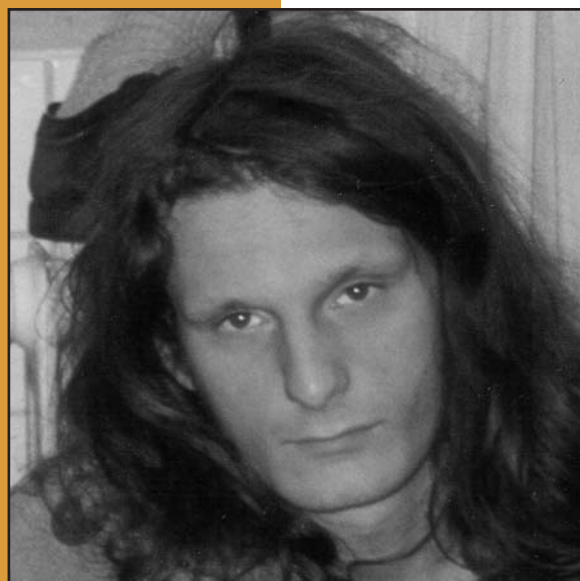


**FOR THE RECORD 2000:**

The United Nations  
Human Rights  
System

6



**V o l u m e 6 :**

**Western Europe  
and Other**

# HUMAN RIGHTS INTERNET (HRI)

Founded in 1976, Human Rights Internet (HRI) is a global 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 United Nations' Economic and Social Council (ECOSOC) and UNICEF, as well as observer status with the African Commission on Human and Peoples' Rights. HRI has recently been granted NGO status with the Organization of American States.

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For further information, please contact:

HRI  
8 York Street, Suite 302  
Ottawa, Ontario K1N 5S6  
Canada

Tel: (613) 789-7407  
Fax: (613) 789-7414  
E-mail: [hri@hri.ca](mailto:hri@hri.ca)  
Web: [www.hri.ca](http://www.hri.ca)

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Volumes 1-6 ISBN 1-894253-47-7

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# GLOSSARY OF ACRONYMS

<b>CAT</b>	Committee Against Torture
<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>CIS</b>	Commonwealth of Independent States
<b>CoE</b>	Council of Europe
<b>CRC</b>	Committee on the Rights of the Child
<b>CSW</b>	Commission on the Status of Women
<b>DAW</b>	Division for the Advancement of Women
<b>ECOSOC</b>	Economic and Social Council
<b>FAO</b>	Food and Agriculture Organization of the United Nations
<b>GA</b>	General Assembly
<b>HRC</b>	Human Rights Committee, also known as the Committee on Civil and Political Rights
<b>ICC</b>	International Criminal Court
<b>ICJ</b>	International Court of Justice
<b>ICTR</b>	International Criminal Tribunal for Rwanda
<b>ICTY</b>	International Criminal Tribunal for the Former Yugoslavia
<b>IE</b>	Independent Expert
<b>ILO</b>	International Labour Organization
<b>IMF</b>	International Monetary Fund
<b>NGO</b>	Non-governmental organization

<b>OAS</b>	Organization of American States
<b>OAU</b>	Organization of African Unity
<b>OECD</b>	Organization for Economic Co-operation and Development
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<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>UNCTAD</b>	United Nations Conference on Trade and Development
<b>UNDP</b>	United Nations Development Programme
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization
<b>UNFPA</b>	United Nations Population Fund
<b>UNHCHR</b>	United Nations High Commissioner for Human Rights
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNICEF</b>	United Nations Children's Fund
<b>UNIFEM</b>	United Nations Development Fund for Women
<b>WG</b>	Working Group
<b>WHO</b>	World Health Organization
<b>WIPO</b>	World Intellectual Property Organization

# VOLUME 6 — WESTERN EUROPE AND OTHER

## 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 (CRC/C/61/Add.3) has been submitted and is scheduled for consideration at the Committee's January 2002 session; the second periodic report is due 31 January 2005.

*Reservations and Declarations:* Articles 7, 8, 38 (2) and 38 (3).

**Optional Protocol (Sale of children):** Signed: 7 September 2000.

**Optional Protocol (Armed conflict):** Signed: 7 September 2000.



## 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, 19 April 1994) 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 Australia'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) was considered at the Committee's August/September 2000 session; the fourth periodic report was due 30 June 1999.

#### Civil and Political Rights

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

Australia's third (CCPR/C/AUS/98/3) and fourth (CCPR/C/AUS/98/4) periodic reports were considered at the Committee's July 2000 session; the fifth periodic report is due 31 January 2005.

*Reservations and Declarations:* Articles 10 (2) (a), 10 (2) (b), 10 (3), 14 (6), 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 tenth through twelfth periodic reports were submitted as one document (CERD/C/335/Add.2) which were considered by the Committee at its March 2000 session; the thirteenth periodic report was due 30 October 2000.

*Reservations and Declarations:* Article 4 (a); 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 was due 27 August 2000.

*Reservations and Declarations:* Article 11 (2).

**Torture**

Signed: 10 December 1985; ratified: 8 August 1989. Australia's second periodic report (CAT/C/25/Add.11) was considered at the Committee's November 2000 session; the third periodic report was due 6 September 1998; the fourth periodic report is due 6 September 2002.

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

**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:* Article 37 (c).

## REPORTS TO TREATY BODIES

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

Australia's third periodic report (E/1994/104/Add.22, July 1998) was considered by the Committee at its August/September 2000 session. The report prepared by the government covers the period from 1990 to 1997 and contains information on, inter alia: legal guarantees of the right to non-discrimination; the Human Rights and Responsibilities Commission; vocational education and training programs; indigenous unemployment; the Workplace Relations Act 1996; provisions for equal pay for work of equal value; measures taken to promote free collective bargaining; the legal right to strike; social security; the development of child-care and parenting education initiatives; strategies concerning youth employment and education; state support for indigenous communities; safeguards for the right to adequate housing; the National Health Priority Areas initiative; measures to improve the lives of people with a mental illness; the Action Plan on Aboriginal and Torres Strait Islander Emotional and Social Well-Being;

a national women's health policy; the National Education Program on Female Genital Mutilation; HIV/AIDS; education; literacy programs for disadvantaged groups; and measure to promote the arts and culture.

In March 2000, the Committee prepared a "list of issues" (E/C.12/Q/AUSTRAL/1) to be taken up with the government during consideration of the third periodic report. The issues identified by the Committee included factors related to: the implementation of treaty obligations under the Covenant at the State/territory level; the rights of indigenous persons to self-determination; international assistance and co-operation; the apparent disadvantage that indigenous persons suffer in the area of economic, social and cultural rights because of their cultural background; refugees and asylum-seekers; equal rights for women and men; employment services; the right to strike; significant cuts in the social security budget; domestic violence; the gap between rich and poor; housing; the decentralisation of responsibility from the federal to the State/ territory levels; education; and the right to take part in cultural life.

In its concluding observations and comments (E/C.12/1/Add.50) the Committee noted with satisfaction: the fact that a majority of Australians have a high standard of living and that the government makes efforts to maintain that standard; measures to streamline the regulation of business activities and the provision of public services, especially the application, beginning in July 2000, of a fiscal regime aimed at reducing the tax on revenue for the majority of the active population; efforts in regard to the recent financial crisis in Asia; the government's leading role in maintaining peace and stability in the region, notably through humanitarian and economic aid; the motion adopted in Parliament affirming the support of reconciliation with the indigenous peoples as an important national priority, and expressing profound and sincere regret concerning past detrimental policies to those people; the establishment of a credit of A\$2.3 billion for the priority creation of programs for indigenous peoples; the partnership between the government and indigenous communities within the context of initiatives aimed at promoting access by the indigenous population to health service adapted to their culture and at devoting significant resources to the improvement of health of indigenous people generally; the fact that, in spite of the persistence of inequalities between women and men in areas of employment, the percentage of women in high-level positions has risen; and the programs put in place to combat domestic violence.

The Committee noted, as a factor impeding the full implementation of the Covenant, the fact that despite guarantees in terms of economic, social and cultural rights set out in domestic legislation, the Covenant still does not enjoy legal status on both a national and state level.



The principal areas of concern identified by the Committee included: the fact that the provisions of the Covenant cannot be invoked before the courts; the fact that, despite government efforts, indigenous people continue to be relatively disadvantaged in the exercise of economic, social and cultural rights, in particular in the areas of employment, housing, health and education; amendments to the 1993 law of native titles, which are retrogressive and have harmed the reconciliation process between the government and indigenous populations; the fact that the 1996 Work Relations Act favours the negotiation of individual accords with employers to the detriment of collective agreements; the fact that home workers, who are essentially women, do not benefit from any form of social protection and are paid at a rate inferior to the minimum wage.

The Committee also expressed concern at: the fact that neither the law nor collective work agreements provide for paid maternity leave, and that the government has not ratified ILO Convention No. 103 on maternity protection; the absence of a fixed poverty threshold by which an evaluation can be undertaken of the progress achieved over the years by the government in its efforts to fight poverty; the 1987 law on the rental leases (New South Wales), which does not sufficiently ensure the security of use and the protection against evictions as well as arbitrary rent increases; the significant increase in rents in Sydney and reported forced evictions, particularly in the period preceding the Olympic Games; the lack of sufficient attention given to the problem of long, pre-admission waiting periods in hospitals, particularly for surgery; the absence of any measure to reinforce the teaching of human rights in academic and non-academic educational programs; the lack of sufficient information concerning the financing of public and private schools, in regard to the difference in the quality of education given by the two systems.

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

- ◆ incorporate the Covenant in domestic legislation so that its provisions can be invoked before domestic courts; ensure that there be no conflict between Commonwealth and domestic law in that regard; conform to the position taken by the High Court regarding “legitimate waiting periods” arising from ratification of the Covenant;
- ◆ pursue efforts towards reconciliation with indigenous peoples with the aim of improving their situation as a disadvantaged people;
- ◆ see to it that the legislative provisions related to job security are reinforced and effectively put into practice, particularly in cases involving the most vulnerable groups;

- ◆ take measures towards protecting domestic workers and see to it that they receive the official minimum wage, benefit from adequate social protection and enjoy work conditions that conform to the law;
- ◆ consider adopting a law that institutes paid maternity leave and ratify ILO Convention No. 103 on the protection of maternity;
- ◆ limit the restriction (interdiction) on the right to strike concerning essential services and, in regard to the civil service, concerning public employees who exercise public authority;
- ◆ ensure that, in privately run prisons, work is voluntary and properly remunerated;
- ◆ guarantee that the two-year waiting period imposed on new immigrants before being able to benefit from social security assistance does not threaten their right to a satisfactory standard of living;
- ◆ determine an official poverty line so that credible evaluations of the extent of poverty can be realised; provide information on this subject in the fourth periodic report;
- ◆ elaborate at the federal level a housing strategy and take measures to protect renters against unjustified forced evictions and the arbitrary rise of rents; ensure that territory and state governments elaborate housing policies that conform to this strategy;
- ◆ take the necessary measures to introduce human rights teaching in educational programs both at the primary and secondary levels;
- ◆ in the next periodic report, provide more detailed supplementary information that contains statistical data based on age, gender and minority group concerning the rights to work, just and favourable work conditions, social security, housing, health and education.

### Human Rights Committee

Australia's third and fourth periodic reports (CCPR/C/AUS/98/3, July 1999; CCPR/C/AUS/98/4, August 1999) were considered by the Committee at its July 2000 session. The third periodic report prepared by the government covers the period from March 1987 to December 1995. The report provides social and demographic statistical data as well as information on, *inter alia*: the 1995 Co-operative Arrangements Regarding International Human Rights Communications and Reports by the federal and state governments; anti-discrimination legislation, including the Disability Discrimination Act (1992); the Aboriginal and Torres Strait Islander Social Justice Commissioner; the Standing Committee of Attorneys-General Working Group on Human Rights; an inquiry into the removal of Aboriginal children; the



National Women's Justice Strategy; the National Action Plan for the Education of Girls (1993-1997); the International War Crimes Tribunals Act (1995); the Mental Health (Treatment and Care) Act (1994); the right to equality before the courts; the Privacy Act (1988); the Racial Hatred Act (1995); the right to freedom of association; safeguards for the rights of children; provisions for equal employment opportunities; the rights of indigenous peoples; the Native Title Act (1993); and multicultural policies.

The fourth periodic report covers the period from 1 January to 31 December 1996 and contains information on, *inter alia*: changes to the Human Rights and Equal Opportunity Commission; the Workplace Relations Act (1996); state and federal measures concerning violence against women; the International War Crimes Tribunal; euthanasia and palliative care; measures to improve Aboriginal and Torres Strait Islander health; legislation prohibiting female genital mutilation; the right to equal access to legal advice; children in the justice system; age of consent in the Criminal Code; an indigenous employment strategy; and measures to improve indigenous access to land.

In March 2000, the Committee prepared a "list of issues" (CCPR/C/69/L/AUS) to be taken up with the government during consideration of the third and fourth periodic reports. The issues identified by the Committee included factors related to: the status of Covenant rights and the implementation of the Committee's views under the Optional Protocol; the underrepresentation of aboriginal persons in civil society; the removal of indigenous children from their families; the Native Title Amendment Act; discrimination and equality before the law; fair trial; the imprisonment and sentencing of juveniles; the right to life of Aboriginal detainees and prisoners; corporal punishment; liberty and security of the person; the treatment of prisoners and other detainees; freedom of movement and the rights of aliens; defamation of religions and xenophobic or extremist attitudes; and dissemination of information about the Covenant.

In its concluding observations and comments (CCPR/CO/69/AUS), the Committee welcomed: Australia's accession to the Optional Protocol in 1991; action taken to implement the views of the Committee in the case of communication 488/1992 (Toonen vs. Australia); the enactment of anti-discrimination legislation in all jurisdictions, including legislation to assist persons with disabilities; the establishment of the Aboriginal and Torres Strait Islander Social Justice Commissioner in 1993; the fact that the status of women had improved considerably during the reporting period, particularly in public service, in the general workforce, and in academic enrolment; initiatives to make available to women

facilities to ensure their equal access to legal services, including in rural areas, and the strengthening of the Sex Discrimination Act (1984).

The principal areas of concern identified by the Committee included: the failure to take sufficient action in regard to the principle of indigenous peoples exercising meaningful control over their affairs; the lack of resolution, in many areas, of native title rights and interests, despite such judicial decisions as *Mabo* (1992) and *Wik* (1996), the enactment of the Native Title Act of 1993, and the actual demarcation of considerable areas of land; the fact that the Native Title Amendments of 1998 in some respects limit the rights of indigenous persons and communities, in particular in the field of effective participation in all matters affecting land ownership and use; the fact that securing the continuation and sustainability of traditional forms of economy of indigenous minorities (hunting, fishing and gathering) and the protection of sites of religious or cultural significance for these minorities is not always a major factor in determining land use.

The Committee also expressed concern at: the continuing effects of the previous policy of removing indigenous children from their families; the absence of a constitutional Bill of Rights, or a constitutional provision giving effect to the Covenant; the lack of effective remedy in the domestic legal system for persons whose rights under the Covenant have been violated; the government bill in which it would be stated, contrary to a judicial decision, that the ratification of human rights treaties does not create legitimate expectations that government officials will use their discretion in a manner that is consistent with those treaties.

The Committee also noted with concern: the government's approach to the Committee's Views in Communication No. 560/1993 (*A. v. Australia*), which undermines the government's recognition of the Committee's competence under the Optional Protocol to consider communications; legislation regarding mandatory imprisonment in Western Australia and the Northern Territory, which leads to the imposition of punishments that are disproportionate to the seriousness of the crimes committed; the fact that the mandatory detention under the Migration Act of "unlawful non-citizens," including asylum seekers, raises questions of compliance with article 9, paragraph 1, of the Covenant; the policy, in the context of mandatory detention, of not informing the detainees of their right to seek legal advice and of not allowing access of non-governmental human rights organisations to detainees in order to inform them of this right.

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

- ♦ take the necessary steps in order to secure for indigenous persons a stronger role in decision-making related to their traditional lands and natural resources;
- ♦ in light of the high level of exclusion and poverty facing indigenous persons, take further steps to secure the rights of indigenous population; take the steps necessary to restore and protect the titles and interests of indigenous persons in their native lands, including by considering amending anew the Native Title Act;
- ♦ give sufficient weight to the continuation and sustainability of traditional forms of economy of indigenous minorities and the protection of sites of religious or cultural significance for such minorities in the finalisation of the pending bill intended to replace the Aboriginal and Torres Strait Islander Heritage Protection Act (1984);
- ♦ intensify efforts to address the tragedies resulting from the previous policy of removing indigenous children from their families, including through provision of proper remedy;
- ♦ take measures to give effect to all Covenant rights and freedoms, and ensure that all persons whose rights and freedoms have been violated have an effective remedy;
- ♦ ensure that political arrangements between the Commonwealth government and the governments of states or territories do not condone impermissible restrictions on Covenant rights;
- ♦ withdraw the bill stating that the ratification of human rights treaties does not create legitimate expectations that government officials will use their discretion in a manner that is consistent with those treaties;
- ♦ reconsider its interpretation of the Committee's views in the Communication No. 560/1993 (*A. v. Australia*) with a view to achieving full implementation of those views;
- ♦ reassess the legislation regarding mandatory imprisonment so as to ensure that all Covenant rights will be respected;
- ♦ secure in domestic law effective remedy under law for persons who claim that their rights have been violated;
- ♦ reconsider the policy of mandatory detention of "unlawful non-citizens" with a view to instituting alternative mechanisms for maintaining an orderly immigration process; and
- ♦ ensure that all detainees are be informed of their legal rights, including their right to legal counsel.

## Committee on the Elimination of Racial Discrimination

Australia's tenth, eleventh and twelfth periodic reports were submitted as one document (CERD/C/335/Add.2, December 1999), which was considered by the Committee at its March 2000 session. The reports prepared by the government cover the period from July 1992 to June 1998 and contain information on, *inter alia*: the prohibition of racial discrimination; the Racial Hatred Act (1995); representative, policy-making and administrative powers for Aboriginals and Torres Strait Islanders; state funding of indigenous programs in the areas of housing, health, education and employment; the Race Discrimination Commissioner; efforts to promote respect for the human rights of Aboriginal persons and Torres Strait Islanders; the Council for Aboriginal Reconciliation Act (1991); the Royal Commission into Aboriginal Deaths in Custody; an inquiry into the forcible removal of indigenous children from their families; and multicultural policy.

The reports also refer to: equal access to public services and public facilities; public information and education campaigns to combat racial discrimination; land rights and the Native Title Act (1993); state funding to indigenous communities to acquire land; social, economic and cultural measures for indigenous peoples; community development employment projects; infrastructure projects; programs for immigrants and refugees; services for immigrant women; provisions for equal access to the legal system; the Workplace Relations Act (1996); and the Human Rights and Equal Opportunity Commission.

In its concluding observations and comments (CERD/C/304/Add.101), the Committee welcomed: the attention given by the government to obligations under the Convention and to the work of the Committee; the many measures adopted in the area of racial discrimination, including those adopted to implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody; the numerous legislative measures, institutional arrangements, programmes and policies that focus on racial discrimination.

The principal areas of concern identified by the Committee included: the absence in law of any entrenched guarantee against racial discrimination that would override subsequent law of the Commonwealth, states and territories; the unsatisfactory response to decisions 2 (54) (March 1999) and 2 (55) (August 1999) of the Committee and the continuing risk of further impairment of the rights of indigenous communities; the fact that changes introduced and under discussion regarding the functioning of the Aboriginal and Torres Strait Islander Commission (ATSIC) and of the Aboriginal and Torres Strait Islander Social Justice Commissioner may have an adverse effect on the carrying out of

their functions; the apparent loss of confidence by the indigenous community in the process of reconciliation; the lack of governmental support for a formal national apology concerning the separation of Aboriginal and Torres Strait Islander children from their families, as well as the provision of monetary compensation for those forcibly and unjustifiably separated from their families, on the grounds that such practices were sanctioned by law at the time and were intended to “assist the people whom they affected.”

The Committee also expressed concern at: the fact that the rate of incarceration of indigenous people is disproportionately high compared with the general population, and that the provision of appropriate interpretation services is not always fully guaranteed to indigenous people in the criminal process; the minimum mandatory sentencing schemes with regard to minor property offences enacted in Western Australia, and in particular in the Northern Territory, since they appear to target offences that are committed disproportionately by indigenous persons, especially juveniles, leading to a racially discriminatory impact on their rate of incarceration; the compatibility of such laws with the government's obligations under the Convention; the extent of the continuing discrimination faced by indigenous persons in the enjoyment of their economic, social and cultural rights.

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

- ♦ undertake appropriate measures to ensure the consistent application of the provisions of the Convention, at all levels of government, including states and territories, and if necessary call on its power to override territory laws and use its external affairs power with regard to state laws;
- ♦ in light of the devolution of power to legislate on the “future acts” regime, give close scrutiny to any other proposed state and territory legislation to ensure that protection of the rights of indigenous peoples is not reduced further;
- ♦ ensure effective participation by indigenous communities in decisions affecting their land rights and provide full information on this issue in the next periodic report;
- ♦ give careful consideration to the proposed changes to the ATSIC and the Aboriginal and Torres Strait Islander Social Justice Commissioner, so that these institutions preserve their capacity to address the full range of issues regarding the indigenous community;
- ♦ take appropriate measures to ensure that the reconciliation process is conducted on the basis of engagement and effective leadership, so as to lead

to meaningful reconciliation, genuinely embraced by both the indigenous population and the population at large;

- ♦ consider the need to address appropriately the extraordinary harm inflicted by the separation of Aboriginal and Torres Strait Islander children from their families;
- ♦ review all laws and practices with regard to minor property offences enacted in Western Australia, and in particular in the Northern Territory, and make them compatible with obligations under the Convention;
- ♦ implement faithfully the provisions of the 1951 Convention relating to the Status of Refugees, as well as the 1967 Protocol thereto; and
- ♦ ensure, within the shortest time possible, that sufficient resources are allocated to eradicate discrimination faced by indigenous persons in the enjoyment of their economic, social and cultural rights.

### Committee Against Torture

Australia's second periodic report (CAT/C/25/Add.11, May 2000) was considered by the Committee at its November 2000 session. The report prepared by the government covers the period from 1991 to June 1997 and refers to, *inter alia*: reliance on the definition in the Convention of torture for domestic legal purposes; mechanisms for scrutiny of actions taken by public officials; the Royal Commission into Aboriginal Deaths in Custody; the Royal Commission into the New South Wales Police Service; territorial jurisdiction over acts of torture; a Model Criminal Code; protection visas for asylum-seekers; extradition; the training of police and prison officers on the care and custody of detainees and prisoners; information regarding the prohibition against torture in military courses; the training of immigration and customs officers; medical treatment and residential care; the prohibition of the use of statements induced by torture; criminal and civil sanctions for acts of torture; complaints mechanisms; the Office of the Federal Ombudsman; and state and territory criminal injuries compensation legislation for victims of torture and ill-treatment.

In its concluding observations and comments (CAT/C/XXV/Concl.3) the Committee welcomed: the declarations made in 1993, under articles 21 and 22 of the Convention; the ratification of the Optional Protocol to the International Covenant on Civil and Political Rights; the investigations and enquiries that have been undertaken, *inter alia*, by royal commissions of inquiry, parliamentary committees, the Human Rights and Equal Opportunity Commission, ombudspersons, and other ad hoc bodies, at both the federal and state levels, on matters of relevance to the implementation of the Convention; the

consultations with national NGOs during the preparation of the report; the expansion of the rehabilitation services available for victims of torture and the government's contributions to the UN Voluntary Fund for the Victims of Torture; the measures taken to address the causes of the disadvantage experienced by the indigenous population; the establishment of the independent statutory office of the Inspector of Custodial Services.

The principal areas of concern identified by the Committee included: the apparent lack of appropriate review mechanisms for ministerial decisions in respect of cases coming under article 3 of the Convention; the use of instruments of physical restraint by prison authorities that may cause unnecessary pain and humiliation; allegations of excessive use of force or degrading treatment by police forces or prison guards; allegations of intimidation and the adverse consequences faced by inmates who complain about their treatment in prisons; legislation imposing mandatory minimum sentences, which has allegedly had a discriminatory effect against the indigenous population (including women and juveniles), who are over-represented in statistics about the criminal justice system.

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

- ♦ ensure that all states and territories are at all times in compliance with their obligations under the Convention;
- ♦ consider the desirability of providing a mechanism for an independent review of ministerial decisions in respect of cases coming under article 3 of the Convention;
- ♦ continue education and information efforts aimed at law enforcement personnel regarding the prohibition against torture; further improve efforts in training, especially of police, prison officers and prison medical personnel;
- ♦ keep under constant review the use of instruments of restraint that may cause unnecessary pain and humiliation, and ensure that their use is appropriately recorded;
- ♦ ensure that complainants are protected against intimidation and adverse consequences as a result of their complaint;
- ♦ continue efforts to reduce overcrowding in prisons;
- ♦ continue efforts to address the socio-economic disadvantage that, *inter alia*, leads indigenous persons to come disproportionately into contact with the criminal justice system;

- ♦ keep under review legislation imposing mandatory minimum sentences to ensure that it does not raise questions of compliance with international obligations under the Convention and other relevant international instruments, particularly with regard to the possible adverse effect upon disadvantaged groups; and
- ♦ ensure that information on the implementation of the present recommendations and disaggregated statistics is included in the next periodic report.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

#### Independence of judges and lawyers, Special

**Rapporteur on:** (E/CN.4/2000/61, paras. 9, 16, 19, 43-45)

In December 1998, the Special Rapporteur sent an urgent appeal concerning a Somali national who was seeking asylum in Australia and risked being deported to his homeland, where it was alleged he was at risk of being subjected to torture or extrajudicial execution. The information received indicated, *inter alia*: the applicant was transferred from the Immigration Detention Centre (IDC) at Marybyrnong in Melbourne to the Port Hedland IDC in Western Australia; he had no connection with Western Australia; as of November 1998, he had been detained for almost 12 months at the Melbourne IDC; (c) all of the applicant's legal representatives were located in Melbourne and were acting pro bono because he could not afford to pay for counsel; because of lack of money, access to telephone facilities at the Port Hedland IDC was restricted because of the significant cost of telephone calls from there to Melbourne; the remote location of the Port Hedland IDC meant that it was prohibitively expensive for the applicant's legal representatives to visit him.

In its response, the government noted, *inter alia*: the person concerned had been returned to the Maribyrnong IDC in Melbourne; he had been offered, and had accepted, free telephone calls for the purpose of contacting his legal representatives, and assurances that any documents he wished to send to his legal representatives would be sent immediately and unopened by government officials.

#### Racism and racial discrimination, Special Rapporteur

**on:** (E/CN.4/2000/16, paras. 4, 36, 45-46)

The report refers to information indicating, *inter alia*: indigenous children are still being removed from their families and communities at a disproportionately high rate; it is the contact with the child welfare and juvenile justice systems which leads to many indigenous children being removed from their families; indigenous



children throughout Australia still remain significantly over-represented in care, particularly in long-term foster care, and a high percentage of these children live with non-indigenous care-givers.

In the interim report to the General Assembly (A/55/304, para. 20-22), the Special Rapporteur (SR) referred to concerns raised by the Native Title Amendment Act 1998 and the effects of that law; the report also refers to the process of reconciliation between the Aborigines and the rest of the population and to the claims of Aboriginal children who had been taken from their parents and forced to assimilate (the "Lost Generation"). The government invited the SR to carry out a mission in October 2000.

Concerning the process of intra-Australian reconciliation, the report notes: the inability of the government and the Council for Aboriginal Reconciliation to reach agreement, in May 2000, on a single text that could be accepted as an Australian declaration towards reconciliation; the fact that the positions of the government and the Council differed with respect to the apology that the Aborigines wished to receive from "one part of the nation"; the government text does not refer to "one part of the nation."

**Torture, Special Rapporteur on:** (E/CN.4/2000/9; E/CN.4/2000/9/Add.5, para. 2)

An urgent appeal was sent on behalf of a Libyan asylum-seeker and his family, who were said to be facing imminent and forcible repatriation to Libya, where they may be at risk of torture. The information received indicated that the person concerned was a member of the reportedly illegal Libyan opposition group National Front for the Salvation of Libya (NFSL); the Australian Refugee Review Tribunal did not accept that he was a member of this organisation and therefore rejected his claim; the authorities unsuccessfully attempted to deport the family in December 1999, but the airline refused to carry them because of the physical condition of one of them; the parents were verbally and physically abused at the airport while in the custody of the officials who were attempting to deport them. The government reported that the case was under consideration by the Department of Immigration and Multicultural Affairs and that the Special Rapporteur would be informed of the outcome of the process.

In response to concerns that were transmitted in September 1998 (see E/CN.4/1999/61, paras. 56-58), the government noted, *inter alia*: the Royal Commission into Aboriginal Deaths in Custody was established in October 1987 to investigate the deaths of 99 aboriginal and Torres Strait Islanders in custody between 1 January 1980 and 31 May 1989; the Commission was given the task of examining the circumstances of the deaths, the action taken by the authorities and the underlying

causes of indigenous deaths in custody, including social, cultural and legal factors; the investigation concluded that the predominant cause of the high incidence of indigenous deaths in custody was the disproportionate rate at which Aboriginal and Torres Strait Islanders came into contact with the criminal justice system, reportedly because of the severely disadvantaged position of many indigenous people in society, socially, economically and culturally; the Commission made 339 recommendations to various levels of governments on a wide range of issues and in 1992 the Commonwealth Government allocated \$400 million, mostly channelled through the Aboriginal and Torres Strait Islander Commission, to support 338 of the 339 recommendations; the implementation of the recommendations had led to a reduction in the number of indigenous deaths in custody, as well as a growing awareness by custodial and medical staff of the treatment of indigenous prisoners; the increasing over-representation of indigenous people in custody, however, and their rate of contact with the criminal justice system needed to be addressed; to that end, a ministerial summit on indigenous deaths in custody was convened in July 1997; strategic plans to address the over-representation of indigenous people in the criminal justice system are now being monitored.

The government also responded to two individual cases that had been previously transmitted.

**Violence against women, Special Rapporteur on:** (E/CN.4/2000/68/Add.1, paras. 3, 8-18)

An urgent appeal was sent on behalf of a Ukrainian woman who was reportedly facing deportation. The information received indicated, *inter alia*: the woman had been trafficked to Australia by a network of Russian nationals in 1997 to work as a prostitute; she entered Australia on a temporary residence visa; her passport and ticket were taken from her on arrival in St. Kilda, Australia, by her traffickers and she was forced by them to work in a brothel; she was threatened with death if she tried to escape and told that if she spoke to anyone about the situation when she returned to Ukraine she would be found and punished; she managed to escape with the help of undercover police agents and an Australian national; she supplied the police with information about her traffickers, by virtue of which a number of persons were detained, questioned and removed from Australia; the woman was in hiding; relatives in Ukraine were pressured by means of threats to provide information on her whereabouts; she applied for refugee status in Australia out of fear that the Ukrainian authorities would not be able to provide her with sufficient protection; her application for a protection visa referred to fear of persecution by reason of belonging to a particular social group of persons who are, or who face a real chance of becoming, victims of mafia gangs or criminal groups

operating in her country of origin; the application was initially refused because the basis for her fear is not one recognised by the Convention relating to the Status of Refugees (the Convention); she was granted a bridging visa pending a review of the decision by the Refugee Review Tribunal (RRT) in February 1999.

Information also indicated: the RRT accepted that the woman had been brought to Australia and made to work as a prostitute; there was ample evidence to confirm the existence of prostitution rackets based in Eastern Europe, including Ukraine, and threats to relatives in the country of origin are a documented method of control of women who are the victims of these rackets; she could not rely on the protection of the state in Ukraine; future harm to her would be of such a nature as to constitute persecution; the Tribunal found that the woman's fear was covered by the Convention but noted that its role was limited to determining whether the applicant satisfied the criteria for the grant of a protection visa; consideration of the woman's circumstances on other grounds was said to be a matter solely for the minister's discretion; the Tribunal decided that it was not satisfied that she was a refugee, and affirmed the decision not to grant her a protection visa.

An appeal was made to the minister for Immigration and Multicultural Affairs to review the decision to refuse a protection visa (refugee status). At the time the report was prepared, the case was still pending a decision by the minister.



## AUSTRIA

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

### TREATIES:

#### RATIFICATIONS AND RESERVATIONS

**Land and People:** Austria has submitted a core document for use by the treaty bodies (HRI/CORE/1/Add.8, 17 March 1992). The report prepared by the government includes demographic data and statistics as well as information on the general political structure and the general legal framework within which human rights are protected. Concerning protections of human rights, the report notes that there is a distinction between the ordinary judicial system and the public administration. The lawfulness of an administrative decision cannot be examined by an ordinary law court and the legality of a judicial decision cannot be reviewed by the public administration. The public administration is subject to

the extraordinary external jurisdiction of the Administrative Court and the Constitutional Court; it is the Constitutional Court that examines allegations of violation of fundamental rights arising from an administrative decision. The laws on protection of personal liberty, the protection of the home, the general rights of citizens (the Basic Law) and the Provisional National Assembly form the foundation of the human rights guaranteed by the Constitution. Under the Federal Constitutional Law of 1964, the European Convention for the Protection of Human Rights and Fundamental Freedoms and several provisions of the 1955 Treaty of Vienna concerning fundamental rights acquired constitutional law status. International treaties may either be transformed into domestic law without restriction following approval and ratification by federal bodies or, approved by federal authorities with the reservation that the requisite laws for a treaty's application in Austria will be adopted. Only the provisions of the European Convention may be invoked directly before Austrian authorities. The office of the Volksanwaltschaft corresponds to that of an ombudsperson and has a mandate to investigate and address allegations of maladministration by the Bund.

#### 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 fourth periodic report is due 1 October 2002. *Reservations and Declarations:* Articles 9, 10 (3), 12 (4), 14, 19, 21, 22, and 26; declaration under article 41.

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

*Reservations and Declarations:* Article 5 (2).

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

#### Racial Discrimination

Signed: 22 July 1969; ratified: 9 May 1972.

Austria's fourteenth periodic report (CERD/C/362/Add.7) has been submitted but is not yet scheduled for consideration; the fifteenth periodic report is due 8 June 2001.

*Reservations and Declarations:* Articles 4 (a), 4 (b) and 4 (c).

#### Discrimination against Women

Signed: 17 July 1980; ratified: 31 March 1982.

Austria's third, fourth and fifth periodic reports (CEDAW/C/AUT/3-4; CEDAW/C/AUT/5) were considered by the Committee at its June 2000 session; the fifth periodic report is due 30 April 2005.

*Reservations and Declarations:* Articles 7 (b) and 11.

**Optional Protocol:** Signed: 10 December 1999; ratified: 6 September 2000.

**Torture**

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

Austria's third periodic report was 31 December 2000.

*Reservations and Declarations:* Articles 5 (1) (c) and 15; declaration under articles 21 and 22.

**Rights of the Child**

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

Austria's second periodic report was due 4 September 1999.

*Reservations and Declarations:* Articles 13, 15, 17, 38 (2), 38 (3).

**Optional Protocol (Sale of children):** Signed: 6 September 2000.

**Optional Protocol (Armed conflict):** Signed: 6 September 2000.

## REPORTS TO TREATY BODIES

### Committee on the Elimination of Discrimination against Women

Austria's third, fourth and fifth periodic reports (CEDAW/C/AUT/3-4; CEDAW/C/AUT/5) were considered by the Committee at its June 2000 session.

In the presentation of the reports to the Committee, the government noted, *inter alia*: legal amendments to shift the burden of proof in sexual harassment cases and enhance the enforceability and monitoring of equal treatment before law; the establishment of several regional branches of the Ombud's office for equal treatment and plans for others; the payment of a child-care allowance to each parent, irrespective of employment status; information campaigns on violence against women and a federal law on the protection against family violence, providing for exclusion orders; the creation of seven intervention centres against domestic violence; an advisory committee on the prevention of violence against women within the Ministry of the Interior; the establishment of an intervention centre for women victims of trafficking and the introduction of a "humanitarian visa" to allow them to remain in Austria; an inter-ministerial working group for gender mainstreaming; initiatives to make women aware of the opportunities and risks related to new technology; access by women to the army.

In its concluding observations and comments (CEDAW/C/2000/II/Add.1), the Committee welcomed: measures to combat violence against women; the May 1997 federal law on protection against family violence, which created a legal basis for the speedy and efficient protection of victims of domestic violence; programmes relating to sexual violence against persons with disabilities; various measures to combat trafficking in women, including the

apprehension, prosecution and punishment of perpetrators; government efforts to increase international co-operation in order to address trafficking; and the initiative to promote the participation of women in the field of the new information and communication technologies as both consumers and entrepreneurs.

The Committee noted that persisting cultural stereotypes of women as homemakers and caregivers are an obstacle to full implementation of the Convention.

The principal areas of concern identified by the Committee included: the abolition of the Ministry of Women's Affairs; the broad scope of the responsibilities of the Ministry of Social Security and Generations, including now responsibility for women's and gender issues, which will result in less priority being given to the elimination of discrimination against women and obstruct the visibility of government policy in that respect; the situation of migrant and trafficked women; reports of human rights violations by state officials against women seeking asylum; the high percentage of the female population that has no education beyond the compulsory level; the continuing gender-role stereotyping in the area of education and vocational training for girls and boys; the low participation of qualified women in academia; the continued segregation of women in low-paying jobs in the labour market; the disadvantages suffered by women who never married and by divorced elderly women in terms of retirement pensions and social security benefits; the decrease in women's representation in the legislature in the recent elections; the lack of data disaggregated by sex on the impact of policies and programmes; and the fact that governmental initiatives to assess gender policies through pilot projects do not go beyond the pilot stage.

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

- ♦ ensure, on a regular basis, the evaluation and assessment of the gender impact of the federal budget as well as governmental policies and programmes affecting women; ensure that the women's national machinery increases co-operation with NGOs;
- ♦ facilitate the acquisition of work permits by migrant women on an equal basis with migrant men and establish the conditions needed for their integration into economic and social life;
- ♦ take responsibility in guaranteeing the human rights of all trafficked women and girls; increase co-operation with countries of origin and other countries of destination so as to prevent trafficking and to penalise those who facilitate trafficking;
- ♦ adopt policies that acknowledge gender-specific grounds for women seeking asylum, including



gender-based violence and persecution and female genital mutilation;

- ♦ ensure ongoing training for law enforcement officials and the judiciary, including sensitisation with regard to violence against women in migrant communities; extend such programmes to health professionals; pay particular attention to the physical, emotional and financial abuse of elderly women; institute therapy programmes for male offenders;
- ♦ take measures to encourage girls to continue their education beyond the compulsory level and in particular in the areas of science and technology; introduce affirmative action to increase the number of women to academic posts at all levels; integrate gender studies and feminist research in university curricula and research programmes;
- ♦ take action to decrease the wage discrepancy between female- and male-dominated jobs, especially in the private sector; adopt a proactive comprehensive policy, with appropriate budgetary allocations as incentives to provincial and local authorities, so as to develop child-care facilities that enable women's equal participation in the labour force;
- ♦ strengthen the powers of the Equal Treatment Commission in order to enable it to be more effective in efforts to combat discriminatory practices and to guarantee equal opportunity and treatment for women in the workplace;
- ♦ take into consideration current social trends when designing policies so as to meet the needs of the increasing number of single women;
- ♦ replicate, at the federal level, the Vienna programme on women's health, and intensify efforts to apply a gender perspective in health care by, *inter alia*, initiating and sponsoring relevant research;
- ♦ undertake temporary special measures to redress the decrease in women's representation in the legislature; consider, *inter alia*, the use of federal funding for political parties as an incentive for the increased representation of women in Parliament, as well as the application of quotas and numerical goals and measurable targets aimed at increasing women's political participation;
- ♦ improve, *inter alia*, the collection of data on criminal proceedings related to violence against women, the evaluation of policy as regards victims of trafficking, the nature and outcome of equal treatment cases in the labour courts and gender perspectives in health care, including sex-disaggregated data on the causes of morbidity and mortality;

- ♦ apply the results of gender policies through pilot projects in ongoing law, policy and programming; and
- ♦ introduce human rights education into school curricula, and in particular women's human rights education on the basis of the Convention.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

**Extrajudicial, summary or arbitrary executions, Special Rapporteur on:** (E/CN.4/2000/3, paras. 13, 25; E/CN.4/2000/3/Add.1, paras. 38-39)

The Special Rapporteur transmitted one allegation on behalf of a Nigerian citizen who died in police custody. The information received indicated, *inter alia*, that the person had submitted an asylum request which was denied, thereby allowing for his expulsion from Austria to Nigeria; three members of the Austrian police accompanied him on board a flight from Vienna to Sofia in order to carry out the expulsion order; his hands and feet were tied and his mouth sealed with adhesive tape; the police left him tied to his seat and gagged until shortly before the arrival of the plane at Sofia Airport; a doctor recorded his death on arrival. The government indicated that it would reply to the case at a future date.

**Racism and racial discrimination, Special Rapporteur on:** (A/55/304, paras. 6, 7, 32-33)

The Special Rapporteur (SR) noted concerns related to the accession to power of the Freedom Party and referred to a fact-finding mission that was undertaken by an international human rights NGO. Published reports on that mission noted discriminatory and xenophobic practices against the black community (approximately 6,000 people out of a total population of 8.8 million); the singling-out of Africans for public condemnation and as the target of police operations conducted under particularly humiliating conditions. The SR recalled that the European Union (EU) had sent a delegation to Austria to investigate the human rights situation, with a view to possibly lifting the sanctions adopted by the EU when representatives of the Freedom Party joined the government. The finding of the EU mission will be considered in the SR's report to the 2001 session of the Commission.

**Violence against women, Special Rapporteur on:** (E/CN.4/2000/68, paras. 77, 90)

The report notes that in Austria, in 1998, the police uncovered a trafficking ring, a discovery that resulted in the arrest of 18 traffickers. Twenty women were reportedly freed, many of whom returned to their homes; others stayed in Vienna to testify against the traffickers.

The Special Rapporteur also noted that, in 1995, the Penal Code was amended; its provisions were extended to cover trafficking in persons for purposes other than sexual exploitation. Section 104a establishes a prison term of up to three years for anyone who induces another person to enter a country illegally and to pay or commit himself/herself to pay him for the passage; the same section proscribes enabling a person to enter another country illegally for the purpose of his or her exploitation. The provisions allow for enhanced penalties when the crimes are committed professionally or by a criminal organisation.



## 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, 13 April 1994) 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) was considered at the Committee's November/December 2000 session; the third report is due 30 June 2005. *Reservations and Declarations:* Articles 2 (2) and 2 (3).

#### Civil and Political Rights

Signed: 10 December 1968; ratified: 21 April 1983. Belgium's fourth periodic report is due 1 October 2002. *Reservations and Declarations:* Articles 10 (2) (a), 10 (3), 14 (1), 14 (5), 19, 20, 21, 22, and 23 (2); declaration under article 41.

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

**Second Optional Protocol:** Signed: 12 July 1990; ratified: 8 December 1998.

#### Racial Discrimination

Signed: 17 August 1967; ratified: 7 August 1975. Belgium's eleventh through thirteenth periodic reports were due 6 September 1996, 1998 and 2000 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 submitted as one document (CEDAW/C/BEL/3-4) which is not yet scheduled for consideration by the Committee; the fifth periodic report is due 9 August 2002. *Reservations and Declarations:* Articles 15 (2) and 15 (3).

**Optional Protocol:** Signed: 10 December 1999.

*Reservations and Declarations:* General declaration.

#### Torture

Signed: 4 February 1985; ratified: 25 June 1999. Belgium's initial report was due 25 July 2000. *Reservations and Declarations:* Declaration under articles 21 and 22.

#### Rights of the Child

Signed: 26 January 1990; ratified: 16 December 1991. Belgium's second periodic report has been submitted (CRC/C/83/Add.2) and is pending for consideration at the Committee's May/June 2002 session; the third periodic report is due 14 January 2004. *Reservations and Declarations:* Articles 2 (1), 13, 14 (1), 15, and 40 (2) (b) (v).

**Optional Protocol (Sale of children):** Signed: 6 September 2000.

**Optional Protocol (Armed conflict):** Signed: 6 September 2000.

## REPORTS TO TREATY BODIES

### Committee on Economic, Social and Cultural Rights

Belgium's second periodic report (E/1990/6/Add.18, March 1998) was considered by the Committee at its November/December 2000 session. The report prepared by the government contains information on, *inter alia*: the legal recognition of the direct effect of certain

provisions of the Covenant; legal amendments to combat discrimination in employment or at work more effectively; measures to combat racial discrimination in collective labour agreements; steps taken to restore competitiveness, promote employment and ensure the viability of social security; paid education leave; industrial apprenticeship; the reintegration of the long-term unemployed; employment initiatives at the regional and community levels; a minimum monthly wage scheme; regulations for workplace safety and health; trade union rights; the modernisation of the social security system; a charter for beneficiaries of social welfare schemes; allowances for persons with disabilities; measures to deal with the problems of the ill-treatment and sexual abuse of children; improved legal protection for pregnant women; federal and regional initiatives to control poverty and social exclusion; the modernisation of the health care sector; education; a new law on copyright; and efforts to promote cultural identity.

In its concluding observations and comments (E/C.12/1/Add.54), the Committee welcomed: the positive attitude of the government towards the active participation of civil society in promoting and protecting economic, social and cultural rights; the government's invitation to a representative of a national NGO to address the Committee during the dialogue; and the government's indication of its support for the Committee's work with regard to the draft optional protocol.

Factors impeding implementation of the Covenant were noted as including: the lack of sufficient mechanisms to co-ordinate and ensure uniformity in complying with international human rights obligations at both federal and regional levels; the reliance on statutes and royal decrees rather than legislation to guarantee economic, social and cultural rights; the fact that, while article 23 of the Constitution, read in conjunction with other constitutional guarantees of fundamental rights, could be interpreted to apply directly economic, social and cultural rights, that is not an automatic consequence and depends on discretion exercised by the domestic courts.

The principal subjects of concern identified by the Committee included: the government's failure to establish a comprehensive national plan of action for human rights; the lack of an independent national human rights institution; the absence of specific legislation that prohibits acts of xenophobia and racism, and in particular the activities of right-wing racist political parties; the discriminatory effects against women of the so-called "cohabitation rule" in the unemployment insurance regime; the persistent gap between the unemployment rate of women and men and the discrepancy in wages between them; the fact that there is considerable unemployment among young people; the government's failure to address adequately the long-

term unemployment of persons over 45 years of age, or the situation of those who have been forced into early retirement; and the phenomenon of paedophilia and the prostitution of children as well as child pornography and violence against children.

Other concerns identified by the Committee were: the significant shortage of social housing, especially in Flanders; the fact that larger families, as well as single-parent and low-income families, are at a disadvantage in qualifying for such social housing; the lack of adequate mechanisms to ensure uniformity in the application of educational standards, including international norms on education, in all regions; the allocation, in 1998, of only 0.35% of its GDP to international co-operation, noting that the UN recommendation in this regard is 0.7% of GDP for industrialised countries.

