THE SEVENTH INTERNATIONAL CONFERENCE OF NATIONAL HUMAN RIGHTS INSTITUTIONS

SEOUL 14-17 SEPTEMBER 2004

Upholding human rights during conflict and while countering terrorism

ND ORGANIZED BY THE NATIONAL HUMAN
COMMISSION OF THE REPUBLIC OF KOREA

National
Human Rights
Commission of Korea

TABLE OF CONTENTS

Friday, September 17th Plenary II

Annexes

Preface

Preface

The Seventh International Conference of National Institutions for the Promotion and Protection of Human Rights provided a timely opportunity for National Institutions around the world to discuss ways to safeguard human rights and fundamental freedoms in times of great adversity. The Conference, held in Seoul 14–17 September 2004, was rightfully devoted to the theme of upholding human rights during conflict and while countering terrorism. The significance of the theme is indisputable, given the magnitude of the present challenges that National Institutions face in their daily activities as well as within the overall human rights framework to ensure rights of individuals in conflict situations.

This Conference was marked by an unprecedented degree of participation by the 120 representatives of 61 National Institutions and 70 other members of the international human rights community including the Office of the United Nations High Commissioner for Human Rights and the Asia Pacific Forum of National Human Rights Institutions. Furthermore, observers from non-governmental organizations (NGOs) enriched the deliberations with their contribution to pre-conference forum and active participation in the conference itself. It is our sincere and confident belief that the relationship and solidarity affirmed and strengthened during those four days in Seoul will engender effective networks to meet the human rights challenges facing our respective countries in the near future.

In order to adequately address multiple aspects of the Conference theme, it was divided into five categories and discussed within five working groups. The five themes respectively were Conflict and Countering Terrorism: Economic, Social and Cultural Rights; Conflict and Countering Terrorism: Civil and Political Rights and the Rule of Law; The Role of National Human Rights Institutions in Conflict Situations; Migration in the Context of Conflict and Terrorism; and, Women's Rights in the Context of Conflict. Intense discussion within these working groups, following stimulating presentations by

keynote speakers, identified the various threats that conflict, terrorism, and counter-terrorism measures pose to human rights. It also explored the role of National Institutions to meet such challenges in conflict situations.

The Seoul Declaration adopted unanimously by the Conference reaffirmed that NHRIs had the mandate to protect and promote human rights in conflict situations as well as counter-terrorism. The Declaration also demonstrated that there was a need to strengthen the effective implementation of this mandate especially in light of the increased pressure against fundamental rights. Hopefully the Seoul Declaration will become a useful tool for National Institutions as they address issues related to the protection of human rights and fundamental freedoms in conflict situations.

It is further expected that this Conference will give us a clearer vision and renew our commitment to our common struggle for human rights. In addition, the relationships built through this meeting in Seoul will efficaciously contribute to regional and international cooperation better facilitating our collective efforts in the field of human rights.

It was a great privilege for the National Human Rights Commission of Korea to host the Seventh International Conference of National Institutions for the Promotion and Protection of Human Rights in Seoul.

Indeed, I would like to thank all the participants for their invaluable contribution to the Conference in addition to the presenters who delivered speeches and the moderators who assured the smooth functioning of the meetings. I would also like to thank the UN OHCHR, ICC and APF secretariats for their generous technical and financial support. I would also like to give special thanks to Ms. Louise Arbour for attending the Conference though she was appointed UN High Commissioner for Human Rights a short time ago.

Chang-kuk Kim
President
National Human Rights Commission of Korea

November 2004

Executive Summary

Executive Summary

"Upholding human rights during conflict and while countering terrorism" was the overall theme of the Seventh International Conference of National Human Rights Institutions (NHRIs). Faced with an international crisis of insecurity due to conflict, terrorism and counter-terrorism, universal human rights and fundamental freedoms are threatened like never before. Held in Seoul, Republic of Korea from 14 to 17 September 2004, the meeting was organized by the National Human Rights Commission of Korea (NHRCK) and arranged in consultation with the International Coordinating Committee (ICC) of NHRIs with the support of, and in technical cooperation with, as well as financial contributions from the Office of the United Nations High Commissioner for Human Rights (OHCHR), and with financial contributions from the Asia Pacific Forum of National Human Rights Institutions (APF) and the Agence Internationale de la Francophonie. 120 delegates from 61 NHRIs, 70 delegates with observer status from Korean and international non-governmental organizations (NGOs) together with some delegates with non-observer status from NGOs and 11 participants from the OHCHR and APF joined the four-day conference. The overwhelming enthusiasm of vast numbers of NHRIs and NGOs made the Seoul gathering the largest international conference of NHRIs since their 1991 Paris meeting.

The Seventh International Conference of NHRIs aimed to better promote and protect human rights by focusing on the role of NHRIs during conflict and their respective national governments' struggle to counter terrorism. Pursuant to this, they noted that their mandates must encompass the efforts of their national governments' measures to counter terrorism, as well as the challenges posed in conflict areas. They reaffirmed the need to strengthen the effective implementation of their mandate to protect and promote these fundamental rights and freedoms in regard to conflict situations and counter-terrorism measures. This, participants recognized, is especially true in light of the recent increased pressure on those rights and freedoms. At the Conference, major human rights issues arising out of conflict and counter-terrorism were categorized into

the five Working Groups: Working Group 1: Conflict and Countering Terrorism; Economic, Social and Cultural Rights; Working Group 2: Conflict and Countering Terrorism; Civil and Political Rights and the Rule of Law; Working Group 3: The Role of National Institutions in Conflict Situations; Working Group 4: Migration in the Context of Conflict and Terrorism; Working Group 5: Women's Rights in the Context of Conflict. The working group sessions gave the participants the opportunity to discuss concrete cases and share their unique experiences about specific human rights issues. By engaging in a dialogue as to how NHRIs can cope with these issues, the Conference participants affirmed commonalities and explored new ways to redress human rights violations, heal wounds, and prevent future conflict.

The Opening Ceremony and the Plenary Session of the First Day (September 14)

The opening ceremony of the Seoul Conference saw several speeches and addresses by distinguished persons that covered important issues to be treated during the four day gathering of the International Conference of NHRIs, and set the stage for amicable and constructive dialogue among them.

In his opening speech, President Chang-kuk Kim of the National Human Rights Commission of Korea initiated the Conference by highlighting the late UN High Commissioner for Human Rights Sergio Vieira de Mello's thoughts on protecting human rights while countering terrorism. Mr. Vieira de Mello stressed that the only strategy to defeat terrorism is to respect human rights, to foster social justice, to enhance democracy and to uphold the rule of law, and pointed out that such safeguards already exist in international human rights and humanitarian law, but that it is up to NHRIs in coordination with NGOs and human rights defenders everywhere to ensure those protections. Mr. Chang-kuk Kim reaffirmed that NHRIs have a crucial role in this regard. The Korean Commission was successful in stopping one such encroachment onto citizen's human rights by preventing the passage of the government's proposed Terrorism Prevention Bill of 2003. Still, he emphasized, the Commission must remain vigilant.

In the first of two welcome speeches, Mr. Morten Kjaerum, Chairperson of the ICC, reinforced the theme of President Kim's speech by further underlining Mr. Vieira de Mello's emphasis on upholding human rights, social justice and the rule of law while countering terrorism. He reminded delegates that NHRIs, being close to the power brokers (after all, their mandates are founded in national law), are in a unique position to safeguard human rights in their respective countries. In particular, he pointed out a thematic connection between the Sixth International Conference in Copenhagen and Lund and that of the Seoul Conference. He noted that racism and ethnocentrism

cause marginalization which can compel some groups to turn to terrorism and fratricidal violence. NHRIs have, according to the Copenhagen Declaration, a role to play in early warning of these dangers.

In her welcome speech, Ms. Louise Arbour, UN High Commissioner for Human Rights, focused on the importance of national actors in promoting and protecting human rights as she cautioned the delegates not to be embroiled in process at the expense of content. She touched on the links between human rights and conflict and counter-terrorism measures, respectively, and pointed to the role of judiciaries in human rights protection. She then underscored the vital role of NHRIs in complementing this work. She also reaffirmed OHCHR's commitment to NHRIs by working to strengthen their institutional capacity, by helping them acquire international support, and by partnering with them in common purpose. She observed that NHRIs strength lies in their credibility and weighs heavily on their independence. Measurement indicators of compliance to the Paris Principles, she offered, would be invaluable in this regard.

The President of the Republic of Korea, Moo-hyun Roh, once a human rights lawyer himself, contextualized the themes into the broader historical context of his country's persistent struggle toward democracy and development. He congratulated those in attendance, observing that defenders of human rights deserve recognition for their tireless ardor in an effort that is too frequently dangerous and lonely. Indeed, they would stand up against majority opinion alone and oppose the powerful armed with only the truth. He described how he felt awkward sometimes when the National Human Rights Commission of Korea as a governmental body opposed his administration. However, when he admitted that this independence was the indispensable source of its credibility as an independent body, he received long applause. Established by an act of the National Assembly, the Commission is independent of his government. He noted that this fact has earned the Commission the reputation as a voice of the voiceless or the social vulnerable groups. This, he said, will help the Commission ensure that citizens enjoy their rights and make Korea as well known for its democracy and human rights as it is for its economic development.

Later that afternoon, in the first of two introductory speeches, Mr. Vojin Dimitrijevic, Director of the Belgrade Center for Human Rights, traced the philosophical trajectory of humanitarian and human rights law in the context of counter-terrorism and conflict, specifically in the context of the Balkan wars of the 1990s. He outlined the dichotomous nature of humanitarian and human rights law, where the nation-state's legitimate 'use of force' during conflicts and wars is balanced by the universal value of individual human dignity and life. At present, the individual enemy soldier is

sometimes perceived on the basis of his/her essential characteristics, like ethnicity, religion, or language, and these are seen as villainous. These characteristics are associated with an enemy ethnic nation under the influence of extreme nationalism, or an imposed ideological system detrimental to sacred universal beliefs. This was the situation during the Balkan wars of the 1990s. The enemy was stripped of his/her humanity because he/she represented an anti-civilization force unworthy of human rights protection. Currently, nations' counter-terrorism measures spring from this same 'neurotic panic,' Mr. Dimitrijevic asserted. He suggested non-discrimination as the value NHRIs, NGOs and human rights defenders everywhere ought to promote above all else in order to counsel groups and governments away from gross human rights violations during conflicts, and in order to alleviate the harsh aspects of counter-terrorism measures.

Finally, the Special Representative of the UN Secretary General on Human Rights Defenders, Ms. Hina Jilani, spoke to the issue of the increasing power of security forces during conflict. Specifically, the "War on Terror" has at best uncertain, and perhaps, dangerous consequences for human rights defenders. In her speech entitled "Preserving Human Rights and the Rule of Law," she addressed how long standing internal conflicts, too, are recast within the War on Terror paradigm and encompassed into the scope of counter-terrorism measures. In this environment, national executives have expanded their power, judiciaries have retreated from countering them, and legislatures have emboldened security forces with new powers. NHRIs should redouble their cooperative relationships with civil society in order to balance against this present trend. Through strengthening this relationship with civil society, she contended, NHRIs can better assist human rights defenders, who are at the forefront of the struggle to protect human rights.

In the morning of the first day, the moderators and speakers of the Working Groups met to discuss their groups' procedural rules. They agreed on common ways of conducting their meetings. Afterwards the 15th ICC business meeting was held. At the afternoon session, in the presence of the United Nations High Commissioner for Human Rights, the Chairperson of the ICC and Mr. Chang-kuk Kim of the National Human Rights Commission of Korea (NHRCK), the International Conference appointed the General Committee, Drafting Committee, and the Rapporteur-General Dr. Birgitte Olsen. At the closing of the first day, the 70 participants of the Conference had an opportunity to visit the office NHRCK for an hour, followed by a cultural event and a welcoming dinner hosted by the President of the NHRCK, Chang-kuk Kim.

The Working Groups' Session of the Second Day (September 15)

From the morning of the second day of the Conference, the participants separated

into five Working Groups: (1) Conflict and Countering Terrorism: Economic, Social and Cultural Rights; (2) Conflict and Countering Terrorism: Civil and Political Rights; (3) The Role of NHRIs during Conflict; (4) Migration in the Context of Conflict and Terrorism; and, (5) Women's Rights in the Context of Conflict.

In Working Group 1, Mr. Suk-tae Lee of the National Human Rights Commission of Korea chaired the session; Dr. Mohamed N. Galal of the Egyptian National Council for Human Rights was the Rapporteur; and papers of Mr. Volmar Pérez Ortiz of the Defensoria del Pueblo of Colombia and Justice Adarsh Sein Anand of National Human Rights Commission of India were discussed. Mr. Ortiz enumerated the ways in which the current conflict in Colombia impacts the economic, cultural and social (ESC) rights of the people. It impacts the realization of those rights by destroying the physical infrastructure and by displacing peoples. ESC rights are denied to people in two other ways as well. The realization of the ESC rights is inhibited by both the diversion of government funds away from social spending to feed security projects and military operations and also by the indirect consequences at this diversion. He concluded his assessment by asserting the importance of refocusing efforts to confront terrorism by way of increased social spending. It is important to recognize the unfortunate symbiotic links between social conditions and security conditions in the fight against terrorism and to resolve long standing conflicts. Justice Anand emphasized the on-going confusion of what terrorism legally is and ways in which democratic States must confront it in their respective counter-terrorism measures. Regardless of what it precisely means, it is an assault on democratic governance, specifically on concepts of the rule of law and respect for human rights. Therefore, NHRIs should focus on promoting and protecting ESC rights as an indivisible part of the spectrum of human rights, because conflict and countering terrorism leads to discriminatory effects on the ESCR of vulnerable groups.

The participants of Working Group 1 included the NHRI representatives from Albania, Bosnia-Herzegovina, Colombia, Egypt, India, Indonesia, New Zealand, Nigeria, Republic of Korea, Senegal and Thailand. NGO representatives from India, Malaysia and United Kingdom attended the meeting as well.

In Working Group 2, Mr. Omar Azziman of the Conseil Consultatif des Droits de l'Homme du Marco chaired the session; Mr. Wilhelm Soriano of the Commission on Human Rights of the Philippines was the Rapporteur; and, Mr. Myung-deok Kang, Acting Secretary-General and Director-General of the Policy Bureau of the National Human Rights Commission of Korea, and Ms. Maria Eugenia Acena of the Procoraduria de los Derechos Humanos Guatemala and the Hon. John von Doussa of the Australian Human Rights and Equal Opportunity Commission presented papers.

Mr. Kang enumerated a dozen specific ways counter-terrorism measures violate the International Covenant on Civil and Political Rights. He pointed out that the UN Security Council Resolution 1373 authorizing States to take effective measures to counter terrorism failed to oblige States to live up to their responsibilities to respect the rule of law and international human rights standards. Though UN Security Council Resolution 1456 was a step in correcting the Council's initial decisions, the correction has yet to trickle down to the national government level. More must be done. NHRIs can play a positive role in facilitating the implementation of this Security Council Resolution at the national level.

Ms. Acena presented a paper by Dr. Sergio Fernando Morales Alvarado describing conflict and violence broadly and the human rights situation in Guatemala through its history to the present. Ms. Acena said terrorism represents an assault on civilization and on the fundamental underpinnings of democracy, and listed specific incidents, statistics, and other data on how it is impacting Guatemalan society. She pointed out the need for Guatemala to approach security holistically as "democratic security." NHRIs can contribute much to fulfilling the security needs of democracy. The Hon. Mr. von Doussa pointed to the importance of simultaneously upholding respect for human rights and the rule of law while combating terrorism. Indeed, the Conference invoked the memory of Mr. Sergio Vieira de Mello and his strategy of defeating terrorism by increasing and enhancing democracy and the rule of law. During the Working Group's discussion, he suggested ways NHRIs can negotiate with their respective national governments to mitigate the impact of counter terrorism measures.

The participants of Working Group 2 included the NHRI representatives from Australia, Guatemala, India, Indonesia, Malaysia, Morocco, Niger, Republic of Korea, Thailand and the Philippines. Also, NGO representatives from Japan, Switzerland, Taiwan and Vietnam attended the meeting.

In Working Group 3, Justice Nayan Khatri of the National Human Rights Commission of Nepal chaired the session; Mr. Dheerujlall Baramlall Seetulsingh of the National Human Rights Commission of Mauritius was the Rapporteur; and Mrs. Margaret Sekaggya of the Uganda Human Rights Commission and Prof. Brice Dickson of Northern Ireland Human Rights Commission presented papers. Ms. Sekaggya discussed the role NHRIs can play during conflicts, especially in providing early warning systems and in conflict resolution. She enumerated many ways NHRIs can facilitate this. Among others, she listed conflict prevention, mediation and conciliation, and human rights education as paramount. As they receive, analyze and compile human rights complaints, NHRIs can serve vital roles to conflicting parties. She emphasized that conflict often arises because of perceived violations of human rights. Therefore,

NHRIs should become aware of the importance of conflict resolution while dealing with complaints. They must become aware of the link between their mandate to promote and protect human rights and the potential of assisting in the resolution of conflicts.

Prof. Dickson described how NHRIs can assist their national governments in countering terrorism and resolving conflicts while respecting human rights and the rule of law. He also spoke to the situation in Northern Ireland in this regard. He asserted that human rights standards must be addressed by non-state actors as well as State entities. Prof. Dickson pointed to the importance of both publicizing and advocating the adoption of international treaties and conventions on the national level. NHRIs should also advise criminal justice and other agencies on compliance with those international standards, in addition to monitoring the compliance of international standards. Informed by the 30 year plus experience of Northern Ireland with terrorism and counter-terrorism measures, he also suggested that NHRIs have a vital role to play in ensuring the integration of a human rights perspective into national government policy proscriptions.

The participants of Working group 3 included the NHRI representatives from Bolivia, Cameroon, Canada, Fiji, France, Ghana, Indonesia, Malawi, Mauritius, Mongolia, Nepal, Peru, Republic of Korea, Togo, Uganda and Venezuela. Also, NGO representatives from Australia, China, Fiji, Indonesia, Japan, Korea, South Africa, Switzerland and Taiwan attended the meeting.

In Working Group 4, Ambassador Salvador Campos Icardo of the National Human Rights Commission of Mexico was the Chairperson; the Rapporteur was Mr. Joris de Bres of the New Zealand Human Rights Commission; and the Deputy Ombudsman of Spain Manuel Aguilar Belda and Dr. Purificacion C. Valera Quisumbing of the Commission on Human Rights of the Philippines presented papers. Mr. Belda discussed the importance of the protection of the right to seek asylum and its preservation while countering terrorism, though this right belongs to the State and not to the individual. In Spain, following the 3-11 terrorist attack in Madrid, the debate over the balance between security and respect for the rule of law and human rights raged. Although Spain receives relatively few territorial asylum applications, Spain elevated the protection of that right to the constitutional level by fully adopting international treaties on asylum seeking. He discussed surveys conducted by the Spanish NHRI in this regard. Dr. Quisumbing discussed how the change in the nature of migration has altered the significance of counter-terrorism, further impacting migrants' rights harshly. This is because of their status as non-citizens, as "outsiders," because of discrimination and other negative perceptions of migrants. Push factors have become much more

forceful through the 130 conflicts over the last five decades. She also pointed to the UNSC Resolution 1373 for fault in encouraging national governments to abrogate their obligations to human rights with regards to regular and irregular migrants. She discussed the case of Filipino migrants to illustrate how the rights of migrants have been violated while countering terrorism.

The participants of Working Group 4 included the NHRI representatives from Argentina, Denmark, Germany, Greece, Mexico, New Zealand, Republic of Korea, South Africa, Spain and the Philippines. Also NGO representatives from Australia, India, Switzerland, Thailand and United Kingdom attended the meeting.

In Working Group 5, Dr. Rhadika Coomaraswamy of the Human Rights Commission of Sri Lanka chaired the session; Dr. Sima Samar of the Afghan Independent Human Rights Commission and Mr. Déogratias Kayumba of the National Human Rights Commission of Rwanda presented papers. Dr. Samar discussed how the on-going violence in Afghanistan and the failure to improve security, the impunity enjoyed by human rights violators, the lack of law enforcement and the persistence of a war economy together adversely impact the rights of women. The improvement of women's rights in the 1960s and 1970s was erased by 23 years of warfare. The Islamic fundamentalist groups supported by other countries as a strategy to defeat Soviet communism in Afghanistan had horrible repercussions for women's rights there. So, presently the improvement of human rights is only marginally better than what it was during more than two decades of war. Therefore, the activities of the Afghan Independent Human Rights Commission include pressing for the promotion of the rule of law and the disarmament of Afghan society. Only a few hundred of 6, 500 peace keeping troops work outside Kabul. The expansion of NATO involvement is a must. Violators of human rights must be brought to justice. Presently, the culture of impunity persists in Afghanistan. Monitoring as well as investigation of violations of women's rights should be stepped up as the Commission has had success in some cases but not many. The Commission did have partial success in its fight to include women's rights into the constitution. Promoting and protecting human rights is all of our concern, she concluded. We now know that what happens in far-flung places-- even Afghanistan-- affects the world. So, she urged, we cannot now in Afghanistan allow women's rights to wilt.

Mr. Kayumba discussed how mass rape and other atrocities were used against women during the genocide in Rwanda. He emphasized the steps made since then to improve the human rights situation there, and especially for women. Those steps included the re-creation of public institutions, including the Ministry for Gender Equality and the many programs for improving women's rights, and also the advancement of civil

society in Rwanda. He pointed out that improving basic services, like education, employment and health services is fundamental for the improvement of women's rights in Rwanda. He said it is important to note that since the genocide, the National Union Government has made human rights its number one priority, though having said that, there remains much to be done. In light of simply recovering from the enormous psychological shock of genocide, people's basic attitude toward how to treat boys and girls must be changed. This is, he concluded, a great challenge that remains before us. Such challenges shall encourage NHRIs to better facilitate counseling for women suffering violence, promote awareness of women's rights, and engage in other crucial work on women's issues.

The participants of Working Group 5 included the NHRI representatives from Australia, Indonesia, Luxemburg, Malaysia, Republic of Korea, Rwanda, Sri Lanka and Thailand. NGO representatives from Korea, the Philippines and South Africa attended the meeting as well.

The Plenary of the Third Day (September 16)

On Thursday the following day, the Working Groups' rapporteurs presented summaries of their respective groups deliberations. In addition, NGO representatives formally contributed their conclusions on each group's work. In Plenary, Mr. Suk-tae Lee summarized for Working Group 1 and Amnesty International legal advisor Ms. Karima Bennoune presented the NGO contribution; Mr. Wilhelm Soriano summarized the discussion of Working Group 2 and the International Commission of Jurists Ian Seidermann presented on behalf of the NGOs; Mr. Sushil Pyakurel summarized Working Group 3 and Ms. Michelle Parlevliet of the Center for Conflict Resolution presented the NGO contribution; Ambassador Salvador Campos Icardo of Mexico summarized for Working Group 4 which incorporated the NGO contribution; Dr. Radhika Coomaraswamy of Sri Lanka summarized the discussion of Working Group 5; and, Ms. Young-hee Shim of Korea presented on behalf of the NGOs. This was then followed by plenary discussion.

Each rapporteur of the Working Groups presented a summary of his/her group's deliberations, conclusions and recommendations. Dr. Mohamed N. Galal of Egypt, the Rapporteur of Working Group 1, explained that his group concluded that terrorism is not simply violence against individuals, but against society as a whole. Indeed, it is an attack on humanity with the aim of spreading fear. NHRIs have a special role within their complaint processing function, because they can address grievances of ESC rights. In this way too, NHRIs can contribute to early warning mechanisms. The delegates agreed that NHRIs should press their respective national governments to

engage more fully with the CESCR. This includes enlarging their participation in international human rights bodies as well as more actively encouraging respective governments to adopt the optional protocol of the ICESCR and encourage wider and deeper support for the World Solidarity Fund.
Mr. Wilhelm Soriano of the Philippines was the Rapporteur of Working Group 2. He delivered the group's consensus opinion that the fight against terrorism is impossible outside the rule of law and without robust respect for human rights. Even when extraordinary measures are justifiable, those must be narrow in scope and subject to independent review. In this way, the world's judicial systems have a crucial role to play. NHRIs can become a bridge between civil society and government in order to prevent abusive measures before they are implemented. Monitoring legislative processes and working with legislatures constructively will lend credibility to their recommendations.

Mr. Dheerujlall Seetulsingh reported Working Group 3's deliberations to the plenary. They concluded, he related, that NHRIs had great difficulty in ensuring non-state actors' accountability with regard to abuses of human rights standards and norms. NHRIs can be crucially constructive during conflict situations, not just in resolving conflicts per se, but also by inserting human rights criteria into the negotiations of conflict resolutions, they can play a role in preventing conflict in the future. After all, the group concluded human rights violations, perceived neglect, exploitation, and oppression are causes for conflict in the first place. They recommended NHRIs build capacities on early warning systems, mediation and conciliation, and protect internally displaced persons through assisting national governments and international entities in the provision of humanitarian assistance. They made many other recommendations out of their constructive and lively discussions.

Rapporteur Mr. Joris de Bres of New Zealand presented the summary on behalf of Working Group 4. He reported that the group unanimously agreed many national governments' measures to counter terrorism compromise the rights of migrants, refugees and asylum seekers because they arbitrarily and unproductively profile them by way of race, religion, and/or ethnicity. He said that they agreed NHRIs must press their respective national governments to ratify and/or implement the Convention on the Rights of All Migrant Workers and Their Families, particularly migrant receiving countries.

Finally, Dr. Radhika Coomaraswamy of Sri Lanka summarized the discussion of Working Group 5. She reported that participants had a lively and active exchange with NGO representatives participating fully. The violation of women's human rights during conflict and while countering terrorism, experienced in their everyday lives is only further exasperated in time of conflict. Accountability is crucial if women's lot is to be

improved. To accomplish this, the group concluded, women themselves must gain participation in peace processes, including the integration of gender perspectives into mainstream policy considerations in their respective national governments. She reported that the group further concluded that the human rights of women will not be improved until they and their concerns receive recognition for their existing contributions as well as further consideration in post-conflict processes, including rehabilitation and reconstruction efforts.

In plenary, the various Rapporteurs came back with the familiar conclusion that a concise and incontrovertible definition of terrorism is untenable. However, they also all agreed that it is possible to confront its challenge while upholding human rights and the rule of law. Indeed, this challenge is the great imperative facing democracies and its aspirants everywhere in the world. Mr. Sergio Vieira de Mello's strategy of facing terrorism's challenge to democracy, the rule of law and individual human rights by coupling security and counter-terrorism measures with a deeper protection and expansive promotion of those ideals remained promising comfort to those present throughout the Conference halls and lobbies of the Lotte Hotel. During this plenary, too, the participants recognized the sorrowful neglect over the plight of migrants, and the vital role of NHRIs in pressing their respective national governments to adopt and adhere to international standards on migrants' rights. Specifically, the participants agreed more things must be done to bridge the gap between sending countries and receiving countries regarding ratification of the Migrant Workers Convention, and that NHRI delegates have an important role to encourage wide spread ratification.

During this plenary session there was also much discussion on the importance of the NGOs/NHRI partnership. 70 delegates from Korean and international NGOs participated as official observers formally for the first time at an International Conference of NHRIs. The delegates of both NHRIs and NGOs affirmed their new working relationship established in Seoul. By coordinating their efforts more euphoniously, they will better meet the challenge of protecting and promoting human rights. This task was furthered as the participants marked a milestone in operational cooperation between civil society and human rights institutions on the national level. At this Conference, many NGOs participated with the status of official observers. This new relationship will improve the work NHRIs do on the myriad of projects, roles and functions they perform. For example, fuller and better coordination of the activities of NGOs and NHRIs will further enable NHRIs to enhance their early warning mechanisms, their roles as facilitators in conflict resolution, as well as actions to address intra-State and intra-community conflicts that could lead to severe violations of human rights. This was a specific outcome of the meeting in Seoul. Moreover, more efficient and effective coordination will create an improved understanding between

civil society and NHRIs.

The General Plenary of the Final Day (September 17)

Mr. Kyung-whan Ahn of Korea chaired the final plenary on Friday. General Rapporteur Dr. Birgitte Olson of the National Department of the Danish Institute for Human Rights summarized the final draft of the Seoul Declaration before general discussion among the participants began. Dr. Olsen described how the Seoul Declaration was drafted, who made it, and then summarized it in brief. She explained that the Drafting Committee consisted of the four regions' representatives, the Chairman of the ICC, a representative of OHCHR and herself, the General Rapporteur. Its basis, she continued, was derived indirectly from the proposal submitted by the Korean Commission. The opinions and recommendations of the Working Groups as well as the discussions from Thursday's plenary together informed the Drafting Committee's work. The Seoul Declaration began with a preamble; some factual statements about the Conference and references to some founding conventions, treaties, and the like; general principles; and, finally, the results of the four Working Groups. The General Principles were based on generic commonalities and other duties of NHRIs. The declaration concludes with the Seoul Commitment. The Seoul Commitment is a promise by the NHRIs to take action on the agreed Declaration. Implementing measures include, among other things, reporting to the ICC in April 2005.

Ms. Margaret Sekaggya, Chairperson of the Uganda Human Rights Commission, affirmed the purpose and the merit of the Seoul Declaration, observing that the proposed draft is to guide the NHRIs in their renewed role of promoting rights while countering terrorism and during conflict. Accordingly, it is for NHRIs a way to approach the challenge of protecting and promoting, among other things, women's rights and the rights of migrants and children. With those observations, Dr. Purificacion Quisumbing, the Chairperson of the Commission on Human Rights of the Philippines, made the motion to adopt the declaration, adding the sentiment that it well reflects the aims of the NHRIs at this Conference. Mr. Livingston Sewanyana, Executive Director of Uganda's Foundation for Human Rights Initiative representing the participating NGOs, suggested a couple of changes to the Seoul Declaration. NHRIs should press for full protection of all rights, he recommended, not just non-derogable rights. He also emphasized the importance of preventive strategies to protecting rights, specifically the protocol on women in peace and security. He emphasized the importance of UN Security Council Resolution 1325. After some discussion, the Seoul Declaration was adopted by voice vote from the floor with the single caveat that the Drafting Committee accepts written amendments from the participants as they adjourn to edit and rework the Declaration.

After the adoption of the Seoul Declaration, four regional case presentations were made. Ms. Margaret Sekaggya of Uganda presented the African regional report; Mr. Sushil Pyakurel of Nepal presented the Asia-Pacific regional report; Mr. Walter Alban Peralta of Peru presented the Americas regional report; and, Mr. Gerard Fellous of France presented the European regional report. Before leaving the Conference, Mr. Morten Kjaerum, Chairperson of the ICC, thanked the NHRCK for its hospitality and participants for the dynamic and constructive interaction between the NHRIs and the NGOs. President of NHRCK Chang-kuk Kim announced the closure of the Seventh International Conference of NHRIs by giving his closing remarks with sincere thanks to every participant and presenting a delightful slide show of pictures taken during the four day conference.

Regarding the evaluation of the Seventh Conference, on the last day of the Conference, the host Commission distributed Conference evaluation questionnaires to the participants. From the total 190 participants, 63% were NHRI-affiliated, 31% NGO-affiliated and 6% UN or APF-affiliated individuals. On the question of the Conference venue and its facilities, 83% of the respondents said they were very satisfied, and 17% satisfied. On the question of the Conference Secretariat's organization, 80% of them were very satisfied, and 20% satisfied. With regard to the program format, 53% of the respondents said the Conference was very satisfactory, 38% satisfactory, 8% fair and 1% poor. With regard to the performance of the presenters and moderators, 50% were very satisfied and 33% were satisfied. Concerning the papers and other Conference materials, 44% said they were very satisfied, and 41% satisfied. On the question of how participants valued the Conference, 71% said that the Conference was very important, and 24% said it was important. Therefore, the vast majority, 95% of the participants, said that the Conference was important or very important.

****

Tuesday, September 14th

Opening Ceremony

Congratulatory Remarks

Mr. Moo-hyun Roh
President of the Republic of Korea

The Honorable UN High Commissioner for Human Rights Louise Arbour, Chairperson of the International Coordinating Committee Morten Kjaerum and distinguished ladies and gentlemen from home and abroad,

I congratulate you on the Seventh International Conference of National Human Rights Institutions and wholeheartedly welcome the participants from around the world.

You are working hard for the cause of protecting human rights. Whether you work for an international group, a National Institution or another group, this work is not easy. This kind of work requires compassion, persistence, self-sacrifice, and the courage to stand up against the powerful. Your every deed has helped make the world a more just and compassionate place to live. You have my deepest thanks and respect.

We Koreans, too, have gone through a dark period when human rights were encroached on. Now, however, we are opening a new chapter in human rights and democracy. Having experienced a painful history, we will never return to such a time.

Furthermore, we will work hard so that Korea will be able to make a greater contribution to the protection and enhancement of human rights throughout the world.

Distinguished guests,

President Dae-jung Kim, recipient of the Nobel Peace Prize, created the National Human Rights Commission of Korea in 2001. At that time when democracy was making great progress, the Commission was viewed by some as redundant.

In retrospect, however, it was a fresh starting point in the history of our human rights. From then on, numerous human rights issues that had lingered for dozens of years

began to be handled earnestly.

The number of human rights cases filed with the National Human Rights Commission has surpassed 10,000, and more than 90 percent of the recommendations made by the Commission have been accepted.

On the basis of this, various laws and systems, which were liable to encroach on human rights, have been improved. We are striving to put a stop to social discrimination and injustice while giving consideration to the socially disadvantaged, including women, children and people with disabilities.

Fine institutions like the Human Rights Commission will bring about good result. However, good results can become even greater when the people working there fulfill their jobs with diligence.

The President appoints the members of the Human Rights Commission, but the Commission works under its own authority. Sometimes, the Human Rights Commission even opposes the government's policies, putting me in difficult position. And I am asked how I can allow a government commission to oppose me. However, this independence is essential to the Commission's work.

The Commission members have all along devoted themselves to human rights and are trusted by the people. I believe the successes it has achieved are due to institutional excellence coupled with the passion of its members.

In contrast to an investigative agency, however, it is difficult for the Human Rights Commission to deal with all past cases of human rights violations. In order to clarify the past, the National Assembly is considering the legislation of a special law on truth and reconciliation. The Government, too, is voluntarily taking steps to investigate the dark side of its own past and make confessions.

On the strength of the results, Korea will be able to make a fresh start as a model country for upholding human rights. We will become an advanced county in terms of human rights. As the President, I will lead the concerted efforts in the interest of this cause.

Distinguished participants,

Any human rights issue on earth can by no means be ignored. The dignity of humanity must be respected without any exception. Therein lies the importance of maintaining

international cooperation for the protection of human rights.

In particular, terrorism taking place in many places in an indiscriminate manner adds up to a necessity for international cooperation. In this light, it is quite appropriate for the conference this time to adopt the theme, "Upholding Human Rights During Conflict and While Countering Terrorism."

Only a few weeks ago, we watched with sorrow and indignation the barbaric acts of terrorism in Russia that claimed the lives of many innocent children. Terrorism is inhuman and cannot be tolerated for any reason. The international community should join forces to combat it. In that way, we should make sure that human rights stand above all values and that humanity will preserve human rights against all threats.

I trust that this conference will serve as a profound opportunity to reassure all people in their common endeavors to preserve human rights. The Republic of Korea will actively join such common endeavors.

Once again I hope that this conference will enjoy great success and wish every of you joyous and rewarding experience.

Thank you.

****

Openig Remarks

Mr. Chang-kuk Kim
President of National Human Rights Commission of the Republic of Korea

The Honorable President Mr. Roh Moo-Hyun, United Nations High Commissioner for Human Rights Ms. Louise Arbour, Mr. Chairperson Morten Kjaerum of the ICC, representatives of national human rights institutions and non-government organizations, distinguished guests, ladies and gentlemen,

It is my great pleasure to open the 7th International Conference for National Human Rights Institutions here in Seoul and to welcome all of its participants and observers.

Distinguished delegates, this conference addresses the very timely issue of "upholding human rights during conflict and while countering terrorism." I do not need to repeat what you already know. News of conflicts throughout the world and human rights violated by acts of terrorism as well as counter-terrorism haunt us everyday. The stories and images of such human rights violations convey unspeakable tragedy, causing deep sorrow to each of us. We are saddened by the children injured during indiscriminate air raids, hundreds of thousands of internally displaced persons threatened by starvation, the abuse of prisoners of war and many others.

No matter how remote the places of these tragic incidences, we cannot be indifferent to them. Human tragedy has an impact far beyond its initial geographical location, and it is very likely that similar incidences will occur in other parts of the world. Being aware of another's problems yet remaining unmoved by them is, as the Korean proverb puts it, "watching a fire from the other side of the river." This is simply unthinkable in the field of human rights today because we now live in a world where the force of globalization increased the level of mutual interdependence between nations as well as regions to unprecedented heights.

What should we do to remedy human rights violations caused by both conflicts and counter-terrorism measures? The key principle of the solution is already resolutely

enunciated by international human rights and international humanitarian law, and the statements and activities of international human rights organizations, including the UN Commission on Human Rights. This principle stipulates that the fight against terrorism can and must only be pursued while respecting human rights and fundamental freedoms, and that the essential rights of civilians and those in detention can and must be protected during conflict. More fundamentally, the principle states that conflict and terrorism, which impairs human rights so much today, can only be defeated by ensuring the full enjoyment of human rights. The late High Commissioner for Human Rights Sergio Vieira de Mello, who fell victim to terrorism while defending human rights in Iraq during the course of the war, once formulated this principle in the following way: "best-- the only-- strategy to isolate and defeat terrorism is by respecting human rights, fostering social justice, enhancing democracy and upholding the primacy of the rule of law."

Sharing their commitment to that principle, human rights defenders and organizations worldwide, including the Office of the High Commissioner for Human Rights, are striving to protect human rights from the threat of conflict, terrorism and counter-terrorism. I would like to take this opportunity to express my appreciation for their efforts and sacrifice. Despite their global commitment, however, the encroachment on human rights and fundamental freedoms continues. There is heightened concern that conflict, terrorism and counter-terrorism will further deteriorate the human rights situations through many parts of the world.

Violations of human rights in this context take many forms. Human rights and fundamental freedoms of prisoners of war, refugees and even civilians are often infringed upon during conflicts. They are subject to arbitrary arrest, torture and extrajudicial killings while the economic rights of refugees are ignored. Parties of conflicts often target women for sexual abuse. Human rights violations occur even after the actual fighting ends. We know of many occasions where perpetrators of crimes against humanity are given impunity and retain their freedom. Most of the anti-terrorism legislation, policies and activities by governments around the world following September 11 attacks have placed additional pressure on human rights. Many counter-terrorism measures permit detention without indictment or trial and suppression of the right to access to counsel, and even non-derogable rights such as the right to freedom from torture comes under pressure.

I may have depicted a rather gloomy perspective of the situation, yet we do not need to despair. We are now witnessing an increased global awareness and concern with regard to the state of human rights threatened by conflict, terrorism and counter-terrorism worldwide. As we will address later during this conference, the

commendable work of various national human rights institutions to uphold human rights during conflict and while countering terrorism is just another example of such a positive movement.

We national human rights institutions have been working to ensure the protection of human rights in conflict and counter-terrorism situations. At the national level, national human rights institutions monitor and present recommendations for improvement of government anti-terrorism legislation, policies and activities which have implications for human rights; they also provide victims remedies and recourses; and they conduct human rights education to the public in this issue area. This cannot be done effectively without partnerships with civil society, thus national human rights institutions also seek to establish a close relationship with NGOs.

At the international level, national human rights institutions have endeavored to uphold human rights while countering terrorism through regional networks of national human rights institutions and ICC activities as well as the cooperation with UN human rights organizations and international NGOs. The importance of the perspective of a global network is becoming realized due to the international nature of human rights violations during conflict and while countering terrorism.

Despite its relatively short existence, the National Human Rights Commission of Korea has also strived to do its part. For instance, our Commission presented its opinion to the government that the "Terrorism Prevention Bill" proposed in 2002 and 2003 would encroach on Korean human rights. Over the course of the previous year, we waged a media campaign to enhance the human rights of migrant workers in Korea. At the same time, we have continued to express our concern over the negative impact that conflict and the War on Terror have on human rights.

The situation is far more complex at the moment. A series of recent developments exposed citizens of Korea to the full threat of global terrorism and subsequently, the government of the Republic of Korea is to take more proactive measures. Under these circumstances, our Commission affirms the great need to redouble our efforts to uphold human rights while countering terrorism. I believe this need is shared by all national human rights institutions. After all, we are here precisely to seek ways to meet this challenge.

I hope the 7th International Conference for National Human Rights Institutions will provide a valuable opportunity to explore the possible ways to enhance the role of national human rights institutions in promoting and protecting human rights. Though engaged in this solemn task, I very much hope that we can pause for a moment to

enjoy Korea's beautiful autumn weather as well as traditional Korean culture during your stay in Seoul. I would like to conclude by extending once again my sincere appreciation to the Office of the United Nations High Commissioner for Human Rights, the ICC and the APF for all their invaluable cooperation and assistance.

Thank you very much.

****

Welcome Speech

Mr. Morten Kjaerum
Chairperson of the ICC

Ms. Arbour, High Commissioner for Human Rights,
Dr. Soberanes, Vice-Chairperson of the ICC,
President of National Human Rights Commission of the Republic of Korea,
Esteemed colleagues,
Ladies and gentlemen;

It is a great pleasure and honour to stand before you and to bid you welcome to this our 7th international conference for National Human Rights Institutions (NHRIs). I would like to start out with a warm greeting to our new High Commissioner for Human Rights, Ms Louise Arbour. Knowing the dedication and commitment of the High Commissioner combined with her long standing experience as judge, prosecutor and professor we could have wished for no better person to take the international leadership in the protection and promotion of human rights. I can assure you, High Commissioner, that we look forward to our cooperation and we are very pleased that you would join us here in Seoul.

I would also like to thank our host the Korean National Human Rights Commission of the Republic of Korea. What we see here today is the result of months of extremely hard and focused work by our host. I am deeply impressed with the seriousness and commitment that the Commission has put into the preparations of this conference. All this is framed beautifully here in the lovely city of Seoul.

In these opening remarks we also owe a special thank to the National Institutions Unit in the Office of the High Commissioner for Human Rights, which has contributed to the shaping of this conference both in relation to the practicalities as well as the substance.

Chairperson, that so many people have spent so much time in preparing for our

meeting and that so many institutions have found they way to Seoul are good indicators for the gravity of the issues that we are here to discuss as well as the confidence shown in our joint efforts to address them. As NHRIs our raison d'être is becoming ever more evident. Human Rights are under attack from many angles – not least in the many conflicts that rage in various parts of the world and in the efforts to combat international terrorism; the two main topics of our gathering.

As NHRIs we face new and frightening challenges. The 21st century did not set out on the note of hope, development and a brighter future which we some how came to imagine in the 1990s. On the contrary, we still face new conflicts – "traditional" ones like the tragedy that is taking place in Darfur Province in Sudan as I speak; and we face the much less tangible threat called "international terrorism." Acts of terrorism are devastating – living under threat is a blatant violation of the right for every one to live in a safe and secure environment. The most recent tragic event in Beslan in North Ossetia and the expressions in the faces of the fathers and mothers waiting or already knowing the faith of their children say more than words can possible describe.

Our task in this new world order, – some may say disorder – appears like navigating in unchartered waters. But the actual task is clear. More than ever we must hold on to and promote the values we are set to defend. More than ever we must prove our independence of political authorities, religious or other groups, or economic powers and point out breaches in their actions, whatever their pretext. More than ever we must use our potential in handling conflicts between the powerbrokers and civil society groups. This can be a very lonely – and sometimes frightening – task, but this is where we must prove our will and ability to go against currents setting an agenda threatening the protection of human rights.

We have two very important landmarks: one is rule of law as the solid foundation of just and safe societies; the other is to ensure that what we have already gained in the way of human rights standards is not sacrificed in the name of increasing security and combating international terrorism. Each and every one of us on this earth has the right to feel safe in our own home.

All of us here agree that rule of law is one of our most important safeguards for the respect for human rights. Inherent in most democratic societies based on rule of law is the transparency and accountability of state organs. Rule of law in its purest form safeguards checks and balances on leaders and their decisions, and thereby create the enabling conditions for the protection of human rights for everyone.

When a State can protect its citizens on the basis of rule of law, including checks and

balances on the exercise of power, the ground might well become less fertile for the recruitment of forces, destructive to society and the State – such as the Al–Qaeda network and others like it. Another horrifying example at this time is the situation in Darfur, Sudan, where thousands and thousands of people have died, and much greater numbers are forced to flee their homes, because their State is not able to – or refuses – to protect them.

Thus it is our task to make sure that all the important legal principles are upheld. I can think of no better words to set the scene for these discussions on our strategies for conflict prevention as well as balancing national security concerns and human rights law than those of the late High Commissioner Sergio Vieira de Mello: "the best – the only – strategy to isolate and defeat terrorism is by respecting human rights, fostering social justice, enhancing democracy and upholding the primacy of the rule of law". We are more and more frequently told that the security and protection of human rights do not go hand in hand. I hope this conference will demonstrate how this is wrong: How security and human rights are intimately linked, and the one cannot live without the other.