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

- ♦ provide, in the next periodic report, more details on the mechanisms adopted to co-ordinate and ensure uniformity in activities by the various levels of government aimed at complying with international human rights obligations;
- ♦ formulate and adopt a comprehensive plan of action for human rights; establish an independent national human rights institution, in accordance with the Paris Principles of 1991; take appropriate steps to guarantee fully the direct applicability of the Covenant in the domestic legal order;
- ♦ adopt measures to ensure that xenophobia, racism and activities of racist organisations, groups or political parties are outlawed;
- ♦ revise the "cohabitation rule" in the unemployment insurance regime in order to eliminate its indirect discriminatory impact on women;
- ♦ undertake more active measures to address the inequality of employment between women and men and the wage discrepancy between them, as well as to promote women's access to all levels of the labour market;
- ♦ combat unemployment among young people and the long-term unemployment of workers over the age of 45 through appropriate vocational and technical training; provide in the next periodic report more information on the measures taken, on the results achieved and on the developments with respect to the data on early retirement;
- ♦ take effective measures to combat paedophilia, child prostitution as well as child pornography and violence against children; seek international co-operation in this regard;

- ♦ provide more detailed information in the next periodic report on the situation of social housing, especially in Flanders; take measures to eliminate the disadvantage of larger families as well as of single-parent and low-income families in qualifying for such housing;
- ♦ establish an adequate mechanism to monitor and ensure the uniformity of educational standards throughout the country; provide information in the next periodic report that reflects adequately and in a balanced manner the situation of education in all regions and communities;
- ♦ provide more information in the next periodic report concerning the initiative (introduced in September 1999) to assist Flemish secondary school students who are in conflict with the educational system; consider, if the initiative has proved successful, its introduction throughout all regions;
- ♦ provide information in the next periodic report on the enjoyment of the right to participate in and benefit from cultural life, such as access to cultural activities and cultural property, especially by disadvantaged and marginalised groups of society, persons with disabilities and older persons;
- ♦ review the budget allocation for international co-operation with a view to increasing its contribution, in accordance with the UN recommendation;
- ♦ as a member of international organisations — in particular the International Monetary Fund and the World Bank — do everything possible to ensure that the policies and decisions of those organisations conform with the obligations of states parties to the Covenant, in particular the obligations set out in article 2 (1) concerning international assistance and co-operation.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

#### **Extrajudicial, summary or arbitrary executions, Special Rapporteur on:** (E/CN.4/2000/3, paras. 13, 14)

The report notes that information related to violations of the right to life was transmitted to the government and that a response was received. No details of the case(s) are provided.

#### **Independence of judges and lawyers, Special Rapporteur on:** (E/CN.4/2000/61, paras. 57-69)

The Special Rapporteur (SR) recalled that missions to Belgium were undertaken in October 1997 and November 1998 in response to the massive public

demonstrations held in Brussels following the dismissal of a magistrate (juge d'instruction) who was investigating a case of child prostitution, kidnapping and murder. The removal of the judge gave rise to a perception that the system by which magistrates and judges were appointed, promoted and dismissed was motivated by political and/or partisan interests. As a result of the public outcry concerning this case, the government took immediate steps to reform the entire judicial system, including a proposal to revise article 151 of the Constitution providing for the appointment of justices of the peace and judges of the Police Tribunal and the Tribunals of First Instance by the King.

The report refers to an amendment to article 151 of the Constitution which provides for a Superior Council of the Magistracy composed of a French-speaking college and a Dutch-speaking college in equal proportion of the 44 members (e.g., retired magistrates, practising lawyers or legal academics). Points related to functioning of the Council include the following: it makes recommendations for the appointment of magistrates and evaluates their performance and has the power to impose penalties, including the withholding of salary, for unsatisfactory performance; the recommendations are made to the minister of Justice, who has the power of veto; when such power is exercised the minister must give the reasons in writing; the Council may re-nominate the same candidate for appointment, in which event the minister is obliged to accept; the Council also makes recommendations to the King concerning the appointment of the First Presidents of the Courts of Appeal and the Court of Cassation for a non-renewable period of seven years.

On the issue of a disciplinary procedure, at the time of submission of the report, the SR had not been informed of the status of contemplated reforms. The SR had previously indicated to the president of the parliamentary commission on judicial reform the importance of ensuring that the composition of the mechanism was left to sitting magistrates, and that it have at least 50 per cent participation of such magistrates.

#### **Racism and racial discrimination, Special Rapporteur on:** (E/CN.4/2000/16, para. 35)

The report refers to the discrimination experienced by Roma asylum-seekers in Europe and notes a case in which 70 Roma asylum-seekers were collectively deported after a summary review procedure from Belgium to Slovakia. Several human rights organisations stated that a mass deportation of this nature is not in accordance with international standards concerning the right of asylum (which require each application to be considered individually) and may be regarded as discriminatory.



**Sale of children, child prostitution and child pornography, Special Rapporteur on:** (E/CN.4/2000/73, paras. 8, 9, 65; E/CN.4/2000/73/Add.1, paras. 10-107)

The Special Rapporteur (SR) visited Belgium and the Netherlands from 30 November to 4 December 1998 to study the issue of the commercial sexual exploitation of children. The decision to visit these two countries was taken following the high-profile arrest in Belgium in 1996 of a man allegedly responsible for the kidnap, rape and murder of several children. Given the timing of the mission, it was not possible for the SR to prepare a complete report. As a consequence, a combined report, covering Belgium and the Netherlands, was prepared for the 2000 session. The section of the report dealing with Belgium provides information on, *inter alia*: general background on the three areas of the mandate; the legal framework; the structure of government as it relates to the rights and protection of children; the criminal justice system; NGOs.

The report reviews the facts of the Dutroux case, in which 10 suspects were eventually arrested in connection with the abductions and murders of children, including a police officer who was alleged to have protected the paedophile ring. A parliamentary commission was established to investigate allegations of corruption and complicity in the law enforcement and judicial systems. The SR noted that one result of the public outcry over the case was the creation of Child Focus, a centre mandated to actively support both the investigation of children reported missing or abducted and cases of sexual exploitation of children.

On the sale of children, the report notes, *inter alia*: the practice is closely linked to the disturbing profusion of trafficking of persons into and through Belgium; a large percentage of such victims are girls and young women from Eastern Europe, trafficked for the purposes of prostitution, often under the guise of being refugees; boys are being brought from African countries for the purposes of professional sport, namely football; these boys are taken from one football club to another and the recruiter presumably makes a considerable profit if the boys are taken on by a club; if the boys are unsuccessful, they are usually abandoned. On the issue of trafficking of boys for professional sports, the SR stated that this is a largely unknown and perhaps very new violation of child rights; governments and others working with and for children and migrants were urged to examine whether this phenomenon exists in other countries and if so, what measures are being taken to combat it.

On child prostitution, the report notes, *inter alia*: the trafficking of women and children for prostitution, under the guise of their being refugees, is a serious problem; legal immigration into Belgium was ended in 1994 and since that time the number of asylum-seekers

has steadily increased; it is mainly women and girls who are trafficked by highly organised trafficking networks, whereas men and boys are more likely to come of their own volition; children who do not cooperate with the traffickers' and pimps' demands are forced into compliance by threats made against them and their families; immigrant children are not necessarily at greater risk of entering prostitution than Belgian children; these children face particular problems, however, stemming from discrimination and marginalisation; they also have to deal with the difficulties of growing up in two different and sometimes opposing cultural environments — that of their homes and families, and that encountered every day in school and with their non-immigrant friends; in some cases, the children cannot reconcile their dual lifestyles, and the ensuing disputes cause them to run away from home; such children, alone and feeling rejected, in need of money and a place to sleep, are particularly vulnerable to networks of local recruiters; networks recruiting the daughters of immigrants have been found to exist; these networks usually consist of men of the same nationality, who appear to target girls of a certain nationality — rarely their own. The report adds: given Belgium's level of development, the entry into prostitution of Belgian children cannot be imputed to economic necessity; for those who become involved with some degree of "voluntariness," the causes include violence and sexual abuse, or emotional neglect and indifference, in the home from a young age; many children who suffer such abuse in the home run away around the age of 12 or 13 and often enter prostitution shortly afterwards in order to make some money while living on the streets; older children and teenagers are more likely to admit their involvement in prostitution; concerning child sex tourism involving Belgians, extra-territorial legislation was adopted in 1995 to make it possible for Belgian nationals to be tried in Belgium for sex crimes committed abroad.

With regard to child pornography, the report notes that children who are at risk of entry into prostitution are equally at risk of becoming involved in pornography, but are less likely to admit to their involvement in it. Boys appear to be at a greater risk than girls. The report notes that several organisations and individuals expressed concerns about the dangers of the Internet with respect to child pornography. There are suspicions that several paedophile rings are operating in Belgium, trading and posting pornographic pictures of children on the Internet, and using the electronic superhighway to share information with other paedophiles and assist them in finding children to abuse. Several universities, in conjunction with the Global Network to End Child Prostitution, Child Pornography and Trafficking (ECPAT) are actively scanning the Internet to trace and have removed pornographic sites involving children.

The report notes that following the Dutroux affair, the Ministry of Justice carried out an evaluation of the role of the police in the protection of the rights of the child. In particular, the Ministry issued a directive regarding the sensitive handling of cases of sexual exploitation to avoid the revictimisation of the child. This directive was aimed at the police, prosecutors and those public services working directly with children.

In terms of the justice system, the report notes, *inter alia*: it has been improved by the enactment of a legislative provision that entitles associations to become a party to legal proceedings and to act on behalf of the victims, taking the place of a child and representing her or him in court; one of the major obstacles preventing many children from seeking a judicial remedy stems from the child's desire to remain an anonymous party to the proceedings; there have been situations where the perpetrators had not been brought to trial because the boys, through fear or shame, refused to report them as they could not remain anonymous; the age of exemption from criminal responsibility has been raised from 16 to 18; the information obtained did not clearly indicate that this had necessarily made children bolder in their criminality, but it was clear that this age limit was being taken advantage of by those responsible for the abuse and exploitation of children; in many cases, children who were apprehended as a result of their involvement in crimes such as theft, were discovered to be part of a criminal network using children to commit crimes for which older members of the network would be imprisoned.

The SR expressed particular concern over one element of the system of youth assistance that appears to be based on protection through incarceration and its pertinence as regards children who have been trafficked into Belgium. The need to protect children from the violence used by trafficking networks has been offered as the justification for incarcerating such children in a closed institution. The report notes that children are subject to possible incarceration if the following criteria are met: the children present themselves to the authorities to request asylum and there are suspicions that they are under the control of a trafficking network; or the police discover a child whom they consider is in danger. The period of incarceration is also seen as a period during which the children are given time away from their trafficker or pimp, to break or loosen any emotional attachment that a child may feel towards that person and to attempt to bolster the confidence of the child in the Belgian justice system. The SR noted, however, that there is no special institution for such children; they are housed in the same building as juvenile offenders, albeit in a different section. Transfer to a more open institution is arranged after the child has spent a period of time, usually a few weeks, in the closed facilities.

The Special Rapporteur recommended, *inter alia*, that:

- ♦ immediate response mechanisms be established for children who are entering Belgium either as refugees or as victims of traffickers;
- ♦ measures be initiated to ensure that children are not subjected to revictimisation in the process of ascertainment of their status;
- ♦ a reception centre be established to enable the immediate needs and safety of unaccompanied minors to be attended to without any delay, even prior to the determination of the administrative and/or legal procedures that have to be followed; this centre be established solely for this purpose and not house other children who have been found to have violated the law;
- ♦ bilateral or multilateral collaborative arrangements be established with neighbouring countries on the issue of trafficking of children by organised networks;
- ♦ the rules and policies on asylum be reviewed and amended to facilitate rapid determination of the status of unaccompanied children;
- ♦ awareness-raising programmes and initiatives be undertaken on the rights of children under the Convention on the Rights of the Child, particularly their right to be protected from sexual exploitation of any kind;
- ♦ training programmes for all professionals working in the criminal justice system be continuous in order to promote more aggressive action against child abusers and a more compassionate approach to child victims;
- ♦ studies be carried out on the involvement of children, especially boys, in the production of pornography and focus on, for example, methods of recruitment, venues of operation, the impact and adverse effects of the abuse, and approaches to healing and recovery; these studies be undertaken so that gender-specific initiatives can be established; steps be taken to address the proliferation of pornographic materials involving children; restrictions on the access of children to viewing any pornographic materials be put in place;
- ♦ intensive campaigns through education, both formal and informal, be conducted aimed at eliminating discrimination, particularly against children;
- ♦ the government support all initiatives aimed at deterring its nationals from exploiting children, whether in the country or abroad; the law on extra-territoriality with respect to child abuse be coupled with a massive media campaign aimed at sensitising

the general public to the right of children to be protected against any kind of sexual exploitation;

- ♦ to combat the growing phenomenon of gambling addiction among children and in view of the fact that it is established as one of the causes of the involvement of children, especially boys, in prostitution, a strict ban on children under 18 years of age in casinos or places where gambling machines are available be enforced; video and amusement arcades likewise be regularly monitored to make sure that no betting occurs there among children;
- ♦ urgent attention be given to non-commercial sexual abuse, especially when perpetrated in the context of the family; incest and other types of domestic violence, abuse and neglect be examined in relation to the age and sex of the victim; and
- ♦ the government make the curtailment of drug, alcohol and other types of substance abuse by children a high priority; clinics and other medical facilities encourage children to come for treatment and rehabilitation; this assistance be made available to all needy children, regardless of the legitimacy or otherwise of their presence in the country.

**Violence against women, Special Rapporteur on:**  
(E/CN.4/2000/68, paras. 62, 64, 94)

The Special Rapporteur noted, in the context of trafficking in persons, that, generally, illegal border crossing is increasingly met with stiff penalties both for third parties who facilitate clandestine entries and for undocumented immigrants whose migration is facilitated through illegal means. The penalty for illegal entry range into Belgium is one year's imprisonment. The report notes that, again generally, migrant women are not allowed to work legally in the sex sector and, as a consequence, migrant sex workers' immigration status is generally undocumented, making them more vulnerable to violence, abuse and control by traffickers. The report notes that Belgium provides special entertainers' or artists' visas for sex work. Persons trafficked into Belgium are given a 45-day "rest period" during which they can decide whether to press charges against the traffickers. A three-month temporary residence permit, which entitles trafficking victims to social benefits if they are unable to find employment, is issued to women who decide to proceed with a case. This permit is renewable for an additional six months if the trial continues beyond three months. Additionally, the government has funded the establishment of shelters in Brussels and Liège for victims of trafficking.



## 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, undated, distributed 12 January 1998) 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 integral 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 fourth periodic report was due 30 June 2000.

**Civil and Political Rights**

Acceded: 19 May 1976.

Canada's fifth periodic report is due 30 April 2004.

*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 thirteenth through fifteenth periodic reports were due 13 November 1995, 1997 and 1999 respectively.

**Discrimination against Women**

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

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

**Torture**

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

Canada's third periodic report (CAT/C/34/Add.13) was considered by the Committee at its November 2000 session; the fourth periodic report was due 23 July 2000.

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

**Rights of the Child**

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

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

*Reservations and Declarations:* Articles 4, 21, 30 and 37 (c).

**Optional Protocol (Armed conflict):** Signed: 5 June 2000; ratified: 7 July 2000.

*Reservations and Declarations:* Article 3 (2).

## REPORTS TO TREATY BODIES

**Committee Against Torture**

Canada's third periodic report (CAT/C/34/Add.13, May 2000) was considered by the Committee at its November 2000 session. The report prepared by the government covers the period from April 1992 to April 1996. Part 2 of the report concerns federal law and provisions, and contains information on, *inter alia*: the prohibition of torture and the recourse to remedies for victims under the Charter of Rights and Freedoms; a specific offence of torture in the Criminal Code based on the definition in article 1 of the Convention; legislative, regulatory and administrative provisions governing the use of force by police and correctional agencies; a complete review of the Operational Manual within the Royal Canadian Mounted Police; events relating to the deployment of Canadian Forces in Somalia as well as a public inquiry into the matter; jurisdiction to try war crimes and crimes against humanity committed outside Canada;

amendments to improve and streamline the immigration and refugee determination system; training for members of the Immigration and Refugee Board; provision of a humanitarian and compassionate review of refugee claims; provisions related to applications for permanent residence by non-Convention refugees who face a serious risk of harm should they be returned to their country of origin; extradition; new legislation that regulates all aspects of incarceration including transfers, isolation and searches; the right to compensation.

Parts 3 and 4 of the report refer to new measures and developments relating to implementation of the Convention in the provinces and territories. Information is provided on, *inter alia*: training on officer safety and the use of force for the Royal Newfoundland Constabulary; human rights training for all corrections officers in Nova Scotia; implementation of a use-of-force policy in Nova Scotia; a review of certain practices in New Brunswick correctional institutions; the rights of users in dealings with health-care and social-services institutions in Québec; measures to ensure that the rights of persons arrested, detained or incarcerated are respected in Québec; corporal punishment in Québec; the Ontario Human Rights Commission's policy on female genital mutilation; training for the staff of the Ontario Ministry of Community and Social Services pertaining to the use of force on clients; a comprehensive regulation with respect to inmate discipline in Manitoba; policies related to the use of force by staff in the Corrections Division of Saskatchewan; young offenders in custody in Saskatchewan; the role of the provincial ombudsman in Alberta; training on the limits of force that can be used by police officers in Alberta; policies for the Correctional Services Division of Alberta that reinforce the need to treat incarcerated offenders equitably; creation of the Crimes Compensation Board in Alberta; the use of corporal punishment in Alberta; regulation of the proper conduct of police officers in British Columbia; deportation procedures in British Columbia; training of public officials and police on torture and use of force in British Columbia; the Ombudsman Act (1995) in the Yukon.

In its concluding observations and comments (CAT/C/XXV/Concl.4) the Committee welcomed: the extensive legal protection against torture and ill-treatment; entry into force of new legislation, the Crimes against Humanity and War Crimes Act, overcoming many of the obstacles to the prosecution of persons accused of these crimes; the ratification of the statute of the International Criminal Court; the systematic review, since December 1999, of all allegations against individuals involved in genocide, war crimes and crimes against humanity; the introduction of legislation under which the criteria for granting refugee protection would include grounds outlined in the Convention relating to

the status of refugees; the appointment of a correctional investigator, independent of the Corrections Service, to act as an ombudsman for detained federal offenders; the establishment of a Human Rights Division in the Correctional Service of Canada to assist in monitoring and evaluating policies and practices and to strengthen a human rights culture; development of a national strategy and other measures taken to address the historical social and economic disadvantages experienced by indigenous peoples; the policy of the government to seek the views of NGOs in preparing the reports for the Committee, and assurances that the “criticisms and concerns” of such organisations will be explicitly included in the next report; the increase in the government’s contribution to the UN Voluntary Fund for the Victims of Torture and the continued support to national rehabilitation centres for victims of torture.

The principal areas of concern identified by the Committee included: allegations of actions not in conformity with the Convention, including the inappropriate use of pepper spray and force by police to break up demonstrations and restore order; allegations that female detainees are treated harshly and improperly by the authorities and that many recommendations of the Arbour Report have not been implemented; allegations of the use of undue force and involuntary sedation in the removal of rejected asylum-seekers; the over-representation of aboriginal people in prison throughout the criminal justice system; the position of the government in arguments before the courts, and in policies and practices that, when a person is considered a serious criminal or security risk, the person can be returned to another state even where there is a risk of torture.

The Committee also expressed concern at: the fact that a public danger risk assessment (without interview or transparency) is carried out prior to the refugee determination procedure; the ineligibility of persons considered to pose risks to have their cases examined in depth under the normal refugee determination procedure; the fact that, at present, both the review of security risk and the review of the existence of humanitarian and compassionate grounds are determined by the same governmental body; the provision allowing for a person to be removed while an application for humanitarian review is under way; provisions in law under which persons accused of torture have recourse to a number of defences that would grant immunity.

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

- ♦ comply fully with article 3 (1) of the Convention prohibiting the return of a person to another state where there are substantial grounds for believing that the individual would be subjected to torture, whether or not the individual is a serious criminal or security risk;

- ♦ enhance the effectiveness of the remedies to protect the rights granted by article 3 (1) of the Convention (expulsion, refoulement, extradition); ensure that obstacles to the full implementation of article 3 are removed so that the individual concerned has an opportunity to respond before a security risk decision is made; ensure that assessments of humanitarian and compassionate grounds are made without demanding a fee from a person who seeks protection;
- ♦ prosecute every case of alleged torture where the person accused is not extradited, the evidence warrants it, and prior to any deportation;
- ♦ remove from current legislation the defences that could grant immunity to a person accused of torture;
- ♦ consider the creation of a new investigative body to receive and investigate complaints of violations of the provision of the Convention, including allegations related to the treatment of indigenous persons;
- ♦ continue and enhance training of military personnel on the standards required by the Convention and related human rights matters, including those regarding discriminatory treatment; and
- ♦ submit the fourth periodic report, which was due in July 2000, in the most timely manner possible.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

#### Education, Special Rapporteur on the right to: (E/CN.4/2000/6, para. 37)

The Special Rapporteur referred to the issue of whether a state has an obligation to subsidise private schools and the state’s right to subject such schools to regulation and supervision. The report notes a decision by the Supreme Court, which examined a complaint against a denial of public funding to private religious schools and affirmed that the purpose of public schools is the provision of education for all members of the community. The Court found that the exercise of parents’ freedom to educate their children in accordance with their religious beliefs in separate schools (or at home) prevents their children from taking advantage of public schools and creates costs for the parents; it also ruled that such exercise of parental freedom, however, does not entail an entitlement to public funding.

#### Racism and racial discrimination, Special Rapporteur on: (E/CN.4/2000/16, paras. 32, 36, 47-49)

The report notes that Canada is among the countries in which the concept of “leaderless resistance” is evident, meaning instances in which the weakening of local right-wing organisations had been replaced either by

regional reorganisation or by international organisation. The emergence of this phenomenon means that individuals and small groups can circumvent both stronger police enforcement of laws and better communal protection, as well as enhanced governmental measures to deal with racism and hate crimes.

The Special Rapporteur (SR) referred to reports indicating that: Quebec's population split after the referendum on sovereignty in October 1995; several radical movements have since come into being; expressions of racism, xenophobia and intolerance have multiplied. According to sources, the constitutional debate is increasingly marked by emotional outbursts, and statements are increasingly polarised; each of the contending parties accuses its adversary or adversaries of racism or even fascism.

The report summarises the response of the government to a case that was previously transmitted, noting, *inter alia*: the laws and judicial system ensure adequate, accessible and effective protection for all Canadians against manifestations of racism, discrimination or xenophobia; the domestic judicial system has the capacity and the competence to respond to complaints of this type and is in a position to grant appropriate compensation should they prove valid; no domestic judicial remedy has been sought by the complainants regarding the allegations that were reported by the SR; the allegations should first be examined by the Canadian judicial system before recourse is had to international machinery.

**Sale of children, child prostitution, child pornography, Special Rapporteur on the:** (E/CN.4/2000/73, paras. 59, 95, 110-111)

The Special Rapporteur (SR) cited information referring to two lawyers who were indicted in an alleged immigration fraud scheme that arranged for Hungarian mothers to enter the United States illegally so that they could give up their babies for adoption in exchange for money. The lawyers, who operated in Orange and in Vancouver, British Columbia, reportedly wrote letters of invitation to the women which enabled them to obtain visas to the United States. When that method did not work, the women were smuggled across the border from Canada.

The SR noted that, in 1984, the federal government appointed the Committee on Sexual Offences against Children and Youths (the Badgley Committee) to explore legal sanctions pertaining to child sexual abuse and to make recommendations aimed at protecting children at risk. The Committee's report expressed concern at the relationship between sexual abuse and involvement in prostitution, and contained several findings and conclusions following interviews with 229 "juvenile prostitutes." For many of them, the choice

to run away from home and their subsequent entry into prostitution were precipitated by a home situation they described as intolerable. The Committee also determined that many males involved in prostitution ran away from home because they were ridiculed and ostracised for their homosexual preferences. With little support from family members and a homophobic school environment, many young males turned to the streets where they believed they could meet people of the same sexual preferences and where they could escape from the hostility and derision of family and friends. The SR stated that since the Badgley report, some researchers have concluded that there is a clear link between intra-familial physical and sexual abuse while growing up and subsequent entry into prostitution; other researchers have questioned this link.

**Violence against women, Special Rapporteur on:**

(E/CN.4/2000/68, paras. 45, 62, 86, 92, 100;

E/CN.4/2000/68/Add.1, paras. 3, 31)

The Special Rapporteur (SR) noted that in December 1998, 53 trafficked women were arrested in Toronto, and she stated that the case highlights the problems of a law enforcement approach. The women, who were reportedly trafficked from Asia into Canada and sold for approximately C\$16,000-\$25,000, were then forced to work off a debt of approximately \$40,000. The information obtained indicated, *inter alia*: although the year-long police operation was meant to target the agents behind the operation, the women were likewise arrested and charged on prostitution-related charges; some women also faced charges under the Immigration Act; the women's bail was set at \$1,500; they described situations of forced labour and sexual slavery, and the traffickers were charged with forcible confinement; nonetheless, law enforcement agents were hesitant to label the operation sexual slavery owing to the existence of "contracts," under which the women's travel documents were confiscated, their movements restricted and they were forced to work off their debt by performing approximately 400-500 sex acts; because some of the women had agreed to migrate to work in the sex trade, law enforcement agents concluded that "they knew exactly what they were getting into."

The SR also noted that, in Canada, the penalty for illegal border crossing, both for third parties who facilitate clandestine entries and for undocumented immigrants whose migration is facilitated through illegal means, is to two years' imprisonment. The SR stated that such strict anti-immigration policies, which reduce opportunities for legal migration and thereby encourage migrants to turn to third parties for assistance in migrating and to rely on false promises of legal migration, serve to provide an ever-growing number of clients to the increasing number of underground networks of immigrant smugglers. Such policies also have

a strong impact on the living and working conditions of migrant workers, increasing their vulnerability to violence, abuse and control by criminal networks.

Reference is made to information submitted by the government to the Secretary-General in respect to resolution 51/66 on traffic in women and girls. The government stated that the selective use of visitor visas remains a primary means of preventing illegal entry. The SR noted that this suggests an anti-immigration approach to trafficking and stated that while emphasising the seriousness of trafficking as a form of violence against women and as a violation of human rights, Canada simultaneously seems to rely on an anti-immigration approach that confuses alien smuggling with trafficking.

The SR sent an urgent appeal on behalf of one woman, a Thai national, who was trafficked from Thailand to Canada to work as a prostitute. She was arrested in May 1998 on prostitution- and immigration-related charges and detained for four months until she was released on a \$5,000 bond and after incurring \$4,500 in lawyers' fees. The woman was rearrested in December 1998 for violating the conditions of her bond (returning to work for her employer) and has allegedly been held in an immigration detention centre in Toronto since December 1998. Information indicated that her status as a trafficked person was not taken into consideration during her last three detention hearings; only the fact that she violated the terms of her release on bond informed the adjudicator's decision to keep her in immigration detention; the lengthy detention has had a detrimental effect on her emotional and physical health.



## 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, 20 April 1995) 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 authorities. 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 fourth periodic report was due 30 June 1999.

*Reservations and Declarations:* Article 7 (d).

#### Civil and Political Rights

Signed: 20 March 1968; ratified: 6 January 1972.

Denmark's fourth periodic report (CCPR/C/DNK/99/4) was considered at the Committee's October 2000 session; the fifth periodic report is due 31 October 2005.

*Reservations and Declarations:* Articles 10 (3), 14 (1), 14 (5), 14 (7), and 20 (1); declaration under article 41.

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

*Reservations and Declarations:* Article 5 (2) (a).

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

#### Racial Discrimination

Signed: 21 June 1966; ratified: 9 December 1971.

Denmark's fourteenth periodic report (CERD/C/362/Add.1) was considered by the Committee at its March 2000 session; the fifteenth periodic report was due 8 January 2001.

*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 was due 21 May 2000.



**Optional Protocol:** Signed: 10 December 1999; ratified: 31 May 2000.

#### **Torture**

Signed: 4 February 1985; ratified: 27 May 1987.

Denmark's fourth periodic report (CAT/C/55/Add.2) has been submitted and is scheduled for consideration at the Committee's April/May 2001 session; the fifth periodic report is due 26 June 2004.

*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 was pending for consideration at the Committee's January 2001 session; the third periodic report is due 17 August 2003.

*Reservations and Declarations:* Article 40 (2) (b) (v).

**Optional Protocol (Sale of children):** Signed: 7 September 2000.

**Optional Protocol (Armed conflict):** Signed: 7 September 2000.

## **REPORTS TO TREATY BODIES**

### **Human Rights Committee**

Denmark's fourth periodic report (CCPR/C/DNK/99/4, February 1999) was considered by the Committee at its October/November 2000 session. The report prepared by the government contains information on, *inter alia*: the translation of the Covenant into Greenlandic; courses on the general human rights conventions within the sphere of the Ministry of Justice; increased punishment for the dissemination of Nazi and racist propaganda; human rights education and training of employees with the police and the Public Prosecutor; police outreach initiatives in relation to ethnic minorities; the Act on Integration of Aliens in Denmark (1998); measures to strengthen the Board for Ethnic Equality; the legal prohibition of discrimination in the labour market; the promotion of human rights within the educational system; efforts to promote equality between women and men; the lawful use of force by police; proposals to regulate inmates' rights and duties; young offenders; rules concerning the expulsion of aliens; the public administration of justice; a bill on the treatment of personal data; the right to freedom of religion; a new Act on Custody and Access of children; family reunification; and the establishment of a Children's Council.

In its concluding observations and comments (CCPR/CO/70/DNK), the Committee welcomed: the government's high level of respect for human rights generally and for its obligations under the Covenant; government

efforts to educate its population, and in particular to train the police, in human rights; the fact that, following its third periodic report, Denmark has changed the rules and practices on the use of police dogs in crowd control; new rules on examination of complaints concerning the police; the high level of respect for gender equality and the measures taken to achieve full equality; the provision of legal training in Greenland, the promotion of Greenland's financial independence and support for the Greenland Houses in Denmark; the translation of the Covenant into Greenlandic; the amendment of the Criminal Code to prohibit advocacy of national or racial hatred.

The principal areas of concern identified by the Committee included: the reservations entered by the government to the Covenant and their continuation; the delay in resolving the claim for compensation by the members of the Thule community in Greenland in respect of their displacement from their lands and the loss of traditional hunting rights as a result of the construction of the military base at Thule; reports that the alleged victims in the Thule case were induced to reduce the amount of their claim in order to meet the limitations set in legal-aid requirements; the lack of information on the implementation of the Covenant in the Faeroe Islands.

The Committee also noted with concern: the extended use of solitary confinement for persons incarcerated following conviction, and especially for those detained prior to trial and conviction; continuing discrimination against women, notably in respect of employment in the public and private sectors and in applications for asylum; reports of discrimination against ethnic minorities; the provision in the Aliens Act, Article 40c, under which the Immigration Authorities may require DNA examination from the applicant and from persons with whom the applicant claims the family ties on which a residence permit is to be based; the fact that asylum-seekers are often restricted or discouraged from choosing residence in specific municipalities or from moving from one municipality to another.

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

- ♦ take the steps necessary to ensure that all rights under the Covenant are fully protected in domestic law;
- ♦ continue to consider withdrawal of some or all of the reservations entered to the Covenant;
- ♦ provide information in response to reports that victims in the Thule case were induced to reduce the amount of their claim in order to meet the limitations set in legal-aid requirements;

- ♦ include in the next report information on the implementation of the Covenant in the Faeroe Islands, including with regard to the implementation of the right of self-determination;
- ♦ reconsider the practice of solitary confinement so as to ensure that it is imposed only in cases of urgent need;
- ♦ ensure that the Covenant may be invoked before the authorities and the courts;
- ♦ provide in the next report information on measures taken to address discrimination against women, notably in respect of employment in the public and private sectors, and in applications for asylum;
- ♦ ensure equality of treatment for ethnic minorities; take measures to prevent the occurrence of racial discrimination in, for example, restaurants and night-clubs; provide information on this matter in the next report;
- ♦ provide additional information with respect to equality between National Church members and members of other religions, and between members of religions and non-believers, in respect of financial subventions, educational costs and special taxes;
- ♦ ensure that DNA testing is only used when necessary and appropriate to the determination of the family tie on which a residence permit is based;
- ♦ ensure that any measures to restrict or discourage asylum-seekers from choosing residence in specific municipalities or from moving from one municipality to another are in strict compliance with article 12 of the Covenant; and
- ♦ provide information in the next report on the stages of the application procedures for asylum at which legal assistance may be had and whether the assistance is free at all stages for those who cannot afford it.

### Committee on the Elimination of Racial Discrimination

Denmark's fourteenth periodic report (CERD/C/362/Add.1, July 1999) was considered by the Committee at its March 2000 session. The report prepared by the government contains information on, *inter alia*: the Prohibition of Differential Treatment on the Labour Market Act (1996); measures to improve employment opportunities for foreign nationals; the participation of ethnic minority women in the labour market; efforts to integrate refugees and immigrants into society; measures to ensure ethnic equality in community life and the prohibition of racial segregation; the rental and assignment of public dwellings; prohibition on the dissemination of racist statements and propaganda; equal

access to public service; the right to freedom of movement and residence; family reunification; the right to receive medical treatment and to social security; the right of all immigrant children to receive partial mother-tongue instruction; higher and adult education; and education and training of the police.

The second part of the report covers the Home Rule Governments in Greenland and in the Faroe Islands and contains information on, *inter alia*: governance; provisions against any kind of discrimination; the labour force; a ban on public incitement to discriminate; housing; health services; teaching and education; and culture.

In its concluding observations and comments (CERD/C/304/Add.93), the Committee welcomed: the enactment and entry into force of the Act on Integration of Aliens (1998); the new Act on the Board for Ethnic Equality (1997); the establishment in 1999 of a new Committee of Ministers to prepare an inter-ministerial and comprehensive report on existing integration problems and a plan of action to improve the integration of aliens; and the decision of the Danish Immigration Service to adjust its practice by which it assigns refugees to municipalities.

The Committee identified as principal concerns: activities of organisations that promote racial hatred and discrimination; the influence of Radio Oasen, owned by a neo-Nazi association, whose licence was renewed in 1997 by the Ministry of Culture and which receives financial support from the government; the fact that decisions regarding quotas for newly arrived refugees and/or asylum-seekers can be arbitrary in their effects; the level of unemployment among foreigners and the difficult access to employment of members of ethnic minorities; and the fact that the Convention has not yet been translated into the Greenlandic language.

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

- ♦ monitor closely the implementation of the new Act on Integration of Aliens so as to ensure that the geographical distribution of aliens is made according to the principle of equity and does not lead to violation of their rights recognised under the Convention;
- ♦ declare illegal and prohibit any organisation that promotes and incites racial discrimination;
- ♦ adopt rules of procedure regarding the right to housing of refugees and/or asylum-seekers that are in line with the principles and provisions of the Convention;
- ♦ ensure that sanctions pronounced under the Criminal Code are commensurate with the nature of the related crime;

- ♦ pay equal attention to the economic, social and cultural rights set out in article 5 and guarantee that foreigners who have obtained a work permit are not discriminated against in their access to employment;
- ♦ take all effective measures to reduce unemployment among foreigners and facilitate the professional integration of all persons belonging to ethnic minorities in the public administration;
- ♦ facilitate the translation of the Convention into the Greenlandic language and provide means for its dissemination; and
- ♦ take further action to ensure that the provisions of the Convention are more widely disseminated, particularly among minority groups, government officials, employers and trade unions; and ensure that the public is better informed about the remedy available under article 14 of the Convention.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

#### **Sale of children, child prostitution, child pornography, Special Rapporteur on:** (A/55/297, paras. 80-84)

The Special Rapporteur's interim report to the General Assembly refers to various measures that have been taken to address domestic violence, including violence against children. Points noted include: a 1990 report by Danish National Institute of Social Research showing that prostitutes have often been subject to violence in the family; a reference to male prostitutes generally having had absent or violent fathers; the establishment on a permanent basis, in July 1998, of the National Council for Children (NCC), which monitors social development, public debate and issues of importance to children, and may take initiatives and make proposals to the Parliament in matters of importance to children; a study by the National Commissioner of Police in 1995 and 1996 on abuse and domestic violence; provisions related to the reporting of domestic violence; the fact that incidents of extra- and intra-familial sexual abuse of children had been disclosed in recent years that highlighted both judicial and legislative lapses and the absence of documentation or knowledge about the scope of the phenomenon by local authorities.

#### **Violence against women, Special Rapporteur on:** (E/CN.4/2000/68, paras. 62, 96)

The Special Rapporteur (SR) stated that illegal border crossing is increasingly met with stiff penalties both for third parties who facilitate clandestine entries and for undocumented immigrants whose migration is facilitated through illegal means. The penalty for illegal entry

is six months' imprisonment in Denmark. The SR also noted that a new law legalising adult prostitution came into effect in July 1999. The law makes it illegal to purchase sex from anyone under the age of 18; contravention is punishable by a maximum of two years in prison. Information indicated that the government has simultaneously increased its efforts to prevent the sexual exploitation of minors, to help women who want to leave the sex trade and to stop the trafficking of women for the purpose of forced sexual labour.



## 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, 28 February 1997) 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 (E/C.12/4/Add.1) was considered at the Committee's November/December 2000 Session; the fifth periodic report is due 30 June 2005.

**Civil and Political Rights**

Signed: 11 October 1967; ratified: 19 August 1975.  
Finland's fifth periodic report is due 1 June 2003.  
*Reservations and Declarations:* Articles 10 (2) (b), 10 (3), 14 (7) and 20 (1); 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 fifteenth periodic report (CERD/C/363/Add.2) was considered by the Committee at its August 2000 session; the sixteenth periodic report is due 13 August 2001.  
*Reservations and Declarations:* Declaration under article 14.

**Discrimination against Women**

Signed: 17 July 1980; ratified: 4 September 1986.  
Finland's third and fourth periodic reports (CEDAW/C/FIN/3; CEDAW/C/FIN/4) are pending consideration at the Committee's January 2001 session; the fifth periodic report is due 4 October 2003.

**Optional Protocol:** Signed: 10 December 1999; ratified: 29 December 2000.

**Torture**

Signed: 4 February 1985; ratified: 30 August 1989.  
Finland's fourth periodic report is due 28 September 2002.  
*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) was considered by the Committee at its October 2000 session; the third periodic report is due 19 July 2003.

**Optional Protocol (Sale of children):** Signed: 7 September 2000.

**Optional Protocol (Armed conflict):** Signed: 7 September 2000.

**REPORTS TO TREATY BODIES****Committee on Economic, Social and Cultural Rights**

Finland's fourth periodic report (E/C.12/4/Add.1, December 1999) was considered by the Committee at its November/December 2000 session. The report prepared by the government contains information on, *inter alia*: measures to narrow the gender pay gap; job-orientation courses for immigrants; housing allowances; amendments to the Debt Arrangement Act; the National Programme for Aging Workers; amendments to the Penal Code concerning sexual offences relating to child pornography and the sexual abuse of children; efforts to reduce the drop-out rate in schools; and measures aimed at preventing continued marginalisation in education.

The report also refers to: autonomy of the Åland Islands and of the Sami; amendments to the new Equality Act to prohibit further types of discrimination against women; the Equality Programme; employment indicators; measures to reduce long-term and youth unemployment; efforts to advance the employment prospects of certain disadvantaged groups; occupational safety and health regulations; trade unions and the right to strike; health care; social insurance; measures to combat gender-specific violence; poverty; housing; the development of health care services; the provision of free education; and basic instruction in minority languages.

In September 2000, the Committee prepared a "list of issues" (E/C.12/Q/FIN/2) to be taken up with the government during consideration of the fourth periodic report. The issues identified by the Committee related to: the general legal framework within which human rights are protected; the government's position with regard to the proposal to adopt an optional protocol to the Covenant; the Parliamentary Ombudsman and the Chancellor of Justice; efforts to combat all manifestations of xenophobia, racism and discrimination against the Sami and Roma; plans to restore fully to the Sami their rights to land, water and natural resources; a quota system for the representation of women in governmental and municipal bodies; efforts to narrow the gender gap in employment; age discrimination in employment; the principle of equal pay for work of equal value; the Contracts of Employment Act; violence against women; homeless families; the right to housing; discrimination in housing against certain ethnic groups; efforts to combat cancer, diabetes and asthma; persons affected by mental disorders; and measures to protect the language and culture of the Roma and of foreign nationals.

In its concluding observations and comments (E/C.12/1/Add.52), the Committee welcomed: the ratification of the Additional Protocol to the European Social Charter

providing for a system of collective complaints; the government's support for the draft Optional Protocol to the Covenant; the participation of NGOs in the drafting of periodic reports to the human rights treaty bodies; the inclusion of age in the Constitution as a prohibited ground of discrimination; the adoption of a programme on the integration of immigrants (April 1999), as well as the proposal prepared by the Ministry of Labour for a plan of action to prevent ethnic discrimination and racism; and the proposal for the establishment of an Office of Ombudsman against Ethnic Discrimination; the decrease in unemployment in general and the fall in youth unemployment.

The principal areas of concern identified by the Committee included: the absence of case law to demonstrate that the Covenant has been directly invoked before the courts; insufficient awareness on the part of lawyers and judges of the rights enshrined in the Covenant; in 1999, a commitment of only 0.32 per cent of GDP to international co-operation, given that the UN has set the threshold at 0.7 per cent of GDP for industrialised countries; continuing racist attitudes among the population; the situation of the so-called "stand-by" workers who can be laid off without notice; the lack of a national guarantee of a minimum wage; the alarming proportions of violence against women; the absence of comparative statistical information on the extent of such violence as well as lack of information on the remedies, rehabilitation and services provided to victims.

The Committee also expressed concern at the lack of affordable accommodation for the homeless, especially in the Helsinki metropolitan area; at the weakening of the public health care system as a result of cuts in the government's health spending; and at the insufficient allocation by certain municipalities of funds for health care services.

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

- ♦ formulate and implement a national plan of action for the protection and promotion of human rights;
- ♦ ensure that all judges and lawyers receive further free training to familiarise themselves with the provisions of the Covenant and the General Comments adopted by the Committee;
- ♦ review its budget allocation for international co-operation with a view to increasing its contribution in accordance with the UN recommendation;
- ♦ complete the review of legislation concerning the Sami population with a view to ratifying ILO Convention No. 169; settle the question of Sami land title as a matter of high priority;

- ♦ provide information in the next periodic report on the enjoyment by the Roma of their economic, social and cultural rights;
- ♦ continue and strengthen efforts to combat racism and xenophobia;
- ♦ ensure that legislative provisions concerning job security are effectively implemented, especially with regard to the most vulnerable groups, such as part-time, "stand-by" workers and foreigners;
- ♦ set a minimum wage at the national level in order to ensure protection to workers who are not protected by sectoral collective agreements;
- ♦ in the next report, provide comparative statistical data on the extent of violence against women; provide detailed information on the results of the measures taken by government to address the problem (facilities, rehabilitation and remedies);
- ♦ ensure that adequate resources are provided to public health services and that the cost of private health care remains affordable to all sectors of society;
- ♦ ensure that municipalities provide adequate health services, especially to persons belonging to vulnerable groups (e.g., children, older persons and persons with physical and mental disabilities); provide information, in the next periodic report, on the services available in municipalities, particularly for those in need of mental health care services; and
- ♦ take special care in ensuring the equality of standards in education for all.

### Committee on the Elimination of Racial Discrimination

Finland's fifteenth periodic report (CERD/C/363/Add.2, May 2000) was considered by the Committee at its August 2000 session. The report prepared by the government provides demographic data as well as information related to, *inter alia*: the Integration of Immigrants and Reception of Asylum Seekers Act (1999); improvements to the legal protection of immigrants under the Aliens' Act; provisions on the prohibition of the treatment of delicate information (personal data describing or intended to describe race or ethnic origin, for example); the Ombudsman against Ethnic Discrimination; the Advisory Board for Ethnic Relations; initiatives to promote the employment of immigrants and the strengthening of multiculturalism; the Advisory Board for International Human Rights Affairs; and the Commission against Racism, Xenophobia, Anti-Semitism and Intolerance.

The report also refers to: immigrant associations; the establishment of a national system for the monitoring of racism and discrimination based on ethnic origin;

land rights of the Sami; measures to prevent the social exclusion of the Roma; increasing quotas for refugees; provisions against racist organisations and the dissemination of racist ideas; protection against violence; the prohibition of discrimination in the labour market; the right to education and vocational training of immigrants; minority language protection and instruction in schools; cases of discrimination and assault brought before the courts; racism and police operations; human rights training; and support to minority cultures and work against racism.

In its concluding observations and comments (CERD/C/57/CRP.3/Add.3), the Committee noted with satisfaction: the legislative measures adopted with a view to combatting racial discrimination (e.g., the new Constitution, the Act on the Integration of Immigrants and Reception of Asylum-Seekers); efforts made to establish an institutionalised system for protection against racial discrimination and the promotion of the rights of minorities, mainly Sami and Roma; the proposal for a national programme of action against ethnic discrimination and racism; the in-depth studies undertaken on ethnic relations, in particular on attitudes towards immigrants, ethnic groups and ethnic discrimination at work; the implementation of anti-racist projects at regional and local levels, in particular the Finnish Romako joint project to raise the education level of the Roma and to prevent their social exclusion.

The principal subjects of concern identified by the Committee included: the lack of uniform terminology on discrimination in different laws; the absence of a law prohibiting organisations that promote and incite racial discrimination; the lack of a provision in the Penal Code declaring any dissemination of ideas based on racial superiority or hatred to be punishable by law; the fact that the Roma continue to experience discrimination in the fields of housing, education and employment; reports that the Roma are sometimes denied access and service in public places (e.g., restaurants); the fact that the question of land ownership of the Sami has not yet been resolved and that Finland has not acceded to the ILO Convention No.169 (Indigenous and Tribal Peoples in Independent Countries); and activities authorised by state bodies in Sami reindeer-breeding areas, which may threaten Sami culture and their traditional way of life.

The Committee also expressed concern over: the fact that, in some cases, the new accelerated procedure in the revised Aliens' Act will result in the repatriation of asylum-seekers while their appeals are still pending; in respect to racially motivated crimes, the fact that police do not always intervene, or that they take action that is not always appropriate and that prosecutors hesitate to

initiate criminal proceedings; the fact that, according to a 1999 study on the attitudes of the public authorities towards immigrants, police and frontier guards have the most negative attitude; and the fact that immigrants, refugees and minorities, in particular Roma, have higher rates of unemployment, have difficulties in accessing to housing and social services, and have higher rates of school drop-out.

The Committee also noted with concern: the low number of judicial proceedings initiated related to incidents of racial discrimination, including cases of discrimination in employment; in light of article 6 of the Convention, the fact that the only way to obtain reparation or satisfaction for any damage suffered as a result of an act of racial discrimination is through penal proceedings; the increasing number of racist acts; reports showing that a significant percentage of Finns declare themselves racist or partially racist and are opposed to the practice of Islam by immigrants (refugees); and the fact that the media often present immigrants and minorities, in particular the Roma, in a negative light.