Chairperson, as NHRIs, we are all in the unique position that we are close to the powerbrokers in our respective countries, founded as we are by law to safeguard human rights. We often have key actors from civil society and minority groups in our governing structures, having a pluralist composition. We can place conflicting and disagreeing parties around the same table and open important discussions identifying problems and drawing sketches for their resolution within the fixed normative framework created by international and national human rights standards. In short National Institutions have a unique position to initiate, insist on and facilitate dialogue between conflicting parties within a common consensual framework. When looking at the conflicts in many parts of the world both past and present what is striking is always the absence of dialogue and the obstruction by some of the channels for dialogue. A dialogue framed by a strong set of values namely human rights standards is a good outset for building bridges between conflicting views and perceptions. The importance of conciliation between conflicting parties, *before* a conflict escalates into an armed conflict can not be overestimated

Our last conference for NHRIs in Copenhagen and Lund in 2002 focused on our responsibility in combating racism and xenophobia. Racism, ethnocentrism and xenophobia are the direct causes of many conflicts. They cause the victims to become marginalised, and we cannot exclude the possibility that in some cases they become marginalised to the extent of turning to brotherhood and salvation – as they perceive it – in international terrorism or civil war. As a result, the Copenhagen Declaration states

that “we must be careful to ensure that we identify and address all new manifestations of racism, racial discrimination, xenophobia and related intolerance.” Furthermore, that “National Institutions have a particular role to play in providing early warning of the dangers in this regard”. Thus we can draw a line from Copenhagen to Seoul.

Chairperson, I look much forward to the discussions on all the dimensions of these problems including the migration and gender dimensions as well as the particular economic, social, cultural, civil and political rights dimensions of the problems. I hope that discussions will focus on which role NHRIs can and should play. We must develop tools to use our platform as NHRIs in handling conflicts. We must develop tools to be able to see the initial warning signs that precede conflict. We must develop to identify and address all new manifestations of measures applied in a discretionary measure. What should we register to defuse the frustrations that precede armed conflict and the acts of international terrorism that may follow in the extreme? What are the gender dimensions of the discussions and how can women get a more prominent role in conflict handling? These and many more questions should be addressed and I look much forward to leaving Seoul on Friday with a lot of ideas and inspiration in my suitcase.

Once again, I want to welcome you all and thank you for your attention.

****

Welcome Speech

Ms. Louis Arbour
High Commissioner for Human Rights

Your Excellency Mr. Roh Moo-hyun, President of the Republic of Korea,

Your Excellency Mr. Kim Chang-kuk, President of the Human Rights Commission of the Republic of Korea,

Distinguished Representatives,

Colleagues, Ladies and Gentlemen,

I would like to extend my best wishes to the President of the Republic of Korea and to express my sincere appreciation for his presence here today.

I warmly thank the President of the Human Rights Commission of the Republic of Korea, our host, for the diligent and efficient work carried out by his staff to ensure such excellent organization for this Conference. I would further like to express my gratitude for the very warm welcome and hospitality extended to me and my colleagues.

Last but not least, I would like to thank the Asia Pacific Forum of National Institutions for its financial contribution to this event.

It is an honour and a pleasure for me to be here today to speak at the opening session of the Seventh International Conference of National Human Rights Institutions.

All of us in this room today share the same values and work towards the same end: the protection of the rights of individuals. However, I sometimes fear that many of us become so embroiled in process – that we run the risk of obscuring the reason behind our actions.

Let me blunt. The promotion of human rights is of value only to the extent to which it

helps bring about the realization of those rights. It is not an end in itself.

The United Nations can do little to ensure respect for human rights without the support of national actors. The United Nations Secretary-General has noted that building strong human rights institutions at the country level will, in the long run, help ensure that human rights are protected and advanced in a sustained manner.

The issues that you will discuss during this Conference provide a perfect illustration of the need for strong mechanisms of national human rights protection based on international human rights norms. Let me turn to a few issues that you will be addressing.

Human rights and conflict

Rights are invariably put at risk in situations of violence. Conflict not only has an immediate devastating impact on the rights of those caught up in its unfolding, but it also has a malevolent, lingering presence, hindering progress in all spheres of life: civil, political, cultural, economic and social. The prevention of, and solution to, conflict depends, in large part, on the implementation of fundamental human right standards. I deeply believe in the role of prevention and protection that strong and independent national human rights institutions can play not only in situations of conflict but also in diffusing situations that may otherwise develop into full-fledged conflict.
Through your presence at the national level, you can keep delicate situations under constant scrutiny and play crucial roles in both early warning and mediation.
And, should conflict break out, you must be alert to the imperative need to continue to monitor respect for human rights, playing a deterrent role in part by seeking to ensure accountability.

Human rights and counter-terrorism

National institutions can - indeed, must - also play an important role in upholding human rights while countering terrorism.

I, my predecessors, and the Secretary-General have stressed that there must be no trade-off between human rights and counter-terrorism. Legitimate and robust responses to terrorism can and must be made to operate within international human rights norms.

National institutions have an important role to play in this regard. You can analyze proposed legislation to ensure that, at all times, it complies with international and

national human rights norms.

When national security is considered to be under actual or imminent threat, counter-terrorism initiatives are rarely submitted to public debate and scrutiny. However, it is precisely in these situations, when liberty is under great threat, that such scrutiny is most critical.

The judiciary in many countries provides examples of how critical it is to ensure a sober analysis of counter/terrorism initiatives. Courts have pronounced on a whole range of fundamental issues such as the right to life, the right not to be subjected to cruel or inhuman treatment, access to courts, the proportionality of the measures adopted, the need for independent review of states of exception and the question of retroactive application of law.

It is vital that National Institutions also play their part to help ensure transparency from the start and that such debate, critical for a free society, does indeed take place.

Excellencies, Ladies and Gentlemen,

The need for strong national human rights institutions as part of an effective national protection system is greater than ever.

OHCHR has a three-track approach to achieve this goal.

First, it works to strengthen the capacities of national human rights institutions. Second, it seeks to enhance international support to them. Third, we seek to work with national institutions as partners.

We are implementing specific projects to improve the investigations, fact-finding and monitoring techniques of national human rights institutions through activities and training at the national, regional and international level. A new project providing distance learning training on conflict prevention for national institutions should be launched this year.

Furthermore, through a separate initiative, OHCHR is encouraging national human rights institutions to participate more actively in the reporting process to human rights treaty bodies. A number of institutions already participate in the preparation of reports or, when that is not possible, prepare parallel reports to bring particular concerns to the attention of competent bodies.

Recent developments, such as the participation of national human rights institutions in the Commission on Human Rights and in the Sub-Commission for the Promotion and

Protection of Human Rights, provide further opportunities to voice specific national concerns on the international scene. We must welcome and encourage these important developments.
I am aware that the work you do is difficult and that at times you perform your tasks in trying and delicate circumstances.

I will support you in your efforts to monitor effectively the situation of human rights in your countries and will be at your side when these efforts are curtailed and your reports or activities become the object of hostile actions threatening your independence.

Excellencies, Ladies and Gentlemen,

While it is true that OHCHR attaches the greatest importance to the work of genuine and independent national institutions and that their crucial role is increasingly recognized by the international community, it remains that you have a great responsibility to preserve your own credibility and legitimacy. Your strength lies in your independence: of mind and of voice, and in your impartiality: real and visible.

In order to assist you, OHCHR intends to develop, in cooperation with the International Council for Human Rights Policy and in consultation with you, measurement indicators of the compliance of national institutions with the Paris Principles.

It is also essential that you seek to enhance partnerships with other actors, such as NGOs. I am very pleased that, for the first time, NGOs have been invited to participate in the International Conference of National Institutions. I am sure they will make a very valuable contribution to your discussions.

As I think about the wealth of expertise present in this room, I look forward with great interest to the outcomes of your discussions. I also see a need to make your work on these specific issues more accessible and more visible, so that other institutions, be they governmental or non-governmental, and other sectors of the societies in which you operate and which have a crucial role to play for the protection of human rights, can benefit from your experience and expertise.

My Office remains committed to supporting all of your efforts. I wish you all the best in your deliberations.

Thank you.

****

First Introductory Speech

Mr. Vojin Dimitrijevic
Director of the Belgrade Center for Human Rights

Observing human rights in conflict situations has always been a difficult task. In this respect different kinds of conflicts can be distinguished.

The traditional attitude towards the rights and interests of the individual was shaped in the context of *international* armed conflicts. The origin of international humanitarian law is related to this problem. In traditional international conflicts the laws and customs of war (the law of war) faced the paradox that, on the one hand, the use of force among states was legitimate and that at the same time the sufferings of the individual human beings should be reduced, on he other hand. The paradox lies in the contradiction between war as the ultimate use of deadly force and the need to uphold the values of life, health and corporal integrity of those participating in the war. This dichotomy has been gradually overcome through the efforts in the 19th century and the beginning of the 20th century to reconcile military necessity and humanitarian concerns.

At that time, the idea of human rights was not present in the deliberations: human rights were guaranteed at the level of constitutions of some states but they did not exist as an internationally protected value. The situation was further complicated by the fact that in international conflict individual participants could become subject to the sovereignty of enemy states and thus not enjoy the effective protection of their own state. The solution in traditional laws of war was found in terms of the rights and obligations of the belligerent states regarding the conduct of hostilities; states were expected to abide by some standards of chivalry and humanity – not to respect individual human rights of the victims of the war.

International humanitarian law was refined after the First and especially after the Second World War but its essential logic has remained the same. Violating the rules of humanitarian law was not understood as a violation of human rights of the protected

persons but as a breach of international obligations of states, defined in international treaties and in international customary law. These obligations were owned to *other states*, not to human beings.

At the emotional and social level, emotions accompanying classical wars in the 19th century and until 1941 were less strong and less radical than the levels of hatred which had been aroused by religious wars in earlier centuries and by the whole complex of the Second World War and the series of subsequent conflicts. With some simplification it could be argued that enemy combatants were a hundred years ago viewed as loyal subjects of their rulers who fulfill their duty to defend their own country. Furthermore, they were distinctly *alien* – direct contact with enemy soldiers was not frequent. If taken prisoner they were interrogated by military officers who spoke their language and who were trained to exercise patience and restraint. Very often there were closer links and better understanding between the members of the same social class across battle lines than between the superiors and subordinates of the same army. This was admirably presented in the famous film by Jean Renoir *La grande illusion.*

The brutality of the conflict has tended to increase with the stronger presence of civil war elements in international conflicts. This has also been due to the introduction of ideology in international conflicts. As a result, members of the adversary forces were not treated any more as mere soldiers doing their duty but as villains participating in an effort to impose a system of values and ideas that would be detrimental to some sacred universal value. In the Second World War, for example, a German soldier became seen as an instrument of the scheme to subjugate the whole world and to eliminate inferior races. A Soviet soldier, in turn, was in the eyes of some enemy soldiers not a Russian or Ukrainian defending his country but an agent of world revolution attempting to impose communism on all nations.

In the shadow of the Second World War many ethnic conflicts took place. In them, the enemy soldier suffered, not because he was a citizen of another state, but because of his being a part of an enemy ethnic nation. He was identified by his origin – his fate depended of the quality of that origin. Under the influence of extreme nationalism the attitude has prevailed that no person belonging to a hostile ethnic group should be spared in the decisive battle for primacy, possession of territory, glory, etc.

As could have been expected, "pure" civil wars could not promise better treatment for persons fighting for the other side. The remark of Sigmund Freud related to the fetishism of small differences has applied especially in conflicts among members of the same ethnic group or among very similar ethnic groups. In such conflicts the political attributes of the enemy become dominant: he is otherwise almost identical, one can

communicate with him using the same language and in personal contact have a strong argument in addition to the exchange of fire. A good illustration was provided in the part of Europe where I come from. The conflicts in the former Yugoslavia were, legally speaking, a mixture of international and civil wars where all embattled sides were of very similar ethnic origin and spoke the same language. The brutality of these conflicts and the difficulties of overcoming their consequences have become notorious. A complicating factor was religious differences. However, if in a religious war of the 17th century one could save one's life by converting to the religion of the victor, in Yugoslavia this was not possible.

The most worrying element of this deteriorating situation is that in the meanwhile the idea of international protection of human rights has established itself very strongly and appeared to have gained universal acceptance. After the Universal Declaration of Human Rights and the ensuing international treaties for the protection of human rights, universal and regional, the protection of human rights was finally removed from the exclusive domain of state sovereignty and has become a legitimate international concern. Thus while there have been made impressive steps in the protection of individual human rights, both in national systems and through international mechanisms, these rights have been blatantly disregarded in most conflicts that in any way resembled ideological, ethnic and religious confrontations. In other words, protection of human rights has proved not to be immune in prevalent friend – foe atmosphere. Human rights have tended to become a commodity which can be offered to members of the same group, ethnic and religious, or to citizens of the same state, but not when others are involved.

Another complication occurred in conflicts related to international terrorism or combined with the latter. Traditional tools against terrorist attacks have been produced and refined within states, where the terrorist was viewed as a typical member of the same community resorting to illegal, immoral and other non-conventional methods of political combat. Most states have conditioned their anti-terrorist laws on this "national" premise. However, when terrorism acquired international dimensions it proved to be very difficult to catch it in the net of national and international criminal law. What was obviously repulsive and inhumane in terms of national societies was not clearly so in the international context. The catchy phrase "your terrorist is my freedom fighter" is the best succinct expression of this failure. Most anti-terrorist international treaties have incriminated, together with acts of terrorism, similar offences that are not of terrorist nature.

When the dimensions of international terrorism became enormous and threatening, as witnessed by the attacks in the United States on September 11, 2001, this feeling of

bewilderment was accompanied by panic. Powerful states, such as the USA, have discovered that their might is immense compared to other states if calculated in terms of traditional military confrontation, but that confronting relatively small but well organised terrorist groups this power was of relatively little practical use. There was therefore strong temptation to identify the terrorist threat with foreign states (Afghanistan, Iraq) and to translate the conflict into familiar terms of international war. This, of course, was not sufficient so that the very dangerous enemy became elusive and difficult to define. This panicky reaction has reduced, under the strong influence of emotional outrage, official thinking to the stage characteristic of diffuse civil wars, where the enemy is predominantly depicted as belonging to an alien, ethnic, religious, cultural and racial group.

Situations that are perceived as remote from traditional international conflict governed by international humanitarian law or violations of human rights defined in national law for peacetime use pose tremendous challenge to institutions that have to uphold the rule of law and support the mechanisms for the protection of human rights. These institutions have to work against the pressure of strong emotions and feelings of outrage and threat to the existence of whole states and societies. They must approach international conflicts, including conflicts permeated and contaminated by terrorism, in the rational manner that was the basis and inspiration of modern approaches to combating criminality and developing criminal law. The most important reminder to institutions, both those belonging to the state and those expressing the concerns of the civil society, is to be constantly aware that criminal behaviour cannot be dealt with only through repression. Prevention of crime is not only technical prevention through police methods but general prophylaxis in the widest social terms. The latter means that the roots of conflict have to be carefully studied, understood and explained to the extent permitted by the state of development of modern social sciences. If this can be accomplished, then some of the causes of conflict, causes as well of criminal behaviour but also of irrational and neurotic reactions to the former, can be partly removed. This could greatly alleviate the task of practically fighting criminality and reducing its level.

In this respect, some comparisons can be made with the evolution of methods to prevent international conflicts. These methods have found an expression in the United Nations Charter and the other international instruments defining and developing agencies and procedures for the peaceful settlement of international disputes. It is accepted that one of the causes of internal conflicts is the inability of political systems to deal with social demands and to remove contradictions before they take a violent form. If it is recognised that some of the causes of terrorism are related to political blockades preventing the open formulation and statement of grievances and the promotion of values held by parts of the population, then it becomes obvious that

before approaching explosive situations through state institutions exercising the monopoly of physical force there is ample room for non-state actors to intervene, both at the international and the national level. Their major concern should be to energetically promote the idea of human rights as individual rights belonging to any human being *qua* human being and to prevent by all means the association of violent and illegitimate behaviour with the members of some defined group of "others".

This is in line with the one of the cornerstones of any system of human rights – that is, non-discrimination. Prohibition of discrimination is based on the idea that human beings cannot be held responsible for those qualities which they have acquired without their volition, such as being born into a racial, ethnic or national group. Therefore, if there is military confrontation it shall never be viewed in Manichean terms of all members of the other group being evil and all members of "our" group being good. The repressive apparatus of the state can handle this if a violator of law is regarded as a *deviant individual* and if any kind of collective incrimination is avoided. If there is hope that there are enough legislators, administrators and judges who can elevate themselves to an enviable level of impartiality, the more difficult task of countering the hysterical waves of public opinion and expressions of primeval fear have to be addressed by educational institutions, churches and national institutions for the protection of human rights. There is also an important role of non-governmental organisations, which can count on the experience such organisations have had in humanising international conflicts, opposing the use of force and promoting understanding and reconciliation within societies torn by internal wars.

****

Second Introductory Speech

Ms. Hina Jilani
Special Representative of the UN Secretary General on Human Rights Defenders

"Terrorism" and "counter terrorism" are today at the center of the debate both on security and on human rights. The security dominated approach proceeds on the premise that global terrorism has created a state of exception in which counter terrorism measures are not subject to the rule of law and human rights norms. This approach poses a serious challenge to the protection of rights and is beginning to undermine the framework of international human rights norms. The human rights community the world over is raising serious concerns regarding the erosion of the rule of law as well as the political implications of this approach.

These concerns persist, notwithstanding the obligation of States to guarantee the security of their citizens and the commitment of the international community under the Charter of the United Nations to take collective measures for prevention and removal of threats to peace and security. Laws, policies and practices that disregard or undermine human rights norms are proving counter productive to the objective of assuring security at the national or global level. Such measures in themselves contribute to an unstable political climate in which human rights violations are occurring with alarming frequency and being unduly accepted and condoned. In this environment human rights activity can not be expected to have the desired impact on political, social and economic conditions, and human rights defenders are finding it increasingly difficult to gather the support they need to strengthen respect for human rights. The determination in pursuing a course that by passes the rule of law and sees it as an unnecessary restraint on State powers is taking its toll on democracy and on institutions necessary for its preservation and development. Terrorism must be combated in a manner that promotes justice and stands on higher moral ground than those who are committing atrocious acts of violence. The international community must not allow any measures that are seen to perpetuate injustice, are not transparent, violate rights, and alienate world public opinion.

Laws and state actions that purport to protect public or State security or to protect against acts such as terrorism have existed in many countries much before the adoption of current security driven measures at the global level. In the wake of the terrorist attacks of 11 September 2001, however, 'security' has become a declared priority on many international and national agendas, to the extent that security legislation is called upon for application in a widening number and range of situations. In an increasing number of countries national security laws have been activated with greater vigor. Regulations have been enforced, reinforced and re-interpreted or suspended in a manner, and with the intention of, giving legitimacy to on going human rights violations. Even countries with no significant threat of terrorism are using this as a pretext to restrict the freedom of expression, assembly and association.

Long-standing internal conflicts and political tensions have been recast and brought within the scope of anti-terrorism measures. With governments now exercising extraordinary powers with fewer constraints, there is little scope for accountability domestically. International pressure to observe and respect human rights has waned with the new emphasis on countering terrorism. Movements for democracy, self-determination and independence have been placed at greater risk in the context of the fights against terrorism. Military action has become the first option rather than the last resort in resolving political conflicts, resulting in wide scale militarization globally.

The changed global environment has allowed the emergence of legal regimes that permit state action in contravention of recognized constitutional principles and international norms and standards of human rights. These norms were adopted and developed after immense international effort over many decades. A large body of states accepted the obligations created by these instruments and most constitutions recognize these as principles and guarantees to which domestic legislation must adhere. Even though the benefit of such enunciation may not be universal and violations of rights occur to a disturbing degree, these principles have given legitimacy to demands for the protection of life and liberty or the quest for social justice, equality, and non-discrimination. Trends that diminish these guarantees must be isolated to save this advancement from reversal.

Defining counter terrorism as a "war" has become a convenient means for eliminating all of the protections of human rights law. At the same time provisions of international humanitarian law are being misapplied or wrongly invoked as a bar to the application of human rights standards. Humanitarian law and human rights are inseparable regimes and are mutually reinforcing. Security imperatives are not exempt from compliance with human rights norms, and cannot be served outside the rule of law.

Even where states of emergency exist they are declared within the rule of law and are bound by the limitations that it imposes. It is questionable whether the "war" paradigm within which anti-ten-terrorism measures are being taken conforms to any definition provided by international law or by the detailed jurisprudence that already exists on the subject. Governments have created lega1 "b1ack holes" to deprive detainees of all safeguards and to bar international scrutiny of the methods that they are employh1g in the fight against terrorism.

Vague and imprecise texts of anti-terrorism laws allow application to a range of activities much broader than can be justified. There are interpretations based far more on government policy than on objective legal correctness. Many of these laws have lowered the threshold of the type of criminal activity that may be defined as an "act often-terrorism". Others have paved the way for criminalization of certain types of human rights activity. More recently, some states have used anti-terrorism laws to repress the right to protest. Farmers have been prosecuted in anti-terrorist courts for protesting attempts by state security forces to evict them from land. Journalists have been arraigned before these courts for exposing corruption and wrong doing by government officials. Villagers resisting mega-projects that threaten their environment and livelihood have been charged with conducting anti-state activities and tried under these laws.

The scope of anti-terrorism legislation in many countries exceeds the legitimate objective of strengthening security. Often the breadth of terrorism related legislation is such that, when abused, these instruments can themselves be used as tools of State terror. The worst affected are pro-democracy activists and those organizing or taking part in peaceful public action asserting their right to independence or self-determination. They have become most susceptible to the use of security laws and anti-terrorism measures by States. These trends are now more noticeable in countries where the political or institutional arrangements are not implicitly or explicitly undemocratic.

Denial of due process, lack of safeguards for fair trial and arbitrary detention of people on the basis of suspicion and without warrant or trial is a common feature underlying most of these laws. Under certain circumstances legislation does not impose any obligation upon the State to publicly specify the charges under which a person is being held. Preventive detention measures allow authorities to detain individuals suspected of terrorism for long periods without intent to prosecute them. Evidence justifying the arrest of an individual can be kept wholly or partly secret, severely limiting the opportunities for defense against such arrest and detention. In several jurisdictions the right to habeas corpus has been restricted, and judicial review of the legality of

detention by an independent court is denied[1].