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

- ♦ adopt explicit anti-discriminatory legislation in order to combat acts of racism better;
- ♦ give due consideration to the Committee's General Recommendation VII relating to the implementation of article 4 of the Convention; consider adopting provisions aimed at increasing the severity of sentences for racially motivated crimes, in particular racial violence;
- ♦ take additional measures at the national and municipal levels to improve the situation of the Roma minority, with a view to preventing social exclusion and discrimination against them;
- ♦ pursue ongoing efforts, together with the Sami people, towards the adequate resolution of the land dispute; provide full information on this issue in the next periodic report;
- ♦ take all available measures to guarantee the legal safeguards of asylum-seekers;
- ♦ provide for the continuation and strengthening of training programmes for police and all law enforcement officials and the improvement of communication between officials and immigrants in order to enhance mutual confidence; ensure that an independent body investigates cases where police officers are personally involved in racially motivated acts; invite judges and prosecutors to be more active and firm in prosecuting those cases;

- ♦ take all necessary measures to alleviate the situation of immigrants, refugees and minorities, in particular the Roma, at the national and municipal levels, especially with respect to housing, employment and education;
- ♦ consider ensuring alternative measures to penal proceedings in cases of discrimination;
- ♦ strengthen measures to promote tolerance and combat prejudices, in particular in the field of teaching, education, culture and information; find adequate modalities to raise the awareness of journalists and people working in the media sector of racial discrimination; and
- ♦ take all necessary measures to strengthen the Office of the Ombudsman against Ethnic Discrimination and provide the necessary human and financial resources to enable it to carry its tasks in an effective way.

### Committee on the Rights of the Child

Finland's second periodic report (CRC/C/70/Add.3, November 1998) was considered by the Committee at its September/October 2000 session. The report prepared by the government covers the period from January 1995 to June 1998 and contains information on, *inter alia*: special protection for children in the 1995 reform of the fundamental rights provisions of the Constitution Act; punishment for the purchase of sexual services from minors and possession of child pornography; a bill to amend the Penal Code concerning sex tourism; the principle of the protection of children as a vulnerable group in terms of housing; the compilation of child-oriented statistics; and the promotion of the health and welfare of ethnic minorities.

The report also refers to: guaranteeing immigrant children equal access to education services; legal provisions related to the best interests of the child; respect for the views of the child in custody hearings; children's television programming; family reunification; physical violence directed at children; an action program on disability; compulsory education for all children with disabilities; mother and child welfare clinic services; school health care services; provisions for teaching the Romani and Sami languages as the mother tongue of the student; measures to promote children's culture; special protection measures for refugee children; and protection against the economic exploitation of children.

In its concluding observations (CRC/C/15/Add.132), the Committee welcomed: the government's overall progress in implementing the Convention; the comprehensive social security system and the wide range of welfare services available for children and their parents; efforts to reduce the impact on children of the economic recession of the first half of the 1990s; the adop-

tion of laws as well as amendments to domestic legislation aimed at achieving conformity with the principles and provisions of the Convention; the bill on the criminalisation of the purchase of sexual services from minors and the possession of child pornography; the amendment of the Penal Code that criminalises offences of sexual abuses committed abroad by Finnish citizens; the revised Alien's Code of 1999, which aims to facilitate family reunification; the law promoting the integration of immigrants into society and establishing procedures for receiving asylum seekers; the preparation by the Ministry of Social Affairs and Health of a national program to prevent commercial sexual exploitation of children.

The Committee also welcomed: the establishment, in 1998, of an Assistant Parliamentary Ombudsperson on child issues; the policy guidelines issued by the government to promote tolerance and to combat racism; the promotion of health and welfare of ethnic minorities within the national program for the organisation of social welfare and health care services for 1998-2001; equal access to education for immigrant children, including measures to facilitate teaching in the immigrants' own language; the national equalisation system for child welfare; the adoption, in January 2000, by the Association of Finnish Local and Regional Authorities of a program on child policy with the aim of promoting the implementation of the Convention in municipalities; the action program for social welfare and health, which also takes into consideration the issue of mental problems of children and young people; the ratification of ILO Convention No.182 (Elimination of the Worst Forms of Child Labour); the steps taken to ratify the two Optional Protocols to the Convention on the Rights of the Child.

The Committee noted the devolution of responsibilities to local and regional authorities as a factor that may impede the implementation of the Convention, to the extent that there are local and regional differences in its interpretation and application, and in budget allocations.

The principal areas of concern identified by the Committee included: the absence of a focal point for children within the government; the absence of mechanisms, at the central and local levels, for co-ordinating policies relating to children and for monitoring the implementation of the Convention; as a result of decentralisation, the fact that not all the municipalities provide the same level of social services for the most vulnerable groups in society, in particular, poor families, single-parent families, refugee and minority children, and children with disabilities.

The Committee also expressed concern at: disparities in the extent and standard of welfare services provided by local authorities to low-income families or families



with children with disabilities; the need to develop regular and large-scale collection and analysis of data and indicators on issues related to children in order to assess the extent to which the Convention has been implemented, in particular at the local level; the failure to disseminate the principles and provisions of the Convention at all levels of society; the lack of systematic training and retraining of professionals working with and for children; the failure of municipal authorities always to take into full consideration the principle of the best interests of the child; the fact that the best interests of unaccompanied child asylum-seekers or refugees are not always a primary consideration; the lack of an explicit reference in the report to the government's implementation of the right to development; the failure always to take into consideration the views of children, in particular those below 12 years of age, especially in child custody cases; the inadequate attention given to the participation of children in, *inter alia*, education at the primary and lower secondary level.

Other concerns related to: the considerable decrease in the net income of families with children as a result of high unemployment rates and budgetary measures negatively affecting child-related allowances; the increasing number of children placed outside their families; the prolonged process of family reunification; the number of cases of violence against children in their homes, including sexual abuse and the lack of information on this phenomenon; the inadequate human and financial support given to families with chronically ill children; the closure or threat of closure of a number of children's medical wards as a cost-saving measures and the consequent care of children in adult wards; the institutionalisation of mentally ill children in the same facilities as adults; the long waiting list and delayed access to mental health services and professionals for children because of an insufficient number of psychologists and psychiatrists; the differences between municipalities in terms of the resources provided to mother- and child- welfare clinics; the lay-off of teachers in some municipalities for economic reasons.

The Committee also expressed concern over: the practice of interviewing unaccompanied minors applying for asylum in the same way as adults; the insufficient efforts made to ensure adequate resources and training for the representatives of unaccompanied minors applying for asylum; disparities among municipalities in terms of providing education for refugee children in their own language; the number of asylum-seeking and refugee children coming from areas affected by war and who may have been victims of traumatic experiences; the reported increasing use of drugs, in particular heavy drugs, as well as abuse of alcohol and tobacco among adolescents; the lack of capacity in the present child

welfare system to deal with the growing need for services; the emerging practice of Finnish child sex tourists travelling to the nearby countries of the former Soviet Union for child prostitution purposes; the high rates of school drop-outs among Roma children.

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

- ♦ consider taking further steps to establish a focal point for children within the government, as well as co-ordination mechanisms both between various ministries and between central and local authorities;
- ♦ undertake an evaluation of the implementation of all aspects of the Convention by municipal authorities; establish an integrated monitoring system or mechanism to ensure that children in all municipalities benefit to the same extent from basic social services;
- ♦ continue developing a comprehensive system of data collection consistent with the Convention; ensure that this system covers all children up to the age of 18 years, with specific emphasis on those who are particularly vulnerable;
- ♦ seriously consider the establishment of an independent national ombudsperson for children;
- ♦ develop more creative methods to promote the Convention, including through visual aid such as picture books and posters; incorporate the Convention in the school curriculum; consider translating the Convention into the Roma language and into other minority languages, and making the Convention available in the languages of the main immigrant groups; provide further systematic training and/or sensitisation of professional groups working with and for children;
- ♦ in terms of judicial proceedings, make sure that the views of children below 12 years of age, if considered mature enough, are heard in a child-friendly environment; undertake a regular review of the extent to which children's views are taken into consideration and of the impact on policy-making and court decisions, program implementation and children themselves;
- ♦ take effective measures to enhance children's participation in, *inter alia*, education activities that concern them;
- ♦ allocate more funds to families with children; develop effective measures to provide those families with appropriate support in order to avoid, among other things, having to place children in foster care or institutions; take all necessary measures to ensure that the placement of children outside their family

only occurs when it is evidently in the best interests of the child and for the shortest period possible;

- ◆ consider taking additional measures to prevent and to identify on a timely basis instances of violence against children within families in order to facilitate early intervention and to develop child-friendly preventive programs and services for treatment and rehabilitation;
- ◆ continue efforts to ensure equal support and assistance to families with chronically ill children and to provide them with the help of specialised staff; take effective measures to ensure appropriate care for children in hospitals in compliance with the Charter for Children in Hospitals of the European Association for Children in Hospital (EACH); address the shortage of child psychiatrists and psychologists in order to provide children with more timely access to mental health services and to prevent the institutionalisation of mentally ill children with adults;
- ◆ implement the revised school legislation in order to ensure equality between different regions of the country and between different school and educational establishments;
- ◆ ensure adequate resources for the training of the officials who interview refugee children and of the representatives of unaccompanied minors applying for asylum; consider measures through which asylum-seeking and refugee children can be granted equal access to the same standard of services, in particular education, irrespective of who they are and where they live;
- ◆ ensure that every effort is made to identify asylum-seeking and refugee children coming from areas affected by war, who may require special support;
- ◆ undertake adequate measures to combat the phenomenon of child sex tourism to the nearby countries of the former Soviet Union; pursue international co-operation for the investigation and the prosecution of sexual abuse and exploitation of children by Finnish citizens abroad; and
- ◆ continue efforts to develop special education for, and to prevent social exclusion of, Roma through such measures as strengthening the status of the Roma language in teaching, developing teaching material in the Roma language; provide information on the impact of these measures on Roma children in the next periodic report to the Committee.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

**Religious intolerance, Special Rapporteur on:**  
(E/CN.4/2000/65, paras. 3, 4, 38)

The Special Rapporteur stated that the duration of alternative service for conscientious objectors gives the appearance of being punitive. In a very detailed reply, the government recalled, *inter alia*: conscientious objection was legally recognised in 1931 and requests for conscientious objector status are approved without any inquiry; military service has been estimated to be more straining both physically and psychologically, the actual daily/weekly time of duty is longer, there are fewer financial benefits, and freedom of movement and other aspects of personal freedom are more restricted; also, persons who complete military service are under an obligation to do refresher training later; there is no equivalent to this for persons performing civilian service; because of the different nature of the types of service, comparing is difficult; the government will monitor the current system closely.



## 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, 15 March 1996) 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 (E/1990/6/Add.27) has been submitted and is pending consideration at the Committee's April 2002 session; 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 was due 31 December 2000.

*Reservations and Declarations:* Articles 4 (1), 9, 13 14, 20 (1), 21, 22 and 27.

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

*Reservations and Declarations:* Articles 1, 5 (2) (a) and 7.

#### **Racial Discrimination**

Acceded: 28 July 1971.

France's twelfth through fourteenth periodic reports were submitted as one document (CERD/C/337/Add.5) which was considered by the Committee at its March 2000 session; the fifteenth periodic report was due 27 August 2000.

*Reservations and Declarations:* Articles 4, 6 and 15; declaration under article 14.

#### **Discrimination against Women**

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

France's third periodic report (CEDAW/C/FRA/3) has been submitted but is not yet scheduled for consideration; the fourth and fifth periodic reports were due 13 January 1997 and 2001 respectively.

*Reservations and Declarations:* Paragraph 11 of the Preamble, articles 5 (b), 9, 14 (2) (c), 14 (2) (h), 16 (1) (d), 16 (1) (g) i and 29 (1).

**Optional Protocol:** Signed: 10 December 1999; ratified: 9 June 2000.

#### **Torture**

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

France's third and fourth periodic reports were due 25 June 1996 and 2000 respectively.

*Reservations and Declarations:* Article 30 (1); 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, 30 and 40 (2) (b) (v).

**Optional Protocol (Sale of children):** Signed: 6 September 2000.

**Optional Protocol (Armed conflict):** Signed: 6 September 2000.

## **REPORTS TO TREATY BODIES**

### **Committee on the Elimination of Racial Discrimination**

France's twelfth through fourteenth periodic reports were submitted together as one document (CERD/C/337/Add.5, July 1999), which was considered by the Committee at its March 2000 session. The report prepared by the government contains information on, *inter alia*: policies on the entry, sojourn and removal of aliens; safeguards for the right to family reunion and the right of asylum; the acquisition of French nationality; social policy for asylum-seekers and refugees; legislation concerning crimes against humanity and war crimes; the National Consultative Commission on Human Rights; measures to combat racist propaganda and safeguard freedom of opinion and expression; the absence of discrimination between metropolitan France and its overseas possessions; the exercise of political rights; the right to work for alien wage-earners who are legally in France; language and vocational training for immigrants; safeguards for the right to reparation of victims of racial discrimination; the prevention of racial discrimination in educational curricula; and instruction of students in their mother tongue.

In its concluding observations and comments (CERD/C/304/Add.91), the Committee noted with satisfaction: the 29 July 1998 law detailing action against exclusion, the re-organisation and extension of departmental anti-racism bureaus, the establishment of departmental commissions on access to citizenship, the work of the Study Group on Discrimination, the creation of departmental committees for co-ordinating policies against exclusion and of departmental councils on access to justice, and provisions for mediation; the part played by the National Consultative Commission on Human Rights in action against racial discrimination; and systematic action in the suppression of speech and publications likely to incite racial hatred.

The Committee's principal concerns were: the lack of complete information for monitoring implementation of the Convention; possible discrimination in effect in the implementation of laws providing for the removal of foreigners, including persons in possession of valid visas; reports that negative images of the Roma minority prevail in the mass media and in the public generally; and the fact that remedies available under article 14 of the Convention may not be sufficiently well known.



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

- ◆ ensure that the prohibition of attempts to justify crimes against humanity, and of their denial, not be limited to those committed during the Second World War, and that information on this be included in the next periodic report;
- ◆ ensure the effective prohibition of actions that are discriminatory in effect on the basis of race or ethnic or national origin;
- ◆ monitor all tendencies that may give rise to racial or ethnic segregation, and counter the negative consequences of such tendencies;
- ◆ include in future reports statistics on racially motivated offences, their investigation and the punishment of the perpetrators;
- ◆ ensure the effective protection of the exercise, without discrimination, of the rights to work and to housing, in both the public and private sectors, and provide compensation to victims of racial discrimination;
- ◆ ensure that, when reviewing laws restricting certain occupations to French nationals, none is discriminatory in effect;
- ◆ reinforce existing measures to ensure that access to places or services intended for use by the general public are not denied to any person on grounds of national or ethnic origin;
- ◆ reinforce the effectiveness of the remedies available to victims of racial discrimination; and
- ◆ give full effect to the provisions of article 7 of the Convention by adopting effective measures, particularly in the fields of education, training and human rights information, to combat such prejudices as those against the Roma minority.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

**Racism and racial discrimination, Special Rapporteur on:** (E/CN.4/2000/16, paras. 5, 32, 157-164)

The report refers to the new concept of “leaderless resistance” and to the fact that France is among the countries in which such resistance is evident. Individuals and small groups can circumvent both stronger police enforcement of laws and better communal protection.

The Special Rapporteur (SR) recalled the report to the 1999 General Assembly (see A/54/347, para. 66) and

noted that the government has adopted a series of measures designed to implement the recommendations that were made following the SR's visit in 1995. Those measures include a revision of the laws on immigration (Pasqua laws), the granting of entry visas to people from the South and the procedure for the consideration of the cases of people detained in holding centres. The laws on immigration, concerning the entry and residence of foreigners in France and the right of asylum, were revised in May 1998. There are now improved safeguards of the rights of foreigners, namely: by requiring the production of reasons for the refusal of a visa to a foreigner in certain cases; and by automatically granting temporary residence permits to foreigners entering France for scientific or artistic purposes, people who can prove the existence of personal or family relationships in France, persons whose state of health requires medical care that they cannot obtain in their own countries, and persons to whom the right of asylum has been granted. With regard to asylum, the law officially recognises the right to asylum of persons persecuted on account of their activities to promote freedom, even if those persecutions are not inflicted by a state, and of persons whose lives or freedom are threatened in their own countries, or who are exposed to treatment contrary to article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Legislative revisions also: make it possible for persons who have to come to France frequently to obtain multi-entry visas valid for between one and five years and to reside in the country for up to three months in any half-year; facilitate application for a visa by replacing the lodging certificate by an accommodation certificate, which is issued without any verification of the conditions under which the applicant will be accommodated; require a person requesting a visa for medical care to prove that the cost of the care will be borne by an insurance plan or by some other body, or to produce a certificate of prior deposit of the anticipated amount of the cost of hospitalisation; stipulate that the period of administrative detention in a holding centre may not exceed the “time strictly necessary” to arrange the departure of the foreigner and, in any case, may not exceed 12 days; state that the practice of escorting “illegal” entrants to the frontier in groups must be discontinued.

In the interim report to the General Assembly (A/55/304, paras. 13, 34, 37, 41), the SR referred to the legislative measures that were put in place to combat racism. The SR stated that there was a risk that those efforts might be undermined by the recent turnaround in public opinion; in a poll conducted between 17 and 24 November 1999, 69 per cent of French people considered themselves to be “quite racist”, “rather racist” or “not very racist”, while only 29 per cent considered themselves to be “not at all racist”.

In commentary on racism and hate speech on the Internet, the SR referred to the case brought in France against the Yahoo! company for selling Nazi objects on its French site. The case arose from a suit launched in April 2000 by the International League against Racism and Anti-Semitism, the Union des étudiants juifs de France (French Jewish Students' Union) and the Movement against Racism and for Friendship among Peoples (MRAP) against Yahoo! in an attempt to have its auction site, which offered for sale over 12,000 Nazi objects (including swastikas, Nazi tracts, Schutzstaffel (SS) insignia and uniforms), barred to French Internet users. Yahoo! representatives argued that the site has its headquarters in the United States, where such operations are perfectly legal, and that the French courts therefore have no jurisdiction over it. The judge rejected the argument and ordered the company to block access from France to Nazi apologist or negationist web pages. Yahoo! was to provide information to the judge on what technology it planned to use to implement that ruling. The court was to issue a final verdict in November 2000 by ruling on the issue of how to compel a technology provider (access provider or host) — especially one based in the United States — to put in place the technology to block access to one of its sites when the content of that site infringes French law.

Noting that racism and xenophobia are apparent in the country, the report notes that measures have been taken, in addition to legal reforms, to eliminate discrimination, including: the creation of a study group on discrimination in April 1999 to observe and analyse manifestations of discrimination in all areas of society, particularly in employment, recreation and housing, and in public administration or education; the establishment, in January 1999, of a commission on access to citizenship in each prefecture, mainly to help the children of immigrants to find a job and a place in society and to eliminate the discrimination they face in hiring, housing and recreation; the introduction in May 2000 of a free telephone number ("green number 114 against discrimination") under the auspices of the study group on discrimination.

**Sale of children, child prostitution, child pornography, Special Rapporteur on:** (A/55/297, paras. 60-61, 86-89)

In the interim report to the General Assembly, the Special Rapporteur (SR) noted that of the thousands of Vietnamese babies who are adopted abroad every year, many go to parents in France. In April 1999, the government temporarily suspended adoptions of Vietnamese children, pending the introduction of rigid checks on the adoption procedures.

On the issue of the abuse of children, a 1997 study indicated that 21,000 minors were found to be ill-treated;

the types of ill treatment included physical violence, sexual abuse, grave negligence and psychological violence. The report notes that if the authorities receive information from social agencies, medical services or a witness that a child is involved in a situation of domestic violence, a police investigation can be ordered. In other cases involving children, it is only the parent or guardian who can bring a complaint on behalf of the child. National initiatives to combat domestic violence are noted as including the establishment of a telephone hotline and a local observation system for ill treated children, which also seeks to find local strategies to combat the problem.

**Torture, Special Rapporteur on:** (E/CN.4/2000/9, paras. 442-452; E/CN.4/2000/9/Add.5, paras. 14-21)

The Special Rapporteur transmitted a number of cases to the government related to, *inter alia*: the arrest of Chinese asylum-seekers in New Caledonia, who were subsequently ordered deported, sought refuge on the roofs of the military hangar where they were being held, tear-gassed and fired upon by officers of the immigration police (DICCILEC) and members of mobile gendarme units who used rubber bullets, noting that the authorities decided to postpone the deportation and to release the asylum-seekers; three Sri Lankan asylum-seekers, who were beaten and handcuffed, kicked and gagged with cellophane tape at Roissy airport while being deported by the police; 16 trade union members who were allegedly beaten and kicked while protesting nuclear tests in Papeete; a young Moroccan man who was arrested at Soisy-sous-Montmorency by the anti-crime brigade and punched, struck with a truncheon and subjected to racial epithets; an Egyptian lawyer, who was mistreated on a visit to France by four policemen who apparently mistook him for someone else; one person who was mistreated by police officers at Fontainebleau, at the time of the death of a friend, who was allegedly killed by police officers while trying to break through a roadblock; an elderly cartoonist, who was reported to have been severely berated by a police officer over a parking matter, handcuffed and taken away in a van, where he was subjected to ill-treatment; an Egyptian restaurateur in Bagneux, who was mistreated by police officers to whom he had appealed for assistance following an altercation with transportation officials.

The report summarises the responses of the government to both these and (in Addendum.5) previously transmitted cases.



## 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, 7 June 1996) 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 conscience, 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 com-

mittees. 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 fourth periodic report (E/C.12/4/Add.3) has been submitted and is pending consideration at the Committee's August 2001 session; the fifth periodic report is due 30 June 2005.

#### Civil and Political Rights

Signed: 9 October 1968; ratified: 17 December 1973.

Germany's fifth periodic report was due 3 August 2000.

*Reservations and Declarations:* Articles 2 (1), 14 (3) (d), 14 (5), 15 (1), 19, 21 and 22; declaration under article 41.

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

*Reservations and Declarations:* Article 5 (2) (a).

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

#### Racial Discrimination

Signed: 10 February 1967; ratified: 16 May 1969.

Germany's fifteenth periodic report (CERD/C/338/Add.4) has been submitted but is not yet scheduled for consideration; the sixteenth periodic report was due 15 June 2000.

#### Discrimination against Women

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

Germany's second, third and fourth periodic reports (CEDAW/C/DEU/2-3; CEDAW/C/DEU/4) were considered by the Committee at its January/February 2000 session; the fifth periodic report is due 9 August 2002.

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

**Optional Protocol:** Signed: 10 December 1999.

#### Torture

Signed: 13 October 1986; ratified: 1 October 1990.

Germany's third periodic report was 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 was due 4 April 1999.

*Reservations and Declarations:* Articles 18 (1), 38 (2), 40 (2) (b) (ii), and 40 (2) (v).

**Optional Protocol (Sale of children):** Signed: 6 September 2000.

**Optional Protocol (Armed conflict):** Signed: 6 September 2000.

## REPORTS TO TREATY BODIES

### Committee on the Elimination of Discrimination against Women

Germany's second, third and fourth periodic reports (CEDAW/C/DEU/2-3, November 1996; CEDAW/C/DEU/4) were considered by the Committee at its January/February 2000 session. The second and third periodic reports provide statistical data as well as information related to, *inter alia*: female employment; women's wages; the situation of women in agriculture; the presence of women in public and political life; the Second Equal Rights Act (1994); an increase in the number of equal opportunities boards and women's offices at the local and federal levels; amendments to the Act on Assistance for Pregnant Women and Families; the Act for the Protection of Gainfully Employed Mothers (Maternity Protection Act); measures to eradicate the trafficking of women; measures to promote equality in education; the protection of women at work for reasons of equal treatment and health protection under the Working Hours Act (1994); measures to facilitate women's access to the job market; expanded family-policy measures in pensions law; the equal rights of women and men; and marriage.

In the presentation of the reports to the Committee, the government also noted, *inter alia*: a "women and work" programme aimed at ensuring better use of women's skills in all sectors of society to provide new impetus for equal opportunity at work and to promote equal participation in the work force and society; an action plan to combat violence against women; a draft bill to increase the number of women in the federal administration and in policy advisory bodies; wage discrimination; measures to reconcile family and career through greater work flexibility for women and men, flexibility in child-raising leave, the improvement of childcare institutions and the promotion of a new male image to help men fit into the role of equal sharers in family work and child-raising; a study commissioned to assess the health situation of German women.

In its concluding observations and comments (A/55/38, paras. 287-333), the Committee welcomed: the government's commitment to achieving equal rights and opportunities for women; the steps taken following reunification to support the many adjustments required from the people, especially the women, of the former German Democratic Republic in the transition

to an economic and social system based on parliamentary democracy, federalism and the social market economy; the amendment of article 3 of the Basic Law, which adds the state's commitment to the promotion of women's de facto equality with men, and the removal of existing disadvantages to the constitutional guarantee of equal rights of women and men; the wide-ranging legislative and policy initiatives, and the programmes and projects aimed at giving effect to the constitutional guarantee of equal rights of women and men; the adoption of the second Equal Rights Act of 1994, the amendment of the Penal Law (making marital rape and sexual coercion a punishable offence) and the action plan to combat violence against women.

The Committee also welcomed: the "women and work" programme aimed at ensuring women's equal participation in all sectors of society; the extensive use of temporary special measures for the realisation of de facto equality for women; the recent advances made in the participation of women in the political sphere, particularly with respect to their representation in the Bundestag; the extensive network of institutional mechanisms at federal, state and local levels that support and promote the implementation of equal rights policies; the continuous increase, between 1986 and 1997, in resources for the Federal Ministry aimed at realising equal opportunities for women; the signing of the Optional Protocol to the Convention, on 10 December 1999, and the government's stated intention to initiate in 2000 the process of ratifying both the Protocol and the amendment to article 20 (1) of the Convention; the intention of the government to evaluate its reservations to article 7 (b) — the right to hold public office and perform public functions — related to the role of women in the German armed forces.

The principal areas of concern identified by the Committee included: the fact that the implementation of the Convention for women living in the new Länder continues to lag behind implementation in the old Länder; the fact that women in the new Länder used to enjoy full employment but now account for 20.7 per cent of the unemployed; the overall unemployment rate of women; despite the programmes, laws and policies introduced by the government, the failure to ensure that the constitutional obligation to promote the implementation of de facto equality for women is understood as a societal responsibility and achieved in practice; the continuing disadvantages that women face in many aspects of work and the economy, and the persistence of indirect discrimination against women in the labour market; the persistence of stereotypical and traditional attitudes about the roles and responsibilities of women and men in private and public life; the fact that measures aimed at the reconciliation of family and work entrench stereotypical expectations for women and



men; the unmet need for kindergarten places for the 0-3 age group; the limited access to day care for school-age children and to all-day kindergartens.

Concern was also expressed over: the limited efforts and measures in place to extend women's equal rights and equal opportunities into the private sector; the often precarious social and economic situation of foreign women living in Germany; the incidence of xenophobic and racist attacks; the vulnerabilities that foreign women can face on multiple grounds (sex, ethnicity and race); the remaining gaps in protecting women against violence in the family and in society; the incidence of trafficking in women and girls; the continuing stereotypical portrayal of women, especially of foreign women, in the media; the fact that, although they are legally obliged to pay taxes, prostitutes still do not enjoy the protection of labour and social law; the situation of foreign women seeking residence in Germany.

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

- ♦ place greater emphasis, in the next periodic report, on the assessment and evaluation of all measures taken to eliminate discrimination against women in all areas of their lives; set time-frames within which goals are to be achieved;
- ♦ continue targeted efforts to improve the situation of women in the new Länder in the area of work and employment, as well as their overall social well-being;
- ♦ take measures to ensure that public officials, including law enforcement officials, contribute to the realisation of de facto equality for women in the entire country; ensure that tertiary and continuing legal education of lawyers and the judiciary adequately covers the evolving understanding of equality and non-discrimination and international norms and standards in that regard; ensure the availability of effective domestic remedies and their accessibility to women, especially in the light of the pending entry into force of the Optional Protocol to the Convention; refer directly to the Convention in legislative, policy and programmatic initiatives; ratify the Optional Protocol to the Convention;
- ♦ ensure that the definition of discrimination contained in article 1 of the Convention is fully integrated into legislation, especially labour legislation; examine existing formulae for the determination of equal work and work of equal value, with a view to developing guidelines or directives to assist the partners in collective wage bargaining in determining comparable wage structures in sectors dominated by women; monitor closely the impact of the new programme on "women and work" to ensure that it achieves its stated aims of advancing equal opportunities for women and men in the work world and in the family;
- ♦ study the impact of measures aimed at reconciliation of work and family responsibilities so as to create a firm basis for policies and programmes that will accelerate change and eradicate stereotypical attitudes; develop more programmes and policies targeted at men to accelerate the changing of attitudes and behaviour; consider the introduction of non-transferable parental leave for fathers in order to increase the number of men who share responsibility for childcare and child-rearing; improve the availability of care places for school-age children to facilitate women's re-entry into the labour market; assess the current legal provisions on the taxation of married couples ("splitting") and its impact on the perpetuation of stereotypical expectations for married women;
- ♦ increase legislative and regulatory efforts to ensure that women are protected against all forms of discrimination in the private sector; increase measures aimed at achieving de facto equality; intensify interaction with the private sector, including through incentives and other non-legislative measures, as well as with unions and with women's organisations to achieve that goal;
- ♦ undertake a comprehensive assessment of the situation of foreign women, including their access to education and training, work and work-related benefits, health care and social protection; provide such information in the next report; improve the collection of data and statistics disaggregated by sex and race/ethnicity of victims of violence motivated by xenophobia and racism; ensure that foreign women who are victims of such attacks are made aware of their rights and have access to effective remedies; strengthen efforts for the social integration of foreign women through education and employment services, and through awareness-raising of the population; take steps to combat domestic violence and violence within the family;
- ♦ ensure the systematic implementation of the action plan on violence against women and monitor its impact; provide for legislation and measures to ensure that women victims of domestic violence have immediate means of redress and protection; take measures aimed at creating zero tolerance for such violence; take measures to sensitise the judiciary to all forms of violence against women, particularly taking into account the increased vulnerability of foreign women to such violence;
- ♦ recognise that trafficked women are victims of human rights violations in need of protection and,

accordingly, provide assistance to them; increase efforts of cross-border and international cooperation to reduce the incidence of trafficking and to prosecute traffickers; ensure that trafficked women have the support that they need so that they can provide testimony against their traffickers; ensure the training of border police and law enforcement officials, and provide them with the requisite skills to recognise and provide support to victims of trafficking; review procedures for the issuance of visas to dependent spouses, taking into consideration that such spouses may be vulnerable to sexual exploitation;

- ◆ support the important role of the media in changing stereotypical attitudes towards women; create opportunities for the portrayal of positive, non-traditional images of women; encourage and facilitate the use of self-regulatory mechanisms in the media to reduce discriminatory and stereotypical portrayals of women;
- ◆ improve the legislative situation affecting prostitutes so as to render them less vulnerable to exploitation and to increase their social protection;
- ◆ continue to improve the legislative and social protection of aliens, especially of women asylum seekers; and
- ◆ engage in a broad consultative process with women's NGOs, including those that represent foreign women, when preparing the next report.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

**Extrajudicial, summary or arbitrary executions, Special Rapporteur on:** (E/CN.4/2000/3, paras. 11, 14, 25; E/CN.4/2000/3/Add.1, paras. 202-204)

An urgent appeal was sent to the government regarding the case of a Sudanese asylum-seeker who reportedly died during an attempt to deport him forcibly from Germany. According to the information received, the individual was escorted by three border police officers to Frankfurt-am-Main Airport, to be put aboard a Lufthansa flight from Frankfurt to Cairo and then on to Khartoum. When he resisted, the police officers allegedly forced his head down between his knees and kept him in that position until the aeroplane had taken off. The man stopped breathing and efforts to revive him by doctors on the flight failed.

In its reply, the government did not dispute the information sent by the Special Rapporteur (SR) and stated that the general prosecutor in Frankfurt had opened a criminal investigation into the case. In addition, an internal investigation, with a view to imposing possible

disciplinary measures against the officers involved, had been ordered. These proceedings had been suspended pending the results of the investigation by the general prosecutor. At the time of the communication, the cause of death had still not been established and the question remained open whether the officers involved had committed punishable acts.

The SR welcomed the steps taken by the Minister of the Interior to order an immediate suspension, as of 29 May 1999, of all deportations where violent attempts to resist expulsion were expected. The SR noted, however, that the suspension order was lifted on 25 June 1999.

**Racism and racial discrimination, Special Rapporteur on:** (E/CN.4/2000/16, paras. 36, 37-44)

The Special Rapporteur (SR) transmitted to the government information related to Sinti and Roma minorities being specially registered in the databases and records of the Bavarian police as "Roma/Sinti type," "gypsy type" or the old Nazi term "Landfahrer" ("vagrant"). The information stated that the Sinti and the Roma are being registered generally on special police files without reason or legal basis by their personal details and even the number plates of their cars and further data. The police justified this storage as vorbeugende Verbrechenbekämpfung ("preventive crime combat") and stated that the Sinti and the Roma "could be a public danger." The SR noted that executive and legislative responsibility for the police in Germany does not lie with the federal government but with the governments of the Länder (states). Within the areas of responsibility of the federal government, terms such as "Roma/Sinti type," "gypsy type" or "vagrant" are not used as categories in the INPOL data-processing system. The report notes that computerised registration was the subject of a question in the Bundestag and, in its answer, the federal government stated that doing away with such classifications altogether was not being considered because of their "indispensable nature" for police work and its storage "for police use only" is not contrary to article 3 (3) of the Basic Law.

In response to the SR's communication, the Bavarian State Ministry of the Interior stated, *inter alia*: the police do not keep records of all members of the Sinti and Roma ethnic groups; only in individual cases are such persons registered as ethnic "Sinti and Roma" as part of the personal details noted during police questioning; the information is provided on a voluntary basis; only the outward appearance of the individual, and not actual membership in the Sinti or Roma ethnic groups, is taken into account in the identification procedure; the accusation that the police justify recording membership of the Sinti and Roma ethnic groups as "preventive crime combat" and state that Sinti and Roma can present "a danger to the public" is unfounded; the practice

was abandoned at the end of 1998 and no general record is kept of membership of the Sinti and Roma ethnic groups, nor of the membership of nomadic groups in general; data relating to nomadic groups are only recorded in cases of actual disturbance of the peace (e.g., when prosecuting criminals).

In the interim report to the General Assembly (A/55/304, paras. 28-35, 40), the SR referred to a resurgence of racist and xenophobic violence in both eastern and western Germany, in such towns as Dessau, Usedom, Ludwigshafen, Eisenach, Gera, Gotha, Düsseldorf and Erfurt. The report notes, *inter alia*: a Mozambican was beaten to death in Dessau; a residence for asylum-seekers was burned down in Ludwigshafen; Africans were beaten up in Eisenach by young people shouting Nazi slogans; the synagogue in Erfurt was attacked; young neo-Nazis (aged 16 to 27 years) were jailed in Gera and Gotha for having assaulted foreigners; at the Düsseldorf railway station, 10 members of a group of immigrants from the former Soviet Union, including six Jews, were wounded.

The SR noted information indicating that the far right draws for its support on young people in the former German Democratic Republic (GDR), where the unemployment rate for young people is 40 per cent in Saxe-Anhalt and where the far right — campaigning under the slogan “Jobs for real Germans!” — won 20 per cent of the vote in the most recent regional elections. In some towns of the former GDR, neighbourhoods have been declared “national liberated zones” by neo-Nazis and other skinheads, who bar access to them by foreigners of colour and the police. The SR stated that the government and civil society (including NGOs, athletes, artists, intellectuals, religious groups and journalists) are mobilising a “democratic resistance” to xenophobia and anti-Semitism. Some NGOs, however, believe that the political declarations and mobilisations against racism and xenophobia organised by the federal and Land authorities are not being followed up by effective measures on the ground.

The report notes that in August 2000 a Berlin court sentenced a former member of the Nationaldemokratischer Partei Deutschland (NPD), a “negationist” and openly Hitlerite movement (with a membership of some 6,000), to two years in prison without parole for incitement to racial hatred and preparation of a bombing attempt. The accused admitted to having made a lethal weapon using the instructions found on an Internet Website. According to a press report in August 2000, the Minister of Justice stated that steps would be taken to prevent Internet sites from using neo-Nazi elements in their addresses, after a site had been able to use “Heil Hitler” as part of its address with complete impunity.

**Torture, Special Rapporteur on:** (E/CN.4/2000/9, paras. 464-466)

Three urgent appeals were transmitted to the government. The first involved a former member of the Algerian army who was said to have deserted because of alleged violations of human rights and who requested asylum. The request was reported to have been rejected as manifestly ill-founded; the administrative tribunal of Frankfurt-am-Main declared inadmissible his request for a stay of implementation of the deportation order pending the determination of his appeal, reportedly because of a delay in the submission of this request by his lawyer. The second case involved an Iranian national who was reportedly facing imminent and forcible repatriation to Iran, where he may have been at risk of torture. His applications for refugee status were reportedly rejected by the authorities and he was forced to sign a document from the Iranian consulate in Munich agreeing to return to Iran. He was reportedly arrested by the police in Cologne on 20 June 1999 while he was protesting against the Iranian government. The third case concerned a Sudanese asylum-seeker and active member of the opposition Democratic Union Party of Sudan who was said to be facing imminent and forcible repatriation to the Sudan, where he may have been at risk of torture. His asylum claim was rejected and he was allegedly ill-treated by police officers during the second and third attempts to forcibly deport him. Information indicated that, despite a medical diagnosis of an acute heart problem and depression, and a doctor's statement that he should not be deported, the Bavarian authorities reportedly issued a deportation order, to take effect on 12 November 1999.

**Toxic wastes and products, Special Rapporteur on:** (E/CN.4/2000/50, para. 116; E/CN.4/2000/50/Add.1, paras. 7, 28, sections II and III)

The Special Rapporteur (SR) visited Germany in October 1999 and met with senior officials at the ministries of the Environment, Nature Protection and Nuclear Safety, and Foreign Affairs. Talks were also held with NGO representatives and a representative of Öko-Institut e. V. Visits were made to the facilities of Kali und Salz (in Herfa Neurode, Hesse), specialising in the storage of dangerous non-organic wastes, and the waste management facilities at the Bayer A. G. pharmaceutical company (in Leverkusen, Rhineland).

The report notes that the basic principle underlying German policy on wastes in general, and dangerous or “special” wastes in particular, is to avoid producing them in the first place if possible, both in industry and in the domestic environment. The country is moving towards a closed-cycle model of waste management in which manufactured items and substances are designed to be reused or reprocessed rather than discarded after use. Until the closed-cycle system is in

place, unavoidable refuse is recycled or stored in an appropriate, environmentally safe facility, or disposed of using state-of-the-art-techniques that minimise the threat to the environment.

In the section providing the legal and institutional context, the report refers to, *inter alia*: the 1986 Waste Avoidance and Management Act (Abfallgesetz), which sets out a series of ordinances on the recycling of refuse related to, for example, packaging, solvents, refuse oils, used batteries, biological waste; the 1994 reformulation of the Waste Avoidance, Recovery and Disposal Act in order to implement European law, particularly Directives 91/156 on waste and 94/31 on hazardous waste; the 1996 Ordinance on the codification of wastes requiring special supervision; the Federal Environment Office, reporting to the Ministry of the Environment, Nature Protection and Nuclear Safety; article 326 (2) of the Criminal Code, which stipulates that environmental crimes are punishable by five or six years' imprisonment for any person engaged in the illegal traffic of dangerous wastes; article 12 of the Ordinance on transport licences, which makes it an offence unlawfully to convey dangerous substances.

Commentary on the visit to Kali und Salz's Herfa Neu-rode site notes, among other things: the site is located 700 metres underground in a geological complex composed of impermeable, isolating rocks; the site is used to store special wastes produced by German industry and others; the substances involved are dangerous inorganic wastes but they pose no threat to health; for security reasons and to protect the environment, they must be non-explosive, non-radioactive, non-flammable, non-gas-emitting and non-chemically reactive.

Concerning the Bayer facilities at Leverkusen, the report notes, *inter alia*: the facilities are state-of-the-art and process Bayer's own waste products; the company has adopted Guidelines for Responsible Care in Environmental Protection and Safety that have led to a reduction in total waste; the company stated that it has pursued an environment-friendly policy and applied the same standards in developing countries as it demanded for its operations in industrialised countries; in all the countries where Bayer has a presence, the company operates in accordance with national legislation; the company stated that it does not export dangerous wastes outside the European Union.

NGOs expressed a number of concerns, including the following: the export to Asia of old ships contaminated by dangerous substances poses health and environmental dangers; some 40,000 people are employed in the ship-breaking industry, working in conditions that are particularly dangerous for their life and health, including through exposure to asbestos, dioxin, and polychlorinated biphenyls (PCBs); a potential problem

may exist because a transaction to send a ship for breaking up may avoid the relevant provisions in the Basel Convention by hiding the fact that the ship is destined for ship-breaking, for example by simply indicating the sale of the ship.

On the issue of trade in pesticides, NGOs noted that statements by major German chemical companies such as Bayer, BASF or Hoechst, to the effect that developing countries no longer import products that cannot be sold or used in Germany and do not import obsolete products, must be treated with caution. Information provided to the SR referred to the existence of illicit trafficking in pesticides and the injury to life and health resulting from the improper use of these products in certain developing countries. The report cites the example of Cambodia and the products Folidol, a pesticide manufactured by Bayer A. G., and Thiodan, manufactured by AgrEvo. The information indicated that: (a) the pesticides find their way on to all markets in the capital city of Phnom Penh, as well as in the provinces; (b) the labels are incomprehensible to Cambodians as they are printed in Thai or Vietnamese; (c) even if the labels were printed in Khmer, only a few would be able to read them, and those understanding the labels would find it difficult to adhere to the recommended protective measures; (d) it is also common for pesticides to be used to kill fish either for private consumption or to be sold on the market.

The SR acknowledged that the government is sympathetic to the argument that developing countries do not always have the means or the qualified personnel to understand the nature of the products entering their territory or to counteract illicit trafficking. The government is committed to increasing technical assistance in this field. The SR recommended greater information-sharing and a multiplication of focal points in order to activate interregional early-warning systems.



## 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, second and third periodic reports were due 30 June 1990, 1995 and 2000 respectively.

#### **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 twelfth through fifteenth periodic reports were submitted as one document (CERD/C/363/Add.4) which is not yet scheduled for consideration; the sixteenth periodic report is due 18 July 2001.

#### **Discrimination against Women**

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

Greece's fourth and fifth periodic reports were due 7 July 1996 and 2000 respectively.

**Optional Protocol:** Signed: 10 December 1999.

#### **Torture**

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

Greece's third periodic report (CAT/C/39/Add.3) has been submitted and is scheduled for consideration at the Committee's April/May 2001 session; the fourth periodic report is due 4 November 2001.

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

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

Signed: 26 January 1990; 11 May 1993.

Greece's initial report (CRC/C/28/Add.17) has been submitted and is scheduled for consideration at the Committee's January 2002; the second periodic report was due 9 June 2000.

**Optional Protocol (Sale of children):** Signed: 7 September 2000.

**Optional Protocol (Armed conflict):** Signed: 7 September 2000.

## **THEMATIC REPORTS**

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

**Religious intolerance, Special Rapporteur on:**  
(E/CN.4/2000/65, paras. 3, 4, 42-44)

The Special Rapporteur (SR) referred to information indicating that in the municipality of Galatsi, a number of residents and the officially recognised Greek

Orthodox Church are attempting to take possession of the Church of Saint Savas in Panorama Galatsiou region, which belongs to the Old Calendarist Orthodox Church, despite a judgement in the latter's favour. Furthermore, members of the Old Calendarist Orthodox Church are said to have been arrested and charged with disturbing a religious gathering of persons who were in fact using their church illegally. The government replied that the case was not one of religious extremism but, rather, a civil law controversy; the case was pending.

A second communication received by the SR stated that in Kassandra municipality in Halkidiki, with the assistance of the Greek Orthodox Church which objected, there was a campaign of hostility among the population to the construction of a lecture hall by the Jehovah's Witnesses, despite a favourable decision by the Ministry of Education and Religious Affairs.



## **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 thirteenth through fifteenth periodic reports were submitted as one document (CERD/C/338/Add.11) which was considered by the Committee at its August 2000 session; the sixteenth periodic report was due 31 May 2000.

#### **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, articles 13,14, 15, 16, 24 (2) and 28.

**Optional Protocol (Sale of children):** Signed: 10 October 2000.

**Optional Protocol (Armed conflict):** Signed: 10 October 2000.

## REPORTS TO TREATY BODIES

### Committee on the Elimination of Racial Discrimination

The Holy See's thirteenth through fifteenth periodic reports were submitted as one document (CERD/C/338/Add.11, May 2000), which was considered by the Committee during its August 2000 session. The report provides statistical data on church population and structure around the world as well as information on, *inter alia*: the primacy of international obligations contracted under treaties; provisions for freedom of conscience and religion; the natural right of association; the full equality of all the faithful in terms of both "dignity" and "action"; condemnation of racial segregation; the right to equal treatment before the courts; the apostolic mission; education and training for tolerance; Catholic schools in the Holy Land; schools and pluralistic society; inter-religious dialogue; joint committees with international Islamic organisations and institutes; the Pontifical Council for the Pastoral Care of Migrants and Itinerant Peoples; efforts to strive for the eradication of the causes of human displacement; pastoral care to the Roma; programmes on Vatican Radio that concern discrimination; and efforts to promote peace in the Balkans and in the Great Lakes region of Africa.

In its concluding observations and comments (CERD/C/57/CRP3/Add.10), the Committee welcomed: the fact that the laws and teachings of the Catholic church promote tolerance, friendly coexistence and multiracial integration; statements by Pope John Paul II condemning all forms of racism, racial discrimination and xenophobia manifested through racial tensions and conflicts; the solemn request of His Holiness for pardon for past acts and omissions of the church that may have encouraged and/or perpetuated discrimination against particular groups of people; the information given by Vatican Radio and the Vatican's daily newspaper, *Osservatore Romano*, in promoting the principles of the Convention; initiatives to promote peace and bring an end to ethnic conflicts; the contributions made by the Pontifical Council for the Pastoral Care of Migrants and Itinerant People through, *inter alia*, declarations and programmes of action to promote non-discrimination against refugees and migrants in various parts of the world; efforts to promote the rights of the Roma population; the role of the Catholic church in promoting education, particularly in developing countries; the opening up of Catholic schools to children from different religious creeds as well as the promotion of tolerance, peace and integration through education; the fact that, in many countries where the majority of the population is non-Christian, Catholic schools are a place where children and young people of different faiths, culture, social class or ethnic backgrounds come into contact with each other.

The Committee recommended that the Holy See, *inter alia*:

- ♦ implement, as appropriate, the Convention, and provide, in the next periodic report, information on the relation of article 4 to Canon Law and Penal Law in Vatican City;
- ♦ in light of the involvement of ecclesiastics in the genocide in Rwanda, fully co-operate with the national and international judicial authorities in connection with prosecutions relating to the genocide;
- ♦ provide data available on the inhabitants and administrative structure of Vatican City; and
- ♦ consider making the declaration provided for in article 14 of the Convention.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

#### Religious intolerance, Special Rapporteur on: (E/CN.4/2000/65, paras. 116-170)

The Special Rapporteur on religious intolerance visited the Holy See from 1 to 3 September 1999. The report of the visit considers inter-community relations in the area of religion and belief in some detail, while giving due consideration to topics related to international and national law in the area of freedom of religion, to the Vatican's relations with states and to matters concerning women, the family and education.

In setting the context, the report notes that as far as international law governing religious freedom is concerned, the Vatican's position follows the provisions on religious liberty, its manifestations and its limitations contained in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981) and in the International Covenant on Civil and Political Rights. In its 1965 Declaration, *Dignitatis Humanae*, the Second Vatican Council established that freedom of religion is a fundamental right not only of the individual but also of religious communities.

Commentary on the position of the Vatican in relation to states notes, *inter alia*: diplomatic relations are maintained with 171 states; generally speaking, with a few exceptions, Muslim states or states with a chiefly Muslim population are very open in their dealings with the Holy See; in some cases, however, a state itself may maintain satisfactory relations with the Holy See, which is considered more as a diplomatic partner, while its Catholic community is viewed with suspicion by the authorities.

Commentary on the Vatican's position in relation to communities in the area of religion and belief refers to the following topics, *inter alia*.

- ◆ **The Pontifical Council for Inter-Religious Dialogue** — Established in 1964 as the Secretariat for Non-Christians and assuming its present title in 1988, the Council fosters dialogue with established world religions as well as with traditional religions. In 1974, a commission for fostering relations with Muslims was set up under the Council to facilitate meetings of a religious nature; the Commission for Religious Relations with the Jews was also established under the Council and has addressed the tragedy of the Shoah. The Pontifical Council has not set up any special committees for other religions (e.g., Hinduism or Buddhism); dialogue has been maintained, however, by means of visits and meetings; dialogue is also maintained, although less formally, with Shintoist, Jainists, Sikhs and Confucianists. With regard to traditional religions — also referred to as tribal, primitive, primeval, native or indigenous religions — and converts to Catholicism, there remains a problem of syncretism because traditional values have not been fully integrated within a Christian lifestyle; with regard to those who adhere to traditional religions and do not wish to become Christians, dialogue is understood in the sense of encounter, mutual understanding, respect, and recognition of traditional religious values that can be integrated within the common heritage.
- ◆ **Evangelisation** — The process of conversion is governed by the supreme law of conscience, and people are not obliged to act against their conscience, or prevented from acting in accordance with their conscience, especially in religious matters. Inter-religious dialogue and proclamation are both authentic elements of the Church's evangelising mission but are not interchangeable; the use of poverty, for example, to gain converts is contrary to the Vatican's instructions. The Church is making an effort to detach itself from any colonial legacy while encouraging African Catholics to take their lives in hand.
- ◆ **"Sects or new religious movements"** — The approach to this question is different from that adopted for Islam, Judaism, Buddhism, Hinduism, traditional and other religions, in that study and documentation take precedence over dialogue. There are two types of problems — ecumenical and socio-juridical. Ecumenical problems revolve around the question of proselytism since, in some countries, a minority Catholic community is often compared by Orthodox believers to a "sect". The socio-juridical problem resides in the fact that the new forms of religiosity constitute a challenge both for evangelisation and for fundamental values. The establishment in some European countries of observatories monitoring sectarian activities has given rise to controversy, which has affected certain Catholic movements

or communities. There remains a considerable degree of terminological uncertainty with regard to the concepts of "religion," "church" and "sect." From a legal point of view, there is a tendency, instead of seeking a definition, to concentrate on abuses committed under the cover of religion but governed by the law of the country. The Vatican's objective is not to combat "sects" or "new religious movements," for instance through defamatory campaigns, but instead to offer training and education to Christians.

The section of the report dealing with the Vatican's position in relation to women and the family considers briefly such subjects as: the ordination of women; procreation and abortion, including the treatment of genetic anomalies and fertility control; medically assisted procreation. Commentary is also provided on education. The report notes that the Catholic Church endorses recognition of the universal nature of the right to education.



## 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, 22 April 1993) 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 may seek compensatory damages, annulment of libelous or slanderous statements, compensation for non-financial loss and/or invalidation of administrative decisions if those decisions 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 third periodic report is due 30 June 2001.

**Civil and Political Rights**

Signed: 30 December 1968; ratified: 22 August 1979.  
Iceland's fourth periodic report is due 30 October 2003.  
*Reservations and Declarations:* Articles 10 (2) (b), 10 (3), 13, 14 (7), 20 (1); declaration under article 41.

**Optional Protocol:** Acceded: 22 August 1979.

*Reservations and Declarations:* Article 5 (2).

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

**Racial Discrimination**

Signed: 14 November 1966; ratified: 13 March 1967.  
Iceland's fifteenth and sixteenth periodic reports (CERD/C/338/Add.10; CERD/C/384/Add.1) have been submitted but are not yet scheduled for consideration by the Committee; the seventeenth periodic report is due 4 January 2002.  
*Reservations and Declarations:* Declaration under article 14.

**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.

**Optional Protocol:** Signed: 10 December 1999.

**Torture**

Signed: 4 February 1985; ratified: 23 October 1996.  
Iceland's second periodic report is due 22 November 2001.  
*Reservations and Declarations:* Declaration under articles 21 and 22.

**Rights of the Child**

Signed: 26 January 1990; ratified: 28 October 1992.  
Iceland's second periodic report (CRC/C/83/Add.5) has been submitted and is scheduled for consideration at the Committee's September/October 2002 session; the third periodic report is due 26 November 2001.  
*Reservations and Declarations:* Articles 9 and 37.

**Optional Protocol (Sale of children):** Signed: 7 September 2000.

**Optional Protocol (Armed conflict):** Signed: 7 September 2000.

**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, 10 January 1997) 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 second periodic report (E/1990/6/Add.29) has been submitted and is pending consideration at the Committee's April 2002 session.  
*Reservations and Declarations:* Articles 2 (2) and 13 (2) (a).

**Civil and Political Rights**

Signed: 1 October 1973; ratified: 8 December 1989.  
Ireland's second periodic report (CCPR/C/IRL/99/2) was considered at the Committee's July 2000 session; the third periodic report is due 31 July 2005.  
*Reservations and Declarations:* Articles 10 (2), 14 (7), 19 (2) and 20 (1); declaration under article 41.

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

*Reservations and Declarations:* Article 5 (2).

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



**Racial Discrimination**

Signed: 21 March 1968; ratified: 29 December 2000.  
*Reservations and Declarations:* Article 4 (a), (b), (c).

**Discrimination against Women**

Acceded: 23 December 1985.  
 Ireland's fourth periodic report is due 22 January 2003.  
*Reservations and Declarations:* Articles 13 (b) and (c),  
 16 (1) (d) and 16 (1) (f).

**Optional Protocol:** Signed and ratified: 7 September 2000.

**Torture**

Signed: 28 September 1992.

**Rights of the Child**

Signed: 30 September 1990; ratified: 28 September 1992.  
 Ireland's second periodic report was due 27 October 1999.  
*Reservations and Declaration:* General declaration.

**Optional Protocol (Sale of children):** Signed: 7 September 2000.

**Optional Protocol (Armed conflict):** Signed: 7 September 2000.

## REPORTS TO TREATY BODIES

**Human Rights Committee**

Ireland's second periodic report (CCPR/C/IRL/98/2, April 1999) was considered by the Committee at its July 2000 session. The report prepared by the government contains information on, *inter alia*: the Standing Inter-departmental Joint Department of Foreign Affairs/Non-Governmental Organisations (NGO) Committees on Human Rights; human rights education efforts in academic institutions and human rights training for police officers; the Employment Equality Bill and the Equal Status Bill; the Commission on the Status of People with Disabilities; citizenship; safeguards for the right to life; the Explosives (Land Mines) Order, 1996; provisions against torture and ill-treatment; the rights of suspects in custody; the juvenile justice system; judicial training; freedom of religion in educational establishments; freedom of expression; the Freedom of Information Act (1997); provisions against racial hatred; social benefits for families; the Domestic Violence Act (1996); safeguards for the interests of children; the equality of all citizens before the law; the rights of linguistic and religious minorities; and a section on the consultation with the NGO sector in the drafting of the report.

In March 2000, the Committee prepared a "list of issues" (CCPR/C/69/L/IRL) to be taken up with the government during consideration of the second periodic

report. The issues identified by the Committee included: the constitutional and legal framework within which the Covenant and the Optional Protocol are implemented; states of emergency and the Emergency Powers Act (1976); the procedure for investigating complaints of abuse; conditions of detention in jails; the maximum periods of police detention; the right to a fair trial; measures to achieve gender equality; protection from domestic violence; the protection of children; the protection of privacy concerning sexual relations between consenting adults of the same sex; the protection of religious minorities, new religious movements and the Travelling Community; and education and training for public officials related to the Covenant and the Optional Protocol.

In its concluding observations and comments (CCPR/CO/69/IRL), the Committee welcomed: the increased use of the Covenant by the courts as an aid to interpret common law and constitutional rights; the government's withdrawal of several reservations made upon ratification of the Covenant; the fact that the recently enacted Human Rights Commission Act provides for the establishment of a Human Rights Commission; the establishment in 1997 of the Standing Interdepartmental Committee on Human Rights, which is mandated to consider all aspects of Ireland's international human rights obligations; the establishment of the Joint Department of Foreign Affairs/Non-Governmental Organisations Standing Committee on Human Rights; the review by Constitution Review Group of the 1937 Constitution with a view to proposing reforms necessary to bring it in line, *inter alia*, with international human rights standards; the fact that the state of emergency declared in 1976 was ended in 1995 and that the Emergency Powers Act of 1976 has now lapsed; the Child Trafficking and Pornography Act of 1998 and the Sexual Offenders (Jurisdiction) Act of 1996; the abolition of corporal punishment in public and private schools; the enactment of the Family Law (Divorce) Bill of 1996, the Freedom of Information Act of 1997, and the Civil Legal Aid Act of 1995; the initiatives being undertaken in the area of human rights education, including education for primary and secondary students, members of the police (Garda) and the legal profession.

The principal concerns identified by the Committee included: the failure to guarantee in domestic law all Covenant rights; the fact that the Garda Complaints Board is not fully independent, in that investigations of complaints against the Garda are often entrusted to members of that body without consultation with the Board; the fact that the law establishing the Special Criminal Court does not specify clearly the cases that are to be assigned to that Court; the continuing operation of the Offences Against the State Act and the increase in the periods of detention without charge under the Act; pro-

vision allowing for the arrest of persons on suspicion of being about to commit an offence, and the fact that the majority of persons so arrested are never charged with an offence; provisions under which the failure to respond to questions may constitute evidence supporting the offence of belonging to a prohibited organisation; the fact that the application of the Act raises problems of compatibility with articles 9 and 14 (3) (g) of the Covenant; and the fact that legal assistance and advice may not be available until a person has been charged.

The Committee also expressed concern over: the seven-day period of detention without charge under the Drug Trafficking Act; the fact that legal aid is not available to detainees between arrest and charge; continuing inequalities faced by women and the fact that the references to women made in article 41 (para. 2) of the Constitution could perpetuate traditional attitudes towards the role of women; the exemptions under the Employment Equality Act, which allow religious bodies directing hospitals and schools to discriminate in certain circumstances on the ground of religion in employing persons whose functions are not religious; restrictions on the circumstances in which women may lawfully obtain an abortion; the generally lower standards of living of members of the Travelling Community, their low levels of participation in national political and social life and their high levels of maternal and infant mortality.

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

- ♦ ensure that all Covenant rights and freedoms are guaranteed and that effective remedies are available to any person whose rights or freedoms are violated;
- ♦ in light of the need for independent and transparent investigation of allegations of police abuse and in the context of its current review of the Garda Complaints Act of 1986, take steps to ensure that the Garda Complaints Board is not dependent on the Garda for the conduct of investigations; give consideration to the establishment of a police Ombudsman; ensure that allegations of death resulting from action by members of the Garda are investigated by an independent and public process;
- ♦ take steps to end the jurisdiction of the Special Criminal Court and to ensure that all criminal procedures comply with articles 9 and 14 of the Covenant;
- ♦ ensure that all aspects of detention, including the period of detention and availability of legal aid, are administered in full compliance with article 9 of the Covenant;
- ♦ ensure that the review of the Constitution take fully into account the government's obligations under article 4 of the Covenant, particularly with regard to permitted derogations;
- ♦ intensify efforts to ensure the equality of women in all spheres, particularly in public and political life and in decision-making bodies; strengthen efforts to monitor the situation of women by collecting gender-disaggregated data in these spheres and by "gender-proofing" all draft legislation to ensure neutrality;
- ♦ ensure that women are not compelled to continue with pregnancies where such compulsion is incompatible with obligations arising under the Covenant;
- ♦ make further efforts to ensure that all prisons and detention centres meet the minimum standards required to ensure respect for the human dignity of detainees; ensure that the Independent Prison Authority, whose establishment is envisaged in a current Bill, has the power and resources to deal with complaints of abuse made by prisoners;
- ♦ in light of proposed changes to the law regarding asylum-seekers, ensure that the grounds on which detention may be authorised and the right of access to judicial review of detention decisions conform fully with the provisions of article 9 of the Covenant; ensure that requirements relating to the place of residence of refugees do not infringe upon the rights to liberty of movement;
- ♦ continue efforts to take positive action to overcome discrimination and to ensure the equal enjoyment of rights by members of the Travelling community and in particular to improve their access to health, education and welfare services, and their participation in political and public life; actively pursue programmes to change attitudes and to promote understanding between the Travelling Community and the settled community;
- ♦ take further action to ensure full implementation of the Covenant by withdrawing the remaining reservations;
- ♦ reform constitutional provisions requiring judges to take a declaration with religious references;
- ♦ provide for the prompt review of detention on mental health grounds (i.e. within a few days);
- ♦ repeal or reform the discriminatory aspects of legislation requiring the registration of alien husbands of Irish women citizens, which is not required of alien wives of Irish male citizens;
- ♦ ensure the full and equal enjoyment of Covenant rights by persons with disabilities, without discrimination; and
- ♦ improve remedies for victims of domestic violence.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

**Freedom of opinion and expression, Special Rapporteur on:** (E/CN.4/2000/63, paras. 17, 121; E/CN.4/2000/63/Add.2)

The Special Rapporteur (SR) visited Ireland from 18 to 22 October 1999. The report of the mission deals with the background and context, the legal framework, and principal considerations and concerns. The SR noted that the print media in Ireland are mainly owned by the private sector, with one company, Independent News and Media, largely dominating the market of the Sunday and provincial newspapers in particular. Some UK newspapers also publish an Irish version. Cable and satellite television, in addition to state-controlled television, and the broadcasting in Ireland of UK programmes, allow a wide range of choice. Digital television will soon be introduced and regulated under a new Broadcasting Bill, now proceeding at the Oireachtas (Parliament).

Commentary on national legislation notes constitutional guarantees of freedom of opinion and expression and the freedom of the media, to the extent that they are not used to “undermine public order or morality or the authority of the State” or produce “blasphemous, seditious, or indecent matter.” The report notes that the print media are not subject to a specific statutory regulation; there are other laws which regulate issues strictly related to the press. Specific laws and entities include: the Defamation Act, 1961; the Offences Against the State Act, 1939; the Official Secrets Act, 1963; the law on contempt of court, which is largely judge-made and is based on the general principle that the courts have an inherent jurisdiction to ensure that the administration of justice is not obstructed and that courts orders are obeyed; the Department of Arts, Heritage, Gaeltacht and the Islands, which is responsible for the formulation of national policy relating to the broadcasting and the audiovisual industry; the Broadcasting Act, 1960; the Radio and Television Act, 1988; and the new Broadcasting Bill. The Broadcasting Bill also provides for the name of the Independent Radio and Television Commission (IRTC) to be changed to “Broadcasting Commission of Ireland” (BCI); the Broadcasting Commission will be given expanded powers and functions with regard to the regulation of digital broadcasting when entering into contracts with providers of broadcast content and drawing up codes and rules relating to the broadcast programme material, advertising and a range of other related matters.

With regard to the Internet, the report refers to the Child Trafficking and Pornography Act, 1998, which applies to the material disseminated over the Internet, as well as to other legislation and institutions with a

direct impact on the exercise of the right to freedom of opinion and expression: the Freedom of Information Act, 1997; the Data Protection Act, 1988; the Censorship of Films Act, 1923 and the Censorship of Films (Amendment) Act, 1992; the Video Recordings Act, 1989; the Censorship of Publications Acts, 1929 to 1967. Article 40 (3.3) of the 1937 Constitution (as amended by the Fourteenth Amendment to the Constitution Act, 1992) and the Regulation of Information (Services outside the State for Termination of Pregnancies) Act, 1995, regulate information about abortion.

The report notes that under the “Good Friday Agreement” of 1998, Ireland and the UK decided to establish independent human rights commissions — one in Ireland and one in Northern Ireland — which will work together. According to the new Human Rights Commission Bill, under consideration at the Oireachtas, the new Irish commission will be independent of the government and will have the following tasks: overseeing the adequacy and effectiveness of law and practice in Ireland; consulting with international bodies with expertise in the area of human rights; recommending to the government measures to further strengthen human rights protection and to promote awareness and understanding of human rights issues; preparing and publishing research; and offering assistance to individuals pursuing human rights cases.

With regard to principal observations and concerns, the report refers to, *inter alia*: the fact that the newspaper market is broadly divided into two categories — those distributed nationally and those targeted at local readers; the fact that the market is largely dominated by the Independent News and Media group; the competition caused by newspapers imported from the UK, which are often sold at a lower price than local newspapers; the introduction by tabloids of a lower standard of journalistic ethics into the Irish newspaper market; the absence of an explicit legal protection for journalists with regard to their right to protect sources of confidential information, although generally courts try to avoid ordering journalists to reveal sources; civil actions for defamation, which may seriously inhibit journalism to the extent that newspapers may feel restrained by the high cost of legal proceedings to properly investigate those in power.

With respect to the broadcast media, the report notes, *inter alia*: broadcasting is largely state-controlled but the state does not have a monopolistic position due to the presence of cable and satellite television; the Broadcasting Complaints Commission investigates complaints about programming of both public and private broadcasting; Radio Telefís Éireann (RTÉ), the Irish national broadcasting organisation, is subject to the RTÉ Authority and has a statutory duty to be fair and

impartial; private broadcasting began to emerge in the 1980s; the IRTC has responsibility for creating, operating, monitoring and developing independent broadcasting in Ireland and, under its new name (Broadcasting Commission of Ireland) will be expanded, particularly in relation to the regulation of new digital services and the responsibility for drawing up codes of standards for all broadcasters; community radio services have been developing; the Women on Air project aims at promoting equality of opportunity for women in independent radio broadcasting by training and policy and management initiatives.

With regard to new information technologies, the report notes that in 1997 the government established the Working Group on the Illegal and Harmful Use of the Internet. One of the Working Group's main concerns was to set a balance between ensuring that Ireland can benefit from the advantages that the Internet offers and, at the same time, protecting users, in particular children, from its illegal and harmful use. In its first report (July 1998), the Working Group made a list of illegal uses of the Internet, including: actions causing injury to children (child pornography, child trafficking); actions causing injury to human dignity (incitement to racial hatred); illegal gambling; infringements of privacy and intellectual property rights; libel; and threats to economic security, information security and national security. The Working Group proposed a package of strategic measures to respond in an appropriate way to the illegal and harmful use of the Internet, stating that laws should be applied against such illegal use while, at the same time, recommending an approach of non-intervention of the state and the establishment by Internet service providers, instead, of a system of self-regulation. Such a system was seen to include: a national public hotline to report illegal use of the Internet on sites maintained by Irish-based Internet service providers; an Advisory Board bringing together the partners needed to ensure successful self-regulation; the introduction of appropriate awareness measures.

The report notes that the Child Trafficking and Pornography Act, 1998 is one of the first legislative initiatives to deal with the Internet. The Act creates several offences relating to child pornography. It provides that Internet service providers may be accused of either causing or facilitating the distribution, import or export of child pornography, or the storage of such material. The SR noted, however, that it is very difficult for service providers to control what their users access, and that they may be faced with a choice between prosecution and disconnecting Ireland from the Internet.

The report notes other concerns relevant to the promotion and respect for the right to freedom of opinion and expression: films, videos, books and periodicals are

subject to censorship; the government will be undertaking a review of Irish censorship laws because they are obsolete; the current censorship regime is characterised by a lack of transparency and accountability; libel actions are seriously inhibiting journalism as these cases can create problems for newspapers, in particular the small ones, in terms of loss of money and time; in 1991, the Law Reform Commission recommended the repeal of the Defamation Act, 1961, and the enactment of new legislation; in 1996, the Commission on the Newspaper Industry, set up by the government, also recommended changes to libel laws; according to the information received by the SR, there is inadequate judicial control over the amount of damages that a jury may award for libel; a prosecution for criminal libel can be brought against a newspaper only with the authorisation of the High Court but such authorisation is reportedly granted only very infrequently; recently, the Supreme Court declared blasphemous libel unconstitutional; there is neither public nor political support, however, for a change in the law on defamation; there is a debate under way as to how free speech and privacy should be balanced, with some persons maintaining that newspapers should not publish information on private matters that have no effect on public life; it has been suggested that a press Ombudsperson or press council, funded by the media industry, be established to mediate on the question of privacy/publication; a new defamation bill is being prepared.

The report also notes: section 31 of the Broadcasting Authority Act, 1960 allows the Minister of Arts, Heritage, Gaeltacht and the Islands to order radio and television broadcasters not to broadcast any matter that is "likely to promote or incite to crime or which would tend to undermine the authority of the state"; the section was amended by section 12 of the Radio and Television Act, 1988, to include local radio stations; since 1994, there has been no order in force under section 31, but it remains valid; the Official Secrets Act, 1963 places wide-ranging restrictions on access to government information and allows the state to prosecute unapproved revelations of sensitive government information; the Act can be used in the case of disclosures of information to which the Freedom of Information Act does not apply. Concerning the Freedom of Information Act, 1997, the report notes: the Act allows members of the general public to access information held by public bodies, to amend official information relating to them where it is incomplete, incorrect or misleading, and to obtain reasons for decisions affecting them; it establishes an Information Commissioner office, giving the Commissioner the power to decide what "public interest" is and, if necessary, to order the release of requested information; for the time being, the Act excludes from its scope the Garda Síochána (the police force); the Act may be



restricted through amendment in cases where the Information Commissioner delivers some decisions with which the political forces may not agree.

Commentary on issues relevant to women sets out a number of points, including that: under Irish law, access to information in a number of areas that are primarily, but not exclusively, of concern to women is reportedly lacking; access to information about abortion services outside of Ireland is regulated by article 40.3.3 of the Constitution but the law restricts the available means and content of the information that may lawfully be provided; information about pregnancy termination services cannot be distributed without solicitation by the recipient in books, newspapers, journals, magazines or other document, or cannot appear in a public notice or in a film or sound recording; any information that may legally be provided must not advocate abortion; all advocacy of abortion and advertisements for abortion are illegal; also, information indicated that provision of information regarding health-care issues affecting women — including medical conditions, available prognoses and treatment options — was inadequate. There is also a lack of information regarding childcare benefits and childcare options, as well as women's rights under the social welfare system; information is available, however, including legal and medical information, regarding rape and sexual assault (issued by the Dublin Rape Crisis Centre); the government's failure to regulate pregnancy information services, including counselling agencies, means that women are at risk of receiving inaccurate and/or misleading information about these services and are open to being counselled by personnel without adequate training. Women are under-represented in public life, including as elected members of Parliament, and there is a lack of gender-specific information on the impact of government policies on women; the absence of gender-specific statistics has serious implications for the rights of women to have access to resources and to participate fully in society.

The report addresses the situation of minorities, in particular the Travellers, an indigenous minority group of 25,000 people who represent the largest minority in Ireland. The report notes: there is a growing recognition of cultural diversity in Ireland, and the Travellers are now starting to articulate their own concerns and interests in order to become more visible; Platform against Racism, a coalition of NGOs committed to developing ways to combat racism and to promoting interculturalism, has been set up; a lack of effective domestic anti-discrimination legislation, however, and the fact that Ireland had not ratified yet the International Convention on the Elimination of All Forms of Racial Discrimination, make it difficult for NGOs to work effectively on these issues; the existing legislation — e.g., the Employ-

ment Equality Act, 1998 — outlaws job discrimination against Travellers; the Prohibition of Incitement to Hatred Act, 1991 needs to be more effective and therefore reviewed accordingly; the government established a monitoring committee to supervise the implementation of key recommendations of the 1995 Task Force Report on the Travellers.

Additional points related to the situation of the Travellers include that: Travellers are often represented by the media only in specific minority-related roles, and rarely as integrated and active participants of society; sometimes local newspapers and radios reportedly feature anti-Traveller declarations, often by quoting local politicians or members of the Garda making a discriminatory comment on Travellers; the National Union of Journalists has agreed to some guidelines for all its members to follow when dealing with race relations subjects; with reference to Travellers, the criteria are to “only mention the word Gypsy or Traveller if strictly relevant or accurate” and to “strive to promote the realisation that the Travellers' community is comprised of full citizens of Great Britain and Ireland whose civil rights are seldom adequately vindicated, and who often suffer much hurt and damage through misuse by the media.”

With regard to refugees and migrants the report notes, *inter alia*: the arrival of refugees and asylum-seekers in Ireland is becoming an issue of major concern; the Irish media sometimes, especially in the past few years, contributed to an intensification of the prejudices of people against refugees and asylum-seekers; especially in 1997, the media coverage of refugees often criminalised and demonised them, labelling them as frauds who were “economic migrants” stealing jobs and houses from Irish people; the media are now trying, however, to have a more constructive approach to this issue.

The SR made the following recommendations, *inter alia*:

- ♦ the government should consider ratifying the International Convention against All Forms of Racial Discrimination and the Convention against Torture, and fully incorporate or reflect in the domestic legislation the international human rights treaties already ratified;
- ♦ the government should guarantee the future Human Rights Commission adequate human and financial resources so that it can work in an independent and effective manner;
- ♦ journalists should not be compelled to reveal their sources except in the most limited and clearly defined circumstances in order not to compromise the media's access to information and their ability to communicate important information to the public;

- ◆ a new defamation bill should be prepared; the onus of proof of all elements should be on those claiming to have been defamed rather than on the defendant; where the truth is an issue, the burden of proof should lie with the plaintiff;
- ◆ steps should be taken to ensure that sanctions for defamation are not so large as to exert a chilling effect on the freedom of opinion and expression and the right to seek, receive and impart information; a range of remedies should be available, including apology and/or correction;
- ◆ an independent press Ombudsperson should be established, with the functions of receiving and adjudicating upon complaints against newspapers; the press Ombudsperson should be granted immunity from action by way of statutory privilege in respect of statements made in the course of duties;
- ◆ the government should consider amending section 31 of the Broadcasting Authority Act and should ensure that legislation excludes the possibility of state authorities influencing the programmes in such a way that would damage the balance, free expression and impartiality of information;
- ◆ the government should: (a) consider reviewing or even repealing the laws concerning the censorship of publication and of films and videos; (b) take steps to repeal strict laws on censorship and ensure judicial review of decisions taken by the Censorship on Publications Board; (c) ensure that the Censorship of Publications Board operates in public and makes its decisions open to public scrutiny;
- ◆ the government should: consider expanding the scope of the *Freedom of Information Act*, for instance, by including the police force; continue its support to the Office of the Information Commissioner with human and financial resources in order to guarantee its independence and effectiveness;
- ◆ with regard to new information technologies, in particular Internet, the Information Society Commission should continue looking into the issue of social inclusion in order to set up strategies to improve the access of marginalised groups to new information technologies; and
- ◆ the government should adopt and implement the Equal Status Bill, 1999, in order to provide for temporary special measures to overcome systemic and indirect discrimination against women and members of the Traveller community; it should also initiate awareness-raising and educational measures to redress cultural stereotypes for marginalised groups.

**Violence against women, Special Rapporteur on:**  
(E/CN.4/2000/68, para. 95)

In the context of trafficking in women, the report notes that Ireland has instituted a programme that allows asylum-seekers to obtain permits to work legally while their case is pending. The permits may be issued to asylum-seekers, as well as to people coming to Ireland from non-EU countries and Eastern Europe to work. The information obtained indicated that the government is considering anti-trafficking measures similar to the work permits for asylum-seekers.



## 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) was considered 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 fifth periodic report is due 1 June 2002.  
*Reservations and Declarations:* Articles 9 (5), 12 (4), 14 (3), 14 (5), 15 (1) and 19 (3); declaration under article 41

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

*Reservations and Declarations:* Article 5 (2).

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

**Racial Discrimination**

Signed: 13 March 1968; ratified: 5 January 1976.  
Italy's twelfth and thirteenth periodic reports have been submitted as one document (CERD/C/403/Add.1) which is not yet scheduled for consideration; the fourteenth periodic report is due 4 February 2003.  
*Reservations and Declarations:* Articles 4 (a), 4 (b) and 6.

**Discrimination against Women**

Signed: 17 July 1980; ratified: 10 June 1985.  
Italy's third periodic report (CEDAW/C/ITA/3) has been submitted but is not yet scheduled for consideration by

the Committee; the fourth periodic report was due 10 July 1998.

*Reservations and Declarations:* General reservation.

**Optional Protocol:** Signed: 10 December 1999; ratified: 22 September 2000.

#### **Torture**

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

Italy's fourth periodic report is due 10 February 2002.

*Reservations and Declarations:* Declaration 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.

**Optional Protocol (Sale of children):** Signed: 6 September 2000.

**Optional Protocol (Armed conflict):** Signed: 6 September 2000.

## **REPORTS TO TREATY BODIES**

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

Italy's third periodic report (E/1994/104/Add.19) was considered by the Committee at its April/May 2000 session. The report prepared by the government, which covers the period 1991-1996, contains information on, *inter alia*: the Committee for the Study of Equal Opportunity concerning employment and the National Parity Committee; the promotion of employment through training, research and innovation; policies related to infrastructure; the employment of young people; the protection of immigrant workers from outside the European Community; trade unions; the right to strike; the National Health Plan (1994-96); health education in the mother-and-child sector; education; and safeguards for cultural assets of religious interest.

In its concluding observations and comments (E/C.12/1/Add.43), the Committee welcomed, *inter alia*: measures to combat organised crime; the adoption of the Immigration Bill of 1998, granting one-year residence/work permits to women who have been the victims of trafficking and who denounce their exploiters; the criminalisation of trafficking of migrants under the Penal Code; the approval of the Testo Unico 286/98, which gives foreigners "regularly present on the national territory" equal standing with Italian citizens regarding access to residential and public housing and to credit on favourable terms for building, acquiring or renting their first home; the approval of Law No. 53 of 8 March 2000, which recognises the right of the father, as well as the mother, to take leave from work to care for a

child during early infancy; and the approval of Law No. 66 of 1996, characterising sexual violence as "a crime against the person" punishable by imprisonment.

The Committee noted that the socio-economic problems arising from the increase in immigration to Italy, caused by events in the Balkans and the influx of persons from other regions, has been an impediment to implementation of the rights set out in the Covenant.

The principal areas of concern identified by the Committee included, *inter alia*: the fact that a large number of the Roma population live in camps located on the outskirts of major cities and lacking basic sanitary facilities; the fact that, on the whole, the Roma live below the poverty line and are victims of discrimination, especially in the workplace and in the housing sector; the fact that life in the camps has had a major negative impact on Roma children; the fact that the transfer to local health units of the functions of the labour inspectorate with regard to prevention and occupational safety and health may create a problem of co-ordination; the high rate of accidents in the workplace; government failure to devise a comprehensive, coordinated and concerted strategy to address violence against women; the extent of trafficking of women and children, sexual abuse of minors and child pornography; the lingering substantial economic and social inequalities between the northern and southern parts of the country; the fact that asylum-seekers have access to subsidised health care only in emergency situations; the high rate of young people dropping out of secondary education; the phenomenon of functional illiteracy; and the controversial proposal in the school education reform programme to give private schools some public funding.

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

- ♦ organise briefings for judges to familiarise them with the provisions of the Covenant and the general comments adopted by the Committee;
- ♦ ratify the 1961 Convention on the Reduction of Statelessness;
- ♦ step up efforts to improve the situation of the Roma population;
- ♦ implement the recommendations made by the ILO Committee of Experts concerning the decentralisation of labour inspections;
- ♦ take effective measures to ensure that workers enjoy safe working conditions;
- ♦ ratify, as planned, ILO Convention No. 159 (Vocational Rehabilitation and Employment [Disabled Persons]);

- ◆ devise a national strategy to combat violence against women;
- ◆ devise a comprehensive, co-ordinated and concerted national strategy to combat trafficking in women and children, sexual abuse of minors and child pornography by organised crime;
- ◆ seriously address the persistent problem of economic and social disparities between the northern and southern parts of the country, noting that these disparities have a negative effect on the situations of women, young persons, children and disadvantaged and marginalised groups;
- ◆ step up efforts to assist those living under the poverty line, the majority of whom are women;
- ◆ extend the subsidised health-care system to asylum-seekers without discrimination;
- ◆ draw up a national strategy and plan of action to address the significant problems relating to school dropouts and youth unemployment.



## 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.

#### Economic, Social and Cultural Rights

Acceded: 10 December 1998.

Liechtenstein's initial report is due 30 June 2001.

#### Civil and Political Rights

Acceded: 10 December 1998.

Liechtenstein's initial report was due 11 March 2000.

*Reservations and Declarations:* Articles 3, 14 (1), 17 (1), 24 (3), and 26; declaration under article 41.

**Optional Protocol:** Acceded: 10 December 1998.

**Second Optional Protocol:** Acceded: 10 December 1998.

#### Racial Discrimination

Acceded: 1 March 2000.

Liechtenstein's initial report is due 1 March 2001.

#### Discrimination against Women

Acceded: 22 December 1995.

Liechtenstein's second periodic report was due 21 January 2001.

*Reservations and Declarations:* Article 1.

**Optional Protocol:** Signed: 10 December 1999.

#### Torture

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

Liechtenstein's third periodic report was due 1 December 1999.

*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 scheduled for consideration by the Committee at its January 2001 session; the second periodic report is due 20 January 2003.

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

**Optional Protocol (Sale of children):** Signed: 8 September 2000.

**Optional Protocol (Armed conflict):** Signed: 8 September 2000.



## 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, 26 July 1996) 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 and fourth periodic reports were due 17 November 1994 and 1999 respectively.  
*Reservations and Declarations:* Articles 10 (3), 14 (3), 14 (5), 19 (2), and 20; declaration under article 41.

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

*Reservations and Declarations:* Article 5 (2).

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

#### **Racial Discrimination**

Signed: 12 December 1967; ratified: 1 May 1978.  
Luxembourg's tenth and eleventh periodic reports were due 31 May 1997 and 1999 respectively.  
*Reservations and Declarations:* Declaration under article 14.

#### **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) was considered by the Committee at its January 2000 session; the fourth periodic report is due 4 March 2002.  
*Reservations and Declarations:* Articles 7 and 16 (1) (g).

#### **Torture**

Signed: 22 February 1985; ratified: 29 September 1987.  
Luxembourg's third periodic report is due 28 October 2000.  
*Reservations and Declarations:* Article 1 (1); declaration under articles 21 and 22.

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

Signed: 21 March 1990; ratified: 7 March 1994.  
Luxembourg's second and third periodic reports are due 5 April 2001 and 2006 respectively.  
*Reservations and Declarations:* Articles 3, 6, 7 and 15.

**Optional Protocol (Sale of children):** Signed: 8 September 2000.

**Optional Protocol (Armed conflict):** Signed: 8 September 2000.

## **REPORTS TO TREATY BODIES**

### **Committee on the Elimination of Discrimination against Women**

Luxembourg's third periodic report was submitted in two documents (CEDAW/C/LUX/3, March 1998, and CEDAW/C/LUX/3/Add.1, August 1998), which were considered by the Committee at its January/February 2000 session. The report provides social and economic statistical information as well as information on, *inter alia*: a draft bill to prohibit sexual harassment in the workplace; discriminatory practices in public institutions; national mechanisms to ensure equality of opportunity between women and men; an action plan for implementation of the Beijing Declaration and Platform for Action; women in the workforce; a televised, awareness-raising campaign on the division of professional and personal responsibilities; a working group on the image of women in the media; training in equality for schoolchildren; shelters for single women, or women with children, in difficult situations; the opening of a reception centre for prostitutes; equality of opportunity in public service and public office; vocational guidance for single mothers, women with children and those wishing to return to work; job placement for women migrants; day care centres; the right to maternity leave.

In its concluding observations and comments (A/55/38, paras. 379-416), the Committee welcomed: the wide dissemination of the Convention and of the concluding comments adopted by the Committee following consideration of the government's second periodic report in 1997; the government's signing of the Optional Protocol and its stated intention to work actively towards speedy ratification; the existence of a separate Ministry for the Advancement of Women; the ministry's interest in, and support for, proposals to conduct gender analysis of the entire state budget; the government's strategic approach to the realisation of equality between women and men, and the systematic integration of a gender equality perspective into all policies; legal measures to strengthen provisions against trafficking in humans and the sexual exploitation of children; action to extend domestic law to cover all sexual crimes or misdemeanours committed abroad by citizens of Luxembourg.

The Committee also welcomed: government efforts to teach equality, in particular through the project entitled "Partageons l'égalité-Gleichheit delen-Gleichheit teilen" (sharing equality) which, *inter alia*, integrates the equality principle in the training curricula of teachers and trainers; the legislation of July 1998 requiring the appointment of equality officers in enterprises with at least 15 employees; in January 1999, the entry into force of the Law on the Implementation of the National Action Plan on Employment, which introduced the right

to non-transferable parental leave of six months for every parent, covered by state benefits; the creation of a legal basis for instituting affirmative action for women in the private sector; the efforts already undertaken and the intention to expand the collection of data disaggregated by sex to develop a solid basis for further legislative and policy initiatives, *inter alia*, with regard to disadvantaged groups of women (e.g., immigrant women).

The principal areas of concern identified by the Committee included: the failure of the government to amend the Constitution to include the principle of equality between women and men; the fact that no progress has been made in withdrawing the reservations concerning articles 7 (hereditary transmission of the crown to the oldest male) and 16 (g) (right to choose the family name of children); the lack of commitment on the part of the government to work towards influencing cultural traditions and attitudes that would allow for a withdrawal of the reservation regarding the latter article; the persistence of traditional and stereotypical attitudes about the roles and responsibilities of women and men in public and private life.

The Committee also noted with concern: the anachronistic nature of some laws (e.g., the waiting period of 300 days before a widow or divorced woman can remarry, legislation governing abortions); the lack of equality of opportunity of women in the labour market; the wage gap between women and men; the higher number of women in part-time work; the ongoing segregation of the labour market and the stereotypical attitudes that tend to portray men as heads of households and breadwinners, and women primarily as mothers and homemakers; the insufficient understanding of the structural causes that perpetuate the wage gap; the continued undervaluing of women's work compared with that of men; the lack of specific legislation to deal with domestic violence.

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

- ♦ undertake as a matter of urgency all necessary steps to facilitate the amendment of the Constitution so as to incorporate a provision on equality between women and men;
- ♦ undertake awareness-raising and education campaigns to overcome traditional and stereotypical images of women and men so that the reservation under article 16 of the Convention may be withdrawn;
- ♦ intensify awareness-raising efforts, supported by legislation, policy and specific projects, to overcome traditional and stereotypical attitudes about the roles and responsibilities of women and men in public and in private life;

- ♦ provide the necessary leadership and develop a comprehensive legislative agenda to amend certain laws — for example, the waiting period of 300 days before a widow or divorced woman can remarry, and the legislation governing abortions;
- ♦ undertake studies on the causes of the wage gap to increase the factual basis for labour negotiations where collective wages are set; analyse projects now under way to broaden women's participation in the labour market so that the findings can be used for the development of comprehensive policies and legislation to secure the gains made by women in this area;
- ♦ develop policy and legislation to prevent and eliminate domestic violence as well as sexual violence, including rape, against women and girls, and to prosecute the perpetrators; collect statistics on the incidence of domestic violence and develop comprehensive information on the impact of measures aimed at reducing and/or eliminating domestic violence; gather further information on the impact of the law on trafficking in humans and the sexual exploitation of children;
- ♦ provide, in the next report, detailed information on women and health and ensure that such information includes data on female smokers and smoking-related diseases; and
- ♦ ratify the Optional Protocol to the Convention.



## 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 and second periodic reports were due 30 June 1992 and 1997 respectively.

*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:* Articles 13, 14 (2), 14 (6), 19, 20 and 22; declaration under article 41.

**Optional Protocol:** Acceded: 13 September 1990.  
*Reservations and Declarations:* Articles 1 and 5 (2).

**Second Optional Protocol:** Acceded: 29 December 1994.

#### **Racial Discrimination**

Signed: 5 September 1968; ratified: 27 May 1971.  
 Malta's thirteenth and fourteenth periodic reports were submitted as one document (CERD/C/337/Add.3) which was considered by the Committee at its March 2000 session; the fifteenth periodic report was due 26 June 2000.

*Reservations and Declarations:* Articles 4 and 6.

#### **Discrimination against Women**

Acceded: 8 March 1991.

Malta's initial, second and third periodic reports were due 7 April 1992, 1996 and 2000 respectively.

*Reservations and Declarations:* Articles 11, 13, 15 and 16.

#### **Torture**

Acceded: 13 September 1990

Malta's third periodic report was due by December 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) was considered by the Committee at its May/June 2000 session; the second periodic report was due 29 October 1997.

*Reservations and Declarations:* Article 26.

**Optional Protocol (Sale of children):** Signed: 7 September 2000.

**Optional Protocol (Armed conflict):** Signed: 7 September 2000.

## **REPORTS TO TREATY BODIES**

### **Committee on the Elimination of Racial Discrimination**

Malta's thirteenth and fourteenth periodic reports (CERD/C/337/Add.3, February 1999) were submitted as one document that was considered by the Committee at its March 2000 session. The report prepared by the government contains information in relation to articles 2 to 7 of the Convention, including: legal provisions against expressions of hatred or contempt of a person or group of persons because of their race, creed, colour, nationality, or national or ethnic origin; the Office of the Ombudsman; educational and cultural measures to enhance the legal awareness of each person living in Malta; anti-racial discrimination provisions in the Constitution; avenues for redress in the event of human rights violations; provisions against discrimination on grounds of race in matters relating to access to a tri-

bunal; the security of the person without any form of discrimination; citizenship; the right to inheritance; religious worship; housing; social security; education; and extradition law.

In its concluding observations and comments (CERD/C/304/Add.94), the Committee welcomed: amendments to the Press Act, as well as measures envisaged by the government to amend the Criminal Code and the Police Force Act, intended to cover aspects of article 4 of the Convention; the amendment to the Citizenship Act that allows dual citizenship and entitles foreign spouses of Maltese nationals to be registered as nationals; and the new law establishing procedures regarding refugees and asylum-seekers.

The principal subjects of concern identified by the Committee included, *inter alia*: the fact that article 4 of the Convention is not fully covered by legislation; claims of racial discrimination in housing, particularly as regards rental accommodation; the fact that the Employment Commission of Malta is empowered to consider only allegations of discrimination based on political opinion; and the new Police Code (Malta Police Force Act), which provides that officers found to have treated persons in a discriminatory manner in the course of their duties are subjected to disciplinary action only.

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

- ◆ investigate carefully the few cases of offences of a racial nature that are reported and take steps to prevent such incidents;
- ◆ review the situation of rental accommodation with a view to ensuring non-discrimination;
- ◆ consider expanding the scope of the competence of the Employment Commission to cover all aspects of racial discrimination;
- ◆ increase efforts in disseminating information about the duties and responsibilities of the Ombudsman, as well as about the procedure for launching complaints concerning racial discrimination;
- ◆ take the necessary measures to ensure that criminal charges are brought against police officers for acts violating the provisions of the Convention; and
- ◆ provide additional information on the criteria for granting temporary, as opposed to permanent, refugee status, specifically as regards European and non-European asylum-seekers, as well as on the implementation of the recently enacted legislation regarding refugees and asylum-seekers and the effect of the recent withdrawal by Malta of the geographical limitation clause relating to non-European refugees.

## Committee on the Rights of the Child

Malta's initial report (CRC/C/3/Add.56, September 1998) was considered by the Committee at its May/June 2000 session. The report prepared by the government contains social and health statistical information as well as information on, *inter alia*: legal minimum ages for children; citizenship; the right to privacy of children; the right to paid maternity leave; provisions in favour of the rights of the child with regard to custody; the recovery of maintenance for children; adoption; penalties for the abuse and neglect of children; the School Health Service; health services for children with disabilities; education for children with special needs; social security and child-care services; poverty; centres for advice on child-care and parenting skills; support and counselling to pregnant schoolgirls; free and compulsory primary education; special protection for refugee children; the administration of juvenile justice; and the prohibition on child labour.

In its concluding observations and comments (CRC/C/15/Add.129), the Committee welcomed: the fact that Malta is party to the main international human rights instruments as well as to the European Convention on Recognition and Enforcement of Decisions concerning Custody and on Restoration of Custody of Children (1999), the European Convention on the Exercise of Children's Rights (1999) and the Council of Europe Framework Convention for the Protection of National Minorities (1998); the government's accession to ILO Convention No. 138 (Minimum Age for Admission to Employment); the translation into Maltese of the Convention on the Rights of the Child.

The principal areas of concern identified by the Committee included: the possibility that the government's reservation to article 26 of the Convention may have an adverse effect on the existing levels of social services and benefits for children; the failure, to date, to incorporate the Convention fully into legislation; the limitations of the Social and Family Welfare Department and the limited co-ordination in the collection of data for all areas covered by the Convention; the lack of a comprehensive national policy for the implementation of children's rights.

The Committee also noted with concern: the limited nature of the measures taken to promote awareness of the principles and provisions of the Convention; the lack of training activities for professional groups working with and for children; the minimum legal age (18 years) for medical counselling without parental consent; the low minimum legal age for criminal responsibility (9 years); the use of the terms "illegitimate child" or "natural child," especially with regard to the succession rights of such children; information indicating that expressions with racial connotations

have been used by government officials to refer to children belonging to immigrant families in an irregular situation; the failure to take sufficient account of the principle of the best interests of the child, especially within the family, the school, in care institutions and in the justice system.

Additional concerns related to: the failure to ban corporal punishment and "reasonable chastisement" in the home; the lack of compatibility of the existing procedures for inter-country adoption with the principles and provisions of the Convention; children's long stay in residential care (children's institutions) and the limited alternative care measures for children deprived of a family environment; the limited information available to determine the scope of child abuse; the limited measures available for the rehabilitation of child victims of abuse; and the insufficient awareness within society regarding the harmful consequences of ill-treatment and abuse, including sexual abuse of children, both within and outside the family.