The executive, in many countries, has adopted a higher level of secrecy, sometimes even in cases other than terrorism. There are examples where the executive, after designating detainees as terrorists, has refused to share information or to provide evidence to support the designation even to the legislature and courts. At the same time where laws on freedom of information were adopted to ensure government accountability, these are now being more restrictively interpreted.

Incommunicado and secret detentions, refusal to allow access to lawyer and restrictions on monitoring of conditions of detention has resulted in detainees being subjected to gross forms of torture. Evidence is now available of systematic torture of suspects; of extradition carried out without adopting the legal process or observing the principle of *non refoulement*; and of transfer of suspects to third countries expressly for the purpose of extracting information under torture.

More recent anti-terrorism laws in some countries have given law enforcement and intelligence agencies exceptional powers of surveillance, collection and processing of personal data and of search and seizure. In some instances these laws allow surveillance of organization, regardless of the nature of their activity and without any suspicion of wrongdoing. Almost all actions related to counter terrorism have the element of secrecy, which is being exercised far beyond what the exigencies of a situation could justify. This has allowed intelligence agencies to commit violations of human right with impunity. In many jurisdictions there are insufficient safeguards against abuse of power by these agencies or no specific rules that apply to their activities, and no mechanisms for transparent oversight and accountability. Responsibility of these agencies for a large number of cases of disappearances is reported from several countries and has become a matter of grave concern for human rights monitors. The outsourcing of security functions to private actors has complicated issue of state responsibility and accountability for human rights violation.

Extra-judicial killing and targeted assassinations have become a legitimate policy of this "war on terrorisms". The most blatant violations of the right to life continue unchecked and receive little condemnation. Use of force employed in counter terrorism measures by state security apparatus is seldom subjected to scrutiny in order to determine necessity or proportionality, or even whether a genuine threat of terrorism existed. In some countries military operations have been mounted, ostensibly to combat terrorism, without any clarity as to their legality or any rules regulating and limiting the use of force. Gross violations of human rights were committed during the course of military operations, whether legally sanctioned or not. Killing of civilians,

including women and children, collective punishments, demolition of homes, destruction of sources of livelihood, restrictions on the freedom of movement of the local population, arbitrary detentions, disappearances, and trial and sentencing by ad hoc military tribunals were observed as a pattern in much such operation. In most case access of journalists and human rights defenders is barred to these areas, preventing any independent monitoring of the situations.

Judiciaries, in general, are exercising far less vigilance on counter terrorism measures adopted by states. An unacceptable level of tolerance by the judiciary of illegal procedures adopted by state authorities, intelligence agencies and security forces has allowed impunity for human rights violation. On the one hand the rhetoric of "war against terror" is being used to constrain judicial response to the erosion of human rights and the rule of law. On the other special courts established under many anti-terrorism laws are undermining the judicial process by creating parallel judicial system to deal with cases of terrorism. A common hallmark of such courts is that of secrecy, combined with a truncation of the normal guarantees assured to a defendant in criminal proceedings.

In particular, requirements as to maximum periods of preventive detention, conditions of detention, access to legal counsel, and admissibility of evidence are less stringent. Many anti-terrorist laws allow special courts to conduct trials inside prisons for security reasons, denying the right to public trial. In some instants, military courts, tribunals or commissions are established, staffed entirely by military personnel and with prosecution and defense lawyers as well as judges all drawn from the military[2]. These tribunals lack sufficient safeguards for fair trial and due process and offer no guarantees of judicial independence.

In an environment in which formal guarantees of rights protection have decreased, human rights defenders play an important role in monitoring and exposing deviations from human rights norms. They find themselves addressing a range of violations by state and non-state actors in a political context that is generally less sympathetic to their concerns.

The menace of terrorism poses a serious threat to peace and security and acts of terrorism have frequently targeted human rights defenders advocating the promotion and protection of human rights. Those striving for the rights of minorities or women, those advancing the cause of religious tolerance and accommodation of ethnic or racial diversity, or resisting trends of ultra-nationalism have been some of the first victims of forms of extremism that have become the major cause of terrorism. They have also been in the frontline to combat these trends in order to preserve the norms

of peace and democracy, as conditions that are fundamental for the promotion, protection and enjoyment of human rights. In this context, the struggle of human rights defenders against terrorism precedes the events of 11 September and has been a visible human rights activity in parts of the world where the roots of terrorism are strongest. However, they firmly believe that measures to assure security and counter terrorism must conform to the internationally accepted norms on which notions of rule of law are based.

Human rights defenders are the first to report and question practices that violate human rights. Governments frequently react to this by undermining the credibility of these defenders by branding them as subversives, anti-national and enemies of the state. Intelligence structures of the state are used to harass defenders, interfere with their efforts to seek and disseminate information on violations, and to prevent any action to draw public attention to these violations. Communicating human rights abuse to concerned international agencies has in particular become the reason for surveillance and crack-downs against human rights groups and individuals. Many human rights defenders have been subjected to interrogations, investigations and placed on intelligence files for defending the right to due process and fair trial, offering legal defense or demanding conditions of detention compatible with human rights standards for those under suspicion of terrorism or other security related offences. Lawyers defending person on terrorism related charges have been subjected to arrest detention themselves, as retaliation for exposing torture and other human rights violations against their clients and attempting to take legal recourse against the authorities responsible.

The use of security legislation to impose restrictions on judicial review and to maximise executive power and control over access to information has diminished the scope for transparency and accountability. This has impeded the activity of human rights defenders and they are finding it increasingly difficult to carry out their monitoring and advocacy functions with facility or safety. Arrest, preventive detention and prosecution under anti-terrorism laws are often conducted in a manner that limits defenders' access to detainees and to the information relevant to their arrest and prosecution. These conditions make it difficult for defenders to verify the legality of the arrest, the respect of relevant human rights related to conditions of detention, or to assure an adequate legal defense[3].

Access to information is indispensable for the work of human rights defenders. The UN Declaration on Human Rights Defenders seeks to protect the monitoring and advocacy functions of defenders by recognizing their right to obtain and disseminate information relevant to the enjoyment of human rights[4]. In many States provisions of

laws on counter terrorism, internal security, official secrets and sedition, amongst others, have been used to deny the freedom of information to defenders and to prosecute their efforts to seek and disseminate information on the observance of human rights standards. Defenders' access to detainees held on terrorism charges has been limited; their attempts to monitor human rights in terrorism trials refused; and efforts to monitor and investigate alleged human rights violations in areas of conflict obstructed. With insufficient information, defenders' capacity to analyze and draw conclusions on particular human rights situations is severely limited. By preventing defenders from obtaining information on respect for human rights, States are effectively limiting their accountability for abuses.

An environment that increases the powers of security forces while simultaneously limiting oversight and monitoring measures has raised the level of concern regarding the safety of human rights defenders. These apprehensions are founded in the awareness of the expanding role of the military and other security forces in counter terrorism measures, which brings them in direct contact with defenders monitoring state practices and campaigning for respect for human rights and accountability for violations.

National human rights institutions have a major role in the human rights protection system. As national legislative watchdog it is their function to ensure not only that human rights norms are preserved in the laws, but also to raise the alarm when these are threatened by any legislative action. In this context public debate on proposed legislation must be emphasized as an essential requirement of democracy. These institutions must engage more actively in the process of law-making by building stronger links with parliaments and advising them on legislative measures to strengthen the protection of human rights in the domestic juridical framework. It is well within the competence of national human rights institutions to submit reference to courts on existing legislation that does not comply with constitutional guarantees or international standards of human rights.

Protection of human rights defenders is inherent in the mandate of national human rights institutions. Preservation of the freedom of expression, assembly and association and the rights to information is a means for supporting the activity of human rights defenders. A consistent engagement with the civil society is critical for such institutions so that they remain well informed of issues related to human rights and can share the broader responsibility of their protection and promotion. National institutions must make a greater effort to address the current concerns regarding counter terrorism measures. Cooperation of these institutions with human rights defenders in creating a better awareness of the human rights framework can help to dispel any

misconceptions that human rights as individuals or state institutions, must consolidate their efforts to expose the fallacy of any arguments regarding reflects tensions or conflicts between preservation of human rights and maintenance of security. Imperatives of security can best be served within the human rights and rule of framework and not outside of it.

[0] General comment No.9 of the Human Rights Committee, which reads "*In order to protect non- derogable rights, the rights to take proceedings before a court to enable the court to decide without any delay on the lawfulness of the detention, must not be diminished by a state part's decision to derogate from the Covenant*", In addition, the Commission on Human Rights in its Resolution 1922/35 "Habeas Corpus" called upon states to maintain the rights to habeas corpus even under circumstances of a state of exception.

[2] The so-called "faceless courts" have been denounced by the Human Rights Committee as non conform to article 14 of the ICCPR in several of its decisions (CCPR/C/61/D/577/1994 and CCPR/C/79/Add.93), in particular with regards to the requirement for independence and impartiality of the courts.

[3] Reference is made to Article 9 of the UN Declaration on the Rights and responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

[4] Articles 6 and 14 of the Declaration the Rights and responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

****

Wednesday, September 15th

Working Groups

Working Group 1- paper 1

Mr. Volmar Pérez Ortiz
The Office of the Ombudsman, the Republic of Colombia

Armed Conflict, Anti-terrorist Measures and the Compliance with Social, Economic and Cultural Rights

Introduction

Colombia has had to deal with an undeclared war for over forty years, a war that with time, rather than wear out has picked up to reach excruciating levels of atrocities and degradation, a war of which most dire consequences now affect all segments of society, including an ever growing proportion of the non-combatant civilian population.

Three issues affect the Colombian armed conflict and their interaction has a bearing on Human Rights and, more specifically, on social, economic and cultural rights. First, there is the direct impact of the conflict, including military actions by legal and illegal groups whose activities cause the displacement and exile of the population, attacks on infrastructure, and an economic blockade in some regions. Second, legislative and administrative measures must be adopted by the State in the face of the conflict, and that demands the appropriation of considerable resources in response to wartime needs. Last, these measures, implemented to prevent and fight subversive, paramilitary or conventional criminal actions, have direct and indirect consequences on the population and against their social, economic and cultural rights.

Given the suggested brevity for the presentations, this account shall be somewhat schematic. It will provide a general impression of the conflict, the measures taken to confront it, and the fiscal consequences of war and the situation of affected areas.

In closing, this exposé will offer some conclusions, and present recommendations made by the Office of the Ombudsman, indeed, that have already been presented at

various fora and to other institutional entities.

1. Overview of the Internal Conflict: Understanding the Context

The conflict is complex and fluid, and because of this, impervious to simple solutions, be they direct ones or situational ones. Its fluidity is linked to the diversity of actors, each with its own concepts, interests, momentum, and purpose. The Revolutionary Armed Forces of Colombia, (Fuerzas Armadas Revolucionarias de Colombia, "FARC"), the National Liberation Army (Ejército de Liberación Nacional, "E.L.N."), and the paramilitary groups formed under the umbrella group, the United Colombian Self-defenses of Colombia (Autodefensas Unidas de Colombia), a subversive rightist movement, are some of these actors, among others. Criminal groups tied to drug trafficking have elongated the conflict do to their astounding economic power and their strategic alliances with illegitimate armed groups to protect and sustain illicit drug trafficking activities.

As it lasts a prolonged period of time, the war has acquired its own dynamism and feeds itself on its own resources in such a way, that aside from the original causes from which it sprang. The subversion expands or, at least, maintains territorial control and power over the communities who have traditionally been there. Year after year, and for decades, these outlawed groups have been the only "authority" present over wide and varied areas. This has bestowed a semblance of legitimacy to their cause. Consequently, the removal of that presence is required, not only in the material sense of the term, but also in a non-physical sense-- in the imaginary realm. The removal of their networks, and the social processes that underpin the insurgent strategy, will require much more than a simple military defeat and the establishment of regular armed forces. The State must legitimate its presence by creating a network of services, authorities, recourses and investments. Military repression might be a beginning to solve the insurgency problem, but it is neither the whole nor the only solution, given the need for the State to address what has been described among academic circles as the "structural causes of violence": poverty, exclusion, marginalization, repression.

The armed conflict has had dire consequences in every way. Most importantly, it has severely impacted the enjoyment of human rights, because illegal, and sometimes legal, elements have implemented warfare strategies with little concern for even the most basic humanitarian considerations that should alleviate abuses all too often endured by defenseless civilians.

In economic terms, the cost of violence in Colombia is already beyond measure. Since 1980, more than 100,000 people have lost their lives as a direct consequence of the

war; this is not including victims of common or of drug trafficking–related violence. Some estimates approximate two million displaced people and one million expatriates, who left the country fleeing political violence and the lack of economic opportunities. The more forbidding aspect is the necessity of the authorities to reallocate national budget resources and seek loans and international cooperation to meet the demands of prosecuting a war. Thus, unavoidably, this translates into fewer resources for social investment and other worthy programs.

Any armed conflict will destroy wealth and drain resources that would have been used for human development. From a doctrinal standpoint, up to seven types of "conflict costs" have been identified.

1. Direct military spending
2. Destruction of tangible assets and infrastructure
3. Economic value of destroyed lives
4. Cost of social damages
5. Illicit transfers
6. Waste due to fear and uncertainty
7. Destruction of intangible assets, such as trust[1]

Security and defense spending has drastically increased, especially since 1991/92, so much so, that its share of GDP has doubled in 10 years-- from 1.6 % in 1991 to 3.6 % in 2001.[4]

Estimate of net cost expenditures for the armed conflict in billions of pesos[2]

	2002	2003	2004	2005	2006	2007	2008	2009	2010
Excess military spending	934,9	953,6	972,7	992,1	1.011,9	1.032,2	1.052,8	1.073,9	1.095,4
Health	6,7	7,3	8,0	8,8	9,6	10,5	11,4	12,5	13,7
Lives conflict	72,2	75,8	79,6	83,6	87,8	92,1	96,8	101,6	106,7
Assaults on infrastructure	538,0	564,9	593,1	622,8	653,9	686,6	720,9	757,0	794,8
Displaced	1.236,4	1.273,5	1.311,7	1.351,1	1.391,6	1.433,4	1.476,4	1.520,7	1.566,3
Kidnapping theft and extortion	987,2	1.016,9	1.047,4	1.078,8	1.111,1	1.144,5	1.178,8	1.214,2	1.250,6
Total	3.775,4	3.892,0	4.012,5	4.137,1	4.265,9	4.399,2	4.537,1	4.679,8	4.827,4
% GDP	1,92	1,94	1,95	1,97	1,98	2,00	2,02	2,03	2,05

Social spending and its components in terms of GDP[3]

Concept	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Education	3,13	3,99	3,77	3,09	3,57	5,03	4,49	4,82	4,64	4,21	4,25
Health	1,07	1,09	1, 75	2,14	3,68	3,08	3,40	4,03	4,08	3,70	3,74
Social Security	2,44	2,76	3,00	3,58	4,23	6,29	4,47	3,76	5,14	4,66	4,71
Social Aid	0,51	0,55	0,54	0,49	0,68	0,70	0,73	0,75	0,73	0,66	0,67
Other social services (recreational & cultural)	0,26	0,26	0,32	0,36	0,35	0,56	0,47	0,39	0,40	0,36	0,37
Housing	0,35	0,38,	0,36	0,37	0,41	0,61	0,61	0,71	0,54	0, 49	0,49
Potable water and sanitation	0,32	0,25	0,21	0,20	0,22	0,41	0,35	0,21	0,33	0,30	0,30
TOTAL SOCIAL SPENDING	8,08	9,28	9,96	10,22	13,14	16,70	14,53	14,68	15,85	14,38	14,53

The direct costs of the conflict affect the future economic growth as they destroy the infrastructure, sacrifice human capital, and alienate national and foreign investments, and furthermore, sap the country's growth potential. The war reduces the availability and the productivity of factors, themselves variables on which the GDP growth depends.[5]

2. Account of Adopted Measures

Considering that the main illegal armed actors (FARC, ELN, Autodefensas), have been categorized as "terrorists" by the United States and the European Union, it is in principle possible to adopt measures that fall under the criteria of "antiterrorist," and which, seek to prevent, confront, intervene in the activities of these groups in the Colombian socio-political context.

Consequently, drug trafficking should also be included as an occurrence that has modified the logic and framework of the conflict: it imposed its own more aggressive and violent force, and dismissed the distinction between the various types of violence which plague Colombia, as terrorist tactics to carry out criminal actions targeted by antiterrorist public policies.

Most of the decisions pertaining to the fight against terrorism have been expedited by the national Government under cover of the declaration of a "State of Internal Commotion," equivalent to a State of Emergency, as established in Article 213 of the

Constitution for circumstances of "severe commotion of the public order."

2.1. Legislative Act No. 2 of 2003

The National Congress introduced constitutional reforms aimed at adopting antiterrorism measures. According to amended articles, the authorities specified in the text of the law may intercept and trace correspondence and other means of private communication, or carry out raids, searches, arrests, and wiretaps without prior judicial order. This was not previously permissible. On the other hand, this constitutional reform made it permissible to mandate the use of "residential reports," or local censuses performed in a specific township or territory to register the population of a given municipality or territory and authorized the creation of special judicial police units to include members of the armed forces, under the direction and coordination of the Attorney General.

At present, the draft statutory law governing antiterrorism measures has received the approval of Congress during the first round of debates, and which should ease the second round, once the legislative bodies are back in session, next July 20th.

The following are special decrees prescribed by the President of Colombia, in accordance with the special powers granted to him by the Constitution under a declaration of a State of Internal Commotion or State of Emergency.

2.2. Decree No. 1838 (11 of August)[6]

Given the terrorist threats and assaults perpetrated by outlawed groups against various authorities and institutions, including the President himself, Decree Nº 1837 was expedited on August 11 of 2002, by virtue of which the "State of Internal Commotion" was declared. Pursuant to said state of exception, the President expedited several legislative decrees, the first of these being Decree Nº 1838 on the basis of which he created a "… special tax to meet General Budget expenditures needed to preserve the democratic security". This was a one time only tax, charged to persons who must file an Unearned Private Income Tax Statement which, in Colombia, only applies to persons with a hefty estate.

2.3. Decree No. 1959 (30 August 2002)

By virtue of this decree, the National General Budget was established for FY 2002. The newly generated resources, from the tax established by Decree No. 1838, were earmarked for allocating a greater share to the National Defense Ministry and the National Police, putting both entities in charge of instituting an "Impact Plan" to tackle, as most appropriate, the illegitimate groups marked escalation of activity.

2.4. Decree No. 2002 (9 September 2002)

The creation of specific "Rehabilitation and Consolidation Zones" in areas where, as a consequence of illegal armed groups activity, it became necessary to apply exceptional measures restricting certain rights to be enforced by the Public Order Forces whose members are granted exceptional powers to this effect. The Constitutional Court, in examining this decree, posed as condition of viability that it be understood that the members of the various law enforcement forces and security agencies did not have Judicial Police powers or authority and could not make arrests without prior judicial authority.[7]

2.5. Decree No. 2555 (8 November 2002)

The National Government decided to extend the effective State of Internal Commotion deeming that the reasons behind the Declaration had not been precluded.

2.6. Decree No. 2929 (3 December 2002)

Some zones were delimited as rehabilitation and consolidation zones in which exceptional measures would be enforced, as set in Decree 2002. These zones included communes of the Bolivar and Sucre Departments.

2.7. Decree No. 2749 (25 November 2002)

A budget item was added, earmarked for the Ministry of Defense and the National Police for 250 million US dollars.

3. Consequences of the Conflict on Economic Social and Cultural Rights (ESCRs)

A brief comment is included hereafter as to how the conflict itself, as well as the measures implemented to overcome the conflict, has weighed on the effective exercise of the ESCRs among particularly vulnerable segments of the population.

3.1. Ethnic Minorities[8]

As already revealed by the OFFICE OF THE PUBLIC PROSECUTOR, since 1980s to the present, the indigenous populations have been the victims of the expansion of illicit crop cultivation and the drug trafficking promoted by outlawed groups who robbed and ransacked the life and abrogated the ancestral and collective rights to land. The life, the autonomy, the exercise of authority and internal control, the habits and customs, and impacted the younger population, together compelled them– in most cases– to join the ranks of armed groups by becoming informants or fighters, or, in other cases, by joining the illicit drug cultivation and traffic as coca scrapers. [9]

On the other hand, the absence of a State presence mandated consistent and

coherent public policies enforced by competent authorities, hinders any neutralizing or corrective action needed to redress the critical Human Rights' situation which afflicts this segment of the population. Rather, it contributes to the dismissal of fundamental rights, and of collective and integral rights of these people while placing their survival and physical and cultural integrity at imminent risk.

The armed conflict is not the only damaging factor to the indigenous people. State abandonment and extreme poverty also play a crucial role. They do not have access to adequate health care and the school system does not meet their cultural needs. Furthermore, few have access to middle and higher education. As a result, the community members consider the school system to be inadequate. This has led to a deterioration of their own identity and integrity. The quasi-extinction of the Paez language, in the Nassa Kiwe reservation in the community of Puerto Rico is a pertinent illustration of this.

In addition, the Witoto communities of the Puerto Sábalo los Monos Reservation are facing a grave problem, i.e., the exploitation of mining resources on their territory: mining of gold ore has been scheduled without the prior consultation and coordination mandated by the law. This omission is detrimental to their territorial and environmental rights, and to the exercise of their collective fundamental freedoms.

With respect to economic, social and cultural rights (ESCR), the communities needs have not been heeded, aside from the armed conflict this is also due to the lack of public policies that would take into full account the diversity and the multicultural requirements. In this respect, the most intense problems are the absence of integral programs in matters of health care, basic sanitation, potable water from non-contaminated sources, food security, and the guarantee that their territories shall not be invaded, and the reclamation of those affected. With regard to education, programs and curricula need to be adapted to their cultural and ethno-educational requirements.[10]

One of the greatest predicaments burdening the ethnic minorities and the farming communities is linked to the implementation of the Aerial Eradication Program using Glyphosate - "PECIG." Indeed, the program's implementation favored criminal law policies flouting constitutionally protected rights, among these: a) the principle of "positive differentiation" by virtue of which the State must provide special protection to the more vulnerable segments of the population, i.e., minors, displaced persons, ethnic groups and rural communities; b) the right to health care, food and food security, and public health, and, consequently, wellbeing; c) the right to not be displaced and, d) the protection and conservation of the environment, natural

resources and areas protected for ethnic, ecological and cultural reasons[11].