Other concerns identified by the Committee included: the low rate of breastfeeding and the high rate of child obesity; the considerable social stigma attached to children with disabilities and the barrier that this represents to their social integration; the limitations faced by voluntary organisations in addressing in a comprehensive manner all the needs of children with disabilities; the increasing rate of teenage pregnancy; the insufficient access by teenagers to reproductive health education and counselling services, including outside the school environment; the lack of a structured policy on health education; the insufficient attention given to issues of adolescents mental health and alcohol consumption; illiteracy, absenteeism and bullying in schools.

The Committee also expressed concerns with regard to: the lack of domestic legislation for the protection of unaccompanied, asylum-seeking and refugee children; the lack of domestic legislation on the family reunification of refugees; the limited access of refugee children to education, health services and housing; reports of under-age employment in family businesses and tourism-related activities during the summer holiday season; the insufficient data and awareness of the phenomenon of commercial sexual exploitation of children and the absence of a comprehensive and integrated approach to prevent and combat this phenomenon; the exclusion of children aged between 16 and 18 years from the juvenile justice system.

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

- ♦ review the reservation to article 26 of the Convention with a view to withdrawing it;



- ◆ continue taking effective measures to incorporate all the principles and provisions of the Convention into domestic legislation; expedite the enactment of a consolidated law on children's rights;
- ◆ establish an independent mechanism to strengthen the monitoring of the implementation of the Convention; ensure that this mechanism is made easily accessible to children, deals with complaints of violations of their rights in a child-friendly manner and provides effective remedies for such violations; conduct awareness-raising campaigns to facilitate the effective use by children of the mechanism;
- ◆ ensure budget allocations for the implementation of the economic, social and cultural rights of children;
- ◆ continue with plans to publish a child-friendly version of the Convention;
- ◆ undertake systematic education and training programmes on the provisions of the Convention for all professional groups working with and/or for children;
- ◆ review legislation regarding the minimum legal ages for criminal responsibility and for access to medical counselling without parental consent; bring them into accordance to the principles and provisions of the Convention;
- ◆ continue reviewing legislation with a view to eliminating the use of the terms "illegitimate child" and "natural child"; take effective measures to combat and prevent acts of racial discrimination against children belonging to immigrant families;
- ◆ take further measures to increase public awareness of, and to promote, the participation of children in the family, at school and in other institutions;
- ◆ take all effective measures, including legal ones, to include an explicit prohibition on the use of corporal punishment in the home; promote positive, non-violent forms of discipline as an alternative to corporal punishment in the home;
- ◆ consider accession to the Hague Convention on the Protection of Children and Co-operation in Respect of Inter-country Adoption of 1993; continue plans to develop and promote alternative care measures for children deprived of a family environment (e.g., adoption and foster care);
- ◆ take effective measures to prevent and combat child abuse and ill-treatment of children within the family, at school and in society at large; ensure, *inter alia*, that law enforcement is strengthened with respect to such crimes; establish educational programmes to combat traditional attitudes within society regarding this issue;
- ◆ take effective measures to increase and promote the use of breastfeeding practices and continue and strengthen special programmes to address the issue of child obesity;
- ◆ implement alternative measures to the institutionalisation of children with disabilities; envisage awareness-raising campaigns to eliminate discrimination against them; establish special education programmes and encourage the inclusion and social reintegration of these children into the educational system and into society; establish adequate monitoring of private institutions for children with disabilities;
- ◆ take effective measures to develop adolescent-friendly health policies and strengthen reproductive health education and counselling services; strengthen programmes on adolescent mental health; continue developing effective educational campaigns to discourage alcohol consumption among children;
- ◆ seek to implement additional measures to encourage children to stay in school, particularly during the period of compulsory education; conduct continuous training programmes for teachers on human rights, including children's rights;
- ◆ enact legislation on asylum procedures and family reunification of refugees; continue undertaking effective measures to provide refugee children with access to education, health services and housing; establish measures to assist refugee children who are victims of any form of neglect, exploitation or abuse;
- ◆ fully enforce child labour laws and strengthen labour inspectorates and penalties imposed in cases of violation; ratify ILO Convention No. 182 (Elimination of the Worst Forms of Child Labour);
- ◆ undertake a national study on the nature and extent of commercial sexual exploitation of children with a view to designing policies and programmes, including for care and rehabilitation, to prevent and combat this phenomenon; and
- ◆ undertake legislative reform to raise the minimum age of criminal responsibility; eliminate from the law the assumption that a child aged between 9 and 14 years could act with "mischievous intent"; ensure that the juvenile justice system covers all children under the age of 18.



## 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 was due 30 June 1999.

*Reservations and Declarations:* Articles 2 (2), 6, 8 (1) (a)-(c), 8 (2), 9, 11 and 13.

#### Civil and Political Rights

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

Monaco's initial report (CCPR/C/MCO/99/1) has been submitted and is pending consideration at the Committee's July 2001 session; the second periodic report is due 27 November 2003.

*Reservations and Declarations:* Articles 2 (1), 2 (2), 3, 13, 14 (5), 19, 21, 22, 25 and 26.

**Second Optional Protocol:** Acceded: 28 March 2000.

#### Racial Discrimination

Acceded: 27 September 1995.

Monaco's initial, second and third periodic reports were due 27 October 1996, 1998 and 2000 respectively.

*Reservations and Declarations:* Articles 2 (1) and 4.

#### Torture

Acceded: 6 December 1991.

Monaco's second and third periodic reports were due 4 January 1997 and 2000 respectively.

*Reservations and Declarations:* Article 30 (1); declaration under articles 21 and 22.

#### Rights of the Child

Acceded: 21 June 1993.

Monaco's initial report (CRC/C/28/Add.15) has been submitted and is pending for the Committee's September/October 2001 session; the second periodic report was due 20 July 2000.

*Reservations and Declarations:* Articles 7 and 40 (2) (b) (v).

**Optional Protocol (Sale of children):** Signed: 26 June 2000.

**Optional Protocol (Armed conflict):** Signed: 26 June 2000.



## 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, 12 December 1995) 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.

**The Netherlands Antilles:** The core document prepared by the government (HRI/CORE/1/Add.67, 12 December 1995) contains demographic and statistical data. The report provides information on: the general political structure, responsibilities and mechanisms related to health, education, housing, religion, labour and the economy; and the general legal framework within which human rights are protected. The Netherlands Antilles is an autonomous part of the Kingdom of the Netherlands, with governing bodies at both the central and island levels, with a population representing more than 40 nationalities of diverse ethnic origins. There are ordinary and administrative courts. Most of the provisions regarding material rights set out in several human rights instruments are directly applicable in view of their content and wording, and can be applied by the courts without the need for separate legislation. Institutions and mechanisms to monitor the implementation of human rights include: the Police Conduct Complaints Committee; inclusion in the Administrative Procedure Bill of a legal measure intended to prevent inhuman treatment or punishment; and an independent Ombudsman to whom complaints can be submitted in cases of investigations involving the Justice Department and the judiciary. The texts of all human rights instruments are available in the language of instruction used in the Netherlands Antilles and are regularly distributed to the public and relevant authorities through the Treaties Division of the Bureau for Foreign Relations of the Netherlands Antilles.

**Aruba:** The core document prepared by the government (HRI/CORE/1/Add.68, 12 December 1995) contains statistical and demographic data as well as information on the general political structure and the legal framework within which human rights are protected. Aruba is an autonomous partner within the Kingdom of the Netherlands. The main frame of reference for fundamental

human rights (including civil and political rights) is the Constitution. Aruba is also a Party to a number of international human rights instruments. A victim of ill-treatment by a government official may seek compensation along a variety of paths. If the official concerned is prosecuted under criminal law, the Code of Criminal Procedure offers the victim the possibility of joining the criminal proceedings. If the victim wishes to receive a larger sum in compensation, a claim can be presented before a civil court. Under either article 1382 or article 1388 of the Civil Code, the official concerned or the state may be held liable for material or non-material damage suffered. In 1991 a human rights committee was established and formalized in 1993. The committee was given the tasks of: advising the government on human rights issues; complying with reporting obligations in pursuance of international human rights conventions; and promoting general awareness among the public regarding human rights.

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

Signed: 25 June 1969; ratified: 11 December 1978.  
The Netherlands' third periodic report was due 30 June 1997.

*Reservations and Declarations:* Article 8 (1) (d).

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

Signed: 25 June 1969; ratified: 11 December 1978.  
The Netherlands' third periodic report (CCPR/C/NET/99/3/Add.1) has been submitted but is not yet scheduled for consideration by the Committee. The third periodic report for the Netherlands proper (CCPR/C/NET/1999/3) has been submitted and is pending consideration at the Committee's July 2001 session; the fourth periodic report was due 31 October 1996.

*Reservations and Declarations:* Articles 10 (2), 10 (3), 12 (1), 12 (2), 12 (4), 14 (3) (d), 14 (5), 14 (7), 19 (2), 20 (1); 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' thirteenth and fourteenth periodic reports were submitted as one document (CERD/C/362/Add.4) which was considered by the Committee at its August 2000 session; the fifteenth periodic report is due 9 January 2001.

*Reservations and Declarations:* Declaration under article 14.

#### **Discrimination against Women**

Signed: 17 July 1980; ratified: 23 July 1991.  
The Netherlands' second periodic report (CEDAW/

C/NLD/2; CEDAW/C/NLD/2/Add.1; CEDAW/C/NLD/2/Add.2) has been submitted but is not yet scheduled for consideration by the Committee; the third periodic report was due 22 August 2000.

**Optional Protocol:** Signed: 10 December 1999.

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

#### **Torture**

Signed: 4 February 1985; ratified: 21 December 1988.  
The Netherlands' third periodic reports (CAT/C/44/Add.4; CAT/C/44/Add.8) were considered by the Committee at its May 2000 session; the fourth periodic report is due 19 January 2002.

*Reservations and Declarations:* Article 1 (1); declaration under articles 21 and 22.

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

Signed: 26 January 1990; ratified: 6 February 1995.  
The Netherlands' second periodic report is due 6 March 2002.

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

**Optional Protocol (Sale of children):** Signed: 7 September 2000.

**Optional Protocol (Armed conflict):** Signed: 7 September 2000.

## **REPORTS TO TREATY BODIES**

### **Committee on the Elimination of Racial Discrimination**

The thirteenth and fourteenth periodic reports of the Netherlands (CERD/C/362/Add.4, July 1999) were submitted as one document, which was considered by the Committee at its August 2000 session. Part One of the report prepared by the government refers to reactions to the concluding observations of the Committee following consideration of the previous report. Information is also provided on, *inter alia*: law enforcement measures to combat racism and discrimination; measures to ensure and promote equal opportunity in economic and social life; measures to promote the integration of ethnic minorities in higher education; the Equal Treatment Act; and the Frisian linguistic minority.

Part Two concerns the Netherlands (European part) and contains information on, *inter alia*: the Ministry of the Interior's internal anti-discrimination code of conduct; support for black, migrant and refugee women in their efforts to achieve equal opportunities; proposals to increase the maximum sentences imposed for structural forms of racial discrimination; the Guidelines for Discrimination Cases for the police and public prose-

cution service; efforts to promote co-operation between the actors involved in fighting racism and discrimination; a national police “discrimination officer”; right-wing extremists; discrimination on the Internet; changes to immigration policy; elected candidates from ethnic minorities; the employment of minorities; housing; and measures to reduce segregation within the education system.

Part Three covers the Netherlands Antilles and contains information on, *inter alia*: migration; application procedures for residence and work permits for aliens; health care for immigrants; a national youth policy programme; education; and efforts to promote cultural awareness and tolerance.

Part Four concerns Aruba and refers to, *inter alia*: immigration; nationality and citizenship; the labour market; foreign domestic servants; vocational and occupational resettlement programmes for adults; the right to housing; social policy aimed at strengthening the position of lower-income groups; constitutional provisions against discrimination; education of ethnic minorities in their mother tongue; and a National Platform for Language Policy.

In its concluding comments and observations (CERD/C/57/CRP3/Add.7), the Committee welcomed: the fact that the Netherlands is one of the few countries to refer to minorities without making a distinction between nationals and non-nationals; the plan to apply the Framework Convention for the Protection of National Minorities without regard to nationality; the further progress in the implementation of article 4 of the Convention and the judicial proceedings that have led to the prohibition of a racist political party; the creation of the National Discrimination Centre within the prosecution service; the appointment of a national police “discrimination officer”; the existence of public prosecutors and advocates-general specialised in discrimination cases; the Partnership Training Project between the police, the public prosecution service and civil society; the establishment of the Reporting Centre for Discrimination on the Internet, which is aimed at combatting racism on Internet sites; the appointment of a Minister for Urban Policy and Integration of Ethnic Minorities; the satisfactory information provided on the situation of the Frisian speaking community; the efforts undertaken to address the problems of children with different language backgrounds in the Netherlands Antilles; the plans to address immigration problems in regional co-operation in Aruba and the Netherlands Antilles; and efforts by the government in Aruba to promote the national language, Papiamentu, in the educational system and cultural life.

The principal subjects of concern identified by the Committee included: the fact that the unemployment

rate of minority groups remains four times higher than the rate within the native Dutch population; insufficiencies in protection against discrimination in the labour market; the planned dissolution of the Women and Minorities Employment Bureau and the question of which institution will fulfil the task of the Bureau in the future; the disproportionately high number of members of minorities leaving the police forces; de facto school segregation in a number of localities; and the fact that social tensions and problems in the educational system have been related to immigration.

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

- ♦ provide information on the results of the action plan set up to reduce the unemployment rate of minority groups by 50 per cent and on the evaluation of the new legal measures;
- ♦ strengthen efforts to create a police force, the composition of which reflects the total population;
- ♦ undertake further measures to reduce de facto | segregation and promote a multicultural educational system;
- ♦ provide further information on the following issues: (a) the revision of the Criminal code, (b) the living conditions of the Roma minority and the specific measures taken to improve them, (c) the further implementation of the Employment of Minorities (Promotion) Act, (d) the participation of minorities in local elections, (e) the changes brought by the draft new Aliens Act, and (f) statistical data on complaints, indictments and judicial decisions related to acts of racism;
- ♦ address social tensions and problems in the educational system related to immigration in the Netherlands Antilles so as to avoid racial discrimination; and
- ♦ ensure that the status of domestic servants under immigration law in Aruba is not exploited by employers.

### Committee Against Torture

The third periodic reports (CAT/C/44/Add.8, January 2000, and CAT/C/44/Add.4, December 1998) of the Netherlands were considered by the Committee at its May 2000 session. The first covers the five-year period from 1994 to 1998 inclusive in the Netherlands (European part) and includes information on, *inter alia*: asylum and deportation; the use of pressure and coercion in the deportation of illegal aliens; the revision of the requirements for the issue of residence permits to prevent war criminals and others guilty of human rights violations from being allowed to stay; criminal proceed-



ings on the basis of the Criminal Law in Wartime Act if an individual is suspected of a provable criminal offence, including war crimes; professional and human rights training for police officers; strict regulation to provide that police officers may use force against individuals under certain conditions; the policy on traumatised victims who seek asylum; the care of persons in police custody; the ban on the “Zaanse” psychological interrogation method; and compensation for victims of torture.

Part I of the second report concerns the Netherlands Antilles and covers the period from January 1994 to January 1998. It contains information on, *inter alia*: the 1995 decision to make torture a separate offence; the 1994 establishment of a complaints committee on police brutality and ill-treatment; conditions in the prison and remand centre at Koraal Specht; measures to undertake a thorough overhaul of the prison system; the Code of Criminal Procedure; training given to police officers, prison officers and forensic instructors in prisons; the interrogation of suspects; a complaints committee for prisoners; and provisions governing compensation and damages that ensure that the victim of an act of torture obtain redress.

Part II concerns Aruba and contains information on, *inter alia*: the constitutional prohibition of acts that infringe upon the physical integrity of a person; a ban on the death penalty; debate in parliament over a bill to implement the Convention against Torture; safeguards against unlawful action by the authorities; the avoidance of the possibility of torture by legal provisions and a system of preventive supervision and regular checks on the treatment of prisoners; criminal liability for torture; constraints involving the deprivation of liberty, including interview, police custody and pre-trial detention; universal jurisdiction over crimes of torture; police training on universal human rights and guidelines relating to police treatment of persons under arrest; and legal help to victims.

In its concluding observations and comments (CAT/C/24/7), the Committee welcomed: the fact that it has received no information about allegations of torture; a special National War Criminals Investigation Team that has been set up and made operational in the Netherlands (European part) to facilitate the investigation and prosecution of war crimes, which can include torture as specified in the Convention; the contributions by the Netherlands to the UN Voluntary Fund for the Victims of Torture; the fact that the Netherlands Antilles and Aruba have both recently, in criminal legislation, made the act of torture punishable as a separate criminal offence, also establishing the principle of universal jurisdiction; the fact that the Netherlands Antilles has established a National Investigation Department to investigate allegations of breach of authority by public servants and a public Complaints Committee on police

brutality; several short- and mid-term measures to ameliorate conditions in prisons in Netherlands Antilles; assurances that, despite the privatisation of prisons in the Netherlands Antilles, the state's obligations under the Convention continue to apply; and measures taken in the Netherlands Antilles to ensure that officials visit the prisons once a week.

The principal areas of concern identified by the Committee included, *inter alia*: allegations of police actions in the Netherlands (European part) involving illegitimate body searches, inadequate deployment of female officers and some excessive use of force by the police in connection with crowd control; allegations of inter-prisoner violence, including sexual assault in Koraal Specht prison in the Netherlands Antilles; the daily use of a riot squad as a means of prisoner control in Koraal Specht prison; and allegations of police brutality in Aruba and the absence of information, including statistics, regarding the prison population.

The Committee recommended that the government:

- ♦ take measures in the Netherlands (European part) to incorporate the Convention into domestic law fully, including adopting the definition of torture as contained in article 1 of the Convention;
- ♦ continue measures to bring to an end the deplorable conditions of detention at Koraal Specht Prison in Netherlands Antilles; and
- ♦ review the practice of controlling prison discipline by the use of riot squads in the Netherlands Antilles and make efforts to develop alternative means to prevent inter-prisoner violence.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

**Sale of children, child prostitution and child pornography, Special Rapporteur on:** (E/CN.4/2000/73, paras. 8, 9; E/CN.4/2000/73/Add.1, paras. 108-146)

The Special Rapporteur (SR) visited the Netherlands and Belgium, from 30 November to 4 December 1998, to study the issue of the commercial sexual exploitation of children. The decision to visit the Netherlands was taken following the discovery, in 1998, of a predominantly European paedophile network called “Wonderland” operating on the Internet. Simultaneous police raids on 100 suspected members were carried out in several countries, including the Netherlands. Given the timing of the mission, it was not possible for the SR to prepare a complete report for the 1999 session of the Commission. As a consequence, a combined report, covering both countries, was prepared for the 2000 session. The section of the report dealing with the Nether-

lands provides information on, *inter alia*: general background on the three areas of the mandate; the legal framework; the structure of government as it relates to the rights and protection of children; the criminal justice system; non-governmental organisations.

The report notes that the Netherlands has traditionally had very liberal laws governing sexual activity and, further, that: since the 1960s, Amsterdam has been host to the largest sex industry in Europe; prostitution of adults is legal; soliciting is carried out very openly and there is a high degree of organisation in all aspects of what is seen as a trade; until the 1980s, there were very few recorded cases of children being involved; these were usually boys who had run away from home, were working as “rent boys” and occasionally were involved in pornography; in the 1980s, in response to a crack-down on paedophiles in other countries, individuals went to Amsterdam and the small, ad hoc “rent boy” industry, took on a new structure and developed into a large-scale organised paedophile venture; in the early 1990s, following the collapse of Communism throughout Eastern Europe and the resultant opening up of borders, the growing prostitution market in Amsterdam proved a strong magnet for the traffickers who delivered their victims to this market.

Commentary on the specific aspects of the mandate notes: the only information received by the SR relating to the sale of children that did not involve sexual exploitation were allegations that babies brought illegally from Latin American countries, mainly Guatemala, for adoption by European parents arrived in Amsterdam prior to travelling to their final destination; police in Amsterdam and other major cities in northern Europe have seized over 6,000 videos of child pornography in recent years; Interpol has estimated that over 30,000 active paedophiles are linked to the production and distribution of this material; of particular concern is the alarming number of children who go missing every year, both in the Netherlands and in surrounding countries, and the equally alarming large number of unsolved mysteries as to the identities of the children whose pictures can be found on pornographic Internet sites. The report notes: the manner of entry and involvement in prostitution of girls and boys appears to differ considerably according to the child’s gender; young men from marginalised immigrant groups recruit girls into prostitution; male entry into prostitution was more organised, with several individuals working to coerce the boy, whereas usually just one man would coerce a girl into these activities; most of the boys have the same background of physical and sexual abuse, and many doubt their own sexuality, virtually all are in drug-related activities; there are concerns that many of the children who disappear each year fall victim to paedophile rings, which use them in

the production of pornography. In recent years, the government has taken steps to bring its legislation into line with the growing international consensus condemning pornography that involves children; the government has also introduced a number of measures to supplement the revised legislation, including the creation of a monitoring group that attempts to track pornographic sites on the Internet that portray children; the government is trying to promote the idea of the public participating in removing pornographic material involving minors from the Internet through measures of “self-regulation” rather than by introducing measures of governmental regulation that might have the effect of generating a conflict with individuals’ freedom of expression.

A number of the SR’s recommendations in the combined report were addressed to both governments. The Sr recommended that, *inter alia*:

- ♦ awareness-raising programmes and initiatives be undertaken on the rights of children under the Convention on the Rights of the Child, particularly with regard to their right to be protected from sexual exploitation of any kind;
- ♦ training programmes for all professionals working in the criminal justice system be continuous in order to promote more aggressive action against child abusers and a more compassionate approach to child victims;
- ♦ studies be carried out on the involvement of children, especially boys, in the production of pornography and focus on, for example, methods of recruitment, venues of operation, the impact and adverse effects of the abuse, and approaches to healing and recovery; these studies should be undertaken so that gender-desegregated initiatives can be established; steps should be taken to address the proliferation of pornographic materials involving children; restrictions on the access of children to viewing any pornographic materials should be put in place;
- ♦ intensive campaigns through education, both formal and informal, be conducted aimed at eliminating discrimination, particularly against children;
- ♦ the government support all initiatives aimed at deterring their nationals from exploiting children, whether in the country or abroad; the law on extra-territoriality with respect to child abuse should be coupled with a massive media campaign aimed at sensitising the general public to the right of children to be protected against any kind of sexual exploitation;
- ♦ to combat the growing phenomenon of gambling addiction among children and in view of the fact

that it is established as one of the causes of the involvement of children, especially boys, in prostitution, a strict ban on children under 18 years of age in casinos or places where gambling machines are available be enforced; video and amusement arcades should likewise be regularly monitored to make sure that no betting occurs there among children;

- ♦ urgent attention be given to non-commercial sexual abuse, especially when perpetrated in the context of the family; incest and other types of domestic violence, abuse and neglect should be examined in relation to the age and sex of the victim; and
- ♦ the government make the curtailment of drug, alcohol and other types of substance abuse by children a high priority; clinics and other medical facilities should encourage children to come for treatment and rehabilitation; this assistance should be made available to all needy children, regardless of the legitimacy or otherwise of their presence in the country.

**Toxic wastes and products, Special Rapporteur on:**  
(E/CN.4/2000/50, para. 7; E/CN.4/2000/50/Add.1,  
Sections I and III)

The Special Rapporteur (SR) decided to undertake a mission to Europe in order to ascertain the problems arising in certain countries with regard to the illegal traffic in toxic and dangerous products and wastes, and the enjoyment of human rights. Accordingly, at the invitation of the governments, a visit was carried out to the Netherlands and Germany from 18 to 29 October 1999.

During the visit to the Netherlands, meetings were held with senior government officials from the Ministries of Foreign Affairs, Housing, Spatial Planning and Environment, Health, Welfare and Sport. Meetings were also held with members of the Committee on Human Rights of the Advisory Council on International Affairs, the national Ombudsman and the prosecutor handling the case of the contaminated glycerine sold by a Netherlands company to a Haitian pharmaceuticals enterprise. There was also a discussion with the representative of Greenpeace International responsible for the trans-boundary movement of toxic waste, and a visit was made to the control facility at the Port of Rotterdam, where containers for hazardous substances and products are checked as they enter and leave the port.

The report notes that the national policy for managing toxic and dangerous products is defined by a Multi-Year Plan for Hazardous Wastes for the period 1997-2007, based on European Directive 75/442/EEC. The plan aims to prevent the production of hazardous waste, encourage the storage of dangerous waste in appropriate facilities without risk to the environment, and dispose of waste that cannot be stored by using state-

of-the-art techniques. The principal means of securing these objectives are legislation and regulation, financial incentives, research, publicity and selection of sites.

Concerning the legal and institutional context, the report refers to, *inter alia*: the Environmental Management Act, which provides the legislative framework for dangerous waste management policy; the Basel Convention, noting that the Netherlands has not ratified Decision III/1 prohibiting the export of dangerous wastes for final disposal or recycling from States members of the Organisation for Economic Cooperation and Development (OECD), the European Community (subsequently the European Union) or Liechtenstein to other States parties; the establishment of an Environmental Inspectorate to ensure that the law is enforced by regional authorities and enterprises; policing and inspection regimes involving 125 inspectors from the Ministry of the Environment, a force of police officers that includes 10 environmental protection specialists and 100 customs officers; the use of a satellite-tracking system that enables consignments of dangerous waste to be followed from their point of origin to their destination; section 10.44 (e) of the Environment Act, which prohibits the export of toxic wastes to developing countries; the Netherlands' participation in the European network for the implementation and enforcement of environmental law (IMPEL), which enables European countries to cooperate in monitoring trans-boundary movements and concentrates primarily on the movement of waste within Europe (between members of the European Union and between them and other European countries).

Commentary on the visit to the Port of Rotterdam notes, *inter alia*: in 1999 the customs service took delivery of a scanner which is able to detect, or provide a rough idea of, what is inside containers entering and leaving the port; at the port, about 500 unlawful attempts to export dangerous waste products are exposed every year, with many of the consignments bound for developing countries (Ghana, China, Malaysia); Asia-bound cargoes chiefly involve plastic wastes containing polychlorinated biphenyls (PCBs); a "fast-track" procedure enables customs authorities to refer cases to the prosecutor expeditiously with a view to taking rapid enforcement measures against persons domiciled in the Netherlands who are discovered in the act of committing an offence.

With regard to the Committee on Human Rights, the report notes that the Committee is simultaneously a subsidiary body of the Advisory Council on International Affairs and an autonomous entity. It submits opinions to the Ministry of Foreign Affairs regarding human rights policy. Generally speaking, the Committee favours some form of linkage between protection of the environment — which falls within the scope of collec-



tive rights — and human rights. The Committee has recommended that the government adopt a flexible position in international bodies to the extent that the recognition of collective rights contributes to the strengthening of universally recognised individual rights. The Committee has also acknowledged a link between environmental protection and the right to development.

On the specific case of the export of contaminated glycerine to Haiti (see E/CN. 4/1999/46, paras. 50-64), the SR recalled that in 1996 and 1997 at least 48 children in Haiti allegedly died of acute kidney failure after taking contaminated liquid acetaminophen (trade name: Afebril) made by Pharval, a pharmaceutical company based in Haiti. The Haitian acetaminophen was contaminated with an automobile antifreeze ingredient called diethylene glycol. The information gathered indicated that the Netherlands company Vos BV knew that the medication delivered to Haiti in 1995 was not pure. Although the results of an analysis showed that the glycerine was unsuitable for medical use, it was still sold with a “pharmaceutical quality” certificate through a German company. An investigation was launched in August 1997 and at the time of the SR’s visit, legal proceedings had commenced against those alleged to have been responsible.

The concerns expressed by NGOs included that: health and environmental dangers are posed by the export to Asia of old ships contaminated by dangerous substances; some 40,000 people are employed in the ship-breaking industry, working in conditions that are particularly dangerous for their life and health, including through exposure to asbestos, dioxin, and PCBs; a potential problem may exist because a transaction to send a ship for breaking up may potentially avoid the relevant provisions in the Basel Convention by hiding the fact that the ship is destined for ship-breaking, for example by simply indicating the sale of the ship; the prohibition in the Netherlands on the burning of cables containing PVC (polyvinyl chloride) and the export of cable waste to several countries in Asia where the PVC-containing residue is sold and the copper content is sent on to smelting facilities; information indicated that workers in Asia are exposed to hazardous fumes emanating from the burning of cables containing PVC and develop health problems affecting kidneys, lungs and liver; since European legislation considers cable waste as “green list” waste — i.e. non-hazardous — the export of cable waste is legal in the Netherlands, to whatever country, as long as it is recycled there.

The SR acknowledged that the government is sympathetic to the argument that developing countries do not always have the means or the qualified personnel to understand the nature of the products entering their territory or to counteract illicit trafficking. The government is committed to increasing technical assistance

in this field. The SR recommended greater information-sharing and a multiplication of focal points in order to activate interregional early-warning systems.

**Violence against women, Special Rapporteur on:**  
(E/CN.4/2000/68, para. 62)

Within the context of trafficking in women, the report notes that illegal border crossing is increasingly met with stiff penalties both for third parties who facilitate clandestine entries and for undocumented immigrants whose migration is facilitated through illegal means. The penalties for illegal entry into the Netherlands is six months’ imprisonment. The SR stated that strict anti-immigration policies, which reduce opportunities for legal migration and encourage migrants to turn to third parties for assistance in migrating and to rely on false promises of legal migration, serve to provide an ever-growing number of clients to the increasing number of underground networks of immigrant smugglers. Such policies also have a strong impact on the living and working conditions of migrant workers, increasing their vulnerability to violence, abuse and control by criminal networks.



## 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, 28 September 1993) 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 and third periodic reports were due 30 June 1995 and 2000 respectively.

*Reservations and Declarations:* Articles 8 and 10 (2).

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

Signed: 12 November 1968; ratified: 28 December 1978. New Zealand's fourth and fifth periodic reports were due 27 March 1995 and 2000 respectively.

*Reservations and Declarations:* Articles 10 (2) (b), 10 (3), 14 (6), 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 twelfth through fourteenth periodic reports were due 22 December 1995, 1997 and 1999 respectively.

#### **Discrimination against Women**

Signed: 17 July 1980; ratified: 10 January 1985. New Zealand's fifth periodic report is due 9 February 2002.

*Reservations and Declarations:* Articles 2 (f), 5 (a) and 11 (2) (b); two states filed objections to aspects of these reservations.

**Optional Protocol:** Signed and ratified: 7 September 2000. *Reservations and Declarations:* Declaration regarding Tokelau.

#### **Torture**

Signed: 14 January 1986; ratified: 10 December 1989. New Zealand's third periodic report was due 8 January 1999.

*Reservations and Declarations:* Article 14; declaration under articles 21 and 22.

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

Signed: 1 October 1990; ratified: 6 April 1993. New Zealand's second periodic report was due 5 May 2000.

*Reservations and Declarations:* General reservation and Articles 32 (2) and 37 (c).

**Optional Protocol (Sale of children):** Signed: 7 September 2000.

**Optional Protocol (Armed conflict):** Signed: 7 September 2000.

## **THEMATIC REPORTS**

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

#### **Independence of judges and lawyers, Special Rapporteur on the:** (E/CN.4/2000/61, paras. 20, 213-217)

In the report to the 1999 Commission (see E/CN.4/1999/60, para. 124), the Special Rapporteur (SR) referred to comments by a judge in a case that was pending. In its reply, the government indicated that the chief district judge had looked into the complaint and made the following observations: the judge denied making any comments in private, only public comments on the complainant's credibility; she was not the trial judge in the case involving the parties; the judge acknowledged her error, expressed regret and apologised for any embarrassment caused. There is no power in law to discipline or reprimand a judge. The government also noted that the question of compensation for the complainant's alleged financial loss arising from the complaint of criminal conduct is a matter entirely separate from the criminal proceedings; he has a right to bring civil proceedings to try to recover the money that was the subject of the criminal complaint.

The SR stated that there appears no doubt that the police withdrew the prosecution based on the injudicious comments of the judge on the credibility of the complainant. The SR stated that her conduct was tantamount to her having interfered in the administration of criminal justice in the matter, resulting in the integrity of the judge being brought into question. The SR expressed surprise and concern over the fact that there is no procedure to discipline judges for such misconduct and stated that mere expression of regret by the judge for such misconduct may not help to command respect for the independence of the judiciary.



## **NORWAY**

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

### **TREATIES:**

#### **RATIFICATIONS AND RESERVATIONS**

**Land and People:** Norway has submitted a core document for use by the treaty bodies (HRI/CORE/1/Add.6, 12 January 1992) which updates the initial and second periodic reports submitted by Norway under the ICCPR (see CCPR/C/1/Add.5 and CCPR/C/42/Add.5). The report prepared by the government includes statistical

and demographic data as well as information on the general political structure and the general legal framework for the protection of human rights. Concerning the status of human rights in domestic law, the report notes that in the event of conflict between the two the courts shall in principle apply domestic law. Provisions of human rights treaties may be invoked before the courts. As of the date of the report, January 1992, no specific body had been established to monitor implementation of human rights. However all courts have the authority to decide cases in which human rights are invoked. The report notes the establishment, in 1987, of the Norwegian Institute of Human Rights which has, among its tasks, the dissemination of information on human rights to both the public and to professionals. Also, there is the permanent Advisory Committee on Human Rights which meets approximately four times a year and is composed of members of the Storting (parliament) from various political parties, civil servants, representatives of NGOs, and researchers in the field of human rights. The Committee helps, *inter alia*, to ensure the flow of information between the various groups on activities and concerns in the field of human rights.

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

Signed: 20 March 1968; ratified: 13 September 1972.  
Norway's fourth periodic report was due 30 June 1999.  
*Reservations and Declarations:* Article 8 (1) (d).

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

Signed: 20 March 1968; ratified: 13 September 1972.  
Norway's fifth periodic report is due 1 August 2001.  
*Reservations and Declarations:* Articles 10 (2) (b), 10 (3), 14 (5), 14 (7), and 20 (1); declaration under article 41.

**Optional Protocol:** Signed: 20 March 1968; ratified: 13 September 1972.  
*Reservations and Declarations:* Article 5 (2).

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

#### **Racial Discrimination**

Signed: 21 November 1966; ratified: 6 August 1970.  
Norway's fifteenth periodic report (CERD/C/368/Add.3) was considered by the Committee at its August 2000 session.  
*Reservations and Declarations:* Declaration under article 14.

#### **Discrimination against Women**

Signed: 17 July 1980; ratified: 21 May 1981.  
Norway's fifth periodic report (CEDAW/C/NOR/5) has been submitted but is not yet scheduled for consideration; the sixth periodic report is due 3 September 2002.

**Optional Protocol:** Signed: 10 December 1999.

#### **Torture**

Signed: 4 February 1985; ratified: 9 July 1986.  
Norway's fourth periodic report (CAT/C/55/Add.4) has been submitted but is not yet scheduled for consideration; the fifth periodic report is due 25 June 2004.  
*Reservations and Declarations:* 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) was considered by the Committee at its May/June 2000 session; the third periodic report is due 6 February 2003.

**Optional Protocol (Sale of children):** Signed: 13 June 2000.

**Optional Protocol (Armed conflict):** Signed: 13 June 2000.

## **REPORTS TO TREATY BODIES**

### **Committee on the Elimination of Racial Discrimination**

Norway's fifteenth periodic report (CERD/C/363/Add.3, April 2000) was considered by the Committee at its August 2000 session. The report prepared by the government contains information on, *inter alia*: the appointment of a committee to draft new legislation for combatting ethnic discrimination and to consider how the Convention can be reflected more clearly in domestic law; the Plan of Action to Combat Racism and Discrimination, 1998-2001; the Plan of Action for Recruiting Persons with an Immigrant Background to the State Sector, 1998-2001; the Centre for Combatting Ethnic Discrimination; an Appeals Board for Asylum and Immigration Cases; efforts to combat racist violence and extreme right-wing activity; efforts to increase multicultural understanding in key service sectors; immigration; immigrant youth; indigenous and minority rights; the Roma; efforts to reduce barriers to the employment of immigrants; housing; the right to public health care; combatting prejudice in education and teaching; and promoting tolerance and understanding through culture.

In its concluding observations and comments (CERD/C/57/CRP.3/Add.12) the Committee welcomed: the fact that the government consulted the Advisory Committee on Human Rights as well as a number of NGOs in the drafting of the report; the adoption of the Human Rights Act; the establishment of the Centre for Combatting Ethnic Discrimination; the adoption of the Plan of Action for Human Rights as well as the Plan of Action for Recruiting Persons with an Immigrant Background to the State Sector; actions by the ministries of education, health and social affairs, the Council of Judges and the Directorate of Immigration to develop training courses to increase the knowledge and skills of public

servants and judges in the prevention of racial discrimination; changes in policies for the reception of asylum-seekers and refugees and the institution of the Appeals Board for Asylum and Immigration Cases; the funding provided for such projects as EXIT, aimed at developing strategies to discourage young people from supporting racist groups; the apology extended to the Roma for injustices they have suffered in the past.

The principal areas of concern identified by the Committee included: the fact that the Convention has not been incorporated into a single human rights act that includes the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights; the absence of an explicit prohibition of racial discrimination in the Constitution; the fact that there has been little progress in monitoring racial discrimination through the maintenance of records on racist incidents, indictments, sentences and compensation; the fact that racist organisations have not been prohibited; the fact that persons seeking to rent or purchase apartments and houses are not adequately protected against racial discrimination; and reports of racial discrimination in access to such public places as restaurants and discotheques.

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

- ♦ ensure that the body charged with drafting the Human Rights Act is encouraged to introduce the provisions of the Convention into the new statute;
- ♦ provide information on court decisions on racial discrimination; review procedures for monitoring racist incidents in order to increase their effectiveness;
- ♦ assess in due course the effectiveness of training by the ministries of education, health and social affairs, the Council of Judges and the Directorate of Immigration to increase the knowledge and skills of public servants and judges in the prevention of racial discrimination;
- ♦ take measures to ensure that persons seeking to rent or purchase apartments and houses are adequately protected against racial discrimination;
- ♦ consider the introduction of provisions in laws to supplement the provisions of the Criminal Code wherever this might produce more effective protections against racial discrimination;
- ♦ ensure that licences to operate such public places as restaurants and discotheques include a prohibition of racial discrimination;
- ♦ provide further information on the following issues: (a) the functioning and first results of the Appeals Board for Asylum and Immigration Cases; (b) the

steps taken to facilitate the employment of minority members in the public sector; (c) the results of the Plan of Action to Combat Racism and Discrimination, 1998-2001 and the Plan of Action for Recruiting Persons with an Immigrant Background to the State Sector, 1998-2001.

### Committee on the Rights of the Child

Norway's second periodic report (CRC/C/70/Add.2, November 1998) was considered by the Committee at its May/June 2000 session. The report prepared by the government contains information on, *inter alia*: a plan of action for children and adolescents with immigrant backgrounds; a national programme for parental guidance; measures to increase awareness among adults and children of the principles and provisions of the Convention; development assistance to children; protection for children without legal residence; equality in schools; specific measures for refugee children; children's and adolescents' participation in local decision-making and planning; citizenship; child support payments; a plan of action for children and adolescents with serious behaviour disorders and for children with disabilities; efforts to reduce infant mortality; the prevention of eating disorders among children; malnutrition; road traffic safety; the right to parental leave; free and compulsory primary and secondary education; children's participation in cultural activities; juvenile justice; a National Resource Centre for Sexually Abused Children; and Sami children and adolescents.

In its concluding observations and comments (CRC/C/15/Add.126) the Committee welcomed: the government's overall progress in implementing the Convention; the positive and independent role of the Office of the Ombudsperson for Children; the priority accorded by the government to the social sector both within its own international development assistance programmes and through its participation in relevant international forums; the government's support for the establishment of the research organisation "Childwatch International" and its development of NORDEM, which aims to facilitate the offering of national expert assistance on, *inter alia*, human rights matters; the constructive dialogue between the government and NGOs, including in the preparation of the report; the support given to NGOs in the preparation of an alternative report; the withdrawal of the reservation to article 40 (2) (b) (v) of the Convention; amendments to the Children Act that strengthen the position of children and the protection of their rights.

The Committee also welcomed: the increase in budgetary resources for child welfare programmes; the establishment of a system for monitoring the policies and measures taken by municipalities with regard to their implementation of welfare programmes for children; the government's efforts to combat trends

towards intolerance of foreigners and to address the issues of racism and xenophobia, including through the involvement and participation of youth; the active role being taken by the government within regional forums in encouraging similar approaches to such problems.

The Committee also noted with satisfaction: amendments to the Citizen Act and their positive impact on the situation of foreign children who are adopted by Norwegian citizens and other persons residing in Norway; the adoption of the 1995 act prohibiting the circumcision of women, and amendments to the 1994 Marriage Act allowing a marriage to be declared null and void if either of the parties was forced into the marriage; the extensive support and intervention programmes available to parents; the support given to children's rights in developing countries through international co-operation and other assistance.

The principal areas of concern identified by the Committee included: the fact that the general principles and provisions of the Convention have not yet been fully incorporated into domestic legislation; the significant delegation of powers from the national level to municipalities, noting that not all municipalities take the Convention fully into consideration; differences in the breadth and standard of welfare services provided by local authorities to children from low-income families and children with disabilities; the lack of systematic training for professionals whose work may involve children and, in some cases, the absence of training; the absence of a legal provision to ensure that children without Norwegian nationality are guaranteed their rights; some limitations in the access to health and education services for children who are not Norwegian nationals; the fact that municipal authorities do not fully take into consideration the best interests of children with an imprisoned parent or of unaccompanied child asylum-seekers or refugees.

Additional concerns related to: the lack of awareness among children of their right to have their views heard and taken into consideration; possible discrimination under Act No. 61 of 17 July 1998 relating to primary, lower-secondary and upper-secondary education and the new common curriculum on "Religions, Knowledge and Ethical Education"; the process of providing for exemptions to those children and parents who do not wish to participate in parts of the teaching; an increase in acts of violence in society and particularly among young people, including older children.

The Committee also expressed concern over: the failure to respect fully the best interests of the child and, in particular, child rights with regard to separation from parents; the failure to take fully into account the impact on children of a foreigner who is deported after being convicted of a criminal offence; the inadequate appli-

cation of domestic measures providing for family reunification; the increase in the numbers of children placed outside their parental home, in particular through an informal voluntary placement procedure; the high incidence of anorexia nervosa and bulimia and the prevalence of alcohol consumption among adolescents; the continuing incidence of suicide by children, especially boys; obstacles to the social integration of children with disabilities; the long waiting list and delayed access to mental health services for children; the continuing need for additional day care places.

The Committee also noted: limitations, and the lack of specialisation, in the educational background of some teachers; the fact that many Roma children, and children of other itinerant groups, do not complete the required years of obligatory education; the failure to respect in their entirety the provisions and principles of the Convention with regard to asylum-seeking children; the failure to implement fully such mechanisms as the appointment of individual guardians for each unaccompanied asylum-seeking child; delays in the processing of asylum applications and the fact that some child applicants are not integrated into local education systems; the fact that not all refugee and asylum-seeking children in need of psycho-social assistance are given the opportunity to receive it; cases of malnutrition among refugee and asylum-seeking children upon their arrival; in general, the focus in government responses to children who commit crimes on, for example, child welfare action or actions appropriate for adult offenders; the insufficient emphasis on the preventive and rehabilitative aspects of juvenile justice; incidents of sexual abuse and the under-use of existing state resources to address such concerns.

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

- ♦ undertake an evaluation of the implementation of all aspects of the Convention by municipal authorities and ensure that every effort is made to ensure its effective implementation at the municipal level; consider ways in which all children can be guaranteed equal access to the same standard of services;
- ♦ develop guidelines for child rights training, covering the appropriate roles of different professional groups working with and/or for children; provide municipal board members and authorities with training in implementation of the Convention;
- ♦ consider amendments to relevant laws so as to ensure a legal guarantee of the rights of children without Norwegian nationality and without legal status living in the country;
- ♦ continue efforts to inform children and others, including parents and legal professionals, of chil-



dren's right to express their views; undertake a regular review of the extent to which children's views are taken into consideration and of the impact this has on policy, programme implementation and on children themselves;

- ♦ review implementation of the new curriculum on "Religions, Knowledge and Ethical Education" and consider an alternative exemption process for those children and parents who do not wish to participate in parts of the teaching;
- ♦ pursue efforts to address the causes of a rise in acts of violence in society and particularly among young people, including older children, and to reduce its incidence;
- ♦ be more flexible in the application of family contact rules for imprisoned persons so as to ensure that a child maintain personal relations and direct contact with an imprisoned parent (where this is in the best interests of the child); review the process through which deportation decisions are made to ensure that the best interests of the child are taken into consideration;
- ♦ establish a standard procedure through which children and other concerned persons are informed of the possibilities and procedures for family reunification; implement those procedures systematically in accordance with set guidelines;
- ♦ carefully analyse both the factors that lead to the need to place children outside their parental homes and the practice of informal placement itself; take effective measures to guarantee that the right of children to family life is respected;
- ♦ continue efforts to address cases of anorexia nervosa and bulimia; continue to promote a healthy lifestyle among adolescents; continue research into the incidence and causes of child suicide, including by children under the age of 10 and use the results of this research to develop further the 1994 suicide prevention programme;
- ♦ continue efforts to ensure that children with disabilities are able to share their time with other children;
- ♦ explore ways of providing children with more timely access to mental health services; address in particular the shortage of psychiatrists and psychologists;
- ♦ evaluate the cash benefit scheme concerning day care places; pursue the original aim of ensuring that day care places are available for all children;
- ♦ study the impact of low teachers' salaries and other factors on education; make efforts to address the problems identified;
- ♦ explore the means of making formal education more accessible to children who travel for a part of the year, such as through the use of mobile communications facilities and distance-learning programmes;
- ♦ pursue efforts to improve child participation in the processing of asylum applications; review procedures for considering asylum applications from children, whether accompanied or unaccompanied; make additional efforts to implement the guardian mechanism and ensure that it functions as intended, including through the provision of appropriate training to guardians;
- ♦ examine the reasons for delays in the procedures for processing applications and for the settlement of children, with a view to shortening them; make further efforts to ensure the rapid integration of children into the normal school system;
- ♦ pursue efforts to ensure that the best interests of the child is a primary consideration in the context of juvenile justice proceedings, giving greater consideration to the need for prevention and rehabilitation of child offenders; and
- ♦ continue efforts to prevent and address cases of sexual abuse by, *inter alia*, increasing the resources available and provision of training of legal and other relevant professionals and of care to the victims of such acts.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

#### **Sale of children, child prostitution, child pornography, Special Rapporteur on the:** (E/CN.4/2000/73, para. 77)

The Special Rapporteur (SR) referred to a study carried out in 1998 by Pro Centre, a national resource centre and social initiative for men and women in prostitution. The study examined the entry of 10 young girls into prostitution; this had occurred when all of them were under 16 and the study found that eight of them had had a traumatic childhood, with broken homes, neglect, violence, alcohol abuse, uncertainty and betrayal. Some were sexually abused. On average, they had their first experience with drugs at age 12, first sex at 13, prostitution debut at 14. Some explained that their entry into prostitution had been a cry for help, a "solution" to a difficult childhood, a wish for love, to be seen and acknowledged.

In the interim report to the General Assembly (A/55/ 297, paras. 99-100), the SR noted information provided by the government indicating, *inter alia*, that: the Ministry of Children and Family Affairs is in charge of national poli-

cies regarding child welfare and child protection, but it does not deal with individual cases; national statistics do not give accurate and detailed information about the incidence or prevalence of domestic violence or child neglect; crime statistics concerning violence do not include specific information about the perpetrators and their victims, or about whether violent acts took place in public or private places; child welfare statistics giving information about the registered causes for intervention concerning children use categories such as neglect and physical abuse; some children who witness domestic violence can be categorised as having been mentally abused; the legal structure for dealing with child abuse and neglect is provided through the Child Welfare Act, which imposes no formal limits as regards who may report a case of assumed child neglect or abuse to the municipal child welfare services; generally, all reports of domestic violence will be investigated by the child welfare services, unless the perpetrator of the violence has moved out of the home.

**Violence against women, Special Rapporteur on:**  
(E/CN.4/2000/68, para. 62)

The report on trafficking in women notes that illegal border crossing is increasingly met with stiff penalties both for third parties who facilitate clandestine entries and for undocumented immigrants whose migration is facilitated through illegal means. The penalty for illegal entry into Norway is six months' imprisonment. The Special Rapporteur stated that strict anti-immigration policies, which reduce opportunities for legal migration and thereby encourage migrants to turn to third parties for assistance in migrating and to rely on false promises of legal migration, serve to provide an ever-growing number of clients to the increasing number of underground networks of immigrant smugglers. Also, such policies have a strong impact on the living and working conditions of migrant workers, increasing their vulnerability to violence, abuse and control by criminal networks.



## 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.20, 11 January 1993) 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) was considered by the Committee at its November/December 2000 session; the fourth periodic report is due 30 June 2005.

#### Civil and Political Rights

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

Portugal's fourth periodic report was due 1 August 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 ninth periodic report (CERD/C/357/Add.1) has been submitted but is not yet scheduled for consideration; the tenth periodic report is due 23 September 2001.

#### Discrimination against Women

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

Portugal's fourth periodic report (CEDAW/C/PRT/4)

has been submitted but is not yet scheduled for consideration; the fifth periodic report was due 3 September 1998.

**Optional Protocol:** Signed: 16 February 2000.

#### **Torture**

Signed: 4 February 1985; ratified: 9 February 1989. Portugal's third periodic report (CAT/C/44/Add.7) was considered by the Committee at its May 2000 session; the fourth periodic report is due 10 March 2002. *Reservations and Declarations:* Declaration under articles 21 and 22.

#### **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 scheduled for consideration by the Committee at its September/October 2001 session; the third periodic report is due 24 October 2002.

**Optional Protocol (Sale of children):** Signed: 6 September 2000.

**Optional Protocol (Armed conflict):** Signed: 6 September 2000.

*Reservations and Declarations:* Article 2 (3).

## **REPORTS TO TREATY BODIES**

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

Portugal's third periodic report (E/1994/104/Add.20, May 1998) was considered by the Committee at its November/December 2000 session. The report prepared by the government includes detailed economic statistical indicators as well as information on, *inter alia*: the right to self-determination as it relates to East Timor; the Office of the High Commissioner for Immigration and Ethnic Minorities; a working group on the equality and integration of the Roma; a procedure for the special regularisation of clandestine immigrants; measures to promote gender equality in public bodies; the establishment of the National Children's Rights Commission; support for children who are victims of physical and/or mental violence; safeguards for the right to work; measures to promote employment and training; the Commission for Equality in Work and Employment; and a national minimum wage.

The report also refers to: increased family allowances; disability and old-age benefits; provision for a guaranteed minimum income; the recognition of fatherhood and motherhood as social functions; special child-care leave during the first three years of life of a child; access to higher education and support for education; social protection measures for the elderly and children; the

prohibition of child labour; a national anti-poverty program; support for persons suffering from AIDS; a food assistance program for disadvantaged persons; housing; environmental policy; health and education policies; and expenditures on culture.

In response to the Committee's requests, the government submitted a document (HR/CESCR/NONE/2000/2) that provided a breakdown of government spending for social security, education and culture, as well as additional information on, *inter alia*: the self-determination of East Timor; the Commission on the Equality and Rights of Women; measures to reduce the imbalance between women and men in managerial posts and promotions in the civil service; the activities of the association *Fuerza Popular* 25; measures to reduce unemployment; the decline in youth employment; discrimination against migrant workers; measures to improve the situation of working individuals who have dependents; the minimum wage; the reform of the social security system; the legal status of abortion; domestic violence; efforts to combat poverty; institutions and programs to deal with the problems of homeless people; drug trafficking and drug addiction; HIV/AIDS; access for disadvantaged groups and children of aliens resident in Portugal to public education; and the promotion of the Portuguese language and culture.

In its concluding observations and comments (E/C.12/1/Add.53), the Committee welcomed: government efforts to implement the recommendations made in connection with its second periodic report, particularly on legislative amendments to promote equality between men and women; the government's support for an Optional Protocol to the Covenant; the ratification of the Additional Protocol to the European Social Charter; the decision to ratify ILO Convention No. 118 (Equality of Treatment (Social Security)); the government's efforts to promote the independence of East Timor, including through the provision of assistance to the territory.

The principal subjects of concern identified by the Committee included: the fact that approximately one fifth of the population still lives below the poverty line and the lack of a comprehensive study of the problem of poverty; the lack of a national human rights plan; the occurrence of child labour; intolerance of and discrimination against Roma people, refugees and immigrants; the prohibition of foreign workers enrolling in the vocational guidance and training courses to which Portuguese workers are entitled.

The Committee also expressed concern at: the persistence of discrimination against women in the fields of employment and equality of wages and opportunity with men; violence against women, including marital violence; the increase of trafficking in women, which is

linked to organised crime; the increase in paedophilia and child pornography, which are associated with the increase in drug trafficking and consumption and other criminal activities that endanger the security and health of the population; and the relatively high rates of school drop-out and high illiteracy.

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

- ◆ review the general strategy for the eradication of poverty and step up activities to combat it;
- ◆ adopt a national human rights plan;
- ◆ intensify efforts to create a culture of tolerance and to eliminate all forms of discrimination, in so far as they affect women, Roma, asylum seekers and immigrants;
- ◆ allow foreign workers to enrol in the vocational guidance and training courses to which Portuguese workers are entitled;
- ◆ ensure the stricter application of the legal provisions guaranteeing women and men equal pay for work of equal value;
- ◆ strictly implement the measures at its disposal to monitor and impose the appropriate penalties on persons or companies that use child labour;
- ◆ intensify efforts to prevent drug addiction among young people and impose appropriately effective penalties on persons who commit offences related to paedophilia, child pornography and trafficking in women; give due consideration to the ratification of ILO Convention No. 138 (Minimum Age of Employment); and
- ◆ intensify the campaign against illiteracy.

### Committee Against Torture

Portugal's third periodic report (CAT/C/44/Add.7, June 1999) was considered by the Committee at its May 2000 session. The report prepared by the government covers the period between March 1996 and February 1998, and contains information on, *inter alia*: recent legislative, administrative and judicial measures regarding torture, including police measures, the protection of victims of violent crime and of child victims of violence; constitutional amendments that prohibit the extradition of persons for crimes which, under the law of the requesting state, carry the death penalty or any other penalty causing irreversible damage to the physical integrity of the person; the constitutional guarantee of the right of asylum to aliens and stateless persons who are persecuted, or under a serious threat of persecution; and legal restrictions on deporting an alien to a country where torture is practised.

The report also refers to: changes in several articles of the new Criminal Code relative to torture; operations and examinations by medical officers; rules for the detention of persons suspected of committing crimes; pre-trial detention; training for police officials and the development of awareness regarding torture; the Programme of Action for the Prison System; the office of the Ombudsman and the right of petition; and special security measures regarding detainees.

The Committee, in its concluding observations and comments (CAT/C/24/2), noted the following developments: the restructuring of police agencies, designed to emphasise the civil features of policing; the fact that an Inspectorate of Prisons is to be set up; the creation of a database to streamline information relating to cases of abuse of public power; the enactment of regulations governing police use of firearms; the enactment of regulations relating to conditions of detention in police lockups; the acknowledgement, by the European Committee for the Prevention of Torture as a result of its 1999 inspection, that improvements in prisons have taken place, including the creation of a national drug unit for prisons as well as the setting-up of new prison health units; the initiation of a practice of prison visits on a monthly basis by magistrates to receive prisoner treatment complaints; the introduction of a new system of police training; measures to reduce inter-prisoner violence; the active dissemination of information relating to the Convention, including distribution to the judiciary of the proceedings relating to the second periodic report in an official periodical.

The areas of concern identified by the Committee were continuing reports of a number of deaths and ill-treatment arising out of contacts by members of the public with police, and of inter-prisoner violence in prisons.

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

- ◆ continue to engage in vigorous measures, both disciplinary and educative, to maintain the momentum moving the police culture to one that respects human rights;
- ◆ ensure that criminal investigations and prosecutions of public officers be undertaken where appropriate as a matter of course where the evidence reveals the commission of torture and ill-treatment by them;
- ◆ continue to take such steps as are necessary to curtail inter-prisoner violence.





## 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, second and third periodic reports were due 30 June 1990, 1995 and 2000 respectively.

#### Civil and Political Rights

Acceded: 18 October 1985.

San Marino's second and third periodic reports were due 17 January 1992 and 1999 respectively.

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

#### Rights of the Child

Acceded: 25 November 1991.

San Marino's initial and second periodic reports were due 24 December 1993 and 1998 respectively.

**Optional Protocol (Sale of children):** Signed: 5 June 2000.

**Optional Protocol (Armed conflict):** Signed: 5 June 2000.



## 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, 2 June 1994) 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 Congressional 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 was due 30 June 1999.

#### Civil and Political Rights

Signed: 28 September 1976; ratified: 27 April 1977.

Spain's fifth periodic report was due 28 April 1999.

*Reservations and Declarations:* Declaration under article 41.

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

*Reservations and Declarations:* Article 5 (2).

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

#### Racial Discrimination

Acceded: 13 September 1968.

Spain's fourteenth and fifteenth periodic reports were submitted as one document (CERD/C/338/Add.6) which was considered by the Committee at its March 2000 session; the sixteenth periodic report was due 4 January 2000.

*Reservations and Declarations:* Declaration under article 14.

#### Discrimination against Women

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

Spain's fifth periodic report was due 4 February 2001.

*Reservations and Declarations:* General declaration.

**Optional Protocol:** Signed: 14 March 2000.

#### Torture

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

Spain's fourth periodic report was 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 has been submitted (CRC/C/70/Add.9) and is pending the Committee's May/June 2002 session; the third periodic report is due 4 January 2003.

*Reservations and Declarations:* Articles 21 (d), 38 (2) and 38 (3).

**Optional Protocol (Sale of children):** Signed: 6 September 2000.

**Optional Protocol (Armed conflict):** Signed: 6 September 2000.

## REPORTS TO TREATY BODIES

### Committee on the Elimination of Racial Discrimination

Spain's 14th and 15th periodic reports were submitted as one document (CERD/C/338/Add.6, October 1998), which was considered by the Committee at its March 2000 session. The report prepared by the government contains information on, *inter alia*: constitutional guarantees of equal rights and freedoms for both aliens and Spaniards; the illegality of organisations promoting racial discrimination; measures to combat racism and xenophobia; the Spanish Committee for the European Year against Racism; the measures taken to ensure the appropriate development and protection of certain racial groups; the penalties under the Criminal Code for advocacy of racial segregation; the penalties for public officials who commit discriminatory acts; the right to equality before the law; and efforts in education and culture aimed at combatting the prejudices that lead to racial discrimination, particularly in regard to Roma communities.

The report also refers to: the implementation of a human rights and non-discrimination training plan for members of the police and the Guardia Civil; the improper treatment of foreigners among the security forces; the provision of identity and residence cards to Muslim residents of Ceuta and Melilla; the linguistic policy for the Catalonia Autonomous Community; and general guarantees of full equality with regard to the linguistic rights and duties of citizens of the Autonomous Communities.

In its concluding observations and comments (CERD/C/304/Add.95), the Committee welcomed: the enactment of Organic Law No. 4/2000 on the Rights and Freedoms of Foreigners; the results of the "Gypsy development program" initiated in 1989 and conducted in cooperation with Roma associations, particularly the positive effects of measures designed to ensure eliminate discrimination against Roma with regard to housing.

The principal areas of concern identified by the Committee were: the fact that few cases before national courts have been identified as incidents of racial discrimination, despite a recognised general increase in violence and attacks on foreigners; the fact that violence against certain foreigners often results in judicial proceedings alleging assault, unlawful detention and prop-

erty damage, and that the racial aspect of such acts is not taken into consideration; recent incidents of violence against persons of Moroccan nationality in El Ejido in the region of Almería, and information indicating that the underlying socio-economic problems which provoked these events are also found in other regions of the country; the lack of information on the status of the inhabitants of Ceuta and Melilla; the prevailing discrimination against persons of foreign origin, particularly in employment; the high drop-out rates and registered absences of Roma children in primary schools, as well as the low number of Roma completing higher education.

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

- ♦ register, for inclusion in the next periodic report, statistics of allegations of racially motivated and related offences, their investigation and the punishment of those responsible;
- ♦ take measures to resolve the underlying causes of tension and unrest as part of a long-term strategy to combat racial discrimination and violence; provide further information concerning the criminal proceedings brought against individuals involved in such incidents and on the extent to which convictions were directly linked to acts of racial discrimination;
- ♦ provide information on the status of the inhabitants of Ceuta and Melilla and on whether they enjoy, without discrimination, the rights set out in article 5 of the Convention;
- ♦ provide further information on the measures taken to ensure the practical enjoyment by persons belonging to ethnic or national minorities of the rights to work, to equal opportunities for promotion and career development, to education and to housing;
- ♦ provide information about the measures undertaken and planned to ensure equal education opportunities for the Roma minority;
- ♦ provide information in the next report on any evaluation made of the effectiveness of non-discrimination training schemes for the police and Guardia Civil officers;
- ♦ provide further information in the next report on: (a) the ethnic composition of the population and the principal socio-economic situation of each group; (b) action taken to implement effectively Organic Law No. 4/2000 on the Rights and Freedoms of Foreigners; (c) the results of regularisation schemes for illegal immigrants, and (d) measures taken to ensure that laws governing the right to education and linguistic standardisation in the Autonomous Communities are not discriminatory in effect; and

- ♦ ratify the amendments to article 8 (6) of the Convention; review the reservation under article 14, which imposes a restrictive deadline of three months instead of six after the exhaustion of domestic remedies, for the submission of communications to the Committee.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

#### Arbitrary detention, Working Group on:

(E/CN.4/2000/4, paras. 3, 4)

One case was transmitted and a reply was received by the Working Group from the government. No details of the case are provided.

#### Racism and racial discrimination, Special Rapporteur on: (E/CN.4/2000/16, paras. 36, 50-123)

The Special Rapporteur (SR) referred to information received which indicated that immigrants are subjected to harassment by the police through, for example, random identity checks and attempted forced entry into apartments in a search for individuals without papers. The authorities denied the allegations and stated that the only case in which the identity of immigrants must be verified arises when they come to obtain a permit and the police officers responsible for security on the premises verify their identities in order to authorise entry into the building and movement within it.

The cases summarised by the SR referred to: a Senegalese citizen who lodged a complaint against the local police for abuse of authority, illegal detention and ill-treatment, noting that an investigation was opened by, among others, the mayor of Vigo where the incident occurred and that the public prosecutor called for a maximum sentence of three years' imprisonment for the officials concerned; a young Moroccan, who had been in Spain since the age of 9, who was shot and killed by a former member of the Guardia Civil, noting that the person responsible was tried and convicted of murder without circumstances modifying criminal liability; an Algerian who was arrested by two policemen from El Ejido, who took him out into open country, forced him into a dried-out pond and beat him with truncheons until he lost consciousness, noting that the case was referred to the Defender of the Andalusian People; the ill-treatment of a Senegalese national by a member of the local police in Córdoba; the beating of an Algerian national by individuals in civilian clothes and the failure of the police to intervene; the beating of a Cameroon national who was requested by police to show his identity papers; an attack by five skinheads

against an immigrant from Bangladesh; 11 cases of attacks on immigrants, the majority of whom were North Africans working in different localities in the Campo di Cartagena, noting that most of the attacks were not reported to the Guardia Civil, since the papers of the victims were not in order; an attack by a group of skinheads on a young person from Gambia; the battering of a young Moroccan by a gang of teenage skinheads who were led by two men in their 30s.

Other cases summarised in the report referred to: a Senegalese national who was tied by up a group of skinheads and dumped on a patch of waste ground; insults and a beating by a group of six youths against a Senegalese national; an attack by three skinheads against a young black man formerly from Guinea-Bissau; an attack by skinheads against a municipal councillor who tried to defend two immigrants who were being chased by a group of 15 skinheads; an attack against a Tunisian by bouncers in a discotheque because he was an Arab; the stabbing of a young man by four skinheads after he took up the defence of a Black friend; an attack and robbery by skinheads of a man born in Pakistan and living in Barcelona; the stabbing of a Black Portuguese citizen by a person resembling a skinhead; a well-known Korean national (an international taekwondo umpire) who was called a "Chinese bastard" and beaten up; arson of the dwelling of a Senegalese family and an Arab butcher's shop.

#### Torture, Special Rapporteur on: (E/CN.4/2000/9, paras. 915-928; E/CN.4/2000/9/Add.5, paras. 63-73)

The Special Rapporteur transmitted to the government a number of cases of arrest and torture and ill-treatment perpetrated by members of the national police and the Guardia Civil. The methods used by police included: incommunicado detention; slapping about the head; threats of being shot; the placing of a plastic bag over the head; beatings with fists and hard objects; the placing of electrodes on various parts of the body; mock execution; blind-folding; threats to family and associates; kicking, being stamped on; being stripped; sexual assault; death threats.

The report summarises the response of the government to a number of cases that were transmitted in November 1998 and 1999 and investigated by relevant authorities.



## SWEDEN

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

### TREATIES:

#### RATIFICATIONS AND RESERVATIONS

**Land and People:** Sweden has submitted a core document (HRI/CORE/1/Add.4, 1 June 1992) for use by the treaty bodies. The report prepared by the government contains demographic and statistical data as well as information on the general political structure and the general legal framework within which human rights are protected. Fundamental rights and freedoms are enumerated in the Swedish Instrument of Government. The independence of the judiciary and, in many respects, the administrative authorities is guaranteed in the Instrument of Government. There is no constitutional court and there is no other authority vested with the power to take a stand in matters solely from the viewpoint of human rights as set out in international instruments. Such instruments are not made part of the national legal system but, rather, are incorporated or transformed into Swedish law. Once incorporated or transformed the material content of international treaties is enforceable in courts of law. Provisions in human rights instruments may be invoked before the courts and other bodies but the decisions of these bodies must be based on domestic law. The contents of human rights instruments may be used by the courts and other bodies as means in their interpretation of domestic legislation. Three institutions have mandates directly related to human rights: the Office of the Parliamentary Ombudsman, dating back to 1809; the Office of the Equal Opportunities Ombudsman, established in 1980; the Ombudsman against Ethnic Discrimination, established in 1986. Human rights issues are an intrinsic part of many different kinds of actions brought before the courts and authorities. The Freedom of the Press Act (1992) guarantees this freedom as well as the right of access to public documents as constitutional rights. A Freedom of Expression Act was adopted in 1992 and ensures the freedom to express thoughts and opinions on radio and television, in films and on video. The Act also safeguards against censorship in these media.

#### Economic, Social and Cultural Rights

Signed: 29 September 1967; ratified: 6 December 1971. Sweden's fourth periodic report (E/C.12/4/Add.4) has been submitted but is not yet scheduled for consideration.

*Reservations and Declarations:* Article 7 (d).

#### Civil and Political Rights

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

Sweden's fifth periodic report was due 27 October 1999. *Reservations and Declarations:* Articles 10 (3), 14 (7) and 20 (1); declaration under article 41.

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

*Reservations and Declarations:* Article 5 (2).

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

#### Racial Discrimination

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

Sweden's thirteenth and fourteenth periodic reports were submitted as one document (CERD/C/362/Add.5) which was considered by the Committee at its August 2000 session; the fifteenth periodic report was due 4 January 2001.

#### 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 was due 3 September 1998.

**Optional Protocol:** Signed: 10 December 1999.

#### Torture

Signed: 4 February 1985; ratified: 8 January 1986.

Sweden's fourth periodic report (CAT/C/55/Add.3) has been submitted and is scheduled for consideration at the Committee's April/May 2001 session; the fifth periodic report is due 25 June 2004.

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

#### Rights of the Child

Signed: 26 January 1990; ratified: 29 June 1990.

Sweden's third periodic report is due 1 September 2002.

**Optional Protocol (Sale of children):** Signed: 8 September 2000.

**Optional Protocol (Armed conflict):** Signed: 8 September 2000.

## REPORTS TO TREATY BODIES

### Committee on the Elimination of Racial Discrimination

Sweden's thirteenth and fourteenth periodic reports were submitted as one document (CERD/C/362/Add.5, November 1999), which was considered by the Committee at its August 2000 session. The report prepared by the government contains information on, *inter alia*: legal amendments related to the prosecution of verbal and written agitation against ethnic groups; provisions that enhance protection against offences committed



with a racist or similar motive; the right of persons subjected to unlawful discrimination to claim compensation; steps taken within the criminal justice system to counteract racism and xenophobia; measures taken by law enforcement officials to prevent crimes motivated by racism; the Countering Ethnic Discrimination in Working Life Act (1999); the Ethnic Discrimination Ombudsman Act (1999); efforts to guarantee legal protection for national minorities and minority languages; measures to enhance the status of the Roma in the community; efforts aimed at strengthening the status of the Sami language; a national integration policy based on non-discrimination, diversity, mutual respect and tolerance; support for unemployed non-nationals and immigrants; a nation-wide project designed to inform young people about the Holocaust; and instruction on human rights and immigration policy in the Swedish National Police Academy.

In its concluding observations and comments (CERD/C/57/CRP.3/Add.14), the Committee welcomed: such recent legislative initiatives as the Act on National Minorities in Sweden, the Act on Immigrant Integration Policy, the Act on Countering Ethnic Discrimination in Working Life, the Ethnic Discrimination Ombudsman Act, the amendment to the Fundamental Law on Freedom of Expression and to the Criminal Code concerning incitement of racial discrimination, and the Act on Responsibility for Electronic Bulletin Boards; the establishment of the National Integration Office to promote and facilitate the implementation of the government's new integration policy and to monitor and evaluate developments as they relate to the ethnic and cultural diversity of the society as a whole; the appointment of the General Commission on Swedish Local Democracy to encourage the broader participation in local government of people with immigrant backgrounds.

The Committee also welcomed: additional initiatives to combat racial discrimination and xenophobia, including the appointment of the Commission for the Study of Racist Crimes; the development of a plan of action by the Prosecutor General to reinforce measures against crimes with racist or xenophobic motives; the implementation of programmes such as "EXIT" to counteract the activities of racist organisations; the reinforcement of training for prison and probation officials in countering prejudice, racism and xenophobia among staff; the publication and dissemination, by the Ethnic Discrimination Ombudsman, of resource materials on, *inter alia*, non-discrimination in recruitment; the introduction of measures to enhance employment opportunities, including within the public sector, for immigrants through, *inter alia*, language training; the implementation of additional measures to ensure that the children of asylum-seekers are afforded equal access to education and health care; the expansion of awareness-raising initiatives through, *inter alia*, books

on the Holocaust.

The Committee also noted with satisfaction: the government's effort to include NGOs in the preparation of the thirteenth and fourteenth periodic reports and generally in the reporting process; the intention to set up a National Action Plan against Racism, Xenophobia and ethnic Discrimination; efforts to disseminate among the Sami and other minority groups, NGOs, trade unions and the wider public, the Convention as well as the concluding observations and the summary records of previous meetings with the Committee.

The principal areas of concern identified by the Committee included: a recent upsurge in racism and xenophobia that has given rise to increased neo-Nazi violence, especially among youth; the increasing popularity of "white power" music, which promotes hatred against ethnic minorities; the difficulties that the Roma continue to experience in exercising their rights; the fact that the right to use the Sami language in legal and administrative proceedings is recognised only in respect of some geographic regions; and the land rights of the Sami people, in particular hunting and fishing rights that are threatened by, *inter alia*, the privatisation of traditional Sami lands.

The Committee also expressed concern at: increasing residential de facto segregation; the failure of the existing legislation to prohibit and penalise all organisations and propaganda activities that promote or incite racial hatred and discrimination; the difficult access to employment of members of ethnic minorities; and the increasing incidence of racial discrimination in restaurants, other public places and with regard to access to services.

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

- ♦ continue efforts to stop the upsurge in racism and xenophobia, prevent and punish racist neo-Nazi violence and prosecute any persons whose actions incite racial hatred;
- ♦ in the next report, provide additional information on the situation of the Roma minority, particularly with regard to education, employment and housing; pay particular attention to the situation of Roma women and children;
- ♦ consider the extension of the right to use the Sami language in legal and administrative proceedings to all Sami territory;
- ♦ introduce legislation recognising traditional Sami land rights and reflecting the centrality of reindeer husbandry to their way of life; ratify ILO Convention No. 169 (Indigenous and Tribal Peoples in Independent States);

- ◆ ensure compliance with the law against discrimination in the allocation of housing, and, in the next report, provide information on the measures taken to address such de facto segregation;
- ◆ declare illegal and prohibit any organisation that promotes or incites racial discrimination;
- ◆ take all necessary measures to increase efforts to facilitate the occupational integration of all persons belonging to ethnic minorities into the public administration; and
- ◆ take effective action, utilising administrative measures as well as criminal prosecutions, to ensure that access to places or services intended for use by the general public is not denied on grounds of national or ethnic origin.



## 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, 2 June 1993) 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 prohibition 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 second periodic report was due 30 June 1999.

#### Civil and Political Rights

Acceded: 18 June 1992.

Switzerland's second periodic report (CCPR/C/CH/98/2) has been submitted and is pending consideration by the Committee at its October 2001 session; the third periodic report is due 17 September 2003.

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

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

#### Racial Discrimination

Acceded: 29 November 1994.

Switzerland's second and third periodic reports were due 29 December 1997 and 1999 respectively.

*Reservations and Declarations:* Articles 4 and 2 (1) (a).

#### Discrimination against Women

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

Switzerland's initial report was due 26 April 1998.

*Reservations and Declarations:* Articles 7 (b), 15 (2), 16 (1) (g) and 16 (1) (h).

#### Torture

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

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

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

#### Rights of the Child

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

Switzerland's initial report was due 23 March 1999.

*Reservations and Declarations:* Articles 5, 7, 10 (1), 37 (c) and 40.

**Optional Protocol (Sale of children):** Signed: 7 September 2000.

**Optional Protocol (Armed conflict):** Signed: 7 September 2000.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

**Independence of judges and lawyers, Special Rapporteur on the:** (E/CN.4/2000/61, paras. 18, 20, 270-272, 334, 337)

The Special Rapporteur (SR) referred to the case of a Nigerian lawyer (see E/CN.4/1998/39, paras. 161-163) and to the conduct of police officers during his arrest and in detention. The government said that an administrative inquiry had concluded that the treatment received by the lawyer was not in conformity with acceptable principles of police behaviour. As a consequence, disciplinary actions were taken against the four police officers involved in the case. The government informed the SR that the sanctions imposed on the four officers in the form of caution, warning and reprimands by the administrative authority were set aside by the Appeals Commission of the Police. The SR expressed regret at the decision of the Appeals Commission and stated that it should not discourage the government from offering adequate compensation to the lawyer. The SR noted that the government had apologised for the conduct of the police officers and stated that rather than requiring the lawyer to spend time and money to prosecute a civil claim for compensation, he should be offered adequate compensation and the “rather ugly and unpleasant episode” be laid to rest.

**Sale of children, child prostitution, child pornography, Special Rapporteur on the:** (E/CN.4/2000/73, paras. 6, 127-128)

The Special Rapporteur noted that the first research on the commercial sexual exploitation of children in Switzerland was carried out in 1999 by an NGO, Arge Kipro. However, this was based on 60 case studies and the government stated that it is not representative of the situation in Switzerland. Despite this assessment, the research demonstrated a clear relationship between commercial sexual exploitation and a childhood of violence and sexual abuse in the family. The government noted a very clear link between prostitution and drug addiction. Also noted was the sexual abuse of children in a sporting environment — namely, abuse of children by sports coaches. The Federal School of Sport of Macolin and the Olympic Sports Association have established a working group to examine possibilities for training and intervention in this respect and the ways in which to inform the public about help and consultation centres.

**Torture, Special Rapporteur on:** (E/CN.4/2000/9, paras. 998-999)

The Special Rapporteur referred to the case of the Nigerian lawyer who was ill-treated while in detention in Switzerland (see “Independence of judges and lawyers”). The report notes that in January 1998, the Procurator General had decided to take no further action on the complaint lodged against the police officers.



## 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.

**Economic, Social and Cultural Rights**  
Signed: 15 August 2000.

**Civil and Political Rights**  
Signed: 15 August 2000.

**Racial Discrimination**  
Signed: 13 October 1972.

**Discrimination against Women**  
Acceded: 20 December 1985.  
Turkey's fourth periodic report was due 19 January 1999.  
*Reservations and Declarations:* Articles 9 (1) and 29 (1).

**Optional Protocol:** Signed: 8 September 2000.

**Torture**  
Signed: 25 January 1988; ratified: 2 August 1988.  
Turkey's second and third periodic reports were due 31 August 1993 and 1997 respectively.  
*Reservations and Declarations:* Article 30 (1); declarations under articles 21 and articles 22.

**Rights of the Child**  
Signed: 14 September 1990; ratified: 4 April 1995.  
Turkey's initial report (CRC/C/51/Add.4) has been submitted and is pending for the Committee's September/October 2001 session; the second periodic report is due 3 May 2002.  
*Reservations and Declarations:* Articles 17, 29 and 30; two states filed objections to these reservations.

**Optional Protocol (Sale of children):** Signed: 8 September 2000.

**Optional Protocol (Armed conflict):** Signed: 8 September 2000.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

#### Arbitrary detention, Working Group on:

(E/CN.4/2000/4, paras. 3, 4, 6, 19, 23, 35, 36, 37, 67)

Two cases on behalf of two persons were sent to the government, which replied to one of them. Three urgent appeals on behalf of five persons were also sent; the government replied to two of them. No details of the cases are provided in the report.

The report summarises the reply of the government to the Working Group's Opinion No. 20/1998. The reply noted that the case had been referred back to the State Security Court in Ankara after the Court of Appeal quashed the decision of the court of first instance. In its second verdict of November 1998, the State Security Court: (a) found three defendants guilty of membership in illegal and terrorist organisations but reduced their sentences; (b) sentenced five defendants for membership in illegal and terrorist organisations and for having participated in illegal activities involving the use of explosives; (c) found one defendant guilty of propaganda for a terrorist organisation. The November 1998 decision was in turn appealed, and the case was once again before the Court of Appeal for consideration.

#### Disappearances, Working Group on enforced or involuntary: (E/CN.4/2000/64, paras. 14, 15, 16, 90-92)

Eight newly reported cases, which reportedly occurred in 1997, 1998 and 1999, were transmitted. Two cases concerned persons who were detained at Habur while intending to cross the border to Iraq. Another case concerned a person who allegedly disappeared after having been arrested at the Ipsala border control post because of irregularities in his passport. Three cases occurred in the city of Diyarbakır, one in the Güngören district of Istanbul and one in Izmit. One case concerned a prisoner who, according to the prison guards, ran away when he was taken to the hospital for a medical operation.

The government submitted information on 10 outstanding cases. Five cases were clarified on the basis of that information. With regard to three other cases, the government reported that the investigations carried out by the Office of the Chief Prosecutor of Izmir had determined that there was no evidence that these persons had been detained by the police. With reference to another case, the missing person had asylum status in Greece since 1984 and probably had illegally entered and left Turkish territory on false travel documents. With regard to another case, the government noted that the missing

person is on the wanted list of the police for several offences and has been a fugitive since February 1994.

#### Extrajudicial, summary or arbitrary executions, Special Rapporteur on: (E/CN.4/2000/3, paras. 11, 12, 13, 14, 19, 21, 23, 25, 26, 27, 35, 47, 48, 78, 82; E/CN.4/2000/3/Add.1, paras. 435-456)

Six urgent appeals and one allegation were transmitted to the government during the period under review. The cases concerned, *inter alia*: the detention of eight lawyers from the local headquarters of the People's Democracy Party (HADEP) in Diyarbakır relating to the case of Abdullah Öcalan; death threats against officials and members of the Turkish Human Rights Association (IHD), apparently because of their statements calling for a fair trial for Mr. Öcalan, made in the name of the so-called Turkish Revenge Brigade; two lawyers acting for Abdullah Öcalan, who were reportedly kicked and punched as they arrived at the quayside at Mndanya to set off for the prison island; a 22-year-old law student and his girlfriend, who were arrested along with 25 other people at the BEKSAV Cultural Centre in Kadiköy by two uniformed and an estimated four plain-clothes policemen; the death sentence imposed upon Abdullah Öcalan, noting a number of irregularities in the legal proceedings leading up to the handing down of the sentence — e.g., incommunicado detention, limited access to legal counsel; a journalist and trade unionist who died in custody in a cell at the anti-terror branch of Istanbul police headquarters.

The report summarises the response of the government to concerns related to the arrest, detention, trial and sentencing of Abdullah Öcalan. The responses to other cases are also summarised. The Special Rapporteur (SR) noted information provided by the government that it was maintaining the de facto moratorium on executions that has been in place since 1984; the death penalty was still retained as a lawful punishment in the legislation, strictly for a limited range of crimes, including those of which Abdullah Öcalan was accused. The SR encouraged the government to make renewed efforts towards the complete abolition of capital punishment.

#### Freedom of opinion and expression, Special Rapporteur on: (E/CN.4/2000/63, paras. 183-189)

The cases transmitted to the government concerned, *inter alia*: a journalist of Hepileri, who had been detained since October 1998; a reporter for Inter Press Service, who was charged under article 159 of the Penal Code "for insulting and belittling the military" and, if convicted, faced a prison sentence of one to six years; an editorialist of Selam, who was sentenced in December 1998 for an article published in July 1997; the Kurdish MED-TV satellite channel, which had its broadcasting licence withdrawn in April 1999. The Special Rapporteur (SR) welcomed, however, the enact-



ment of the Amnesty Law, which brought the release of 21 journalists.

An urgent appeal was sent on behalf of a prominent writer, journalist and publisher who was sentenced to one year in prison and a fine of 100 million lira on charges relating to his book *Three Sivas*. The information received indicated that: he had also undertaken independent human rights studies and participated in the establishment of the Turkish Human Rights Association (IHD); he was first imprisoned from 1971 to 1974 because of his writings; in 1980 he was arrested for the second time, together with his brother, after the military coup. An urgent action was also sent on behalf of the chairman of IHD and vice-chairman of the Human Rights Foundation of Turkey, who was sentenced in December 1998 to a one-year term of imprisonment for a speech he made in September 1995. The information received indicated, *inter alia*: in the speech, he called on the Turkish authorities to negotiate a peaceful end to the conflict in the south-east; three branches of IHD based in Bursa, Mardin and Balıkesir were closed down in November and December 1998 because they had prohibited human rights publications on their premises; the director of the Balıkesir branch was dismissed from his government post because he was an executive member of IHD.

The report summarises information provided by the government regarding the 21 journalists who were amnestied under Law 4454. The government also provided information on the temporary closure of the IHD branches in Balıkesir, Mardin and Bursa as well as other cases brought to its attention by the SR.

**Independence of judges and lawyers, Special Rapporteur on the:** (E/CN.4/2000/61, paras. 13, 17, 19, 20, 287-302)

The Special Rapporteur (SR) transmitted appeals to the government concerning the case of Abdullah Öcalan. Points raised in the appeals included that: his attorney was not allowed to enter Turkey from the Netherlands to visit her client; he was also denied access to his lawyer in Turkey; two lawyers were kicked and punched as they set off to visit their client at the island prison; four lawyers working on the case, who held a press conference at the Press Museum in the Cagaloglu district of Istanbul in February 1999, were jostled by an angry crowd; as a result of threats and harassment, these four lawyers suspended their representation of Abdullah Öcalan, saying that they could not continue under the circumstances and that his trial could not be considered fair unless he was properly assisted by competent and committed defence counsel. The report summarises the government's response to the concerns raised about the case of Abdullah Öcalan.

The SR also referred to the detention of eight lawyers from the local headquarters of the People's Democracy Party (HADEP) in Diyarbakir, including the provincial president of HADEP (see "Extrajudicial, summary and arbitrary executions"). Reference is also made to death threats received by several lawyers and human rights defenders. In light of allegations that a large number of lawyers had been arrested and/or threatened as a result of carrying out their functions, the SR sought as a matter of urgency an invitation from the government to undertake a visit to the country at the earliest time possible. In the report, the SR expressed regret that he was not permitted to visit Turkey at the height of the various alleged incidents so that he might verify the allegations of harassment and intimidations of Mr. Öcalan's defence lawyers.

**Religious intolerance, Special Rapporteur on:** (A/55/280, paras. 53-54)

In the interim report to the General Assembly, the Special Rapporteur (SR) referred to a case in which two Christians, formerly Muslims who had converted to Christianity and were members of the Izmir Fellowship of Jesus Christ, were reportedly arrested as they sold and distributed Bibles and other Christian literature in Kemalpaşa, near Izmir. The information received indicated that: the prosecutor accused them of forcing people to accept the Bibles and of insulting Islam; the local mufti submitted a report to the prosecutor explaining that the material confiscated from the two Christians did not contain any anti-Islamic elements; it was emphasised, however, that passages one individual's personal notebook concerning the meaning of "Allah" and "Jehovah" and other names for God were the essence of falsehood and slander against religion; the arrests occurred one day after the broadcast of a television programme on Christian missionary sects which propagated the message that Christianity is a threat. In its response, the government stated that both persons were acquitted by the Kemalpaşa criminal court.

The SR visited Turkey from 30 November to 9 December 1999. The report of the mission (A/55/280/Add.1) provides information on, *inter alia*: legal aspects of freedom of religion and belief; policy in the area of freedom of religion and belief; minority communities recognised or unrecognised by the authorities as minorities and/or as covered by the Treaty of Lausanne.

The report notes that article 24 of the 1982 Constitution guarantees freedom of religion and belief and the principle of non-discrimination on the basis of religion and belief, and protects both believers and non-believers. The SR stated that the principle of secularism in Turkey is highly complex and noted that while recognised non-Muslim minorities enjoy autonomous legal status in accordance with the Treaty of Lausanne, the state is

directly responsible for administering Muslim religious affairs, through the Department of Religious Affairs. [Note: The July 1923 Treaty of Lausanne establishes the principle of equality for all citizens regardless of race and religion.] The report notes that this state involvement in Muslim religious affairs poses a problem in that it seems to promote a single conception of Islam, the Hanafi.

In discussions with the SR, the government also indicated that: lands and buildings belonging to national religious minorities may be sold, rented or used for another purpose, at the decision of the respective boards of directors, provided such decisions are consistent with legislation governing foundations; other establishments belonging to minorities and religious groups, which are not covered by foundations but which have historical and cultural value, are preserved under the Law on the Preservation of Cultural and National Wealth; members of minorities enjoy equal rights to establish associations envisaged in the Constitution for every Turkish citizen; the statutes of the schools belonging to the minorities recognised in accordance with the Treaty of Lausanne are preserved and these schools are considered as “Foundation Schools” and continue to provide education and training at the pre-school, primary and secondary levels.

The government stated further that: in legislation, no provision exists regarding any limitations or prohibition against new places of worship for minorities, pending conformity with stipulations set out by the Law on Public Works; under article 16 of Law No. 1587, children may not be given names that might offend people or that would be considered incompatible with national culture and values; religious minorities are free to give their children any first or family names they wish, provided they respect this criterion; no measures are taken against missionaries who visit houses and apartments or who open up stands to distribute publications for which a legal permit has been obtained; if any complaint is made by the public against such house visits, however, claiming that privacy and the public order are being harmed, missionaries may be taken to the police station by the local police authorities and following their testimony, they are released. All conscripts are free to practice their religion provided they respect military rank and discipline; if a conscript refuses to execute the orders of a superior officer on grounds of freedom of religion and belief, military criminal law provides for trial by the military tribunals. A simple declaration of conscientious objection does not constitute a crime but statements that slander or denigrate the Army may be prosecuted by the military tribunals. The report cites relevant provisions in such other laws as the 1965 Law on the Public Service, the 1973 National Education Act, the 1983 Law on Associations, the 1994 Law on the Creation and Operation of Radio Stations and Broadcasting.

The SR stated that while the Turkish authorities stressed the tolerance that has prevailed in Turkey since the Ottoman Empire, Turkish human rights activists and independent experts gave quite a different viewpoint. The SR noted, *inter alia*: Turkish secularism is a militant secularism whereby the state has completely taken over religious affairs in order to prevent them from having any political influence; secularism is not based on the principle of neutrality, in the sense that the form of Islam managed by the state and promoted among the population is exclusively that of the Hanafi rite; the state thus imposes a Sunni monopoly on Islam that takes no account of the diversity of the Muslim communities, and particularly the Alawis and the various brotherhoods. The report adds that any understanding of the religious situation must also take account of Turkish nationalism, in particular as it is expressed by the “Turkisation” policy, the impact of which is felt by non-Sunni and by ethnically non-Turkish Muslim communities, and in particular by non-Muslim minorities. As distinct from the Christian minorities, the Jewish community has generally enjoyed satisfactory treatment to the extent that after the collapse of the Ottoman Empire the land claimed by the Jews lay outside Turkey, in contrast to the territorial claims of the Armenians and the Greeks; the current satisfactory status of the Jewish minority also reflects the positive effects of rapprochement between Turkey and Israel, particularly in the military sphere. The Christian minorities, in comparison with the Jewish community, appear to be faced with a kind of “steamroller” effect that is driving them to leave en masse, for reasons entirely unrelated to economic considerations. Because of political concessions, Islamists have been able to use the media to take over control of society and even of state institutions (particularly in the area of justice and education). Islam is being used as a tool of political exploitation by all players in the country’s political life, both in government and within the political parties, particularly the Fazilet.

Commentary on the situation of the Greek Orthodox minority states that the community (consisting of persons with Turkish nationality) enjoys full freedom of religion and worship. Problems have been encountered, however, in such areas as: non-acceptance by the authorities of the proper title of the Patriarchate — the Ecumenical Patriarchate of Constantinople — on the basis that it is not consistent with the Treaty of Lausanne and that the Patriarchate is a Turkish institution; the failure to accord to the Patriarchate the status of a legal entity; the closure of private religious training institutions in 1971, and the consequent loss by the Patriarchate of the use of its seminary on the island of Halki; the failure of the state to reinstate title of ownership to properties that were lost after 1936; the administration of schools and the enrolment of students as a

result of the requirement that the institutions must be administered by a “Greek headmaster” of Turkish nationality, seconded by an assistant headmaster of Turkish nationality who is not an Orthodox Greek, noting that the authorities often fail to appoint a headmaster, thereby leaving the school’s management in the hands of the Turkish assistant headmaster; attacks on Patriarchate property, desecration of cemeteries and personal assaults, including bomb attacks, desecration and assassination. Positive elements were noted as including the lifting of the prohibition on issuing the Patriarch a passport and minority access to media.

Concerning the Armenian minority, the report notes, *inter alia*: the lack of legal status for the Armenian Patriarchate as an institution; the refusal by some authorities and courts to accept the Patriarch as a valid representative, because of the Patriarchate’s lack of legal status; the fact that the Armenian Patriarchate no longer has a seminary for training clergy and the concern of authorities that allowing non-Muslim minorities to have their own private religious training institutions would lead to similar demands by Muslims, with the potential risk of religious extremism that might emerge in private Muslim religious institutions; the confiscation of community properties; the continuation of an antiquated system of electoral districts within Istanbul that has the effect of barring elections indefinitely, blocking financial transactions and raising the possibility of the religious trust being closed down; a 1981 decree requiring all Armenian religious trusts to pay a 5 per cent tax for government inspections and audits, while Greek and Jewish trusts are exempt; the requirement by the Ministry of Finance that non-profit Armenian institutions such as schools and hospitals pay corporate taxes, since those community charities charge for their services; intervention by the state in the appointment and election of the Armenian religious leader, who must be of Turkish nationality.

The Armenian Catholic and Protestant churches do not face any obstacles to their freedom of religion and worship, but they do encounter the same difficulties as those cited by the Armenian Orthodox Patriarch concerning the lack of legal status, religious training institutions, and obstacles and attacks affecting their property and educational establishments. The churches also face serious obstacles to their proselytising activities.

Representatives of the Jewish community declared that they enjoyed full freedom of religion and worship. The Rabbinate has no legal status but enjoys *de facto* recognition by the government. The representatives also stated that their community encountered no anti-Semitism either from the state or from society, except for a few right-wing newspapers; attacks on their places of worship had been very rare, and were committed by foreign elements.

The SR also looked into the situation of non-Armenian Catholic and Protestants, as well as that of the Syrians. The report notes, *inter alia*: there is no corporate legal status for the Catholic Church (despite the establishment of diplomatic relations with the Holy See in 1960) and the Protestant Church; the Catholic community enjoys freedom of worship, but only within confined spaces — i. e. essentially within Catholic places of worship and other religious establishments; any pastoral work among Muslims may be regarded as religious propaganda and incitement, and liable to be prohibited by the police; in the case of priests and nuns, as with other minorities, the wearing of religious habit in public is formally prohibited (apart from the senior religious leadership); the Catholic Church is not allowed its own religious training institutions; difficulties have been encountered in obtaining visas and visitor permits for foreign religious personnel; the appointment of bishops is constrained by legislation prohibiting foreign authorities from designating the leader of a religious community in Turkey; further confiscation of properties were being planned; the rule requiring, for schools, appointment of a headmaster from the minority community and a Turkish assistant headmaster remains in force.

The report notes that the non-Armenian Protestant Church represents a community of recent origin (dating back about 30 years), consisting essentially of people of Turkish origin, and therefore frequently Muslims, who have converted to Christianity. Points noted include that: the active proselytising of this community in its search for converts poses a problem both for the authorities and for society at large; the refusal to recognise the Protestants as a religious minority and the failure to grant them legal status have meant that they cannot conduct their activities officially as a Protestant community and cannot acquire places of worship and other religious properties; foreign religious figures invited by the Protestant Church must in effect apply for a tourist visa; the compulsory nature of religious and ethics courses constitutes a form of pressure on families and children, since those who seek exemptions risk rejection and ostracism by the majority.