In addressing the National Narcotics Board (Consejo Nacional de Estupefacientes), the Ombudsman recommended "the immediate suspension of the fumigation on illicit crops in the Department of Putumayo and anywhere else in the country until the DNE and the Anti-narcotics Police avail themselves of geo-referenced data on all Projects funded by the Plante or by any other national or international body...". [12]

Similarly, the Office of the Ombudsman insisted that the National Police Narcotics Commission "...comply with the obligations and requirements set by the Ministry of the Environment in the Environmental Management Plan, notably as pertains the interdiction to fumigate indigenous territories and water reserves..." In the same Resolution, the Ombudsman urged the National Narcotics Commission to "... facilitate pertinent procedures aimed at verifying complaints and at indemnify, expeditiously, the communities affected by the fumigations in the area of Putumayo." The Office of the Ombudsman also requested from the Ministry of Health that it adopt an "Epidemiologic Monitoring Plan of the Program for the eradication of illicit crops with the use of Glyphosate - PECIG".[13]

3.2. Persons Deprived of Freedom

The measures adopted to confront the violent actions from outlawed armed groups are of a repressive and punitive nature, thus, the prison population has drastically increased. BY the end of 1999, the country's penitentiary system was overcrowded approximately 40%. This figure was lowered thanks to the 2002 prison reconstruction and repair plan, thanks to which the overcrowding was reduced to 16%, a figure deemed reasonable by international standards.

Nevertheless, due to the implementation of new penal legislation and antiterrorist measures put into practice to face the steady intensification of the armed conflict, the prison population increased reaching a 27% overcrowding.

Overcrowding brings about serious consequences. Among others things, health problems, increases in violent crimes, as well as a decrease in services, such as employment, education, and social aid and sports. Thus, this amounts to a serious deterioration of the detainees' quality of life.[14]

One of the consequences of the deficiencies in the penitentiary system is the inactivity of the Evaluation and Treatment Board (Consejo de Evaluación y Tratamiento) and the Work, Study and Teaching Board (Junta de Trabajo, Estudio y Enseñanza), entities whose task is to ensure the proper implementation of the projects and programs in the

penitentiaries guaranteeing the exercise of prisoners' human rights. The performance of these programs is at best deficient and, in the end, is limited to that of a means to reduce prison terms. Thus, its purpose is little known, the social rehabilitation of the prisoner. As a result, the conditions needed to facilitate the social rehabilitation process, i.e., training and developing working habits assisting the detainees find employment or a source of income upon their release, are not guaranteed. This assertion is confirmed by the fact that the percentage of recidivism is generally high.

The Ombudsman has reiterated in numerous opportunities and in various fora the solution to prison overcrowding cannot be limited to increasing space and building new detention centers; it requires due consideration of all factors at the root of the problem: the criminalization or formation of new un-penalized behaviors, the abuse of detention as a security measure, and the inadequate enforcement of norms geared at ensuring the social rehabilitation of the prisoner, among others.

In synthesis, the State policy to tackle violence has been focused on repression rather than prevention and, as a result the number of detainees has increased although the detention centers have not been equipped with adequate facilities, means and resources to ensure the prisoners' full exercise of their fundamental rights and of rights such as the right to work, to education and to health care.

3.3. Displaced Population

One of the greatest humanitarian tragedies in Colombia is that of forced displacement as a direct consequence of the armed conflict. It has been estimated that the number of displaced persons in Colombia has reached the two million mark.

Drug trafficking is a pivotal element in the evolution of the armed conflict and in the colonization process of territories. It was calculated that in 1997, four million hectares were held by drug traffickers, who in one way or another, working in alliance with illegal armed groups or because of their own deterrent power, had managed to obtain property titles in strategic rural zones to facilitate arms trafficking and the transfer of food and supplies while providing economically sound resources, among others.[15]

Another driving force behind these displacements is the dispute for land power between the guerrilla and the paramilitaries, a threatening dispute for the local population, often leading to disappearances and massacres. In addition, the local population is accused, alternately, of being collaborators, informers or activists of the opposite faction.

The displacement has an obvious impact on the economic, social and cultural rights of

those being displaced: as they lose contact with their homes and their homeland, the displaced persons are inevitably dispossessed of their work, of their children's access to education and of their social environment; they drift between various entities and authorities as they exhaust all available procedures to obtain urgent humanitarian aid. This situation has a profound social impact, not only in the rural areas which are left untilled, impoverished and non-productive, but also on the urban areas where the displaced population takes refuge. Massive displacements and scarce resources from the State to cope with the problem translates into the violation of their basic rights, starting with the dispersal of the family members, a high school drop-out rate, lack of work to provide for the family, or the lack of housing and the lack of health care and nutrition services.

3.4. Children and Young Persons

It is estimated that 6,000 minors have joined the illicit armed groups. Whether these children are victims of an offense or of illicit recruiting, their rights have been repeatedly violated due to the fact that the situation in which they find themselves is contrary to what would correspond for their age group.

A research done by the Office of the Ombudsman[16], based on sample interviews, determined that 83% of the children said that they had willingly joined the armed group. However, the study also establishes that their willingness is relative: In some cases the children went along because members of their family were already members of these groups, in other cases because of a fascination for weapons, as 52% of the interviewed children so admitted. Only 4% mentioned a political ideology as the reason for their joining the group. Some testimonies gave accounts of mothers having to turn their children over to armed groups as quota.

The conflict has had a particular impact on specific rights such as schooling. Many children and adolescents can no longer go to school because it was destroyed, or because the teachers were either murdered or had to flee the region under threat, or because they have been displaced, along with their families, or, finally, because they were recruited by an illegal armed group.

On the other hand, it is notable that the drop-out rate among the 12 to 17 age group is lower in the 438 townships where armed actors are not present than in the 626 townships where they are present. This tendency is stronger in the "hot" zones, that is, in the 211 townships where both the guerrilla and the paramilitaries are present. More precisely, the Colombian education, particularly in rural areas, shows the following shortcomings:

1. Coverage and permanency: In 2002, 1.8 million (26%) children between the ages of 5 and 17 were outside of the school system. Of these, 970,000 (12%) were in urban areas and 889.000 (25%) in rural areas. The drop-out rate is three times higher in the rural areas than in the cities. According to the Encuesta Nacional de Hogares, 57% of the 16 to 17 age group were drop-outs, making them easy prey for recruitment by outlawed armed groups. The fact that secondary school lags behind in the rural areas is the result of the scarcity of classrooms and of various reasons such as isolation, absence of roads and means of transportation, poverty and the need to have the children work at a young age to help provide for the family, and, the momentum of the conflict.

2. Quality and pertinence: in 1998, 56% of the public schools were rated by the ICFES[17] as low yielding, 36% of rural students who drop out of school do so because of their lack of desire to study or because of the need to be gainfully employed.

The divergence between the school system and the rural setting is due to the fact that the curriculum is not adapted to the needs of the rural reality. The distance between the home and the school, the schedule and the teaching methodology, as well as the values taught in the schools do not correspond to the farming environment.

3. The school as violence breeding grounds: In a rural setting, the school may create or recreate the conflict, internalizing the very models of the war such as taking justice into one's own hands.

4. The school as war stage: in many rural areas and in some urban communities and neighborhoods, the school may be permeated by the illicit armed groups. The classrooms act as the rear guard and R&R sites, or become munitions warehouses, thus turning the school into a fighters' training camp.

5. The situation of the rural school teacher: in some cases, teachers participate in the conflict thus mentoring violent behavior models or recruiting pupils for the armed organizations. When they are not in favor of the conflict, refuse to endorse it, or attempt to oppose the irruption of armed actors in the classroom, they become the object of threats that result in relocation or, in case of resisting, even death. The educational system is forsaking its own teachers and does not grant them the compensations or encouragements needed to better accomplish their tasks[18].

4. Armed Conflict and the Right to Work

The internal armed conflict affects all segments of the active and productive Colombian population, from the big entrepreneurs to the small farmers. Investors have experienced diminishing returns due to the devaluation of the peso, the absence of investment, capital shrinking, etc.. Many family farmers have lost their jobs due to the fact that rural employment opportunities have remained static because of the armed conflict. A report, entitled *El Conflicto, callejón con salida* (The Conflict, an Impasse with solutions), aproximates the employment figure for 1991 at 5,886,000, and 5,888,000 for 1999. In 2002, rural unemployment remained at 11.5%, three times that of 1991. This situation is reflected in the decline of agricultural activity which shows a reduction of 800,000 hectares of farmed land in the past decade. As a result, employment opportunities have declined and unqualified workers have migrated toward areas of illicit cultivation and urban centers; some have even joined ranks of outlawed groups.

Teenagers and children that have had to drop out of school to help provide for the household needs enter the job market but receive less than half of the minimum wage; a situation which benefits further the outlawed groups who offer jobs for 300,000 up to 500,000 pesos monthly (between US$120 and US$200 per month), two to three times more than they made on the farm, this in itself is a strong recruiting incentive[19].

5. Conclusions

The fight against terrorism requires an inevitable ethical commitment both from the Government as well as from the civil society. In Colombia, the Government is gaining ground in this battle, and that endeavor has the support of the Colombian people. Nonetheless, the backing afforded the Government in its fight against terrorism and, more generally, to overcome the internal armed conflict which weighs down on the country, in no way means that it is less concerned about the impact of the war on the ESCRs. The Government will ensure the suitability and the proportionality of official measures to enforce them.

As mentioned in this presentation, for some forty years Colombia has been going through a complex and strenuous internal armed conflict intensified by the ongoing drug trafficking and the presence of self-defense groups. The official measures adopted to confront the conflict had favored a military strategy over social policies. In fact, the fight against terrorism has, in itself, required the ever increasing allocation of funds. This, in a setting of permanent fiscal deficit and scant resources, as is the case for Colombia, has brought on the need to partially forgo social investment in the areas

of economic, social and cultural rights. Because of cutbacks, the more vulnerable segments of the population, comprised among others by ethnic groups, displaced persons, children, women, and those deprived of freedom, have been the hardest hit, as previously remarked.

From another point of view, the armed conflict in Colombia involves two noticeable a transnational crimes: drug trafficking and terrorism, both benefiting from links, resources and networks in various countries. Accordingly, foreign governments, as well multilateral financial institutions must consider specificities of the Colombian situation in their policies. The development of the ESCR's is a *sine qua non* condition for defeating not only poverty, but the conflict itself. To achieve this, considerable resources are needed. Consequently, the dilemma transcends the consideration of mere stable macroeconomic indicators, but demands solutions befitting our reality. Peace and security are the corner stones of economic development and, indeed, the full enjoyment of our rights. The solutions need to be integral and concurrent. This means that military and security spending must not be budgeted at the expense of the social investment so essential to creating a post-conflict setting. We must win the peace as much as we must win the war. A setting defined as a time and place of true reconciliation, where the effective enjoyment of rights will be real and no longer a frustrated expectation that would lead us back on a path of "eternal return" as one parable puts it. Perhaps this endless conflict stubbornly lingers on because of the structural causes that feed it remain neglected.

[1] UNDP. Colombia National Report on Human Development - 2003, *The conflict, an impasse with solutions* (El conflicto, Callejón con salid Bogotá, D.C., 2003 p. 107.
[2] Luis Jorge Garay. Colombia, between Exclusion and Development - Bogotá: Auditor General of the Republic, July 2002 p. 333.
[3] ibide. P. 52
[4] ibidem. p. xlix
[5] UNDP. op.cit. p. 110. "International evidence confirms this point. Collier concludes that a "civil war", in any given country, will result in a loss of 2.2 percentage points of its yearly growth (1999:571); Stewart Huang y Wang (2001) conclude that internal conflicts have a bearish effect on the per capita income and entail negative GDP growth in almost any Third World country. Also in the case of Colombia, Cárdenas (2002) points out that the loss of productivity registered since the decade of the eighties is directly related to the increase of crime because of the conflict and drug trafficking; and Vargas concludes that the armed clash subtracts 0.33 percentage points to the Colombians' average yearly income, and that as of 1998, this figure may have leaped to 1.25 percentage points (2003.38)
[6] The declaration of a 'State of Internal Commotion" was made under Decree Nº 1837 of 2002. Its revision process was ensured by the *Office of the Ombudsman*. Said entity participated in the revision process to establish its compliance with the terms of the Constitution and deemed it fulfilled the official requirements set by the Constitution, declared it applicable, as established by the Political Charter, to exceptional situations endangering the stability of the Nation.
[7] The *Office of the Ombudsman* asked the Constitutional Court to establish the invalidity of this decree on the grounds that it violated constitutional norms and the Statutory Law governing the State of Exception, and that some of its provisions neither met the requirements of intent, need

and proportionality, nor respected the principle of non-discrimination.

[8] The notes pertaining to this paragraph were taken from the report presented by the *Office of the Public Prosecutor* to the UN Special Rapporteur on the Human Rights and Fundamental Freedoms situation of indigenous people, in March 2004, Doctor Rodolfo Stavenhagen.

[9] OFFICE OF THE PUBLIC PROSECUTOR, *Defense Resolution Nº 2* of 18 September 2002, by virtue of which the Ombudsman denounced the Human Rights situation of the indigenous populations of Sierra Nevada de Santa Marta and of Serranía del Perijá, due to the systematic violence perpetrated on these communities by illegal armed actors (guerrillas and self-defense groups) operating in these areas.

[10] OFFICE OF THE OMBUDSMAN, '*The right to education according to the terms of the Constitution, the Jurisprudence and international entities*', Office of the Ombudsman, Series DESC, National Printing Office of Colombia, Bogotá D.C., 2003.

[11] Points raised by the Ombudsman to the Commission of the Second Chamber of Representatives upon invitation to do so by way of Proposal Nº 07 of 2003.

[12] OFFICE OF THE OMBUDSMAN, *Defense resolution Nº 00* of 12 February 2001. The Defense resolutions may be consulted on the Ombudsman website: www.defensoria,org.co

[13] OFFICE OF THE OMBUDSMAN, *Defense resolution Nº 026* of 2002.

[14] OFFICE OF THE OMBUDSMAN, *Tenth Report of the Ombudsman to the Colombian Congress, January-December 2002*, National Printing Office, Bogota, D.C., 2003, see pp. 126 to 142.

[15] OFFICE OF THE OMBUDSMAN, *Forced displacement in Colombia* ('Desplazamiento forzado en Colombia'), Nacional Printing Office, Bogota, D.C., 2003

[16] OFFICE OF THE OMBUDSMAN, *Children and the Colombian armed conflict* ('La niñez y el conflicto armado colombiano'), Report submitted in support of the program entitled "Follow-up and Monitoring of Children's Human Rights in Colombia" (Sistema de Seguimiento y Vigilancia de los Derechos Humanos de la Niñez en Colombia), Bogota, D.C., 2001.

[17] *Colombian Institute for the Advancement of Higher Education* (Instituto Colombiano para el Fomento de la Educación Superior), a public agency which task is to evaluate the Colombian school system, at all levels, and enhance the greater quality of the system.

[18] UNDP, Ob.Cit., p. 270.

[19] Ibidem. p. 274.

****

Working Group 1-Paper 2

Mr. A.S. Anand
Chairperson of the National Human Rights Commission of India

Combating Terrorism with Focus on Human Rights

Terrorism and more particularly the counter measures which one takes to meet this menace is a matter of great concern and relevance today. Terrorism has been the subject of a huge debate over the years but as yet there is no universally acceptable definition of what is "terrorism," against which we have to fight. Indeed despite definitional difficulties, we can recognize terrorism in action since it is an assault on a civilized society. Terrorism is not merely a heinous criminal act. It is more than mere criminality. It is a frontal assault on the most basic human rights namely, right to life and liberty, by faceless murderers whose sole aim is to kill and maim human beings, whether they are innocent young children, elderly men or women. One of the rights incorporated in the Universal Declaration of Human Rights and in all International covenants is the right to life. For only this right ensures the enjoyment of all other rights. The right to life is of crucial significance for every person, every group of people, every class and every nation and as a matter of fact, for all humanity. This very right to life of the innocent people is the target of terrorism. It poses a formidable challenge to the enjoyment of human rights and causes unlimited miseries to the hapless innocent and ordinary people whose death, injury and agony is aimed at the destruction of human integrity.

While an acceptable definition of terrorism still eludes the international community, the Supreme Court of India, as far back as in 1994, dwelt at length on it and drew a distinction between a 'merely criminal act' and a 'terrorist act'. In its Judgment in *Hitendra Vishnu Thakur v. State of Maharashtra* [(1994) 4 SCC 602], the Supreme Court of India said:

> "…. It may be possible to describe it (Terrorism) as use of violence when its most important result is not merely the physical and mental damage of the

victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death, injury, or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travels beyond the effect of any ordinary crime capable of being punished under the ordinary penal law of the land and its main objective is to overawe the Government or disturb harmony of the society or "terrorise" people and the society and not only those directly assaulted, with a view to disturb even tempo, peace and tranquility of the society and create a sense of fear and insecurity. A 'terrorist' activity does not merely arise by causing disturbance of law and order or of public order. The fall out of the intended activity must be such that it travels beyond the capacity of the ordinary law enforcement agencies to tackle it under the ordinary penal law. Experience has shown us that 'terrorism' is generally an attempt to acquire helplessness in the minds of the people at large or any section thereof and is a totally abnormal phenomenon. What distinguishes 'terrorism' from other forms of violence, therefore, appears to be the deliberate and systematic use of coercive intimidation··· "

Different aspects of terrorism have been a concern of world community. The problem of hijacking was dealt with in the 1963 Tokyo Convention, 1970 Hague Convention and 1971 Montreal Convention. Though there have been as many as 12 conventions and a declaration dealing with the subject but it was the killing of Israeli athletes at the Munich Olympics which led to the inscribing of international terrorism on the agenda of the United Nations General Assembly in 1972 at the request of the then Secretary General of United Nation and the problem of international terrorism was confronted both politically and legally and in its entirety rather than concentrating on any specific acts of terror. The menace, however, still continues and is on the rise globally.

Conflicts and Terrorism have today emerged as serious threats to the humanity. They pose serious challenges to the international community. It is a strange paradox that while on the one hand, higher and better international human rights and humanitarian standards have evolved over the past five or six decades, on the other hand conflicts and newer forms of terrorism, which threaten human rights of people the world over, are on the rise and becoming more and more dangerous. One also finds resort to the use of more and more deadlier and lethal weapons, deliberate targeting of civilians, forced starvation of civilians and resort to rape and other sexual violations besides taking hostages etc. Scientific and technological developments as well as the global network of communications are being viciously exploited by terrorists. What is a matter of serious concern is the existence of trans-national networks of terrorist organizations, which have a nexus with arms and drug traffickers

and crime syndicates. Today's terrorists have modern technology to help them, permitting rapid international communications, travel and the transfer of monies. They have links with others of like mind across international borders. What makes it even more dangerous are recent media reports that they may well have access to weapons of mass destruction including biological weapons.

It must be remembered that there is a clear and emphatic relationship between national security and the security and integrity of the individuals who comprise the state. Between them, there is a symbiosis and no antagonism. The nation has no meaning without its people. The worth of a nation is the worth of the individuals constituting the nation. This is the emphasis laid in the Constitution of India, which holds out the promise to secure both simultaneously. Just as there can be no peace without justice, there cannot be any freedom without human rights. International terrorism is a modern form of warfare against liberal democracies and needs to be dealt with as such. The goal of these terrorists is to destroy the very fabric of democracy and it would be wrong for any democratic state to consider international terrorism to be "someone else's" problem. The liberal democracies must, therefore, acknowledge that international terrorism is a collective problem. They must unite to condemn and combat it. When one free nation is under attack, the rest must realize that democracy itself is under attack. The oft repeated cry, "One country's terrorist is another nation's freedom fighter" is but one manifestation of the widespread confusion about the morality of terrorist forms of violence and even goes to encourage terrorism because it clothes the terrorist with a cloak of respectability–totally undeserved.

Let us be clear that there can be no alibis or justification for terrorism under the spurious slogans of self–determination and struggle for liberation. As Senator Jackson has aptly stated:

> *"*The idea that one person's 'terrorist' is another's 'freedom fighter' cannot be sanctioned. Freedom fighters or revolutionaries don't blow up buses containing non–combatants; as terrorist murderers do. Freedom fighters don't set out to capture and slaughter school children; terrorist murderers do··· It is a disgrace that democracies would allow the treasured word 'freedom' to be associated with acts of terrorists *".*

However, having said this, I must acknowledge that though nothing justifies terrorism, far too many people live in conditions where it can breed. It is common knowledge that systemic human rights violations for long periods of time are often the root cause of conflicts and terrorism. When there is tyranny and wide spread neglect of human

rights and people are denied hope of better future, it becomes a fertile ground for breeding terrorism. The existence of social, economic and political disparities in a large measure contribute to the eruption of conflicts within the State and beyond. The importance of promoting Economic, Social and Cultural Rights to contain such conflicts must, therefore, be realized and appreciated. The protection and promotion of Economic, Social and Cultural Rights must go hand in hand with protection of Political Rights for giving human rights a true meaning. The neglect of Economic, Social and Cultural Rights gives rise to conflicts and emerging forms of terrorism which are threatening the democratic societies worldwide. It cannot be denied that disillusionment with a society where there is exploitation and massive inequalities and whose systems fail to provide any hope for justice are fertile breeding grounds for terrorism, which more often than not thrives in environments where human rights and more particularly Economic, Social and Cultural Rights are denied by the State and political rights are violated with impunity both by the State and non-State actors. Systemic denial of Economic, Social and Cultural Rights, like right to food, health, education etc. are caustic factors of conflict and terrorism. Any worthwhile strategy to resolve conflicts and terrorism will have to ensure enjoyment of the full range of Economic, Social and Cultural Rights.

According to UNDP's Human Development Report of 2002:
- Of the 81 new democracies, only 47 are fully democratic. Many others do not seem to be in transition to democracy or have lapsed back into authoritarianism or conflict.

At the beginning of the 20th century, studies have indicated that the percentage of civilians killed during conflicts was about five percent as compared to 90 percent at the end of the 20th century, with disproportionate impact on women and children. As the events in the former Yugoslavia and Rwanda have shown, gender-based violence in conflict often carries a political and symbolic message. So devastating is its effect that rape, enforced prostitution and trafficking are now included in the definition of war crimes and crimes against humanity.

The next question and a vexed one, is: How do or should democratic States which adhere to the Rule of Law and respect basic human rights deal with this menace?

Undoubtedly, the spectre of terrorism is haunting many countries of the world. It has acquired a sinister dimension. The terrorist threats that we are facing are now on an unprecedented global scale. But it must be remembered that the fundamental rationale of anti-terrorism measures has to be to protect human rights and democracy. Counter terrorism measures should, therefore, not undermine democratic values, violate human rights and subvert the Rule of Law. Consequently, the battle against

terrorism should be carried out in keeping with international human rights obligations and the basic tenets of the Rule of Law. No doubt "the war on terrorism" has to be relentlessly fought but that should be done without going over-board and in effect declaring war on the civil liberties of the people. The protection and promotion of human rights under the Rule of Law is essential in prevention of terrorism. If human rights are violated in the process of combating terrorism, it will be self defeating. It is imperative that the essential safeguards of due process and fair trial should not be jettisoned. We should emphasize that basic human rights and more particularly Economic, Social and Cultural Rights must always be protected and not derogated from.