The information gathered from Syriac representatives reflects as well the situation of the rest of the Assyro-Chaldean community, Catholic and Protestant alike. The report notes: the Syrians are not recognised by the authorities as a minority covered by the Treaty of Lausanne, despite their historical presence in Turkey; they therefore enjoy none of the rights of a religious minority, although they should, in principle, be covered by the constitutional guarantees relating to freedom of religion and worship; there is no legal status for the Syriac community and it has no religious training seminar; the authorities have imposed restrictions on the renovation of churches and monasteries in the



Turrabdin region of southeastern Turkey, sometimes on the grounds that there is a need to preserve a historic landmark; places of worship that were declared “unused” by the General Director of Foundations have been confiscated; the Syrians are severely lacking in social, charitable, education and health institutions, because they are prohibited from opening their own establishments; a climate of violence has forced most Syrians to leave southeastern Turkey.

The SR recommended, *inter alia*, that:

- ◆ precise terminology be devised and legislation, including constitutional provisions, be interpreted in a manner consistent with international standards of human rights and with the jurisprudence and general comments of the UN Human Rights Committee (see General Comment No. 22 (48) of 20 July 1993);
- ◆ the jurisprudence of the Constitutional Court relating to secularism be clearly and fully reflected in state policy concerning religion in order to prevent any interference that would run counter to the limitations prescribed by international law;
- ◆ the authorities take steps to make education an effective vehicle for promoting human rights values, so as to help build a culture of tolerance and thus encourage behaviour consistent with tolerance and non-discrimination; education, and in particular the compulsory religious and ethics courses, be free of any ideological framework and any political bias in favour of a particular religious persuasion, so as to guarantee the principle of educational pluralism;
- ◆ the authorities establish a clear principle whereby nationalism is not to be used against minority religious communities;
- ◆ revision of the laws on given names and on unused properties be undertaken to ensure that any expropriation by the state is based, first, on the principle of non-usurpation and, as far as possible, on the principle of consultation or consensus with the groups and communities concerned;
- ◆ legislation be adopted to guarantee the right to conscientious objections, particularly for religious beliefs;
- ◆ the Sub-Commission's Working Group on minorities decide, in light of international law, the interpretation that should be given to the notion of minorities in the context of the Treaty of Lausanne, and in particular that it identify the communities covered by the Treaty;
- ◆ with respect to the Christian, Greek Orthodox and Armenian minorities, the government: (a) take all necessary steps to prevent and eliminate the discrimination that results from the progressive and de facto refusal to grant and allow the use of an appropriate legal entity structure; (b) ensure that the legal entity structure itself, in this case the foundations, responds to the basic needs of minorities; (c) ensure that public institutions, in particular the General Director to Foundations, not discriminate against Christian minorities; (d) guarantee minorities the right to establish and maintain their own places of worship, and allow them to build such facilities in places where new communities have taken root; (e) guarantee minorities the right to teach their religion, in places suitable for this purpose, and to train their clergy; (f) guarantee the proper functioning of minority educational establishments, by removing obstacles to the appointment of headmasters; (g) guarantee non-intervention in the internal affairs of minorities, in particular in the election and appointment of religious leaders;
- ◆ with respect to the Greek Orthodox and Armenian minorities, the guarantee of their rights not be conditional upon the status of relations between Turkey and Greece, on one hand, and of those between Turkey and Armenia and its diaspora, on the other;
- ◆ with respect to the non-Armenian Protestants and Assyro-Chaldeans, the government provide a full guarantee of this religious community's rights and establish appropriate legal mechanisms to enable it to acquire and manage its own properties, including places of worship;
- ◆ with respect to the Assyro-Chaldeans, the government satisfy legitimate demands for the construction of new places of worship, in particular in Istanbul, put a stop to the arbitrary and discriminatory confiscation of Assyro-Chaldean places of worship by the General Directorate of Foundations and end the abuse of power in procedures for authorising the renovation of religious establishments; and
- ◆ in respect of all religious communities, the government: (a) ensure that Islam does not become a political tool; (b) combat all manifestations of intolerance whenever they appear; (c) combat extremism in all religions, wherever it appears, while respecting international human rights standards and being careful not to affect minority religious communities, directly or indirectly, in the enjoyment of their legitimate rights and freedoms; (d) take all necessary measures, consistent with international human rights standards, to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by religious intolerance; (e) ensure both more legal protection against discrimination based on religion or belief, and the implementation and respect of these legal safeguards; (f) ensure that the interpretation of the constitutional principles of



secularism and nationalism, and policies for implementing them, not affect religious communities, and in particular minority religious communities, whether in their enjoyment of their rights, including religious rights (deriving either from minority status or from citizenship) or in their ability to integrate naturally into Turkish society; (g) protect minority religious communities from any political manipulation in the context of Turkey's foreign affairs; (h) undertake a true dialogue with minority religious communities so as better to understand their needs and to promote a climate of respect and trust; (i) provide for the effective protection and promotion of religious diversity and, in particular, allow room for the Alawis to express their religion; (j) undertake a broad campaign to educate and sensitise society and its different components to the values and principles of tolerance and non-discrimination with respect to minority religious communities, and to counter religious fanaticism; (k) take advantage of the technical cooperation services of the OHCHR in the area of freedom of religion and belief, with particular attention to minorities.

**Sale of children, child prostitution, child pornography, Special Rapporteur on:** (A/55/297, paras. 108-110)

The interim report to the General Assembly summarises information received from the government, indicating, *inter alia*, that there has been an increase in the number of cases of children who have run away from their homes and become vulnerable to exploitation through prostitution, begging and crime. Rapid and irregular urbanisation, unemployment and poverty have led to a reduction in the extent to which children can avail themselves of educational opportunities. Children with physical or mental disabilities or with difficulties in hearing or talking are more vulnerable to sexual harassment. The Penal Code regulates the offences of rape and sexual abuse and introduces a variety of sentences that depend on the age of the victim.

**Torture, Special Rapporteur on:** (E/CN.4/2000/9, paras. 1038-1089; E/CN.4/2000/9/Add.5, paras. 81-90)

The Special Rapporteur (SR) received information according to which: prosecutors are frequently unwilling to open investigations or recommend trials; judges are reluctant to convict members of the security forces or to impose custodial sentences upon them; while criminal charges have been brought against alleged torturers, the measures have not resulted in final convictions or in sentences reflecting the gravity of the offence.

The methods of torture and ill-treatment used are noted as including: being beaten with truncheons; being forced to eat human excrement; being suspended by the arms, which are tied behind the back; being

blindfolded; being administered electric shocks; having the head beaten against walls; being stripped; being the victim of sexual assault; having testicles squeezed; being hosed with pressurised hot water and cold water directed at the head, testicles and throat; receiving death threats, threats of rape; being locked in a toilet; being choked; being denied access to a toilet; being deprived of food and water.

The cases transmitted to the government concerned, *inter alia*: 50 persons from Tilkiler and four other villages in the Kahraman Mara who were arrested, one person who was detained at the Anti-Terror Branch of Bozyaka police headquarters for possession of an unlicensed firearm, noting that he was threatened by police officers after he complained about torture, set fire to himself while naming the officers who had tortured him, and died of his injuries; a 17-year-old high-school student who is a witness in the prosecution of 11 police officers charged with beating a photographer to death; one person who was active in left-wing politics and filed a complaint of torture with the public prosecutor, and whose body was found three weeks later, hanging from a belt around his neck in a toilet at the Faculty of Communication at the Aegean University, following which a second autopsy showed traces of chloroform and ethanol in the blood, calling into question the first finding of suicide; one woman who was arrested during Nevruz celebrations and accused of carrying the flag of an illegal armed organisation; one person who was detained at the Anti-Terror Branch of Istanbul police headquarters; three members of a family who were interrogated at Antalya police headquarters in connection with alleged membership of the Revolutionary People's Party, Devrimci Halk Partisi (DHP).

Other cases that were transmitted concerned, *inter alia*: three boys aged 10 to 12 who were arrested while collecting scrap metal from a rubbish dump in Istanbul and held incommunicado for 32 hours at the Public Order Department of Küçükçekmece police station; one person who presented himself for questioning at the gendarmerie post at Veliköy village, near Savsat (Artvin province) and died in hospital six days later from injuries inflicted during interrogation; one person who was taken into custody in Istanbul while handing out leaflets protesting against the government's role in the Gulf War; a 13-year-old boy who was falsely accused of theft; one person who ended up in intensive care after interrogation for alleged theft at the Çınarlı police station in Izmir; one woman who is a member of the Turkish Human Rights Association (IHD); 16 juveniles and young people who were held at Manisa police headquarters, noting that during the course of their trial at Manisa criminal court, they continued to be subjected to intimidation and one of them attempted suicide; a 19-year-old Kurdish girl and her 16-year-old

friend who were taken to the Anti-Terror Branch of the Iskenderun police headquarters, where they were detained for five and seven days, respectively, noting that they were eventually sentenced to long prison terms after being charged with membership of the Kurdistan Workers' Party (PKK) and taking part in a violent demonstration against the arrest of PKK leader Abdullah Öcalan; one person who was detained while trying to enter the country from Greece using a false passport; two persons who were arrested by mandate of the State Security Court in Ankara in connection with an attack on the governor of Çankiri; one Kurdish man who was taken into custody by soldiers from the Pazarck gendarmerie command and held in incommunicado detention, either at the Pazarck gendarmerie or at the Mara police headquarters.

The SR also sent an urgent appeal on behalf of Abdullah Öcalan and noted in the report that a number of communications were received from the government on the case. The SR also joined with other thematic rapporteurs in the cases of: the eight lawyers from the local headquarters of the People's Democracy Party (HADEP) in Diyarbakir; lawyers representing Abdullah Öcalan; two of the 27 persons arrested at the BEKSAV Cultural Centre.

The report summarises the response of the government to a number of the cases that were transmitted during the period under review, as well as to cases that were transmitted in October and November 1998 (see E/CN.4/1999/61), May 1997 (see E/CN.4/1998/38/Add. 1, para. 424), February and October 1996 (see E/CN.4/1997/7/Add. 1, para. 488 and following) and May 1995 (see E/CN.4/1996/35/Add.1). The fifth addendum to the main report summarises the response of the government to cases that were transmitted in November 1999.

The government also provided the SR with information on the latest steps taken in Turkey on the human rights reform process, including amendments to the Penal Code that provide a new definition of torture and ill-treatment, increase the severity of punishment foreseen for crimes of torture, as well as for health personnel involved in faking forensic reports with a view to concealing the existence of torture and ill-treatment. The government noted that the Law on the Prosecution of Civil Servants was adopted in December 1999 by the Grand National Assembly and had entered into force; the new Law sets a "time limit" for the conclusion of cases, thereby "preventing impunity" through statutes of limitations, and holds civil servants accountable before courts for any of their offences. The SR welcomed the law reform measures and stated that it is still essential to reduce the periods of permitted incommunicado detention to make a substantial impact on the resort by law enforcement officials to torture and similar ill-treatment.

#### **Violence against women, Special Rapporteur on:** (E/CN.4/2000/68/Add.1, paras. 114-116)

The Special Rapporteur (SR) transmitted one case, jointly with the Special Rapporteur on torture, concerning a 19-year-old Kurdish girl and her 16-year-old friend who were reportedly arrested in Iskenderun (Hatay province) in March 1999. Information indicated, *inter alia*: both were taken to the Anti-Terror Branch of the police headquarters in Iskenderun where they were detained for five and seven days, respectively; they were blindfolded, prevented from sleeping and going to the toilet, denied water and food, and forced to listen to loud music and to drink spoiled milk; police forced them to strip and stay naked, and told them to stand in exhausting positions for long periods of time; they were routinely insulted and threatened. The 16-year-old girl was exposed to verbal and sexual harassment, continually beaten on her genitals, buttocks, breast, head, back and legs, forced to sit on a wet floor for a long time and roll naked in water, and suspended from the arms and exposed to pressurised cold water; the older girl was subjected to the same treatment and to anal rape. A formal complaint was lodged against the police officers and, in November, an investigation was opened; the girls were sentenced to long prison terms after being charged with membership of the Kurdistan Workers' Party (PKK) and taking part in a violent demonstration against the arrest of PKK leader Abdullah Öcalan. The SR noted: the girls claimed their convictions were based on statements extracted under torture; they remained in prison pending the decision of the Appeal Court; while in detention, they underwent several medical examinations, including a virginity test which is said to be traumatic, by different doctors; none of the doctors reported signs of violence but a later report by the Turkish Medical Association describes medical symptoms which match the girls' testimonies of sexual torture.

The report summarises the government's response to these cases in which it confirmed that the girls had been subjected to medical controls and, further, that each medical control included a virginity test. The results of the controls showed that they had not been subjected to torture or any other ill-treatment, including vaginal or anal rape. On the basis of reports that were prepared following examinations at the State Hospital of Iskenderun, the public prosecutor reached the decision that no indictable offence had been committed; however, the case was transferred to the district head office for further investigation. The cases were pending at the State Security Court of Adana, and both women were transferred from the Iskenderun prison to the Kürkcüler prison in Adana.



## 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, 24 February 1997) 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, 14 September 1995) 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 was due 30 June 1999. The U.K.'s third periodic report on the Dependent Territories (E/1994/104/Add.24) has been submitted but is not yet scheduled for consideration.

*Reservations and Declarations:* Articles 1, 2 (3), 6, 7 (a) (i), 9, 10 (2), 13 (2) (a), and 14.

#### Civil and Political Rights

Signed: 16 September 1968; ratified: 20 May 1976.

The U.K.'s fourth and fifth periodic reports for the Dependent Territories (CCPR/C/95/Add.10 and CCPR/C/UKGD/99/5) were considered by the Committee at its March 2000 session; the U.K.'s fifth periodic report (CCPR/C/UK/99/5) has been submitted and is pending consideration at the Committee's October 2001 session. *Reservations and Declarations:* Articles 1, 10 (2) (a), 10 (2) (b), 10 (3), 11, 12 (1), 12 (4), 14 (3) (d), 20, 23 (4), 24 (3) and 25 (c); declaration under article 41.

**Second Optional Protocol:** Signed: 31 March 1999; ratified: 10 December 1999.

#### Racial Discrimination

Signed: 11 October 1966; ratified: 7 March 1969.

The U.K.'s fifteenth periodic report (CERD/C/338/Add.12, Parts I and II) was considered by the Committee at its August 2000 session; the U.K.'s sixteenth periodic report was due 6 April 2000.

*Reservations and Declarations:* Articles 1 (1), 4 (a) (b) and (c), 6, 15 and 20.

#### Discrimination against Women

Signed: 22 July 1981; ratified 7 April 1986.

The U.K.'s fifth periodic report is due 7 May 2003.

*Reservations and Declarations:* General declaration and articles 4 (1), 15 (3) and 15 (4).

#### Torture

Signed: 15 March 1985; ratified: 8 December 1988.

The U.K.'s fourth periodic report is due 6 January 2002.

*Reservations and Declarations:* General reservation; declaration under article 21.

#### Rights of the Child

Signed: 19 April 1990; ratified: 16 December 1991.

The U.K.'s second periodic report (CRC/C/83/Add.3) has been submitted and is pending for the Committee's May/June 2002 session; the U.K.'s third periodic report is due 14 September 2004. The U.K.'s initial report for the Isle of Man (CRC/C/11/Add.19) was considered at the Committee's September/October 2000 session; the U.K.'s initial reports for the overseas territories (CRC/C/41/Add.7 and CRC/C/41/Add.9) were considered at the Committee's September/October 2000 session.

*Reservations and Declarations:* General declaration and articles 22 and 37 (c); reservation on article 32 was withdrawn 3 August 1999.



**Optional Protocol (Sale of children):** Signed: 7 September 2000.

**Optional Protocol (Armed conflict):** Signed: 7 September 2000.

*Reservations and Declarations:* General declaration.

## REPORTS TO TREATY BODIES

### Human Rights Committee

#### Dependent Territories

The United Kingdom's fourth and fifth periodic reports on its Dependent Territories (CCPR/C/95/Add.10, July 1997, and CCPR/C/UKCD/99/5, December 1999) were considered by the Committee at its March 2000 session. The first section of both reports refers to the state of Jersey and contains information on, *inter alia*: efforts to improve the complaints procedure against decisions of committees, departments and officials; the Wills and Successions (Jersey) Law 1993; the Ten Point Plan for Equal Opportunities for Men and Women in Employment; a Code of Good Practice on Maternity Entitlement in Employment; the Criminal Justice (Young Offenders) (Jersey) Law 1994; the Interception of Communications (Jersey) Law 1993; the Sexual Offences (Jersey) Law 1990; the Protection of Children (Jersey) Law 1994; provisions against discrimination on grounds of sex; and the abolition of all remaining vestiges of the death penalty.

The second section of the reports relates to Guernsey and contains information on, *inter alia*: measures to ensure the equality of women and men in all spheres; the creation of a specific offence of torture; the Housing (Control of Occupation) (Guernsey) Law 1994; the Juvenile Court (Guernsey) Law 1989; the Children and Young Persons (Miscellaneous Provisions) (Guernsey) Law, 1991; electoral reforms; legal recognition of medical practitioners to perform abortions at the island's general hospital; the Children and Young Persons (Secure Accommodation) (Guernsey) Law, 1997; and the Adoption (Amendment) (Guernsey) Law 1997.

The third section of the reports concerns the Isle of Man and contains information on, *inter alia*: provisions against discrimination; the right to life; the Death Penalty Abolition Act 1993; the right not to be subjected to torture or ill-treatment; the Criminal Justice (Penalties etc.) Act 1993; the free movement of persons; equality before the law; protection of the right to privacy; the right to peaceful assembly; the Trade Unions Act 1991; provisions with respect to parental responsibility for and guardianship of minors; the Police Powers and Procedures Act 1998; plans for a race relations bill; and provisions against refusing employment on grounds related to trade union membership.

In its concluding observations and comments (CCPR/C/79/Add.119), the Committee welcomed: the fact that, in several cases, domestic courts have referred to the Covenant; the Administrative Decisions (Review) (Amendment) (Jersey) Law 1995, which provides for a system of administrative appeals against decisions of committees, departments and officials to an independent review board; the withdrawal, in February 1993, of the government's reservation to subparagraph (c) of article 25 which, *inter alia*, applied to jury service in the Isle of Man; various steps taken in all territories to combat any discrimination on the basis of sex and race; steps taken in Jersey to eliminate differences between the rights of children born in wedlock and the rights of those born out of wedlock.

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

- ◆ ensure that all Covenant rights are given effect in domestic law;
- ◆ extend human rights education to members of the police force, the legal profession and other persons involved in the administration of justice, with a view to making it a part of their regular training; incorporate human rights education at every level of general education;
- ◆ ensure that the authorities in Guernsey and the Isle of Man give due consideration to establishing independent bodies with a mandate to review administrative decisions;
- ◆ adopt legislation on the Isle of Man to outlaw corporal punishment;
- ◆ ensure that Jersey, Guernsey and the Isle of Man take steps to ensure that their anti-terrorism laws comply with article 9 of the Covenant;
- ◆ ensure that the authorities in Jersey consider amending the relevant legislation to enable a withdrawal of the reservation to article 11 of the Covenant;
- ◆ take measures to remove and prohibit any discrimination on grounds of sexual orientation;
- ◆ ensure that the archaic and discriminatory provisions of the Criminal Code of the Isle of Man that make blasphemy a misdemeanour are repealed;
- ◆ ensure that all three jurisdictions introduce legislation and other effective measures to prohibit discrimination between women and men;
- ◆ introduce further reforms that secure for all inhabitants the right of participation in the conduct of public affairs; and



- ◆ complete the current process of enacting legislation outlawing all racial discrimination; promulgate legislation that prohibits any discrimination and guarantees to all persons equal and effective protection against discrimination on any ground.

### Committee on the Elimination of Racial Discrimination

The United Kingdom's fifteenth periodic reports (CERD/C/338/Add.12 (Part I), April 2000 and CERD/C/338/Add.12 (Part II), May 2000) were considered by the Committee at its August 2000 session. Part I concerns the U.K. and contains information on, *inter alia*: the Race Relations Act; the Stephen Lawrence Inquiry Report; new statutory offences for racial crime under the Crime and Disorder Act (1998); the Race Relations (Northern Ireland) Order 1997; the establishment of an Equality Commission in Northern Ireland; efforts to reduce social exclusion because of unemployment, poor skills, low incomes, poor housing, high crime environments, bad health and family breakdown; the adoption of specific legislation on the Channel Islands prohibiting racial discrimination; racism in the media and on the Internet; efforts to extend ethnic monitoring to all stages of the criminal justice system; safeguards for proper stop-and-search powers; deaths in police custody; the Community Policing Liaison Committee for Ethnic Minorities in Northern Ireland; the National Association for the Care and Rehabilitation of Offenders (NACRO) Race Unit; initiatives to ensure that the judicial system is culturally and racially neutral; ethnic minorities in the legal profession; the Prison Service race relations policy; recording racist incidents; ethnic representation in political life and public services; efforts to ensure a fairer immigration and asylum system; religious discrimination; efforts to promote employment among ethnic minorities; policies to combat the deprivation and discrimination endured by ethnic minority communities in housing; the Roma and Travellers; education; provisions to ensure that minority communities enjoy equal participation in cultural activities; the Human Rights Act (1998); and ethnic diversity in the school curriculum.

Part II concerns the Overseas Territories and refers to, *inter alia*: self-determination and citizenship relating to the territories as a whole; Anguilla; Bermuda; the British Virgin Islands; the Cayman Islands; the Falkland Islands; Gibraltar; Pitcairn; St. Helena; and the Turks and Caicos Islands.

In its concluding observations and comments (CERD/C/57/CRP.3/Add.9), the Committee welcomed: the recent legislative measures taken, including the adoption of the 1998 Crime and Disorder Act; the 1998 Northern Ireland Act, establishing a new independent Human Rights Commission for Northern Ireland, and

the 1998 Human Rights Act, giving further effect to the provisions of the European Convention on human rights; the establishment of the Race Relations Forum; the setting up of a ministerial Social Exclusion Unit to rehabilitate inner-city areas where a high percentage of persons belonging to national and ethnic minorities live, the launch of the New Deal scheme, which includes a pro-active strategy to introduce young members of ethnic and national minorities on the labour market.

The Committee also welcomed: the stipulation by the courts that the Roma minority be considered a racial group covered by the 1976 Race Relations Act; the identification of Irish Travellers as a racial group for the purposes of the 1997 Race Relations (Northern Ireland) Order; the initiatives taken to promote the socio-economic situation of Roma Travellers; the use of ethnic monitoring to ascertain the numbers of persons of particular ethnic and national origin in various kinds of employment and the setting of targets to increase the employment of persons of minority origins in fields where they are under-represented; the use of ethnic monitoring in the criminal justice system, including the prison population, in order to identify points at which discrimination occurs and to develop means to correct it.

The principal areas of concern noted by the Committee included: the fact that individuals cannot be protected from any discriminatory practices unless these practices have been explicitly prohibited by Parliament; the restrictive interpretation by the government of the provisions of article 4 of the Convention and the fact that such an interpretation is in conflict with its obligations under article 4 (b) of the Convention; the absence of comprehensive legislation to combat racial discrimination; the continuation of racist attacks and harassment; "institutional racism" within the police force and other public institutions.

The Committee also expressed concern at: continuing incidents of death in police custody, disproportionately involving members of ethnic or national minority groups; the failure to prosecute or discipline officers and staff in the prison service following deaths in custody; the increasing racial tension between asylum-seekers and the host communities; the fact that the dispersal system may hamper adequate access for asylum-seekers to expert legal and other necessary services (i.e., health and education); the lack of information about settled Roma, constituting 70 per cent of the total Roma population; the continued high level of unemployment among ethnic minority groups; racist harassment and bullying in schools; the disproportionate exclusion from schools of ethnic minorities; the failure to introduce specific legislation against racial discrimination in all Overseas Territories, including the Cayman Islands and Montserrat.

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

- ♦ develop an interdepartmental strategy to establish comprehensive legislation to combat racial discrimination;
- ♦ provide, in the next report, further information on the impact of the measures and steps taken to improve the handling of racist crimes;
- ♦ provide detailed information on the measures taken to prevent deaths in police custody and in prisons; ensure fully independent investigation into complaints against the police to inspire confidence in the criminal justice system among ethnic minority communities; consider the feasibility of an independent complaints system;
- ♦ show leadership in sending out positive messages about asylum-seekers and in protecting them from racial harassment; implement a strategy to ensure that asylum-seekers have access to essential services and that their basic rights are protected; ensure that effective safeguards are put in place to respect the rights of all asylum-seekers;
- ♦ consider introducing affirmative-action measures, when circumstances so warrant, for certain racial groups or individuals belonging to ethnic minorities;
- ♦ introduce specific legislation against prohibiting the racial discrimination that is being practised by private persons or organisations in such Overseas Territories as Anguilla, the British Virgin Islands, Gibraltar, Montserrat and the Turks and Caicos Islands;
- ♦ continue efforts to encourage all Overseas Territories to adopt legislation that prohibits and penalises racial discrimination;
- ♦ in the next report, provide disaggregated data on the ethnic composition of the population, the principal socio-economic situation and gender composition of each group, in the U.K. and its Overseas Territories;
- ♦ provide further information on the impact on racial equality of: (a) the work of the Social Exclusion Unit; (b) the New Deal scheme; and (c) the implementation of the 1998 Human Rights Act; and
- ♦ consider making the declaration provided for in article 14 of the Convention.

### Committee on the Rights of the Child

#### Overseas Territories

The United Kingdom's initial reports on its overseas territories (CRC/C/41/Add.7, February 2000; CRC/C/41/Add.9, May 2000) were considered by the Committee at its September/October 2000 session. The first report

prepared by the government covers Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Montserrat, Pitcairn Island, St. Helena and Turks and Caicos Islands. Information is provided on, *inter alia*: the legal definition of a child; child maintenance measures; the establishment of juvenile courts; name and nationality; parental rights and responsibilities; the right to life; basic health and welfare; anti-discrimination provisions in legislation; provisions to protect children from abuse and neglect; social security and standards of living; education; special protection measures for children; adoption; care for disabled children; and cultural activities.

The second report concerns the Falkland Islands and refers to, *inter alia*: the Children Ordinance 1994; provision for the best interests of the child; criminal liability; name and nationality, and the preservation of identity; a ban on the corporal punishment of children at government schools; the abuse and neglect of children; health and health services; education; leisure and cultural activities; and children in conflict with the law.

In its concluding observations and comments (CRC/C/15/Add.135), the Committee welcomed: the efforts related to early childhood health — e.g., the high rate of immunisation (90 to 100 per cent coverage), the low incidence of vaccine-preventable diseases, the relatively low rate of infant and child mortality.

Factors and difficulties impeding the implementation of the Convention were identified as including: the diversity of cultures within the widely dispersed overseas territories as well as diverse levels of economic and social development and varying degrees of autonomy; the remoteness of some of the territories and their vulnerability to natural disasters; the devastation caused by the eruption of the Soufriere Hills volcano in Montserrat, which destroyed approximately two thirds of the island; and the limited availability of skilled human resources related to the rights set out and areas addressed by the Convention.

The principal areas of concern identified by the Committee included: the failure to extend the Convention to all of the overseas territories, including Gibraltar; the lack of information on Henderson, Ducie and Oeno Islands as well as South Georgia and the South Sandwich Islands; the failure of the government to withdraw reservations to articles 32 and 37 (c) and their continuing applicability to the overseas territories; the reservation to article 22, made in respect to the Cayman Islands.

The Committee also expressed concern at: the failure to bring into force in Cayman Islands the Children's Law that was enacted in 1995, and the fact that additional amendments are due to be made to the law; the fact that, generally, domestic legislation in the overseas ter-

ritories still does not fully reflect the principles and provisions of the Convention; the failure to establish mechanisms for the coordination of the implementation of the Convention in all of the overseas territories; the fact that national plans of action for children have not yet been elaborated in the overseas territories; and the insufficient efforts made to involve NGOs in the coordination and implementation of the Convention.

Other concerns identified by the Committee included: the lack of adequate data collection mechanisms in most of the overseas territories and the fact that data collection generally only includes children up to the age of 15 years; the inadequate efforts to establish focal points for children within the Human Rights Commission in Bermuda as well as the Child Protection Group in St. Helena and the Complaints Commissioners in the British Virgin Islands and the Turks and Caicos Islands; the lack of independent mechanisms in Anguilla, the Falkland Islands and Montserrat to register and address complaints from children concerning violations of their rights; the inadequate attention paid to the allocation of budgetary resources in favour of the implementation of the economic, social and cultural rights of children; the fact that professional groups, children, parents and the public at large are generally not sufficiently aware of the Convention and of its rights-based approach.

Additional concerns included: the low legal age for criminal responsibility (8-10 years); the low minimum age for the consumption of alcohol in private in the Falkland Islands (5 years); the absence, in most of the overseas territories, of legislation that provides for the special protection and care of children who have attained the age of 17 years; insufficient efforts to ensure the full implementation of non-discrimination provisions in the Convention; with respect to sexual abuse and exploitation as well as the legal minimum age for sexual consent, references in legislation only to girls; the failure to provide legal, equal and adequate protection for boys; the growing gender bias faced by boys evident in, *inter alia*, their academic underachievement, especially the Falkland Islands and the territories in the Caribbean; the disparity between the ages for sexual consent to heterosexual and homosexual relations in some of the overseas territories; the insufficient effort that has been made to prevent discrimination against teenage mothers and children born out of wedlock; the large number of single-parent families, especially in Bermuda and the territories in the Caribbean; the apparent lack of legal protection with respect to the rights of children born out of wedlock from "visiting" or "common law" relationships; the financial and psychological impact of visiting relationships on children; the lack of sufficient support and counselling in the areas of parental guidance and responsibilities; the high rate of migration from the ter-

ritories in the Caribbean and its negative effects on parental responsibility and guidance.

The Committee also expressed concern at: the insufficient monitoring of placements in some of the alternative-care programmes; the lack of information about the current situation of alternative-care facilities in the Turks and Caicos Islands; the insufficiency of independent complaint mechanisms for children in alternative-care institutions as well as the lack of available trained personnel in this field; the continued practice of informal adoptions in some of the overseas territories; the increasing incidence of, and lack of awareness and information on, domestic violence and the ill-treatment and abuse of children; with the exception of Bermuda, the lack of mandatory reporting of ill-treatment and abuse of children; and the insufficient efforts made to protect the right to privacy of child victims of abuse; the wide practice of corporal punishment and the failure to prohibit it in law; the continued practice in the British Virgin Islands of judicial corporal punishment; the insufficient programmes and services, and the lack of adequate data in the area of adolescent health, including teenage pregnancy, abortion, HIV/AIDS and sexually transmitted diseases (STDs), drug abuse, violence and mental illnesses; the high incidence of teenage pregnancy, particularly in the territories in the Caribbean.

The Committee noted other concerns, including: the absence of legal protection and the inadequate facilities and services for children with disabilities; the significant decline in the standard of living in Montserrat since the eruption of the volcano, the psychological impact of the disaster on children and the fact that programmes and services for children have not yet been fully restored since the volcano eruption; the lower standard of living for children in Anguilla, St. Helena and its dependencies, and the Turks and Caicos Islands than for children living in other overseas territories; the increasing incidence of truancy and the number of dropouts from school, especially the Turks and Caicos Islands and Montserrat; the failure in the travelling teacher service in the Falkland Islands to include secondary schools; the academic underachievement of boys in, for example, the Falkland Islands and the Caribbean territories; the fact that students from these territories who wish to pursue further studies in the United Kingdom pay more in tuition fees than UK students; the lack of efforts to locate and clear the remaining landmines in the Falkland Islands since the end of the conflict in 1982; the lack of information and adequate data on the situation of child labour and economic exploitation; the high incidence of drug and substance abuse, particularly among youth in Bermuda and the Caribbean territories; the insufficient medical and rehabilitative programmes and services available

to child victims of drug and substance abuse; the lack of information concerning the situation of the commercial sexual exploitation of children, including prostitution and pornography; and the lack of programmes for the physical and psychological recovery and social reintegration of children victims of such abuse and exploitation, particularly in Bermuda and some of the Caribbean territories.

The Committee also expressed concern at: the failure to enact the bill to abolish corporal punishment in the British Virgin Islands; the length of time taken before the hearing of juvenile cases; the lack of confidentiality accorded cases involving juveniles; the holding of minors in adult detention facilities; the inadequacy of facilities for children in conflict with the law, including girls; the insufficient number of trained personnel to work with children in this regard; the lack of legal aid programmes; the inadequate access to education, health, counselling and other rehabilitative services; and the lack of a complaints mechanisms for children whose rights have been violated.

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

- ♦ consider the possibility of reviewing the reservations with respect to articles 32 and 37 (c) with a view to their withdrawal;
- ♦ undertake a legal compatibility review to ensure that domestic legislation in each of the overseas territories fully conforms with and positively reflects the principles and provisions of the Convention;
- ♦ in the Cayman Islands, reinforce efforts to amend and bring into force the Children's Law;
- ♦ ensure the adoption of comprehensive child rights codes in the overseas territories;
- ♦ establish child rights focal points within the human rights monitoring mechanisms in Bermuda, the British Virgin Islands, St. Helena and the Turks and Caicos Islands; take all appropriate measures to ensure that these mechanisms are independent, child-friendly and accessible to children; establish independent, child-friendly monitoring mechanisms in the other overseas territories;
- ♦ make greater efforts to ensure that the provisions of the Convention are widely known and understood by adults and children alike; reinforce adequate and systematic training and/or sensitisation of professional groups working with and for children; integrate the Convention into the curricula at all levels of the education system;
- ♦ provide for a review of domestic legislation in the overseas territories, particularly with regard to the legal age for criminal responsibility; ensure that existing legislation is reviewed so as to guarantee adequate protection and care for all children below the age of 18 years;
- ♦ provide for a review of domestic legislation to prevent and combat discrimination, especially on the grounds of sex, sexual orientation and status of birth; ensure that boys are provided equal and adequate protection against sexual abuse and exploitation; take all appropriate measures to address discrimination arising from the socialisation of boys and girls into inappropriate gender roles and the resulting determination of social attitudes concerning children based on gender;
- ♦ take steps to develop a systematic approach to increasing public awareness of the participatory rights of children; encourage respect for the views of the child within the family, communities, schools, as well as care, administrative and judicial systems;
- ♦ take all appropriate measures, including legal ones, to ensure that the rights of children born out of wedlock are protected; undertake a study on the situation of single-parent families and visiting relationships in the Caribbean territories and the impact (both financial and psychological) on children;
- ♦ consider the establishment of a code of standards to ensure the adequate care and protection of children deprived of a family environment; provide for a review of the alternative-care programme in the Turks and Caicos Islands with a view to ensuring the best interests of the child; strengthen the monitoring procedures for foster care and for domestic and inter-country adoptions; take all appropriate measures to monitor the practice of informal adoption and to prevent abuse in this regard; consider extending the 1993 Hague Convention on the Protection of Children and Co-operation in Respect of Inter-country Adoption to the overseas territories;
- ♦ undertake studies on domestic violence, ill-treatment and sexual abuse in order to adopt adequate policy measures and contribute to changing traditional attitudes; take all appropriate measures to introduce effective mechanisms for the timely reporting of such abuse of children and ensure that cases are properly investigated within a child-friendly judicial procedure; ensure that perpetrators are sanctioned; take measures to ensure the physical and psychological recovery and social reintegration of victims and the prevention of criminalisation and stigmatisation of victims;
- ♦ take all appropriate measures, including of a legislative nature, to prohibit and eliminate all forms of corporal punishment; conduct awareness-raising



and education campaigns to change public attitudes and ensure that alternative forms of discipline are administered in a manner consistent with the child's human dignity;

- ◆ take all appropriate measures to increase the promotion of adolescent health policies and strengthen reproductive health education, including the promotion of male acceptance of the use of contraceptives; undertake a comprehensive and multi-disciplinary study to understand the scope of adolescent health problems, including the special situation of children infected with, affected by or vulnerable to HIV/AIDS and STDs;
- ◆ make additional efforts to establish and/or enhance early identification programmes to prevent disabilities; implement alternatives to the institutionalisation of children with disabilities; establish special education programmes for children with disabilities and encourage their inclusion in society;
- ◆ increase efforts to provide material assistance and support to economically disadvantaged families and guarantee the right of children to an adequate standard of living, especially those affected by the disaster in Montserrat and those living in Anguilla, St. Helena and its dependencies, and the Turks and Caicos Islands; undertake a study to assess the impact, including the psychological impact, of the disaster on the children of Montserrat, with the view to ensuring adequate support and, where necessary, counselling for children and parents;
- ◆ take all appropriate measures to prevent and discourage truancy and to encourage children, especially boys, to stay in school; undertake a study on the academic underachievement of boys with the view to understanding the scope and nature of the problem and to enhancing the academic achievement of boys, particularly in the Caribbean territories and the Falkland Islands; review higher-education policies to ensure non-discrimination against nationals from the overseas territories in the payment of fees when they pursue studies in the United Kingdom;
- ◆ take all appropriate measures to locate and clear the landmines in the Falkland Islands; consider extending the 1997 Convention on the Prohibition of the Use, Production, Transfer and Stockpiling of Anti-Personnel Landmines and on Their Destruction to the overseas territories, in particular the Falkland Islands;
- ◆ undertake a comprehensive study to assess the situation of child labour; introduce and/or strengthen monitoring mechanisms to ensure the enforcement of labour laws and protect children from economic

exploitation, particularly within the informal sectors; consider extending to the overseas territories ILO Conventions Nos. 182 (Worst Forms of Child Labour) and 138 (Minimum Age of Employment);

- ◆ enhance efforts to protect children from the illicit use of narcotic drugs and psycho-tropic substances and to prevent the use of children in the illicit production and trafficking of such substances; strengthen rehabilitation programmes for child victims of drug and substance abuse;
- ◆ undertake studies with a view to understanding the scope of the problem of commercial sexual exploitation of children and to implementing appropriate policies and measures, including the physical and psychological recovery and social reintegration of victims;
- ◆ take additional steps to reform the system of juvenile justice in conformity with relevant international standards;
- ◆ consider deprivation of liberty only as a measure of last resort, for the shortest possible period of time and only for serious offences; ensure that children remain in contact with their families while in the juvenile justice system; ensure that children are provided adequate access to education, health, counselling and other rehabilitative services; introduce complaints mechanisms for children whose rights have been violated;
- ◆ introduce training programmes on relevant international standards for all those professionals involved with the system of juvenile justice;
- ◆ ensure that the British Virgin Islands strengthens efforts to enact the bill that has been introduced into the Legislative Council to abolish the use of judicial corporal punishment in the islands; and
- ◆ consider ratifying and extending to the overseas territories the two Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

#### Arbitrary detention, Working Group on: (E/CN.4/2000/4, paras. 3, 4)

The report notes that one case concerning one individual was transmitted to the government and that a reply was received. No details are provided.

**Children affected by armed conflict, Special Representative on:** (A/55/442, paras. 65-69)

The Special Representative (SpRep) visited Northern Ireland from 26 to 28 June 2000. The purpose of the mission was: to assess at first hand the impact of the “Troubles” on children; to see steps being taken to translate the provisions of the “Good Friday Agreement” into protection for children on the ground; to participate in an international conference on children and peace in Northern Ireland; to raise awareness of the importance of paying particular attention to children throughout the consolidation of peace; to encourage and support the participation of young people in the building of peace across segregated communities and political divides.

The SpRep noted that although the long-standing conflict in Northern Ireland has been one of low intensity and therefore quite different from situations of full-blown war, it has nevertheless had a significant impact on children. The visit reinforced the SpRep’s conviction that children’s concerns must remain a priority throughout the building of peace and that the voices of young people should be heard throughout peace processes. Points noted in the report include the following:

- ♦ political leaders are committed to the Good Friday Agreement and positive initiatives have been undertaken at local levels, by NGOs and educators, for the benefit of children; there is a need for political leaders to address the basic concerns of children in Northern Ireland, particularly social and educational integration, youth unemployment, substance abuse and poverty, improved access to health facilities and housing, increased access to counselling, and improved administration of child protection and juvenile justice;
- ♦ children’s rights should be incorporated into the new Northern Ireland Bill of Rights;
- ♦ the consultative Civic Forum established by the Good Friday Agreement should include representatives of children’s rights agencies and NGOs;
- ♦ there is a need for a new body dedicated to promoting children’s rights and ensuring that the concerns of young people are translated into policy-making, priority-setting and sustained resource allocation (e.g., a cabinet Ministry for Children, a Commission for Children, an Ombudsman for Children);
- ♦ all parties to the Good Friday Agreement should insist that paramilitary organisations refrain immediately from recruiting or using children in the youth wings of their organisations or involving them in violence in any way; punishment beatings should also be halted immediately;

- ♦ emergency legislation that provides for the detention of very young children should be reviewed, and police should receive training in children’s rights and protection;
- ♦ the government needs to provide more support for families and parents affected by violence, living in segregated environments, and hampered in their own ability to build bridges with neighbouring communities; educators and other members of civil society working to encourage cross-community links need to be given adequate and sustained support;
- ♦ more must be done at the national and international levels to develop an accessible body of lessons learned in the area of protection and rehabilitation of children affected by violence; steps need to be taken to construct community-based programmes for children affected by the “Troubles,” on the basis of international best practice in this area, as called for in the Good Friday Agreement;
- ♦ the Youth Committee, the Youth Forum, students involved in the Education for Mutual Understanding programme, and other young people across Northern Ireland should consolidate their priorities into a manifesto or agenda for children; and
- ♦ political leaders, members of civil society and NGOs should listen and respond to the voices of young people.

**Education, Special Rapporteur on the right to:** (E/CN.4/2000/6, para. 3; E/CN.4/2000/6/Add.2)

The Special Rapporteur (SR) visited the United Kingdom from 18 to 22 October 1999. The report of the mission provides, *inter alia*: a brief historical perspective on education in the U.K.; a summary of the government’s strategy; commentary on rights-based education, on human rights in education and on discrimination and social exclusion, and on human rights obligations with respect to education — i.e. availability, accessibility, acceptability and adaptability. The report deals only with England and does not encompass Northern Ireland, Scotland or Wales, whose legal and policy frameworks for education are partially or wholly distinct from those of England. References to domestic educational law, policy or practice thus refer to England alone.

The objectives of the mission arose from the SR’s focus on the combined international and domestic facets of the right to education. Two important developments are noted in the report: on the international level, the government adopted a rights-based approach to education in its development cooperation; domestically, the government declared that education is its highest priority, although rights-based education was not included in the government’s domestic vocabulary.

In setting the context, the report states that the current English educational system has been shaped by its long historical tradition and by changes in the periods 1979-1996 and 1997-1999, rather than by new notions of the right to education and human rights in education. Its historical legacy has not been rights-based and this has influenced the vision of education for the next millennium.

The report notes that there is no explicit recognition of the right to education in English law. Under the 1998 Human Rights Act, scheduled to come into force in October 2000, the European Convention on Human Rights (the Convention) is directly applicable. As a consequence, the rights set out in the Convention are incorporated into the domestic legal system, subject to the U.K.'s reservations to the Convention. The report notes, however, that the Convention does not recognise social and economic rights; the government's tendency, therefore, not to perceive social and economic rights as legal obligations but rather as programmatic objectives is likely to continue. Also, the report notes, the U.K.'s reservation to article 2 of the first Protocol to the Convention confines the right to education to parental rights concerning their children's education and non-discriminatory access to the existing public educational institutions; the right is further limited by the qualification that the government's financial obligations remain reasonable. On the last point, the SR noted that despite the recent increase in public funding for education, intended to bring it up to 5 per cent of GNP in 2001-2002, the U.K. remains at the bottom of the Organisation for Economic Cooperation and Development (OECD) ranking in that regard.

On the question of human rights in education, the report notes that statutory enactments relating to education do not use human rights language nor do they mention international human rights law. Where individual rights are mentioned, these relate to parents who have been allowed to challenge school admissions practices since 1980 (see, for example, the 1944 Education Act; the 1994 Parent's Charter).

With regard to concerns arising from discrimination or social exclusion, the report notes that the term "social exclusion" was developed in the European Union to denote the marginalisation of individuals through economic deprivation and social isolation. The SR observed that "the emphasis on 'social' — as distinct from 'statal' — reflects the diminished role of the State, while 'exclusion' questions the postulated inclusiveness of social policies. Social exclusion could be defined as a denial of social rights but human rights language is not used; terms like 'disadvantage' or 'deprivation' are used instead of 'denial of equal rights' or 'discrimination.'" While the term "social exclusion" has not been defined by the European Union nor by the U.K., the Social Exclusion Unit, set up by the Prime Minister in

December 1997 and reporting directly to him, defines social exclusion as "a shorthand term for what can happen when people or areas suffer from a combination of linked problems such as unemployment, poor skills, low incomes, poor housing, high crime environment, bad health, poverty and family breakdown." The report notes that those affected by such exclusion straddle categorisations by race, gender, ethnicity, provenance and class.

In terms of discrimination, the report notes that while the existing legislative framework prohibits discrimination on some grounds but not on others (e.g., sex, race, disability), there is no legislation relating to, for example, religious discrimination. The SR stated that the absence of an explicit prohibition of discrimination on all pertinent grounds prevents the identification of rights that are unequally enjoyed, with a view to their equal attainment. Concern was expressed about the customary reference to all non-white people as "ethnic minorities" because this all-encompassing extension of the term "ethnic" or "minority" does not conform to international human rights law. It is too broad to allow for the identification of the pertinent internationally prohibited grounds of discrimination, to further lead to studying their interplay and multiplication in the case of specific communities and individuals.

Points noted in the commentary on human rights obligations include, *inter alia*: on availability, while schools are, statistically speaking, available in England, this by itself does not exhaust the need to inquire into the human rights dimensions of availability; vast differences exist among institutions and are expressed in popular references to "posh" and "sink" schools; the ranking of schools according to the performance of their learners in tests reinforces the heritage of stratified education; output-related ranking (i.e. performance and efficiency targets) inevitably favours selecting learners by their likelihood to perform well and by orientating the contents and methods of teaching to enhance their success in tests; the underlying rationale discourages the investment of time and effort necessary for those learners who are unlikely to do well because of disabilities or difficulties, or because they lack competitive drive; difficulties in the recruitment of teachers have been a consequence of the low prestige of the teaching profession resulting from the cumulation of their loss of professional autonomy, long working hours (estimated at an average 51 hours per week) and the expectations upon teachers to solve most, if not all, social problems.

Concerning accessibility, the report notes, for example: free primary education was introduced in 1944 and attendance at school is compulsory between the ages of 5 and 16; access to school is defined broadly to encompass all resident children, regardless of their citizen-

ship, or temporary or permanent residence; the criterion of accessibility is often reversed and schooling is provided where the children are, even if the environment is not learning-friendly, while fulfilment of the criteria of acceptability and adaptability routinely leaves a lot to be desired. The child's family background is a strong determinant of the child's educational performance, and there is a need to equalise opportunities for education for all children. The multiplication of factors that exacerbate the influence of poverty on poor educational performance necessitates a clear identification of the influence and confluence of specific factors, especially those that coincide with the internationally prohibited grounds of discrimination. A conceptual conflict emanates from the clash between the child's duty to receive education and expulsion from school. Most exclusions affect learners aged between 12 and 15, and learners with special needs have had the highest rate of exclusion; children deprived of liberty within the compulsory education age range (below 16) have a statutory entitlement to education, which is currently set at 15 hours per week; the orientation towards security and the legal heritage of prisoners having privileges rather than rights do not create an education-friendly environment. Gypsy and Traveller children are especially disadvantaged in education; for the Traveller communities, access to schooling that does not accommodate the children's lifestyle entails a rupture and questions the enjoyment of their freedom of movement and residence. The introduction of tuition fees for university education is counter to the explicit requirement (in art. 13.2 (c)) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) that access to higher education should be determined by individual capacity, while equal access should be secured through the progressive introduction of free education.

With regard to acceptability, the report notes, *inter alia*: the term "linguistic minorities" is never used nor is there legislation addressing discrimination on the grounds of language; instruction is provided in English and the obstacle that this constitutes for learners with English as their second or third language is acknowledged through compensatory measures to facilitate their learning English; the funding provided for additional recruitment to assist non-English-speaking learners does not seem to meet the existing demand. There is an ongoing government initiative aimed at reducing the number of teenage pregnancies, as well as the social exclusion of teenage parents, almost exclusively mothers; the biological fact that only girls get pregnant has slanted the prevention of pregnancy towards girls and defined contraception as a female concern; primary schools are required to have a policy on sex education; this policy can be not to have any sex education.

On adaptability, the points noted in the report include: the uniform verification and evaluation of the educa-

tional performance of learners and schools gives priority to subjects that are easily quantifiable, as well as to methods of instruction that facilitate learners' success in testing; the planned introduction of citizenship education anticipates adding some content of human rights education to the curriculum; materials in preparation for a citizenship curriculum seem to identify "human rights" with international issues and foreign countries, dissociated even from concepts such as equal opportunities and gender equality; there is a need to introduce human rights education that would respond to everyday problems.

In the section of the report dealing with conclusions and recommendations, the SR, *inter alia*:

- ♦ supported the government's conceptual shift to rights-based education at the international level and expressed the hope that the same approach will be introduced at the domestic level;
- ♦ expressed concern about the inherited legal status of the child as the object of a legally recognised relationship between the school and the child's parents rather than the subject of the right to education and of human rights in education; expressed the hope that the spirit and wording of the Convention on the Rights of the Child will gradually influence English educational policy, law and practice;
- ♦ recommended that the government give priority to closing gaps related to children's access to school, particularly with regard to children deprived of their liberty and to Traveller children;
- ♦ suggested that the forthcoming introduction of citizenship education in compulsory schooling be used as an occasion for overcoming widespread misperceptions whereby, for example, gender equality is perceived as distinct from racial equality while both are seen as distinct from human rights;
- ♦ referred to the orientation of education towards enhancing individual competitiveness and stated that this has resulted in competition between children and their schools; expressed concern about the effects of competitiveness on children with disabilities; stated that inclusiveness requires enhancing the adaptation of schooling to children with disabilities;
- ♦ noted the introduction of tuition fees for university education and stated that the apparent discrepancy between this change and the wording of the ICESCR deserves more attention than it has received until now; expressed concern about access to university education for those who cannot afford its direct and opportunity costs; urged the government to give priority to its commitment to utilise funds generated within education to improve accessibility for disadvantaged categories;



- ◆ suggested that a review be undertaken of the notion of social exclusion from the human rights perspective;
- ◆ stated that the conceptual framework for addressing differences in school performance between girls and boys could benefit from a shift of emphasis from sex to gender, and from a focus on all the human rights of girls and women, not only those in education; stated that a gender analysis of education could facilitate the ongoing search for strategies to improve the school performance of boys, which is hampered by the previous emphasis on girls; and
- ◆ noted that the government's overriding objectives in education are to raise standards for all learners, to tackle underachievement and to improve the performance of all learners, often expressed as the creation of a world-class education service; stated that admirable as these objectives are, they direct attention to output at the expense of a diminished concern over inputs and the process of education.

**Extrajudicial, summary or arbitrary executions, Special Rapporteur on:** (E/CN.4/2000/3, paras. 11, 35, 48, 78; E/CN.4/2000/3/Add.1, para. 483)

The Special Rapporteur sent an urgent appeal to the government in response to the murder of a lawyer, Rosemary Nelson, who died from injuries suffered in a car bomb attack outside her home in Lurgan, County Armagh, in Northern Ireland. The report notes that the Special Rapporteur on the independence of judges and lawyers had intervened on behalf of the lawyer in reaction to death threats she had received for her representation of a client accused of murdering two officers of the Royal Ulster Constabulary (RUC). The information received indicated that she had also been struck on the back of the head with a police riot shield while intervening on behalf of a boy who was allegedly being ill-treated by an RUC officer.

**Freedom of opinion and expression, Special Rapporteur on:** (E/CN.4/2000/63, paras. 11, 17, 50, 193; E/CN.4/2000/63/Add.3)

The Special Rapporteur (SR) visited the United Kingdom from 24 to 29 October 1999. The first two days of the visit were spent in London and the remaining days in Belfast. During the mission, the SR met with representatives of the government, members of Parliament and the judiciary, as well as with representatives of human rights NGOs, academics, media professionals, members of civil society and others. The report of the mission provides information on background and context, the legal framework and principal considerations and concerns. Particular attention is given to the situation in Northern Ireland.

Commentary on national legislation states that, in the absence of a written constitution, there is no formal pro-

tection of certain values such as the right to freedom of opinion and expression; several important statutes do exist, however, (e.g., the Magna Carta of 1215 and the Bill of Rights of 1689) but some of these statutes are susceptible to amendment by Parliament at any time. On the press and other mass media specifically, the report refers to, *inter alia*: the Broadcasting Act 1996; the regulation of the television industry by the Independent Television Commission (ITC) in such areas as licensing, investigation of complaints and publication of findings; the fact that the ITC does not regulate BBC1, BBC2 or S4C (the Welsh fourth channel), although any commercial services provided by these broadcasters must be licensed by the ITC; the Press Complaints Commission, which ensures that the Code of Practice, based on self-regulation, is followed by British newspapers and magazines; the Obscenity Publications Act 1959; the independent British Board of Film Classification (BBFC), which is responsible for granting classifications to films and videos. The report notes that the government had prepared a Freedom of Information Bill in May 1999 to replace the non-statutory Code of Practice on Access to Government Information. At the time of the finalisation of the report, the bill was being presented to Parliament.

Other legislation with a direct impact on the exercise of the right to freedom of opinion and expression is noted as including, *inter alia*: the Human Rights Act 1998; the Official Secrets Act 1989; the Defamation Act 1996; section 10 of the Contempt of Court Act 1981; provisions in the Police and Criminal Evidence Act of 1984.

The SR noted that emergency laws have been in force in Northern Ireland since the partition of Ireland in 1921. Despite the fact that the "Good Friday Agreement" envisaged the removal of emergency powers, the government moved to strengthen existing emergency laws in the aftermath of the Omagh car bombing in August 1998. The Northern Ireland (Emergency Provisions) Act of 1991 and the Prevention of Terrorism (Temporary Provisions) Act 1989 were updated with the Northern Ireland (Emergency Provisions) Act 1998 and the Criminal Justice (Terrorism and Conspiracy) Act 1998. Under section 18 of the Prevention of Terrorism Act 1989, individuals are guilty of an offence if in possession of information about acts of terrorism that they know might be of material assistance and they fail to disclose that information. The punishment can be a fine or imprisonment up to five years or both.

Commentary on the establishment of new institutions in Northern Ireland, envisaged under the Good Friday Agreement, notes, *inter alia*: the Northern Ireland Human Rights Commission (NIHRC), created in March 1999, which is empowered to review laws and practice relating to human rights, to conduct research and educational activities to promote human rights awareness,

and to conduct investigations into reported human rights abuses; the NIHR has a specific duty to have a formal link with the human rights commission which is in the process of being established in the Republic of Ireland; the Independent Commission on Policing for Northern Ireland (June 1998), which has a mandate to recommend reforms to ensure fair, impartial and accountable policing; the provision under the Northern Ireland Act for a single Equality Commission to replace several bodies — the Fair Employment Commission, the Equal Opportunities Commission for Northern Ireland, the Commission for Racial Equality and the Northern Ireland Disability Council; the Parades Commission, which is mandated to facilitate mediation of contentious parades; the Police Ombudsperson, who supervises police investigations of complaints filed against the police in Northern Ireland or referred to the Commission by others.

On the issue of restrictions directly related to the conflict in Northern Ireland, the SR noted that legal restriction in the U.K. reached its peak with the 1988 broadcasting ban. It was imposed under section 29 of the Broadcasting Act 1981 and under the charter of the British Broadcasting Corporation (BBC), and was directed at broadcast interviews with members or supporters of 11 organisations, including Sinn Féin. Thus, between 1988 and 1994, there was official censorship which also caused self-censorship among journalists and reduced knowledge and understanding of the conflict in Northern Ireland. In addition, the information received indicated that emergency legislation was used to intimidate journalists. This was the case of the Prevention of Terrorism Act (PTA), introduced in 1974, which contains certain provisions that make it an offence not to pass information to the police about any future act of terrorism or about people involved in terrorism, without a reasonable excuse. There were many allegations that PTA powers of arrest and detention were routinely used to harass and intimidate journalists rather than to prevent or investigate acts of terrorism. In fact, a very small percentage of those held under the Act were subsequently convicted of offences under the Act. The SR stated, however, that the situation in relation to reporting in Northern Ireland has improved markedly as a result of the peace process, although there has been very little public debate or evidence of internal debate on how the broadcasters might facilitate peace by changing both their reporting guidelines and practice and their recruitment procedures. A number of criticisms were addressed to the BBC, in particular that it has been overly reliant on governmental statements and briefings in the peace process, and that its coverage of the issue of marching in Northern Ireland was sometimes biased in favour of the Orange Order against the residents of the Catholic neighbourhoods.

With regard to restrictions related to the confidentiality of sources, the SR stated that the protection of journalists' confidential sources is indispensable for maintaining a free flow of information and therefore safeguarding the public's right to know. Section 10 of the Contempt of Court Act 1981 provides some protection to writers who do not wish to divulge confidential sources. This issue is also reflected in clause 6 of the Broadcasting Standards Commission Codes of Guidance. The PTA, however, allows the police to seize any material that is likely to help a terrorist investigation. The Act also makes it an offence to make any disclosure that is likely to prejudice a police investigation. The SR was informed that, in practice, the courts have interpreted this provision in a restrictive sense, despite the judgement by the European Court of Human Rights in a 1996 case on protection of sources (*Goodwin v. the United Kingdom*).

During the mission, the SR noted with concern that the issue of the protection of journalistic sources had arisen again, particularly with the recent establishment of a tribunal to inquire into the events of "Bloody Sunday" — a 1972 incident in which 13 civilians who were taking part in an illegal but peaceful demonstration were killed by the British military in Northern Ireland. Noting that the findings of a previous inquiry into these events, which exonerated the soldiers, were plagued by allegations that they were politically influenced, a new inquiry was established in January 1998. Information transmitted to the SR indicated that the BBC, Channel 4 TV, UTV and The Daily Telegraph newspaper were summoned to hand over to the tribunal all material, including the names of the sources, used for stories on "Bloody Sunday." All refused to do so for reasons of confidentiality and made applications to have the summons withdrawn. They were reportedly facing contempt-of-court charges. The situation of three journalists was specifically brought to the attention of the SR, who stated that risks to the journalists, if they failed to disclose sources, included a heavy fine and/or imprisonment.

Reference is also made to the case of a Northern Ireland journalist working for the Sunday Tribune, who received a court order on 2 September 1999 asking him to hand over his notes from a 1990 interview with a police informer and member of the loyalist Ulster Defence Association (UDA), who was arrested and charged in June 1999 in connection with the murder of Belfast lawyer Patrick Finucane in 1989. The court order was made under provisions in the Prevention of Terrorism (Temporary Provisions) Act 1989. The journalist published an article in June 1999 detailing some of the allegations that the informer made in 1990 and stating that the Northern Ireland police had been informed that Finucane's murder was being planned. The journalist, who was facing a heavy fine and a prison sen-

tence of between six months and five years, refused to comply with the court order on the grounds that revealing sources was contrary to journalistic ethics and could also endanger him personally. The journalist decided to file for judicial review of the judge's ruling. During the SR's visit to Northern Ireland (on 27 October 1999), the Lord Chief Justice of Northern Ireland quashed the judge's decision ordering the journalist to hand over his notes. The SR welcomed the decision.

The report also notes the following, *inter alia*: the Official Secrets Act 1989 is used to stifle legitimate debate and to penalise writers and journalists who refuse to reveal their sources; this Act does not provide for any form of public-interest defence for the unauthorised disclosure of information where the existence of crime, abuse of authority or other misconduct are revealed; the Act also is based on a presumption of secrecy in favour of the government and does not allow for a defence of previous publication; the Official Secrets Act is supplemented by an unofficial system of "D-notices" issued by a committee established in 1912 — the Defence, Press and Broadcasting Advisory Committee (D-notice Committee); this Committee provides advice on national security issues in the form of D-notices, is run from an office in the Ministry of Defence and is not accountable to the public or to Parliament; D-notices have no formal legal force but ignoring them may lead to more official action, such as prosecutions under the Official Secrets Act; the information received indicated that the aim of the committee is to promote self-censorship by the media in the area of national security, which is defined very broadly.

The report provides some detail of new legislative measures that have a direct impact on the exercise of the right to freedom of opinion and expression. In particular, two bills — the Freedom of Information Bill and the Regulation of Interception and Communication Bill — were generating both controversy and debate.

The report notes that the Freedom of Information Bill was drafted in May 1999 to replace the non-statutory Code of Practice on Access to Government Information and is aimed at allowing widespread public access to official information and documents. The bill stipulates: (a) a general right of access to information; (b) the duty of public authorities to adopt a scheme for publishing information as a matter of course; and (c) the establishment of a new office of Information Commissioner and a new information tribunal, with wide powers to enforce the Act. The bill also defines "information" and "public authority" broadly to allow greater disclosure of information, and attaches legal responsibility to the act of defacing a record to prevent disclosure. There has been criticism of the bill, however, on the following accounts: (a) there is a broad class of exemptions per-

taining to security bodies, investigations, decision-making and policy formation; (b) the jurisdiction of the Commissioner is somewhat restricted; (c) the bill contains a weak test for disclosure.

On the Regulation of Interception and Communication Bill, the report notes that the government's intention is to update the legislation contained in the Interception of Communication Act 1985 to take account of the new communication technologies, and in this light to provide a statutory framework for authorising the disclosure of data held by communications service providers. Part III of the bill is subject to controversy since it appears to infringe on the presumption of innocence embodied in article 6 of the European Convention on Human Rights. Reportedly, the bill would give the police the power to demand decryption keys from anyone suspected of possessing them, while non-compliance could lead to a two-year jail sentence.

Other types of legal restrictions are noted as including or arising from: defamation law, partly as a result of the strict application of a truth standard, with the onus resting on the defendant; the restrictive and arbitrary application of obscenity laws; restrictive interpretations of obscenity by the BBFC and the ITC. Additional concerns relevant to the promotion and respect for the right to freedom of opinion and expression included: the limitation in law on the right of peaceful assembly where such assembly would impose a cost on public convenience; the contentious atmosphere that develops around the annual "marching season" in Northern Ireland and the use by police, in some cases, of plastic bullets to maintain order; disputes and difficulties arising from the expression of cultural diversities (e.g., the staging of cultural events such as concerts, film festivals, exhibitions; campaigns to promote the use of the Irish language in Northern Ireland and a counter-campaign for the use of the Ulster Scots language).

Three other issues were raised in the report. The first concern related to discrimination against parliamentarians. The report refers to the requirement under the Parliamentary Oath Act 1866 that those elected swear an oath to the British monarchy; the oath is seen by some as being anti-Catholic and there was a case of one elected person refusing to swear the oath.

The second concern related to the situation of women. The SR noted the poor socio-economic situation in Northern Ireland and the presence of inequalities that, in relation to the situation in other parts of the U.K., target women on grounds of their religious/political backgrounds, their ethnicity, their age and other such status. The report refers to, *inter alia*: domestic violence and the fact that, in Northern Ireland, such violence constitutes nearly half of reported violent crime against women; the relatively low representation of women in

politics, particularly at the level of decision-making bodies; the fact that there no Northern Irish female members of the European Parliament and of Parliament in Westminster; the fact that only 14 members of the 108-member Belfast-based Assembly are women; the fact that, in Northern Ireland, abortion continues to be illegal and women are, in some cases, being prevented from gaining access to information at centres that provide advice and counselling.

The third concern relates to the right to information of victims and of the public. The report refers to concerns that were raised about the government's failure to investigate independently and fully serious allegations of human rights violations in Northern Ireland and to bring the perpetrators to justice. Also, the results of internal investigations are not made public; this is of particular concern to those whose relatives were killed by the army or the police. The government has appointed, however, a Minister of Victims and a Victim's Commissioner, with the latter designated to initiate a consultation with the victims. The SR noted the failure of the report of the Independent Commission on Policing for Northern Ireland to address the issue of past abuses by the police and to provide adequate investigative mechanisms to deal with allegations of such abuses, noting that there were, on the other hand, progressive elements in the report concerning the achievement of a more accountable policing service. The SR noted the suggestion by some persons that a truth commission be established to address these and other concerns.

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

- ♦ take all necessary steps to accede to the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) in order to allow individuals to submit complaints to the UN Human Rights Committee;
- ♦ with regard to emergency laws, repeal all provisions that are not in conformity with international treaties and standards, in particular such emergency laws as the PTA which have a chilling effect on the right to freedom of opinion and expression;
- ♦ ensure that any restrictions on the right to freedom of opinion and expression remain the exception, bearing in mind that such restrictions must be limited to those permissible under article 19 of the ICCPR;
- ♦ ensure that future legislation and its implementation are in compliance with article 19 and other relevant international standards;
- ♦ in the case of the Freedom of Information Bill, review the text of the bill with regard to two main

aspects: limiting the scope of class exceptions and ensuring that the Information Commissioner has sufficient power to ensure effective access to information held by public authorities;

- ♦ review section 10 of the Contempt of Court Act 1981 to make clear that mandatory source disclosure may be ordered only in the most pressing circumstances;
- ♦ amend the Official Secrets Act so as to allow for penalties for disclosing information only where disclosure would pose a serious risk of substantial and immediate harm to a legitimate national security or public interest; allow defence if the information is already in the public sphere or if the public interest in disclosure outweighs the secrecy interest;
- ♦ amend the obscenity law to include a concrete requirement of harm before material may be prohibited;
- ♦ amend the defamation law to allow for a defence of reasonable publication in the public interest and abolish the offence of criminal libel;
- ♦ provide the Northern Ireland Human Rights Commission and the Police Ombudsperson with the adequate human and financial resources to carry out their mandate effectively and with the independence required;
- ♦ to help build a human rights culture that can support a resolution to the conflict in Northern Ireland, encourage a seminar for the training of journalists and debates relating to human rights issues;
- ♦ pay particular attention to the issue of marching and support the work of the Parades Commission; guarantee the balance between Catholics and Protestants in the membership of the Commission, as well as its independence; amend the Public Processions (Northern Ireland) Act 1998 in order to ensure the independence of Commission members from government;
- ♦ ensure that the law and practice governing public demonstrations are in compliance with international standards; stop the use of excessive force against peaceful demonstrators, in particular the indiscriminate use of life-threatening plastic bullets;
- ♦ disclose information to the victims of the conflict in Northern Ireland to a maximum extent, in order to restore confidence in the police system and to reinforce the peace process; and
- ♦ consider inviting the SR on religious intolerance to undertake a mission to Northern Ireland.



**Independence of judges and lawyers, Special Rapporteur on the:** (E/CN.4/2000/61, paras. 17, 18, 36-37, 303-36)

The report refers to the November 1999 decision of the Court of Appeal of the High Court of Judiciary of Scotland, stating that temporary sheriffs (magistrates) who are appointed by the Secretary of State (but in essence by the Lord Advocate, who is part of the Executive) and subject to recall by him at any time, do not have the requisite security of tenure and are therefore inconsistent with judicial independence (see *Starrs and Chalmers v. Procurator Fiscal (PF Linlithgow)* appeal No. 2570/99). The Special Rapporteur (SR) noted that the Lord Advocate decided not to appeal the decision of the Court of Appeal to the Privy Council.

The SR also included commentary on the cases of the murders of lawyers Patrick Finucane (February 1989) and Rosemary Nelson. The SR continued to monitor developments and had extensive correspondence and discussions with senior members of the government. Meetings were also held with members of the relevant police forces as well as representatives of NGOs that monitor developments in Northern Ireland.

On the Finucane case, the report notes: in June 1999, a suspect, who had previously been charged with firearms possession and acquitted, was arrested and charged; aspects of state collusion in the murder were still under investigation; in light of the charge against the suspect, the government has stated that any form of commission of judicial inquiry into the murder would have a prejudicial effect on the pending criminal proceedings; in court, there were inconsistencies and contradictions emerging in the statements of the various personalities involved in this case; the SR stated that such inconsistencies and contradictions generally arise in cases where there have been cover-ups by interested parties, including state organs; a third investigation is being conducted and, to date, the report of the second investigation has not been made public. The SR restated that, in the circumstances, only a judicial commission of inquiry can get to the truth of what really happened and the circumstances occurring prior to the murder in 1989 and put to rest all doubts and suspicions. The SR does not consider that a judicial commission of inquiry would be prejudicial to any criminal proceedings in the matter.

Concerning the murder of Rosemary Nelson, the SR called for the publication of the full Mulvihill report on the authorities' reaction to the complaints that the lawyer Nelson had lodged with the RUC (threats, etc.). Regarding the investigation into the murder itself, the SR expressed concern at the delay and the fear of some that it will end in the same way as the Finucane investigation.

The SR appealed to the government to take the necessary steps to avoid any allegation of impunity being lev-

elled against it in connection with the murders of the two lawyers.

**Sale of children, child prostitution, child pornography, Special Rapporteur on:** (E/CN.4/2000/73, paras. 6, 56-58)

The report refers *inter alia* to the release, in December 1998, by the Home Office and the Department of Health, of "Guidance on children involved in prostitution" for the police, social services and all other agencies that may deal with potentially affected children. The aim is to ensure that such children are treated as victims of abuse, to safeguard and promote the welfare of all children and to encourage the investigation and prosecution of those who abuse children and coerce them into prostitution. The Special Rapporteur (SR) noted that although prostitution is not illegal, the selling and buying of sexual services in a public place are and it is legally possible for a child over the age of 10 to be charged with one of these offences. The government holds the view that decriminalising prostitution for children would create an incentive for abusers to encourage children into prostitution. The SR urged the government to make further legislative changes to ensure that children under 18 who are involved in prostitution are statutorily protected from prosecution.

The interim report to the General Assembly (A/55/297, paras. 111-115) summarises information provided by the government indicating, *inter alia*, that a study was due at the end of 1999, examining the link between domestic violence and child abuse, incorporating all abuse, not just commercial sexual exploitation. The legislative basis for the protection of children is covered by the Children Act 1989, which imposes a range of responsibilities on local authorities for the care and protection of children; local authorities are required to make enquiries where they have reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm; a court may make a care order or an emergency protection order based on the findings of such enquiries. In some localities, domestic violence forums have been set up to raise awareness of the issue, to promote coordination between agencies in preventing and responding to violence, and to encourage the development of services for victims of domestic violence.

**Violence against women, Special Rapporteur on:** (E/CN.4/2000/68, para. 62; E/CN.4/2000/68/Add.1, paras. 3, 27-30)

Within the context of trafficking in women, the report notes that in the United Kingdom the penalty for illegal entry is six months' imprisonment. The Special Rapporteur (SR) expressed concern that strict anti-immigration policies, which reduce opportunities for legal migration and thereby encourage migrants to turn to third parties for assistance in migrating and to rely on false promises of legal migration, serve to provide an

ever-growing number of clients to the increasing number of underground networks of immigrant smugglers. Such policies may also have a strong impact on the living and working conditions of migrant workers, increasing their vulnerability to violence, abuse and control by criminal networks.

The SR transmitted to the government one case of a British national who was sexually exploited by prison officers at the Ferry Reach Coeducational Facility in Bermuda. Following the incidents, the woman was repatriated to the U.K. to serve out the remainder of her sentence. According to the information received, three prison officers were suspended in March 1999 pending a police investigation into the alleged incident. In June 1999 the police investigation concluded that there was insufficient evidence to support the allegation. In September 1999, there was reportedly an internal hearing for the prison officers. The SR noted that concerns had been expressed that the investigation may not have been conducted in accordance with the relevant international standards. The final decision regarding the incident, the grounds for the decision and any disciplinary or criminal sanctions imposed will reportedly not be made public. There was insufficient time for the government to respond to this case.



## UNITED STATES

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

### TREATIES:

#### RATIFICATIONS AND RESERVATIONS

**Land and People:** The United States has submitted a core document (HRI/CORE/1/Add.49, 28 July 1994) 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 Colombia, 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 U.S., 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 United States' second periodic report was due 7 September 1998.

*Reservations and Declarations:* Articles 4 (1), 7, 9 (5), 10 (2) (a) and (b), 10 (3), 14 (3) (b), (d) and (e), 14 (4), 14 (6), 14 (7), 15 (1), 19 (3), 20 and 47; the United States also declared that "the provisions of articles 1 through 27 of the Covenant are not self-executing"; declaration under article 41; eleven states filed objections to all or some aspects of the reservations.

#### **Racial Discrimination**

Signed: 28 September 1966; ratified: 21 October 1994.

The United States' initial, second and third periodic reports were submitted as one document (CERD/C/351/Add.1) which was scheduled for consideration at the Committee's January 2001 session; the fourth periodic report is due 20 November 2001.

*Reservations and Declarations:* Articles 2 (1), 2 (1) (c), 2 (1) (d), 3, 4, 5, 7 and 22.

#### **Discrimination against Women**

Signed: 17 July 1980.

#### **Torture**

Signed: 18 April 1988; ratified: 21 October 1994.

The United States' initial report (CAT/C/28/Add.5) was considered by the Committee at its May 2000 session; the second periodic report was due 19 November 1999.

*Reservations and Declarations:* Articles 1, 3, 10, 11, 12, 13, 14, 16 and 30 (1); declaration under article 21; four states filed objections to some aspects of these reservations.

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

Signed: 16 February 1995.

**Optional Protocol (Sale of children):** Signed: 5 July 2000.

**Optional Protocol (Armed conflict):** Signed: 5 July 2000.

## REPORTS TO TREATY BODIES

### **Committee Against Torture**

The initial report of the United States (CAT/C/28/Add.5, February 2000) was considered by the Committee at its May 2000 session. The report prepared by the government contains information on, *inter alia*: legal activity

in cases relevant to the prohibition of torture and ill-treatment under the Convention; the acknowledgement of continuing allegations of specific types of abuse and ill-treatment in particular cases; the meaning of “torture” under domestic law; the illegality of every act of torture within the meaning of the Convention; the Eighth Amendment to the Constitution, which prohibits “cruel and unusual punishments”; protection against arbitrary arrest and detention, and “preventive detention” solely for purposes of investigation; the rights to be informed and to legal counsel; the protection of prisoners from torture and ill-treatment; special security measures against prisoners; the illegality of non-consensual medical experimentation; the recognition of the obligation not to return a person to another state where there is a risk of being subjected to torture. The report also refers to: any act of torture within the meaning of the Convention as an extraditable offence; mandatory training in the proper treatment of individuals in custody for all federal law enforcement and corrections officers; training in the principles of medical ethics; interrogation techniques; the right to redress and compensation for all victims of torture; assistance to victims of torture throughout the world; the Torture Victims Protection Act (1992) and the Torture Victims Relief Act (1998); coerced statements; ill-treatment involving police brutality, prison conditions, sexual abuse of women in prison, juveniles in detention, abuse of the institutionalised, non-consensual medical and scientific testing, illegal immigrants in custody and capital punishment.

In its concluding observations and comments (CAT/C/24/6), the Committee welcomed: the extensive legal protection against torture and ill-treatment, and efforts by the authorities to achieve the transparency of institutions and practices; the broad legal recourse to compensation for victims of torture, whether or not the torture occurred in the United States; the introduction of executive regulations preventing refoulement of potential torture victims; contributions to the UN Voluntary Fund for the Victims of Torture; the creation by executive order of an inter-agency working group to ensure co-ordination of federal efforts towards U.S. compliance with obligations under relevant international human rights treaties.

The Committee expressed concern at: the government's failure to enact a federal crime of torture in terms consistent with article 1 of the Convention; the reservation entered to article 16 in violation of the Convention, the effect of which is to limit the application of the Convention; the number of cases of police ill-treatment of civilians, and ill-treatment in prisons (including instances of inter-prisoner violence); information indicating that much of the ill-treatment by police and prison guards is based on discrimination; alleged cases of sexual assault

of female detainees and prisoners by law enforcement officers and prison personnel; the fact that female detainees and prisoners are very often held in humiliating and degrading circumstances; the use of electro-shock devices and restraint chairs; the excessively harsh regime of the “supermaximum” prisons; the use of “chain gangs,” particularly in public; the significant restriction on legal action by prisoners seeking redress through the requirement of physical injury as a condition to bringing a successful action under the Prison Litigation Reform Act; the holding of minors with adults in the regular prison population.

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

- ◆ enact a federal crime of torture in terms consistent with article 1 of the Convention and withdraw the reservations, interpretations and understandings related to the Convention;
- ◆ take the necessary steps to ensure that those who violate the Convention are investigated, prosecuted and punished, especially those who are motivated by discriminatory purposes or sexual gratification;
- ◆ abolish electro-shock stun belts and restraint chairs as methods of restraining those in custody;
- ◆ consider declaring in favour of article 22 of the Convention; and
- ◆ ensure that minors are not held in prison with the regular prison population.

## THEMATIC REPORTS

### Mechanisms of the Commission on Human Rights

#### Arbitrary detention, Working Group on:

(E/CN.4/2000/4, paras. 3, 6)

One case was sent, on behalf of one person. No details of the case are given in the report.

#### Extrajudicial, summary or arbitrary executions, Special Rapporteur on: (E/CN.4/2000/3, paras. 11, 13, 14, 21, 27, 37, 67, 68; E/CN.4/2000/3/Add.1, paras. 460-482)

According to information received, 91 prisoners were executed in the United States between 1 January and 3 December 1999. The Special Rapporteur (SR) expressed concern that in November the Supreme Court refused to consider whether the individual states are forbidden by international law from executing people for crimes committed as minors. The Court's ruling came in the case of *Domingues v. Nevada*, in which a man is on death row in Nevada for capital murder committed when he was 16. Information received also indicated that since 1990, 10 people have been executed for crimes committed when

they were under 18 years of age. The latest execution of a child offender was carried out in Oklahoma in February 1999 when a man was put to death for crimes committed when he was 16 years old.

The SR transmitted 15 urgent appeals to the government concerning the following persons: a Canadian citizen who was to be executed in Texas, noting irregularities in the trial and the appeals process that included failure to inform the defendant of his right under the Vienna Convention on Consular Relations to seek legal assistance from his consulate and his being forced to sign a confession after four days of interrogation, during which time he was denied access to a lawyer; one person due to be executed in Texas for a crime he allegedly committed when he was 17 years old; one person who was scheduled to be executed in Oklahoma for a crime allegedly committed when he was 16 years old, noting that during the trial process the defendant had been diagnosed as suffering from mental disorders, including paranoid schizophrenia and multiple-personality disorder; two teenagers against whom state prosecutors in Florida were seeking the death penalty for the murder of a guard at the Big Cypress Wilderness Institute, a privately run juvenile detention centre; a Thai national who was scheduled to be executed for the murder of two persons during a robbery in California in 1981; two German brothers who were facing imminent execution in Arizona, noting information that they had not been informed of their right under article 36 of the Vienna Convention on Consular Relations to communicate with and receive assistance from their consular representatives; one person scheduled to be executed in Virginia for a murder committed when he was 17 years old. Appeals were also transmitted on behalf of: one juvenile charged with the murder of a police officer, against whom state prosecutors in Indiana were seeking the death penalty; one person who was scheduled to be executed in Oklahoma after having been convicted of murder, noting reports that the defendant suffered from serious mental problems ever since his youth, including a long history of alcohol and drug abuse stemming from his underlying chronic depression, learning disorder and organic brain damage; one person scheduled to be executed in North Carolina, noting reports that he suffered from organic brain damage, possibly a result of a pre-natal injury; one person scheduled to be executed in Texas, noting that he had always maintained that the events were the result of his chronic visual and auditory hallucinations brought about by acute schizophrenia which was reportedly diagnosed three years before the murders; one person scheduled to be executed in Florida after being sentenced to death for killing a bailiff in the Orange County courthouse, noting that he had been diagnosed with paranoid personality disorder and paranoid schizophrenia before his trial; one person

whose appeal had been rejected by the Supreme Court, noting that he is an indigent, learning-disabled, death-row inmate who was forced to appear at an earlier appeal hearing in Georgia without legal counsel, as he could not afford to engage a lawyer, and who had been convicted of a murder committed when he was 17 years old; one person who was convicted of killing three people when he was 17 years old, noting that a psychologist had found him incompetent to stand trial. The SR also sent a communication to the government on behalf of Ahmad Diallo, a citizen of Guinea who was shot dead by four white undercover New York City police officers in front of his home, noting information that he unarmed and the police fired 41 shots at him.

The government replied to all of the cases that were transmitted during the period under review and detailed the legal safeguards for defendants in criminal cases and specifically cases in which the death penalty applies.

The report notes that the SR's concerns as they relate to the United States are limited to issues pertaining to the death penalty. The SR referred to such particular concerns as the continued executions of mentally ill and mentally handicapped persons as well as foreigners who were denied their international right to consular assistance. The SR viewed the persistent application of the death penalty and subsequent executions of persons who committed crimes as minors as a very serious and disturbing practice that inherently conflicts with the prevailing international consensus.

**Racism and racial discrimination, Special Rapporteur on:** (E/CN.4/2000/16, paras. 24, 36, 124-143, 173)

The Special Rapporteur (SR) referred to information provided by non-governmental sources indicating that the legal system is still heavily biased as a result of racial prejudices, the consequence of which is discrimination in the application of the death penalty to African-Americans.

The report details events leading up and during the beating of 13 inmates at the penitentiary at Lewisburg during a prison riot. The information received indicated, *inter alia*, that: the riots in Lewisburg and other penitentiaries were triggered, in part, by prisoners' widespread belief that the legislation on drugs was biased against African-Americans; harsher penalties are imposed for offences involving crack cocaine (reportedly used primarily by African-Americans and other minorities) than for those involving powder cocaine (reportedly used primarily by Caucasians); Congress voted to maintain the distinction in sentencing between the two forms of cocaine. The SR noted that a lawsuit (Branch et al.) was filed following the Lewisburg incident and that it was, at the time the report was prepared, still in the pre-trial discovery phase. The prison administration had not yet estab-



lished all the facts relating to allegations of racism and racial discrimination; information indicated, however, that while the riot was at least partly attributable to the fact that many inmates believed that they saw a racist bias in sentencing in drugs cases, the prison staff was not motivated by considerations of race.

The SR also referred to one case in which an inmate at the Green Haven Correctional Facility (Stormville, New York) was beaten with batons and a flashlight in retaliation for writing complaints against the officials of the prison. The plaintiff claimed that he suffered serious injury to the head, back, arms, legs and face as well as psychological disturbances due to post-traumatic stress caused by systematic reprisals and intimidation, flagrant manifestations of racial discrimination and imprisonment for five years in a special unit; he also claimed that his religious beliefs (as a Muslim) were not respected, since he was forced to have an anti-tuberculosis injection containing human protein. An official civil complaint was brought before the U.S. District Court, Eastern District of New York; no sanction had been taken against the prison officials. The government had undertaken to investigate the merit of the allegations.

The SR also referred to the February 1999 demonstration by civil rights activists and others, calling on the New York Police Department to investigate the shooting of Ahmed Diallo, a 22-year-old Guinean immigrant.

**Sale of children, child prostitution, child pornography, Special Rapporteur on:** (A/55/297, paras. 56, 60-61, 116-117)

In the interim report to the General Assembly, the Special Rapporteur (SR) referred to a case in which a lawyer who took part in an adoption scheme involving the recruitment of pregnant Hungarian women in order to sell their babies to Californian couples, was sentenced to 15 years in jail. The lawyer persuaded the birth mothers to travel to the United States and provided them with fraudulent visas. When it was not possible to provide them with a visa, she allegedly helped arrange for birth mothers and children to be smuggled into the United States via Canada. The report also notes that a significant percentage of the thousands of Vietnamese babies who are adopted abroad every year, go to parents in the United States. In response to concerns about possible irregularities in the adoption process, the government has issued an advisory which warns prospective parents that some Vietnamese families may be tempted to release their children inappropriately for adoption "either out of greed or with the intent of securing them a better economic future."

The report summarises information provided by the government related to abuse, neglect and domestic violence, in particular, in relation to date violence and teenage prostitution. In addition to intra-familial

sexual victimisation as a contributing cause to teenage prostitution, broken homes, foster homes and absent parents, with inconsistent economic and emotional parental support were cited.

**Torture, Special Rapporteur on:** (E/CN.4/2000/9, paras. 1093-1118)

The Special Rapporteur (SR) continued to receive information regarding the use of stun belts and other electro-shock technology (see E/CN.4/1998/38, para. 201). The cases transmitted to the government involved the use of a stun belt and electro-shock on defendants, in some cases inadvertently activated, during trials in Florida, California and Delaware. The same devices, as well as such others as pepper spray, were used against inmates in correctional facilities in Kansas and Kentucky. The SR also transmitted to the government information about the alleged use of stun belts on HIV-positive inmates at the New Orleans Parish Prison (Louisiana); concern was expressed that the use of the stun belt may exacerbate the medical condition of HIV-positive prisoners; information also indicated that HIV-positive inmates have been required to sign a waiver consenting to be fitted with a stun belt or else they will be denied transportation to receive medical treatment.

Other cases transmitted to the government concerned, *inter alia*: beatings, protracted cell confinement and verbal abuse of one inmate during incarceration at various facilities; the use of solitary confinement at the Arizona Boys Ranch for juveniles; a 17-year-old African-American who was allegedly maltreated by a police officer after he had been moved from his car, which had crashed after a police chase; the death of a mentally ill man after police shackled him face-down, sprayed him several times with Oleoresin Capsicum ("OC" or pepper spray) and hit him several times with an electric laser gun; death from a blood clot of one person who had been held for 16 hours in a restraint chair; death in custody of a mentally ill prisoner, following the use of pepper spray on him by guards; the failure to provide timely medical assistance to a young female inmate, noting that the baby died.

The SR has also received information about the ill-treatment of prisoners at the Wallens Ridge State Prison (Virginia). The information indicated, *inter alia*: use by guards of arbitrary and punitive measures, including random selection of prisoners for beatings at night, allegedly to maintain a climate of fear at the prison; the denial of access to medical care; sleep deprivation by keeping lights on 24 hours a day; verbal abuse, including racist taunts, and threats of violence; the use of electro-shock stun guns; simulated sodomy. Concerns were also sent to the government related to abuse and ill-treatment by members of the New York Police Department.

The report provides a summary of the government's reply to concerns previously expressed by the SR in the case of Leonard Peltier (see E/CN.4/1999/61, para. 751).

**Violence against women, Special Rapporteur on:**  
(E/CN.4/2000/68, paras. 41, 49, 64, 65, 76, 91)

Within the context of trafficking, the Special Rapporteur (SR) referred to a case that was successfully prosecuted by the U.S. Justice Department and by the U.S. Attorney's Office in southern Florida against 15 members of a family who were trafficking women from Mexico to the United States. The leader of the ring pleaded guilty to charges that he headed a group that trafficked at least 23 women; the women were reportedly lured to the United States with promises that they would be employed as nannies and domestic workers, but were then forced to work as sex workers. The information received indicated that the women were forcibly kept in slavery-like conditions; they were locked in windowless rooms and were given no money, and forced to work until they repaid a US\$2,000 smuggling fee; the traffickers threatened them with reprisals against their families if they tried to escape. In addition to jail terms of up to 15 years, the convicted parties were ordered to pay restitution to the women in the amount of US\$1 million.

The report notes that the United States is among the countries that legally bar persons engaged in or living off the proceeds of prostitution from entering the country and subject such persons to arrest, detention (sometimes prolonged) and deportation if they do succeed in entering the country.

The SR also referred to reports according to which thousands of domestic workers are being brought into the United States by foreign diplomats and employees of international organisations such as the International Monetary Fund, the United Nations and the World Bank, and then exploited and subjected to abuse. Under U.S. immigration law, foreign diplomats, embassy employees and officials of such organisations may bring in personal domestic workers on A-3 or G-5 visas. Although these thousands of workers, most of whom are women, are supposed to be protected by labour laws and paid a minimum wage, there has been little oversight. As a result, some of the women are subjected to conditions of forced labour or slavery-like practices. In some cases, employers have reportedly confiscated the employee's passports, required round-

the-clock services with little or no pay, restricted contact with other domestic workers, confined employee movements and physically abused the workers. Since the domestic worker's legal immigration status is dependent upon her contract, she may face deportation if she tries to escape the situation. In 1999, the U.S. Attorney-General formed a "worker exploitation task force" to investigate allegations of abuse. It has been pointed out that visa programmes that make immigrant's legal status contingent upon their employment status with a specific employer turns employees into captive workers in situations of indentured servitude.

Other information received by the SR referred to a battle that is being waged between the various sides of the trafficking debate in the context of a new law on trafficking. Two bills — the Wellstone resolution and the Smith-Gejdeson bill — are both working their way through the legislative process. One of the major differences between the two is the definition of trafficking. The Wellstone resolution defines trafficking broadly to include forced labour, whereas the Smith-Gejdeson bill defines trafficking solely in terms of sex work. In 1998, President Clinton issued an Executive Memorandum on Steps to Combat Trafficking. Such steps include public-awareness campaigns, the production and distribution to visa seekers of brochures in Russian, Polish and Ukrainian about trafficking, and the sponsoring of conferences abroad. Although protection, legal counselling and other services for victims of trafficking were envisioned in the strategy to combat trafficking, according to reports, such programmes have not been implemented. In many cases, trafficking victims have been caught in raids by the Immigration and Naturalization Service (INS). In such cases, and contrary to policy statements, victims are often deported or detained in INS detention facilities or local jails.

In the fifth addendum to the main report, on the relationship between violence against women and economic and social policy (E/CN.4/2000/68/Add.5, para. 71), the SR noted that in the United States 50 to 60 per cent of homeless women have fled domestic violence. Every night, about 180,000 female-headed families and about 150,000 single women are homeless. Women living on the streets are exposed to high risks of violence, but their only alternative may be to experience violence from a partner they are forced to be with in order to have a roof over their heads.

# APPENDIX: 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 2000 and is subject to change at short notice.

### COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (CESCR)

The Committee has been entrusted by the international community with monitoring compliance with the provisions of the International Covenant on Economic, Social and Cultural Rights.

The provisional schedule of reports to be considered by the Committee is:

#### August 2001

Germany ..... 4th periodic report ..... E/C.12/4/Add.3

#### November 2001

France ..... 2nd periodic report ..... E/1990/6/Add.27

Sweden ..... 4th periodic report ..... E/C.12/4/Add.4

United Kingdom (Dependent territories) .... 4th periodic report ..... E/C.12/4/Add.5

#### April 2002

Ireland ..... 2nd periodic report ..... E/1990/6/Add.29

### HUMAN RIGHTS COMMITTEE

The Human Rights Committee was established to monitor the implementation of the International Covenant on Civil and Political Rights and its two Protocols. The provisional schedule of reports to be considered by the Committee for 2000 is:

#### July 2001

Monaco ..... Initial report ..... CCPR/C/MCO/99/1

Netherlands ..... 3rd periodic report ..... CCPR/C/C/NET/99/3

#### October 2001

Switzerland ..... nd periodic report ..... CCPR/C/CH/98/2

United Kingdom ..... 5th periodic report ..... CCPR/C/UK/99/5

United Kingdom (overseas territories) ..... 5th periodicreport ..... CCPR/C/UKOT/99/5

## COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (CERD)

The Committee monitors the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination.

The provisional schedule of reports and/or situations to be considered by the Committee for 2000 is:

### March 2001

Germany . . . . .	15th periodic report . . . . .	CERD/C/338/ADD.10
Greece . . . . .	12th to 15th periodic reports . . . . .	CERD/C/384/ADD.1
Iceland . . . . .	15th periodic report . . . . .	***
Portugal . . . . .	2nd periodic report . . . . .	***

## COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

The Committee is entrusted with the task of overseeing the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women.

The provisional schedule of reports to be considered by the Committee is:

### January 2001

Finland . . . . .	4th periodic report . . . . .	***
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## COMMITTEE AGAINST TORTURE

The main function of the Committee is to ensure that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is observed and implemented.

The provisional schedule of reports to be considered at the Committee's May 2001 session is (This list also contains reports to be considered at the November 2001 session):

Denmark . . . . .	4th periodic report . . . . .	CAT/C/55/Add.2
Greece . . . . .	3rd periodic report . . . . .	CAT/C/39/Add.3
Luxembourg . . . . .	3rd periodic report . . . . .	CAT/C/34/Add.14
Norway . . . . .	4th periodic report . . . . .	CAT/C/55/Add.4
Sweden . . . . .	4th periodic report . . . . .	CAT/C/55/Add.3

## COMMITTEE ON THE RIGHTS OF THE CHILD

The Committee was established to monitor the implementation of the Convention on the Rights of the Child.

The provisional schedule of state reports to be considered by the Committee is:

### January 2001

Liechtenstein . . . . .	Initial report . . . . .	CRC/C/61/Add.1
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### May 2001

Denmark . . . . .	2nd periodic report . . . . .	CRC/C/70/Add.6
Monaco . . . . .	Initial report . . . . .	CRC/C/28/Add.15
Turkey . . . . .	Initial report . . . . .	CRC/C/51/Add.4

### September 2001

Portugal . . . . .	Initial report . . . . .	CRC/C/65/Add.11
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**January 2002**

Andorra .....	Initial report .....	CRC/C/61/Add.3
Greece .....	2nd periodic report .....	CRC/C/28/Add.17

**May 2002**

Belgium .....	2nd periodic report .....	CRC/C/83/ADD.2
Spain .....	2nd periodic report .....	CRC/C/70/ADD.9
United Kingdom .....	2nd periodic report .....	CRC/C/83/ADD.3
United kingdom (overseas territories) .....	Initial report .....	CRC/C/41/ADD.7

**September 2002**

Iceland .....	Initial report .....	CRC/C/83/ADD.5
Italy .....	Initial report .....	CRC/C/70/ADD.13