Our experience shows that the rubric of counter-terrorism can be misused to justify acts in support of political agendas, such as the consolidation of political power, elimination of political opponents, inhibition of legitimate dissent. Labeling adversaries as terrorists is a notorious technique to de-legitimize political opponents. It is during anxious times that care has to be taken so that the state does not take recourse to bend the Rule of Law to accommodate popular sentiment for harsh measures against suspected criminals. An independent judiciary and the existence of an effective human rights institution are indispensable imperatives for protection of fundamental human rights in all situations involving counter-terrorism measures. It provides vital safeguards to prevent abuse of counter- terrorism measures. Counter- terrorism or anti-terrorism measures must, therefore, always conform to international human rights obligations.

In addressing the Security Council on 18th January 2002, the Secretary-General stated:

> "While we certainly need vigilance to prevent acts of terrorism, and firmness in condemning and punishing them, it will be self-defeating if we sacrifice other key priorities – such as human rights – in the process"

Speaking on terrorism, Ms. Mary Robinson the then United Nations Commissioner for Human Rights, cautioned against the violation of human rights in the global 'fixation' with the war against terrorism and said:

> "What must never be forgotten is that human rights are no hindrance to the promotion of peace and security. Rather they are an essential element of any strategy to defeat terrorism."

While dealing with some fundamental issues relating to terrorism in the Annual Report of 2001 she said:

> "There should be three guiding principles for the world community: the need to eliminate discrimination and build a just a tolerant world; the cooperation by all States against terrorism, without using such cooperation as a pretext to infringe on human rights; and a Strengthened commitment to the rule of law."
>
> "… true respect for human life must go hand in with securing justice", and that "the best tribute we can pay to the victims of terrorism and their grieving families and friends, is to ensure that justice, and not revenge, is served".

It must, therefore, stand as a caution that in times of distress, the shield of necessity and national security must not be used to protect governmental actions from close scrutiny and accountability where the same affect enjoyment of human rights. In times of international hostility and antagonisms our institutions, legislative, executive and judicial, must be prepared to exercise their authority to protect all citizens from petty fears and prejudices that are so easily aroused. Indeed, in the face of terrorism, there can be no doubt that the State has not only the right, but also the duty, to protect itself and its people against terrorist acts and to bring to justice those who perpetrate such acts. The manner in which a State acts to exercise this right and to perform this duty must be in accordance with the Rule of Law. The Supreme Court of India has, in *DK Basu vs. State of West Bengal*, [jt 1997(1) SC 1] cautioned:

> "State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to terrorism: that would be bad for the State, the community and above all for the rule of law. The State must, therefore, ensure that the various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto themselves"

The National Human Rights Commission of India is of the firm view that a proper observance of human rights is not a hindrance to the promotion of peace and security. Rather, it is an essential element in any worthwhile strategy to preserve peace and security and to defeat terrorism. The purpose of anti-terrorism measures must therefore be to protect democracy, rule of law and human rights, which are fundamental values of our society and the core values of the Constitution. It is wrong to be selective about violation of human rights and the perpetrators of terrorism. Such selective approach leads to double standards, which make the motives of the protagonists of human rights suspect. It also indirectly lends support to terrorists and terrorism. All nations must, therefore, co-operate to relentlessly and without any compromise fight terrorism. Concerted steps at a global level will have to be taken to tackle terrorism and safeguard human rights. The fight against terrorism requires close

co-operation of all countries both at law enforcement and judicial levels in order to put an end to illegal trafficking which feeds terrorist networks. To clip the wings of terrorism, the international communities must target the roots of frustration as well as the feeling of injustice. But let me emphasize that in doing so, the approach should be humane, rational and secular. It must be consistent with democratic principles. Any kind of partisan and sectarian approach would be counter-productive. We need to strike a balance between the liberty of an individual and the requirements of security of state and sovereignty and integrity of the nation while keeping an open mind to fight terrorism. A limited approach may help eliminate some present terrorists but not the causes or the phenomenon of terrorism, which produces terrorists; and that too at the cost of violation of human rights of many innocents. A proper balance between the need and the remedy requires respect for the principles of necessity and proportionality.

In conclusion while I confess that I cannot prescribe a quick fix solution to tackle the scourge of terrorism, but, as the head of a National Human Rights institution, I consider that National Institutions can play a crucial role in the resolution of different forms of conflicts. From the causes identified earlier in my talk, may I submit for your kind consideration some suggestions regarding the role which the National Institutions can play in that behalf. In my view:

1) There is an urgent need for evolving and putting in place a mechanism for channelising the grievances of the people, especially the vulnerable sections of our society by the National Human Rights Institutions. Their role is vital. Therefore, countries, which have not set up a National Institution so far, must do so without any further delay on the guidelines contained in the Paris Principles.
2) Once the mechanism is put in place, the National Institutions must, on their part, ensure speedy redressal of grievances brought before them. Neglect or delay in the consideration of such issues, often adds to the frustration of the people, making them even more cynical. The National Institutions need to generate a feeling amongst the citizens that it is a forum where the citizens shall be heard about their grievance. The hope of being heard can restrain a citizen from becoming a potential terrorist.
3) The National Institutions also need to focus on the socio-economic dimensions and related inequities in the society which provide a fertile ground for the growth of terrorism. Learning from each other's experience in that behalf would be rather useful. Therefore, greater co-operation between the National Institutions for that purpose is necessary.
4) The importance of the role of non-state actors for furtherance of the objectives

of the National Institutions needs to be properly appreciated. National Institutions should step up the pace of dialogue and scope of joint partnerships with the non-governmental organizations. Such a linkage, our experience shows, bridges the gap between the government and civil society and helps in creation of public awareness;

5) Issues relating to Economic, Social and Cultural Rights and monitoring their implementation should form an important agenda for all National Institutions.
6) Networking between National Institutions and sharing of information and best practices between them can be very useful.

These are only some of the illustrative and not exhaustive suggestions and I wish also to add a disclaimer. Whether these suggestions can actually advance our fight against terrorism and addressing its causes or not shall have to be tested because the suggestions are aimed at making the National Institutions put their think-caps on to see what they can do to fight the menace of terrorism.

Friends, we need to strive for a world free of fear and oppression while remaining steadfast to our democratic values and adherence to the Rule of Law. We must act now. Let us remember the words of wisdom of the United Nations Acting High Commissioner for Human Rights, Mr. Bertrand Ramcharan, spoken at the Opening Session of the "Sub-Commission on Promotion and Protection of Human Rights" in Geneva in July 2003. He said:

> *"Whatever we may say about tomorrow..... the challenge of human rights protection is immediate and pressing" particularly in our struggle against terrorism.*

Thank you for your patience.

****

Working Group 1-Discussion Summary

I. The Problem

The lack of enjoyment of economic, social and cultural rights of certain sectors or of the whole population can be a cause of conflict. Therefore, there is a causal relationship between conflict and counter-terrorism and the enjoyment of economic social and cultural rights. For this reason, Working group 1 discussed how NIs can monitor respect for such rights, raise awareness about violations and devise strategies to address such violations domestically and internationally in cooperation with governments, international and regional organizations and civil society groups. The working group also discussed national examples and practices to protect economic, social and cultural rights in situations of conflicts and while countering terrorism

II. The Discussion

Mr. Suk-Tae Lee of Korea was the Chairperson of the Working group and Dr. Mohamed N. Galal of Egypt was the Rapporteur. Justice Anand, former chief Justice of India and chairman of NHRC of India presented a paper and emphasized the point that terrorism is a unique type of criminal action. It is not only against an individual or groups of individuals, but also against society as a whole. It is an attack on humanity with the aim to spread fear. In this way, it requires special focus. The participants found no consensus on a definition of terrorism. Mr. Anand mentioned the 1994 Indian Supreme Court ruling. The challenge of terrorism has to be brought within parameter of law. So, state terrorism is no answer to combat terrorism. That is, though state sovereignty has to be protected, it cannot be protected at the expense of the human rights of the people, because the paramount state objective of the national government is to protect the nation, i.e. the people. Although terrorism is devastating, if a state violates the law fundamentally, then it is no different from terrorists. NIs can play an affective role promoting and raising awareness of this logic.

The participants agreed that a selective approach in dealing with terrorism creates confusion between what some may describe as "freedom fighters" and others may describe as "terrorists." For freedom fighters to abuse women or to kill children is a great offence to the concept of freedom. Terrorism is undeclared war on society. Total neglect on social and economic rights breeds terrorism. It is necessary to tackle the root causes, frustration and feelings of injustice. State and national institutions have an important role in this regard. For example, they have to tackle problems related to unemployment, health, education, food security, utilizing the energy of youth. Justice mentioned the incident of Munich 1982 is an example that terrorism was not born on Sept. 11, 2001. He emphasized that collective approach was necessary.

The National Institution representatives invited a representative from Amnesty International to present a NGO perspective on these issues in the discussions. She reiterated the indivisibility and interdependence of all human rights. She emphasized that countries should be accountable for any violations. In particular, she focused on the issue of women and children especially in time of war, parties to a conflict often rape women and girls as a weapon of war. She listed many recommendations for the participants consideration, including the need for National Human Rights Institutions to closely scrutinize national budget priorities in order to ensure that the call of the Beijing Declaration and Platform for Action and to push for excessive resources used for military purposes be redirected to meet human needs.

Dr. Galal of Egypt briefed the participants on his country's experience concerning unemployment, health-care and education. He directed the attention of his presentation to the difficulties people face in these areas, and the role of the Egyptian National Human Rights Council in refocusing his National Government's budget aims to these problems. Mr Anand suggested the Working group recommend emphasizing "food security" among other issues. Dr. Galal concurred, adding the importance of international cooperation to help countries to fulfill their ESC Rights. The delegate from Thailand noted the necessity of prioritizing the Working group's recommendations, and this was affirmed by the NGO delegates in the NGO forum.

III. Outcomes

The Working group's discussion resulted in fruitful conclusions. They agreed that there was a need for putting in place a mechanism for channeling people's grievances in order to both solve problems and prevent potential human rights violations and conflicts. Therefore, countries, which have not set up a national institution so far, should do so without further delay. National Institutions should ensure speedy redress of grievances brought before them. ESC Rights have often been overlooked in favor of

CP Rights. So, National Human Rights Institutions also need to focus on the socio-economic dimensions and related inequities in the society. Therefore, greater co-operation between the institutions for that purpose is necessary.

National Institutions should step up the pace of dialogue and broaden the scope of joint partnerships with the non-governmental organizations. Issues relating to Economic, Social and Cultural Rights and monitoring their implementation should form an important agenda for all national institutions. Networking between National Human Rights Institutions and sharing of information and best practices between them can be very useful. An enhanced role of NIs on ESCR is needed. International and/or regional cooperation among NIs in studying measures to protect ESCR would be beneficial in this regard. And there is a need for enhanced cooperation among international human rights bodies, NIs and NGOs. Toward this end, they work to better ensure food security, especially among the vulnerable sections of the population which would go a long way to preventing the development of conditions which give rise to terrorism/conflicts.

****

Working Group 2-Paper 1

Mr. Myung-deok Kang
Director-General of Human Right Policy Bureau, National Human Rights Commission of the Republic of Korea

Counter-Terrorism, Civil and Political Rights, and the Rule of Law

Introduction

Following the attack of September 11, 2001 on the United States of America and the worldwide surge of deliberately targeting civilians, we live in a world where no individual or country is free from the threat of global terrorism. Over the last few years, governments in many parts of the world took military, policy and judicial counter-terrorism measures to ensure their national security from the acts of terrorism. Many of these counter-terrorism measures involved infringing on human rights and fundamental freedoms: the freedom of assembly and association, the freedom from arbitrary arrest and detention, and the right to legal representation were derogated or even suspended, while foreigners were targeted and discriminated against on the basis of origin and socio-economic status.

National human rights institutions, international human rights organizations and various human rights defenders have consistently expressed their concern over the negative impact of counter-terrorism measures on human rights, and stated that respect for human rights and fundamental freedoms is most effective way to combat terrorism. Unfortunately, these concerned voices have been ignored, and this human rights concern over the impact of war continues to grow.

The aim of this paper is twofold. The first part of this paper is to examine the derogation of civil and political rights while countering terrorism and look into the response of international community to it. The second part concerns the role of national human rights institutions in balancing security concerns with human rights, followed by highlighting the case of South Korea.

Civil and Political Rights and Counter-Terrorism Measures

Since the early 1990s, countries around the world have molded their policies, as well as judicial approaches, and have been engaged in international cooperation to combat global terrorism. However, even before the September 11 attacks, the issue of terrorism was a concern of the United Nations, as illustrated by the 1995 initiative "Measures to Eliminate International Terrorism" by the Secretary-General submitted to the General Assembly in order to better implement counter-terrorism measures at the national, regional and international levels. These are consistent with respect for human rights. Yet today, there are persistent allegations governments are infringing on human rights and suppressing political dissent by exploiting people's natural insecurity and fear of terrorism.

The International Covenant on Civil and Political Rights (ICCPR) is a minimum safeguard for the rights of individuals against the absolute power and the state. However, many of civil and political rights are subject to derogation under counter-terrorism measures. Such derogations under counter-terrorism measures could be divided into five categories.

The first category concerns violation of the rule of law and the derogation of the right to freedom from torture and/or cruel, inhuman or degrading treatment or punishment. ICCPR guarantees, *inter alia*, the right to freedom from torture (Article 7), the right to liberty and security of person (Article 9), the right of persons deprived of their liberty to humane treatment (Article 10), the right to a fair trial (Article 11), the right to recognition everywhere as a person before the law (Article 16), etc. People suspected of terrorist acts in many countries, however, are subject to arbitrary arrest by state authorities without the application of the rule of law. Some are placed under indefinite detention without trial. Indeed, many other are tortured and otherwise mistreatment in detention facilities.

The second area addresses the right of self-determination of ethnic minorities and indigenous peoples. ICCPR provides for the right of self-determination (Article 1), the right to life (Article 6) and the freedom of religion (Article 18). Yet under the pretext of combating terrorism, many governments of multiracial countries labeled the defenders of the rights of ethnic minorities as terrorists or abetting terrorism, and restricted these defenders' rights and freedoms. Indigenous peoples are disproportionately subject to arbitrary detention, and even torture, and other forms of mistreatment. Under the slogan of preventing terrorism, the religious activities of minority groups, and who struggle for their rights and freedoms, are banned. Many governments exploit the global fight against terror in order to intensify their military operations against ethnic minorities, and this often resulting in greater civilian casualties.

The third derogation involves the restriction on the freedom of expression and the freedom of assembly and association. ICCPR provides for the legal protection of the freedom of expression (Article 19), the right of peaceful assembly (Article 21), and the right to the freedom of association (Article 22). Alarmingly, most counter-terrorism measures infringe on these fundamental freedoms. In these circumstances, domestic political dissent is subject to intensified suppression. In some cases, this amounted to near-absolute denial of the freedom of assembly and association. Increased government control of media culminated in disturbing suppression. Sometime, this led to shutting down media companies only because of the fact their publications were critical of the government.

The fourth area concerns the violation of the principle of non-refoulement, and the threat to the rights of refugees and asylum-seekers. The principle of non-refoulement is a part of international customary law and is therefore obliges all States, regardless of whether they are parties to the 1951 Convention Relating to the Status of Refugees. However, counter-terrorism measures made migrants, refugees and asylum-seekers more vulnerable to the threat of abuse and ill-treatment in host countries. Article 13 of the ICCPR stipulates that foreigners "may be expelled only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion." Governments in Western Europe, which have been traditionally tolerant towards to refugees and asylum-seekers, came up with new restrictive immigration regulations. Some governments have even arbitrarily repatriated asylum-seekers claiming they were terrorist suspects. Worse still, many of these repatriates were denied standard procedures allowing review of their cases, or legal assistance, prior their deportation.

The fifth derogation of civil and political human rights concerns the infringement of privacy and violation of non-discriminatory principle. ICCPR provides for the right to privacy (Article 17) and the freedom from discrimination (Article 2). Again, countering terrorism has increased arbitrary or unlawful interference with individual privacy and correspondence. The surveillance of individuals is being implemented in a ruthless and unchecked manner. Whether electronic or otherwise, interceptions of telephonic, telegraphic and other forms of communication, wire-tapping and recording of conversations are becoming alarmingly ubiquitous. Compounding the offense, the measures have a racial and discriminatory bias. Information or personal data on people of certain religions or geographical origins, especially Muslims and those of Arab extraction, are more likely subject to arbitrary compilation, storage and release by law enforcement agencies.

The fundamental principle of the rule of law: "*nullum crimen sine lege, nulla poena sine lege*," no crime without law, no punishment without law, is now in jeopardy. Terrorism is too broadly defined, and the power of intelligence and law enforcement agencies too expansive. The threat to human rights and fundamental freedoms by the worldwide counter-terrorism measures following September 11 is urgent, for even the basic non-derogable rights stipulated in article 4 of the ICCPR are at the risk of infringement in the name of "combating terrorism" and "national security."

Response of International Community

The UN and the international community have long condemned terrorism unequivocally. The UN General Assembly Resolution 2656 adopted on October 24, 1970 categorically prohibits states from organizing facilitating, supporting, participating or perpetrating acts of terrorism. The UN went still further in the 1990s. On December 9, 1994, the General Assembly further affirmed its stead-fastness in the fight against terror in adopting the "Declaration on Measures to Eliminate International Terrorism," while the Security Council again condemned of the increase in the acts of global terrorism through its Resolution 1269 on October 19, 1999. The resolution unequivocally condemned all acts of terrorism as both criminal and unjustifiable, regardless of their motivation, in all their forms, anywhere and by anyone, and further urged governments to better cooperate in order to prevent and suppress terrorist acts.

The international community hardened its resolution to oppose terrorism still further following the September 11 attacks. On September 28, 2001, the Security Council adopted Resolution 1373 obliging states to take effective measures to counter terrorism. The resolution created the Counter Terrorism Committee to monitor cooperation on this issue and to receive progress reports from states. It also declared that states prevent the financing of terrorism; establish terrorist acts as serious criminal offences and punish them accordingly; and, ensure the sanctity of the status of refugees against its exploitation by terrorists.

Resolution 1373, however, failed to oblige states compliance with international human rights treaties, prompting the Office of the High Commissioner for Human Rights grave concern. In fact, the imbalance between national security and human rights led many governments to overlook or even disregard human rights violations in the course of implementing counter-terrorism measures. A great number of governments exploited the letter of Resolution 1373, while state authorities abused human rights. Furthermore, following Resolution 1373, many regional and intergovernmental organizations adopted various counter-terrorism conventions, many of which stressed

broad and comprehensive counter-terrorism measures while silencing on human rights concerns. Against this background, international human rights organizations adopted statements and resolutions to urge States to protect human rights and fundamental freedoms while countering terrorism.

In November 2001, the Committee against Torture (CAT) affirmed the fact that states must prevent torture, and other forms of ill-treatment, and that they must guarantee any statements made as a result of torture will not be used as evidence, indeed, even in a state of emergency, because the right to be secure from torture is non-derogable as stipulated in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Moreover, the CAT urged states to comply with their obligations under the Convention against Torture. On February 7, 2002, The UN High Commissioner for Refugees Ruud Lubbers submitted to the Security Council an opinion describing the effectiveness of International Standards on Refugees as impaired due to the counter-terrorism measures. He urged States should refrain from associating refugees and asylum-seekers with terrorism on grounds of religion, ethnicity, nationality, and political opinion. On March 20, 2003, former High Commissioner for Human Rights Mary Robinson pointed out that the right to privacy, the right to free thought, the right to presumed innocence, the right to a fair trial, the right to shelter, the right to expression and the right to peaceful assembly are all derogated under counter-terrorism measures. He cautioned such measures should always be taken within the framework of international human rights standards.

The European Union and other regional organizations expressed concern over the negative impact of countering terrorism on human rights and urged to strike a fair balance between legitimate national security concerns and the protection of fundamental freedoms.

In December 2002, echoing these growing concerns, the General Assembly adopted "Protection of Human Rights and Fundamental Freedoms while Countering Terrorism." The resolution declared that each country's counter-terrorism measures must comply with its obligations under international human rights law, international refugee laws, and humanitarian law. It also requested the Office of High Commissioner for Human Rights (OHCHR) to closely monitor these human rights situations and provide recommendations to state parties and relevant UN bodies.

Finally, the Security Council adopted Resolution 1456 on January 20, 2003 which called on states to "ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee,

and humanitarian law". The Security Council's pursuit of a balance between counter-terrorism and human rights concerns is a step forward. Despite the change at the international level, at the national level, human rights violations occurring while combating terrorism remains a reality. On August 5, 2003, the OHCHR submitted a report to the UN Human Rights Commission at its 60th session. The report pointed out that the broad and ambiguous definition of terrorism causes problems. Poorly drafted anti-terrorism legislation, thus, contributed to the discrimination against migrants, refugees and indigenous peoples. UN Secretary-General Kofi Annan reported to the General Assembly at its 58th session that the global practice of counter-terrorism poses a grave threat to people's right to life, their right to freedom from torture, a fair trial, as well as refugee rights. He urged States to refrain from debasing rights and suppressing essential freedoms in the name of counter-terrorism.

National Human Rights Institutions' Role in Balancing National Security and Human Rights

As the UN human rights bodies have emphasized the best strategy to defeat terrorism is by respecting human rights and fundamental freedoms, counter-terrorism and human rights are not incompatible. They are separate, but in fact they sustain each other. Therefore, we must find a realistic and effective way to construct counter-terrorism measures based on the protection of human rights. I wish to suggest such a way with reference to the role of national human rights institutions.

Monitoring Human Rights Situations and Presenting Recommendations

National human rights institutions (NIs) work to monitor human rights situations and to present recommendations to their respective governments around the world. Therefore, it is reasonable to conclude that if an NI properly fulfills its duty, it could alleviate the impact counter-terrorism measures have on fundamental rights.

First of all, in the formative stage of counter-terrorism measures, an NI must review such measures and detect any shortcomings with regard to the protection of rights and freedoms. If such shortcomings are detected, an NI must express its opposition publicly. The criteria for review is (1) whether the purpose of anti-terrorism legislation can be achieved with existing laws, (2) whether there are safeguards against the abuse of anti-terrorism legislation, (3) whether a political solution was given a priority, (4) whether the restrictions on human rights are proportionate to the expected degree of danger, (5) whether it causes unnecessary human cost, etc.

In the implementation of counter-terrorism measures, an NI shall monitor whether

counter-terrorism measures encroach on human rights and fundamental freedoms such as the right to liberty and security of person, right to freedom of assembly and association, the right to freedom of expression, and the prohibition of discrimination and, if so, advise the government to correct it immediately.

Policy Recommendations to Address Social and Economic Grievances

Inequality and injustice at the national and international levels constitute the fundamental origins of terrorism. Therefore, without providing remedies for its root causes, a military or judicial approach will fail to defeat terrorism. The Terrorism Prevention Branch, an arm of the UN Office for Drug Control and Crime Prevention, released "Classification of Counter-Terrorism Measures" in November 2002 in which socio-economic policies including employment schemes, anti-discrimination measures, and poverty reduction were suggested to effectively prevent and combat terrorism along with strengthened military and legal regimes.

A national human rights institution should be actively engaged in protecting and promoting social and economical rights as well as civil and political rights to prevent rising social discontent from evolving into political violence. An NI should more strongly recommend the government to be more committed to employment promotion and poverty-reduction. It should remind all concerned that the long-term solution is to remove the conditions in which terrorism flourishes.

Mediation between the UN and Individual States

A national human rights institution is well positioned to communicate the principles and decisions of the UN human rights mechanism to the government and to encourage it to reflect such recommendations on the domestic policies. In order to do that, an NI should secure a full status inside the UN mechanism. National human rights institutions, however, have yet been recognized the independent status in the UN Human Rights Commission. It has hampered NIs' effort to discuss domestic human rights issues officially in the UN arena.

Thus, achieving more clearly-defined status within the UN mechanism is essential for NIs to effectively mediate between the UN and member states. Internationally empowered NIs will be better equipped to persuade the governments to pay more attention to the recommendations of international human rights bodies to uphold human rights while countering terrorism. With the cooperation of NIs, it will also allow UN human rights bodies to effectively monitor counter-terrorism measures and human rights practices of individual countries.

International Cooperation for a "Security Regime Based on Human Rights"

A unilateral and military-centered "Coalition against Terrorism" will not secure international peace and security. This all-out and heavy-handed approach tends to aggravate the situation. The world will be in great danger if a super power assumes the roles of judge, jury and executioner. Counter-terrorism is ultimately for the protection of humanity, so essential rights and freedoms should be respected in pursuing that goal.

Therefore, national human rights institutions should cooperate regionally and internationally to consider military alliances against terrorism from the human rights perspective. If the War on Terror erodes international human rights standards, NIs should offer critiques and raise issues. The Asia-Pacific Forum of National Human Rights Institutions expressed concern over the erosion of international human rights standards under the global counter-terrorism regime in its 8th annual meeting, held in Kathmandu in February 2004. The International Conference for National Human Rights Institutions (ICNI) in its 6th session in 2002 also noted the negative impact of counter-terrorism upon international human rights standards. In its Copenhagen Declaration, the ICNI stated NIs "should be vigilant so that measures aimed at combating terrorism which are taken in their own countries following the attack of September 11th do not encroach on fundamental rights and liberties through restrictions which are disproportionate to their aims or through measures applied in a discriminatory manner, especially on racial or religious grounds." Through their domestic efforts, and regional and international cooperation, national human rights institutions should endeavor to protect human rights and fundamental freedoms from military, judicial and policy encroachments that result from counter-terrorism measures.

Counter-Terrorism and the Role of National Human Rights Institutions: the Korean Perspective

The South Korean case illustrates the proper functioning of a national human rights institution in checking excessive counter-terrorism measures in a domestic context. A case-in-point is the Terrorism Prevention Bill proposed by the National Intelligence Service (NIS) to the National Assembly in November 12, 2001. After reviewing it, the National Human Rights Commission of Korea submitted its opposition to the government and the National Assembly on February 20, 2002. Our Commission opposed the enactment of the Terrorism Prevention Bill for the following reasons: (1) the Bill would restrict fundamental human rights and it does not provide any remedial processes to the victims of counter-terrorism; (2) existing laws and infrastructure are

sufficient to provide for protection against, prevention and punishment of terrorist acts; (3) concerns that the legislation could be abused as a devise for intelligence agencies to intervene in the work of other national bodies and its administrations; (4) the government failed to conduct thorough research in drafting counter-terrorism measures, and there was not enough consultation and discussion with civil society.

The government and National Assembly withdrew the legislation following the Commission's opinion and severe criticism by civil society. In the aftermath of War in Iraq, the NIS once again submitted a partially-amended Terrorism Prevention Bill to the National Assembly. The Commission again reviewed the Bill and found that it even further strengthened the power of NIS and unduly encroached on essential rights and freedoms. The Commission expressed its objection to the government and the National Assembly on October 22, 2003. As of now, deliberation on the Bill has been indefinitely suspended.

In responding to the anti-terrorism legislation, the Commission mediated the United Nations and South Korean government. In its review of the Terrorism Prevention Bill, the Commission stated that the South Korea government should comply with its obligations under international human rights instruments and the decision of treaty-monitoring bodies. It also urged the government to ensure that counter-terrorism measures conform to guidelines set by UN Human Rights Commission and other international bodies in order to protect human rights and fundamental freedoms. It its capacity as mediator, the Commission encouraged to the government to reflect international human rights standards in policy-making. The National Human Rights Commission of Korea's commitment to monitoring counter-terrorism legislation remains unswerving, and will continue to work with the international community to uphold human rights.

Conclusion

International human rights organizations and NGOs have long suggested counter-terrorism measures based on respect for fundamental human rights. However, some states seek the easy path of combating terrorism by way of arbitrary arrests, indefinite detentions, unchecked surveillance and restrictive regulations on immigration.

The role of national human rights institutions is crucial to minimize the negative impact of counter-terrorism and to balance human rights concerns and national security. As discussed above, national human rights institutions should mediate the UN human rights mechanism and individual governments to better reflect international

human rights guidelines in domestic counter-terrorism policies. They also should monitor their respective country's human rights situation and present recommendations to the government for the protection of human rights. In order to best address the structural causes of terrorism, national human rights institutions should urge the government to also promote social and economic rights. Finally, regional and international cooperation is critical for NIs to uphold human rights while countering terrorism. The best strategy to protect human rights and democracy from terrorism is by upholding human rights and fundamental freedoms, and by further enhancing democracy, social justice and the rule of law.

****

Working Group 2- Paper 2

Dr. Sergio Fernando Morales Alvarado
Human Rights Prosecutor of Guatemala

Conflict and Counter-terrorism: Civil and Political Rights

An eye for an eye makes the world blind. (Eduardo Galeano)

I. Introduction

We know now that conflict is inherent in human relations. Our interaction with other people may lead us to disagree because we have opposing interests and needs. Conflict is unavoidable and although we may pretend to ignore it, it is present in our individual and social lives.

Conflict is negative when, by means of violence, termination or destruction, it imposes exploitation, misery, exclusion and intolerance of others.

Conflict is positive when it leads to fair and mutually satisfactory actions and decisions.

Professor Paco Cascón Soriano[1] of the Universidad Autónoma de Barcelona believes conflict can be positive in two cases:

When we consider diversity and difference as values. We live in a plural world where diversity through cooperation and solidarity is a source of mutual growth and enrichment. To live with those differences reveals contrasts and, thus, divergence, disputes and conflict.
When we believe that only conflict with unjust structures and/or with those who maintain them can allow society to progress towards better models. In other words, conflict is the main lever for social transformation.

If therefore conflict is an inherent part of human relations, we must learn to mediate it. The challenge is to resolve it in a constructive non-violent manner.

II. Conflict and violence

Conflict and violence are frequently considered synonymous. Thus, any expression of violence is viewed as a conflict, while the absence of violence is viewed as a non-conflictual situation.

However, not all disputes or disagreements are conflicts because although two parties may be in opposition, that does not mean necessarily that there are antagonistic interests or needs. Conflict arises when disputes or disagreements are caused by opposing interests, needs and/or values[2]. The fulfillment of one party's needs prevents the fulfillment of the others' needs. It is possible to identify the phases of conflict. In the first stage, a need - economic, ideological, biological, etc. - appears. In the second, one side collides with the other which gives rise to a problem. If it is not confronted or resolved, it leads to a dynamic of conflict: lack of confidence, miscommunication, fears, misunderstandings, and so forth. This will sooner or later lead to a crisis, a stage that is usually violent.

It is important, therefore, not to let conflict reach the stage of violent crisis; it must be resolved in the initial stages. Not to do so, according to Dr. Gro Harlem Brundtland, Director General of the World Health Organization, causes the death of more than 1.6 million people each year.[3] 4,237 people were killed in Guatemala in 2003, among them 383 women, 1,185 children and adolescents, 46 elderly people[4] and the figures are growing. In the first six months of this year alone, 2,072 persons were assassinated, among them 246 women.

III. Violence in Guatemala: Context and Reality

Context

The history of both the colonial and the republican phases of our country have been characterized by unfair and exclusionary economic, social and cultural relations. This structural violence has provoked constant confrontation between the State and forces of change, to such an extent that one may say our history is that of a country in conflict, with very few periods of peace.

This reality has been underscored by the internal armed struggle that began with the 1954 Counterrevolution and was reinforced further by the appearance of the revolutionary movement of 1960.

For many Latin American countries - and Guatemala was no exception - the Cold War meant the adoption of national security doctrines. The counterinsurgency policies marked the civilian population as collaborators of the insurgents, thus making both

into enemies of the State.

Among the means used to control and defeat the enemy were activities to demobilize social groups, creating uncertainty and distrust. Counterinsurgency methods included psychological operations and thousands of assassinations of popular leaders, with the aim of stopping and defeating Communism. The outcome is a broken social network and a population living with high levels of fear, distrust, resentment and violence.

Thirty-six years of internal armed conflict have left 200,000 people assassinated, 50,000 disappeared and more than one million internally and externally displaced. Every bullet fired has meant a failure to meet the needs of the people. We Guatemalans have spent billions of Quetzales on war, which has only served to keep Guatemala a poor underdeveloped country.

The Reality

The internal armed struggle caused a moral, institutional and economic crisis which forced the various national interested parties to search for a lasting way out of conflict. This led to the signing of seven peace agreements by the Government with the Guatemalan National Revolutionary Unity (URNG):

1. Global Agreement on Human Rights
2. Agreement on the Resettlement of People Displaced by the Internal Armed Conflict
3. Agreement on the Identity and Rights of Indigenous Peoples
4. Agreement on Socio-Economic Aspects and the Land Reform
5. Agreement on Strengthening Civilian Rule and the Role of the Army in a Democratic Society
6. Agreement on Constitutional Reform and the Electoral System
7. Agreement on the Basis for Legalizing the URNG

These political instruments are tools to resolve the causes of the internal armed conflict. They revitalize democracy as a means of reaffirming the dignity of life, freedom, justice and brotherhood. Significant progress has been made, particularly in what Alberto Couriel[5] calls *formal and minimalist democracy,* which is based on universal suffrage, pluripartism, the rule of law, dialogue and negotiation. These elements were absent during the period of authoritarian rule and confrontation.

However, the state of wellbeing has not reached the people yet. The restoration of democracy has created huge expectations about its ability to solve economic, social and cultural problems and existing violence. But this has not happened, and the

despair and frustration is leading people to look for alternatives.

Democracy is associated with ethical principles of inclusion, social integration and the abolition of inequalities. In so far as this has not been achieved, loyalty to the principles of democracy is in jeopardy and its consolidation is in doubt.

People are showing their disenchantment and their lack of trust in the system. This manifests itself in the most brutal expressions of disregard for the rule of law: vengeance, lynching, corruption and impunity. This is what Ariez Jerez Novara called the *crisis of civilization*.

IV. Crisis of Civilization and National Terrorism

Crisis of Civilization

The loss of patience and public confidence in democracy transforms the people into a critical actor against the incumbent government which, rightly or wrongly, they consider responsible for all the evils they suffer. This lack of confidence reveals itself in a loss of power which the governments try to overcome by repression, isolation, closing of opportunities for dialogue and information. The authorities in fact withdraw.

This loss of the democratic sphere leads to the strengthening of parallel criminal groups who disseminate terror in order to create an atmosphere of impunity in which to carry out their illegal actions.

National Terrorism

Terrorism should be understood as a series of activities that aim to arbitrarily kill men, women, children and adolescents or to destroy their belongings, by use of systematic terror. When we speak of terror we mean indiscriminate criminal violence that aims to have a larger effect than the directly caused harm, thus threatening the whole of society. Terrorist actions are not only single acts but form part of a complex strategy.[6]

From the above it can be seen that terrorism is composed of three elements:

Violent actions aimed at killing and destroying
Systematic use of terror as a threat to the whole society
Existence of a strategy

In Guatemala, criminal terrorist groups, sometimes linked to the State, have submitted the people to a systematic climate of terror. Our country has a population of 12 million people and every day 14 people on average are killed. 40% of the victims are children,

both girls and boys. The worst is the manner in which they are killed, which clearly reveals a strategy to spread terror. Decapitated, mutilated, burned, and tortured bodies are paraded, individually or in groups, in open public places, sometimes with messages tattooed on them. Assassinations occur in full daylight, in frequented places, with complete impunity.[7]

In 2003, 150 members of the Judicial System – judges, magistrates, inspectors, human rights officials – were threatened, intimidated or suffered some kind of attempt against their lives. Our institution was threatened on 32 occasions and raided once; two staff members were assassinated (an auxiliary staff of the Chimaltenango Department and an educator working for the social reinclusion of young members of bands). A study by the Institute of Compared Penitentiary Sciences of Guatemala concludes that only 0.3% of such cases are investigated.

In the face of these facts, the Human Rights Prosecutor, in compliance with his mandate, demanded that the Government establish a Committee of Enquiry into Parallel Groups and Clandestine Security Apparatus (known by its acronym CICIACS) – the proposal is now awaiting action by the Executive Branch – and also demanded the formation of a Front against Violence, which has since held demonstrations in 24 locations mobilizing more than 162,000 people.

Another kind of terrorism is that exerted by the worst forms of labor, such as the "gun powder children", the "stone children" and trafficking of persons. Human beings are being forced to work in inhuman conditions, condemned to lose their health and their lives because of their work, threatened with death if they reveal the conditions in which they have to work. In San Juan Sacatepequez, a county just thirty minutes from the capital city, almost 3,800 persons are exploited by the clandestine fireworks industry. During the first six months of this year, about 400 children suffered burns on more than 60% of their bodies and received treatment in clandestine health centers, where they lie on bedrolls and mats crammed into the same rooms where they have to defecate. It is estimated that 96% of these children die.

V. Counterterrorism: Democratic Security, Respect for Diversity, Institutional Strengthening, Universality

Terrorism is the most violent and unjust manifestation of a conflict and a solution must be found that addresses the causes that produce it. To resort to such negative actions as the denial of civil and political rights of a people with the creation of special tribunals, the restriction of guarantees through a flood of repressive laws, or the militarization of society does not solve the problem. On the contrary, it only deepens

the crisis.

Democratic Security

The doctrine of security, born during the Cold War, has been dominated by its military form and more concretely by its arms component. In Latin America it has justified military takeovers and the extremely harsh implementation of the concept. In the name of the security doctrine a totalitarian order has been imposed that violates human rights. It is a Leviathan that has swallowed the State.[8]

In the context of the new world order, States have been forced to rethink the whole doctrine and replace it with the idea of *Democratic Security* which identifies the enemy by the factors that destabilize the system. The South American Peace Commission describes these as follows:

> *Security is a vital need for people, society and the State. It is both the foundation and the consequence of social harmony and peace in all its dimensions. Levels of individual and collective security depend on the way each society is organized and on relations within and between nations. A contemporary view reveals that the main threats to security in Latin America are of economic, political, social, technological and ecological rather than military nature. National security policies aim to progressively reduce the main insecurities that affect any society. Security, in this context, must be viewed as the possibility of establishing a socially, democratically and politically fair order. Anything that works against that aim is a threat to the State which requires a reaction. However, the response is not necessarily military.*

Professor Vincenc Fisas believes that the challenge is to work toward a gradual demilitarization of security, so as to bring it closer to the real factors that cause insecurity and violence.[9]

Respect for Diversity

The world is full of violence and suffering caused by racism, xenophobia, prejudice and discrimination based on race, sex or religion. Such phenomena are a rejection of the 'other' as a human being. All men and all people are equal in dignity; but it must be recognized that we are unequal. Therefore, a just order demands the recognition of diversity and division. Under the banner of racial superiority the worst massacres of history have been committed. In Guatemala, hundreds of indigenous villages were razed by genocidal acts, causing the death of some 200,000 people. The culture and religion of those people was destroyed and they are being pushed into a consumer society, ruining their organization and social principles.

Institutional Strengthening

Anarchy and/or State dereliction violate the principles and values of democracy which is the political system that makes human rights viable. The main manifestations of this evil are arbitrariness, abuse of authority, impunity, corruption, infringement of the law, lack of participation and dialogue, lies and secrecy. These are modern phenomena which need to be combated.

Universality

The issues of terrorism and counterterrorism must be a challenge that is equally accepted by all States and by mankind as a whole, even when there is no consensus on the definition of terrorism.

On the other hand, mankind is now confronted with new threats such as international crimes, trafficking of persons and the worst kinds of child labor. Those that perpetrate such crimes and such acts subject people to terror. This calls for joint action from all States and it is, therefore, important to define an international agenda on democratic security.

VI. International Democratic Security

In Resolution 1373 the UN Security Council states that "any act of international terrorism is a threat to international peace and security. Terrorist acts further threaten the lives and wellbeing of people throughout the world."[10]

Mankind demands that these evils be combated. However, just as in national conflicts, the solution must be positive, tackling the causes that are at the origin of conflict, such as an unfair world order and the lack of acceptance of diversity.

To pose conflict as a black and white issue of friends vs. enemies and to try to resolve it by violent means has only led to a multiplication of conflicts throughout the world with their resulting of death and destruction.

In his paper on terrorism and the media, José Manuel de Pablos questions this solution, which he claims is but a game of double interests. He says: "The term terrorism is one of those words that are highly tinged by the color of the glasses through which it is looked at. Those who for some – simple citizens or victims – are terrorists are patriots or guerillas for others – sympathizers or countrymen of the actor. Heroes to some are mere terrorists to others."

While there are doubtless differences of opinion or a lack of consensus on the term terrorism, based on divergent political positions or State interests, what is important is

to understand the mainly negative implications of subdividing or conditioning the respect of human rights, now generally recognized. This would be a dangerous way of remedying one evil at the risk of creating an even greater one, such as giving priority to international security over human rights.

The positive way to face terrorism is to recognize differences and reduce inequalities so as to build what the former President of South Africa, Nelson Mandela, called a "rainbow nation" composed of different cultures that constantly intermingle in justice.

References

1. Cascón Soriano, Paco, *Educar en y para el conflicto,* Universidad Autónoma de Barcelona, Barcelona, 2003.
2. Organización Panamericana de la Salud: editores: Etiene G. Drug, Linda L. Dahlberg, James A. Mercy, Anthony B. Zwi y Rafael Solano, *Informe mundial sobre la violencia y la salud,* Washington, D.C., E.U.A., 2003.
3. Información Estadística del Procurador de Derechos Humanos de Guatemala.
4. Couriel, Alberto, de la democracia política a la democracia económica y social, documento mimeografiado, Guatemala, 2000.
5. LXXIX Asamblea Plenaria de la Conferencia Episcopal, Madrid, noviembre 2002, Instrucción Pastoral, valoración moral del terrorismo en España, de sus causas y consecuencias.
6. Aguilera Peralta, Gabriel, *Seguridad, función militar y democracia,* Guatemala, 1996.
7. Resolución 1269 del Consejo de Seguridad de la ONU.

[1] Cascón Soriano, Paco, *Educar en y para el conflicto,* Universidad Autónoma de Barcelona, Barcelona, 2003

[2] Op. cit. page 8

[3] Pan American Health Organization, ed. Etienne G. Drug, Linda L. Dahlberg, James A. Mercy, Anthony B. Zwi and Rafael Solano, *World Report on Violence and Health*, Washington D.C., USA, 2003, Preface.

[4] Statistical Report of the Human Rights Prosecutor of Guatemala.

[5] Couriel, Alberto, *De la democracia política a la democracia económica y social,* mimeographed document, Guatemala, 2000, page 2.

[6] Cf. 79th Plenary Assembly of the Episcopal Conference, Madrid, Nov. 2002, *Instrucción Pastoral, valoración moral del terrorismo en España, de sus causas y consecuencias* page 2.

[7] Between January and November 2002 the State Prosecutor received 198,418 reports and issued 741 sentences.

[8] Aguilera Peralta, Gabriel, *Seguridad, función militar y democracia*, Guatemala, 1996, pages 9-30.

[9] The Report of the World Public Affairs Management Committee states that the principles of security for a new era are based on the prevention of conflict, disarmament and control of the whole military cycle

[10] Resolution 1269 of the UN Security Council.

****

Working Group 2- Paper 3

The Hon. John von Doussa
President, Human Rights and Equal Opportunity Commission, Australia

Conflict and Countering Terrorism: Civil and Political Rights and the Rule of Law.

Torture and various forms of terrorism have been practiced throughout history, though never on the scale we are now confronted with. The first visual records of police interrogation were discovered in a four thousand year old tomb in ancient Egypt. Since the pharaohs there have been many refinements in methods of inducing physical pain and gathering intelligence, most notably during the Spanish Inquisition, but more recently in the modern totalitarian state. Today, in the name of the so-called war on terror, ill-treatment and torture are again being used more or less openly by some countries, including the US. These practices surprisingly have the approval of a number of distinguished professors and opinion-makers who argue that to defeat these new evils, we may have to compromise our standards on occasion.[1]

Although extraordinary times may, at first blush, call for extraordinary responses, arguably the means of addressing these new challenges is already in our possession.

What is needed is a renewed commitment to uphold and give effect to human rights laws. As the late High Commissioner for Human Rights, Mr Sergio Vieira de Mello advised,

> *"the best - the only - strategy to isolate and defeat terrorism is by respecting human rights, fostering social justice, enhancing democracy and upholding the primacy of the rule of law ."*[2]

A global terrorist threat does not present a valid reason to step back from the aspirations set out in instruments such as the Universal Declaration on Human Rights. Rather it is precisely this threat that should inspire us to achieve a world where each person can live their life in peace and with dignity.

The challenge that confronts world powers is that "[a] coercive approach to the establishment of human rights and democracy, particularly if promoted by Western might and wealth, is almost certain to backfire".[3]

The experience of some national human rights institutions may be useful in demonstrating how a human rights culture can be fostered, and a benevolent but potent force for positive change exerted.

As required by the annotated agenda for this session, this paper discusses experience at the national level in Australia concerning the impact of counter-terrorism measures on the enjoyment of civil and political rights. The paper identifies potential strategies for national human rights institutions in States not experiencing actual conflict to be an effective advocate for human rights. It acknowledges that in a conflict situation, strategies available to national institutions will necessarily be different, and curtailed.

Australia's Legal Structure

Australia is fortunate to be amongst the States that were largely unscathed by a terrorist attack prior to 11 September 2001. Only one such attack had occurred on Australian soil, when a bomb exploded in front of the Hilton Hotel in Sydney on 13 February 1978 killing three people and seriously injuring several others. The identities and motivations of the persons responsible for that attack remain unclear.

More recently, Australian citizens have been killed in the attacks on the twin towers in New York, the bombing of the Sari Night Club in Bali and the bombings in three housing compounds in Riyadh, Saudi Arabia last year.

Australia, like other nations, has introduced counter-terrorism measures in response to the emergence of a global terrorism threat. Given the unprecedented nature of this threat, no country can afford to be complacent and continue to function on a 'business as usual' basis. As Edmund Bourke advised, "[a] state without the means of some change is without the means of its conservation." To understand the impact of Australia's counter-terrorism measures it is necessary to briefly sketch the Australian position as it was before that date.

In Australia, the Westminster system of democratic government has functioned under a written constitution since 1901. The Federal and State Parliaments have enacted comprehensive laws which govern virtually every aspect of private and commercial life. The legislation operates against the backdrop of the English common law and an

efficient multi-tiered independent judiciary.

Legislation and adherence to the English common law safeguards ensured that recognised international human rights were generally observed by the legislators and enforced by the Courts. For example, criminal law procedures complied comprehensively with the broad requirements of

ICCPR, particularly Articles 9 to 16. Recognised safeguards included:

- freedom from arrest without warrant;
- a prompt appearance before a Court after arrest;
- a right to apply for bail;
- recognition of the accused's right to silence;
- the presumption of innocence;
- prohibition on the admission and use of evidence obtained by torture or illegal conduct;
- prohibitions against unauthorised telephone taps or interference with mail;
- a public trial;
- a trial by jury in serious cases; and
- right of appeal.

As there is no constitutional guarantee in a Bill of Rights or otherwise of fundamental human rights and freedoms, the legislatures in Australia can override recognised human rights – subject of course to an electoral backlash if the electorate does not support the actions of the parliamentarians. In this respect parliamentary Bills and legislation that potentially empower interference with fundamental human rights attract vigorous debate in the press and electronic media.

The Australian Human Rights and Equal Opportunity Commission (hereafter, the Commission) has consistently taken the view that after the terrorist events or 2001 and 2002, the Australian government had a duty to take appropriate steps to strengthen our legislative protections against international terrorism, and to authorise the courts and the other levels of government to respond effectively should more terrorist acts occur.

The central challenge for the Parliament is how these protections can be achieved in a manner that strikes a balance between the protection of the community at large, and the rights of suspects. It is recognised that the freedom and safety of general members of the community are fundamental human rights that weigh heavily in the balance. But on the other hand, to allow arbitrary detention and draconian measures against possible terrorist suspects would undermine the rule of law and the very pillars of

democratic freedom which anti-terrorism measures are intended to uphold.

It is also recognised that if suspects are convicted of terrorist related charges in unfair court proceedings, or as the result of false confessions under duress, or worse still, if suspects are simply detained indefinitely without trial, democracy will not be served and the real terrorists may pass undetected.

International Standards for Human Rights Protections in the Context of the War on Terror

Human rights law acknowledges that from time to time, States must address serious and genuine security concerns, including terrorism. Principal in this regard is the ICCPR, which provides clear guidance for States as to how they can strike a fair balance between legitimate national security concerns and the protection of fundamental freedoms.

The drafters of the ICCPR envisaged that there would be occasions when human rights as set out in the Covenant would be justifiably infringed by States in times of public emergency. A procedure for the derogation from such rights is prescribed in article 4 of the ICCPR which provides for derogation from human rights protections 'in times of public emergency which threatens the life of the nation'.

However, that power of derogation is carefully circumscribed to avoid the arbitrary disregard for human rights. For example, any measures taken by State must be 'strictly required by the exigencies of the situation' and they should only remain in place whilst there is a publicly-declared state of emergency.[4] A number of additional safeguards have been put forward by the United Nations Human Rights Committee (and the European Court of Human Rights) to minimise the impact of incursions on human rights by public security issues.[5]

The drafters of the ICCPR were also careful to spell out which human rights are not subject to suspension under *any* circumstances.[6] The list of non-derogable rights includes:

- the right to life (article 6);
- freedom of thought, conscience and religion (article 18);
- freedom from torture or cruel, inhuman or degrading punishment or treatment (article 7);
- the right to recognition everywhere as a person before the law (article 16); and
- the principles of precision and non-retroactivity of criminal law (article 15).

Australia's Counter-Terrorism Legislation

Australia has not sought to invoke article 4 of the ICCPR and under international law may not at present derogate from any of its obligations under the ICCPR in any new measures which are introduced to protect national security.

Yet the post 11 September counter-terrorism measures introduced by the Australian Government have the potential to significantly impinge on recognised human rights standards, and in some cases breach human rights law. It is therefore not surprising that the Commission, human rights NGOs, legal academics and other high profile commentators in Australia have strenuously opposed aspects of the Bills in the national media and other public fora.

The fact that counter-terrorism bills are now routinely being sent to federal parliamentary committees for review and exposure to public consultations, demonstrates how keenly aware all political parties are of the groundswell of concern in the Australian community. In some cases, the Government's own members (who are in the majority on the legislative committees) have condemned the proposed legislation and recommended substantive amendments to achieve a better balance between human rights measures and national security objectives.[7]

Despite this opposition, Australia like most countries, now has a raft of counter-terrorism legislation and policies in place. The Australian Parliament and its committees of inquiry continue to consider further additions to this body of law, and as a consequence, the Commission remains engaged in the process of highlighting both Australia's obligations under human rights law and the shortcomings of legislative proposals in this regard.

Two pieces of counter-terrorism legislation that are now law in Australia demonstrate that a national institution can positively influence the legislative process to promote and protect human rights.

Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2002

Referred to as 'the ASIO Bill' before it was enacted, this is probably the most draconian Bill an Australia government has ever conceived of. It surpasses the attempts of former Australian Prime Minister Robert Menzies to ban the Australian Communist Party in 1950.[8] Legal commentators have compared the ASIO Bill to counter-terrorism legislation in the UK, the US and Canada and found that it supersedes the draconian measures adopted in all of these jurisdictions. As one legal expert summed it up,

"[o]nly Australia has sought to legislate to authorise the detention in secret of non-suspects".[9]

In its original form, the ASIO Bill allowed adults and even children (above the age of 10) to be detained and strip searched, and to be held by the Australian Security Intelligence Organisation (ASIO) for rolling two day periods that could be extended indefinitely.[10] The detainees could be denied access to people outside ASIO, and could be denied the opportunity to inform family members, their employer or even a lawyer of their detention.[11]

Further, the Bill provided that Australians could be held, not on the grounds that authorities suspected they had engaged in terrorism or were likely to do so, but because they *may* 'substantially assist in the collection of intelligence that is important in relation to a terrorism offence'.[12] A detainee's failure to answer a question posed by ASIO could result in a five year gaol term.[13] Not surprisingly, this latter provision raised serious concerns amongst journalists and lawyers who might have professional and ethical grounds for wanting to exercise their right to silence to protect their sources or clients respectively.

The Commission made a submission to one of the *two* parliamentary inquiries that reviewed the bill, which collectively received almost 600 submissions.[14] We also engaged in a public awareness raising campaign, issuing a number of media statements to point out where we believed the Bill would breach human rights standards.

In response to strong public criticism and two damning parliamentary committee reports, the Government was forced to substantially amend the Bill. Australians had sent the government a very clear message that they were not prepared to compromise key legal rights and erode civil liberties.

The Bill was ultimately passed in June 2003 after an exhaustive debate in the Australian Senate. It is now subject to a three year sunset clause and can only apply to children over the age of 16 years. Additional improvements include that:

Detainees are afforded immediate access to a lawyer of their choosing, and can only be questioned by ASIO for a total of 24 hours over a one week period. They must then be released, but can be questioned again should a new warrant be justified by fresh information; [15]

A person can only be held and questioned when ordered by a retired judge, and the

questioning itself must occur before a retired judge. The questioning must be videotaped and the whole process monitored by the Inspector-General of Intelligence and Security, who is effectively the Ombudsman for ASIO.[16] These additional protections in the hands of independent people blunt some of the worst excesses of the original Bill.

However, elements of the ASIO Amendment Act which remain of concern to the Commission and which we will continue to monitor, include the following:

It is sufficient grounds for the Minister to approve a warrant for questioning if he or she is satisfied that 'there are reasonable grounds for believing that [questioning] will substantially assist the collection of intelligence that is important in relation to a terrorism offence';[17] and when questioned, a detainee must give the information or records sought (if they have them) or face the penalty of five year's imprisonment.[18]

Anti-Terrorism Act (No.2) 2004

Prior to its recent enactment, this legislation was also the subject of a Senate Committee inquiry,[19] and a submission by the Commission elaborating on our concerns.[20] The Commission's analysis of the shortcomings of the Bill contained in our submission was quoted at length throughout the Committee's report, and the Committee adopted many of our recommendations. The Senate ultimately enacted four amendments that were proposed by the Senate Committee.

Despite the fact that some of the potential breaches of human rights standards originally contained in the Bill have been removed, a number of provisions remain of concern.

The Act amends the *Criminal Code Act 1995 Cth* making it an offence to intentionally associate with a person who is a member, or who promotes or directs the activities, of a listed terrorist organisation in circumstances where the association provides support to the organisation. The person must know that the organisation is a terrorist organisation and must intend that their support 'assists' the organisation to expand or to continue to exist.[21] Both the Commission and the Senate Committee recommended that the term 'assist' was unnecessarily wide-ranging in its effect and should be defined to identify the nature and extent of the risk that the offence is intended to address. The Commission pointed to the example of the *Patriot Act 2001 (USA)*, which lists specific types of unlawful behaviour such as provision to a terrorist organisation of financial services, weapons, false documentation or personnel.[22]

Whilst the Australian legislation contains some exemptions, the Commission's concerns in relation to the lack of proportionality remain. There are not adequate carve outs for lawyers, journalists and family members, and this may have adverse implications for the right to freedom of association and freedom of expression in Australia. We will continue to monitor the operation of the legislation in these regards.

Strategies for National Institutions in Non-conflict Situations to Promote and Protect Human Rights

As I have indicated, the Australian Commission has been very active in exercising our statutory function to promote awareness amongst the Australian public of the human rights issues arising from counter-terrorism measures. We have sought to ensure these concerns are conveyed to legislators through the parliamentary committee process and public addresses, thereby giving effect to another of our statutory functions, to review existing and proposed legislation for any inconsistency with human rights standards. Another approach we have taken is to publicly report on concerns raised by members of minority groups in the Australian community who are (or who perceive themselves to be) most affected by the wider community's response to threats of terrorism, and to suggest possible solutions. One example of our work in this regard is the recently-completed national consultations that the Commission convened with Arab and Muslim Australians, which we called the Isma§ Project.[23]

The very clear message from these consultations was twofold: firstly stronger leadership at all levels of government to denounce prejudice and discrimination on the basis of race or religion, and secondly, the delivery of more education initiatives to foster greater understanding and improved community relationships between minority groups and the broader Australian community.

To assist us in all of our efforts to protect and promote human rights in Australia, the Commission is very fortunate to have long history of a free and questioning media and a strong, vibrant civil society. When it comes to challenging and stridently criticising our government, the Commission is by no means a lone voice. But we are set apart from many of the other voices by our independence.

All national human rights institutions established under the Paris Principles[24] are meant to be afforded an important degree of independence from government. They are in the privileged position of being able to provide independent feedback and advice to ensure that the government's laws, policies and practices reflect accepted human rights standards.

It is to be expected that there will be times when a national institution will be required to be critical of government laws and policies, and this is particularly the case in the context of the so-called 'war on terror'. As a consequence, it is inevitable that political tensions will arise when a national institution is working effectively. However, in the interests of promoting and protecting human rights, it is important that any critical findings of the national institution are accepted by the government in a constructive manner and used as the basis for reappraisal and where necessary, legal or policy reforms.

The challenge for national institutions is to develop a relationship with the State that is based on mutual respect for each other's roles and functions. At the same time, national institutions must establish themselves in the eyes of the broader community as independent, credible and objective organisations so that their criticisms cannot be dismissed by the State or others as uninformed or biased. Meeting these challenges is an imperative if national institutions are to sustain an ongoing dialogue and constructive interaction with the State and the broader community.

The experience of the Australian Commission is indicative of the valuable watchdog/awareness raising role that national institutions can play in other jurisdictions.

Obviously the scope for intervention by national institutions to protect and promote human rights will differ according to the functions they are afforded under their enabling legal instrument. For example, the Australian Commission is explicitly prevented under our legislation from 'inquiring into an act or practice of an intelligence agency', or investigating a complaint concerning such an agency.[25] This is despite the fact that these agencies are the principal actors in counter-terrorism activities in Australia, and that intelligence agencies in many countries, including Australia, are coming under increasing domestic pressure to be more accountable for the advice that they provide governments.

The Australian experience suggests the following strategies may be of relevance to other national institutions to achieve the appropriate balance between the human rights of the community on the one hand, and those of terrorist suspects on the other.

a) A monitoring role

Human rights institutions, along with NGO's must ensure that proposed government action is monitored and evaluated. Monitoring must be comprehensive, and ensure that media reports and statements by government officials as well as formal ministerial statements and Bills are covered.

In Australia that is not difficult at the parliamentary level, as Bills become public upon their introduction to Parliament. However, monitoring of administrative action is more difficult. Unless apprehended suspects have the ability to contact family, friends and lawyers, and unless there is a statutory requirement to present them before a court within a short time of arrest, the apprehension of suspects may remain unknown. New legislative measures, whatever else they do, should ensure these rights are preserved, and to the extent that they are not, national institutions and others must address strategies to gather information about the administrative enforcement of the laws as it takes place.

The development of strategies to monitor the enforcement and administration of anti terrorism laws in Australia is still in its infancy, but as steps are taken under the recent anti-terrorism laws against individuals, the pressure to develop sophisticated mechanisms of information gathering will increase.

As new legislative or other proposed measures come to light, national institutions and other independent parties must analyse the contents of the measures and the human rights implications of their enforcement. Measures inconsistent with proper recognition of human rights should be identified in media statements, through submissions to appropriate players in the parliamentary process, and in academic journals and similar publications.

National institutions have human rights and legal expertise to identify inconsistencies with international instruments and principles of international human rights law. That expertise is invaluable in public debate because it provides the community access to informed, independent and reliable information. They are then in a better position to reach their own conclusions about the actions of the executive, the legislature, the judiciary, the police and armed forces and so on.

b) An educative role

The ability of national institutions to gather experience through other national institutions in other countries equip them to identify potential human rights breaches flowing from proposed measures which the general public might not recognise. This expertise should equip national institutions to undertake educative programs through the media, their websites and with civil society that others in the community cannot undertake.

Educative programs must, however, be balanced and pay due regard to the risk to the community, as well as to suspects. Unbalanced debate is likely to be counter-productive.

Strategies for National Iinstitutions in Conflict Situations

Strategies of this kind assume that a State is not under immediate attack. In situations of actual conflict, the opportunity for rational debate may not exist. In a conflict situation avenues for dissemination of information and public debate are likely to be cut-off, and the daily activities of national institutions and civil society frozen. Australia has no experience in a situation of actual internal conflict.

For strategies in conflict situations we need to look to the experience of our national institution colleagues in countries which have experienced conflict.

In conflict situations the personal safety of human rights workers is likely to be under threat, and personal safety risks of that kind of necessity curtail what can be done. Appropriate responses that provide guidance include the brave and admirable efforts of the National Human Rights Commission of Nepal to broker the observance of human rights by both sides of the conflict, and the Fiji Human Rights Commission in recording events as they occurred during the periods of political instability.

Contemporaneous records of events are of enormous importance after the conflict subsides, when it becomes necessary in criminal proceedings or otherwise to determine what happened. The gathering of information is also valuable to enable lost people to be traced, by humanitarian agencies such as UNHCR and the International Committee of the Red Cross.

Concluding Remarks

External threats – whether real or imagined – have the potential to compromise the rights of people within a nation under the guise of protecting national sovereignty. It is precisely at these times – when a nation expresses a sense of fear and vulnerability – that it needs to strengthen and protect its human rights mechanisms.

We need to be mindful of the fact that human rights laws are among the foundation stones of our functioning democracy, and if we seek to justify the sacrifice of particular rights in an attempt to safeguard our society, we risk foregoing the very rights that are essential to the maintenance of the rule of law, and ultimately the very sense of security we so value.

And it is at these times that a robust and independent national human rights institution is even more crucial in promoting and protecting human rights.

Each national human rights institution has a responsibility to vigorously defend human rights standards before the State and its governing institutions. It also has a responsibility to develop a culture of tolerance and understanding- a human rights culture- which is critical to the development of a cohesive national community and indeed an international community.

In so doing, national institutions can help bridge the divide of differences and become engaged in creating a society where the rhetoric is matched by the reality of its protection of human rights.

[1] In the aftermath of 11 September 2001, US legal scholar Alan Dershowitz argued in favour of legalised torture as a counter-terror measure. Refer to Richard Falk, 'Think Again: Human Rights',*Foreign Policy,* March-April 2004 page 1 of 6, www.foreignpolicy.com

[2] As quoted by The Acting High Commissioner for Human Rights, Mr Bertrand Ramcharan, *The Protection of International Human Rights in Counter-Terrorism Efforts,* paper delivered at the Eighth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, 16-18 February 2004, Kathmandu, Nepal, p.1.

[3] Richard Falk, ibid, p.6 of 6.

[4] In order for States to derogate from their obligations under article 4 of the ICCPR in times of public emergency, article 4(1) provides that; the public emergency must threaten the life of the nation; the public emergency must be publicly proclaimed; the measures must be strictly required by the exigencies of the situation; the measures cannot be inconsistent with other requirements of international law; and the measures must not involve discrimination solely on te grounds of race, sex, colour, language, religion or social origin.

[5] The Human Rights Committee has developed a list of elements that, in addition to the rights specified in article 4(2), cannot be subject to lawful derogation (Human Rights Committee, *General Comment No. 29: States of Emergency (Article 4*, 31 August 2001)

[6] Article 4(2) of the ICCPR.

[7] See for example Senate Legal and Constitutional Legislative Committe Repor, Inquiry into the Provisions of the National Security Information (Criminal Proceedings) Bill 2004 and the National Security Information (Criminal Proceedings) (Consequential Amendments) Bill 2004, tabled 19 August 2004; available at http://www.aph.gov.au/senate/committee/legcon_ctte/index.htm.

[8] Prime Minister Menzies introduced the*Communist Party Dissolution Bill 1950 (Cth)*- the so-called 'Anti-Communism Bill, which threatened to herald an era of McCarthyism in Australia and to undermine accepted ad valued legal principles including the presumption of innocence, freedom of belief and speech, and the rule of law. See George Williams 'Australian Values and the War Against Terrorism', in *UNSW Law Journal,* Vol.26(1), 2003, p191-194.

[9] George Williams, ibid, p.197.

[10] *Australian Security Intelligence Organisation Legislation Amendments (Terrorism)ill 2002 [No 1] (Cth)*,34M.

[11] c.34F(8).

[12] c.34G(3).

[13] c.34G(3).

[14] The Bill was first examined by the Parliamentary Joint Committee on ASIO, ASIS and DSD, which reported in June 2002 *An Advisory Report on the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 200*, and subsequently sent the Senate Legal and Constitutional References Committee, which reported in August 2003 *Consideration of Legislation Referred to the Committee: Provisions of the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002).*

[15] *Australian Security Intelligence Organisation Legislation Amendments (Terrorism)Act 203,*s.34D(3)(c)

[16] Ibid,s.34HAB.

[17] Ibid,s 34C(3)(a).

[18] Ibid,s 34G(3 and 6).
[19] The Australian Senate, *Legal and Constitutional Committee Report on Provisions of the Anti-Terrorism Bill (No.2) 2004*, August 2004; http://www.aph.gov.au/senate/committee/legcon_ctte/anti_terror_2/report/index.htm
[20] The Commission's full submission to the Senate Inquiry is available at http://www.humanrights.gov.au/legal/submissions/terrorism.html
[21] *Criminal Code Act 1995 Ct*,s.102. 8.
[22] http://www.humanrights.gov.au/legal/submissions/terrorism.html
[23] For more information, refer to http://www.humanrights.gov.au/racial_discrimination/isma/index.html
[24] Formally referred to as 'Principles relating to the status and functioning of national institutions for protection and promotion of human rights', as adopted by the UN General Assembly in December 1993.
[25] Section 11(1)(3) of the *Human Rights and Equal Opportunity Commission Act 1986 (Cth)*.

****

Working Group 2-Discussion Summary

I. The Problem

In this Working group, NIs discussed their experiences with regard to the serious problem of conflict and counter-terrorism measures negatively impacting the enjoyment of civil and political rights. Particularly, they looked at strategies to strengthen NIs' functions, including monitoring the aforementioned situation; monitoring national legislation; assisting states in identifying security measures which both address legitimate threats and ensure respect for fundamental rights and freedoms; and promoting respect for human rights in time of crisis through public education campaigns and outreach. Participants also discussed the role of NIs in internationally, specifically how best they can cooperate with regional and international human rights mechanisms.

In recent times, CP Rights have come under considerable pressure in the fight against terrorism, and human rights treaty bodies and mechanisms have highlighted this fact. They have emphasized that human rights law has provisions allowing States to undertake emergency measures, including the suspension of certain rights, to combat terrorism but only in the case of emergencies that "threaten the life of the nation and the existence of which is officially proclaimed," and only "to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin" (ICCPR, article 4). Nevertheless, even in times of emergency, certain core elements of international law are non-derogable and may never be suspended. These include the right to life; the right to freedom from torture; the right to freedom from arbitrary detention; the right to freedom from discrimination; and fundamental principles of fair trial, including the presumption of innocence; and respect for the principle of legality. (See article 4, ICCPR, and UN Human Rights Committee, General Comment No. 29.

II. The Discussion

Mr. Omar Azziman of Morocco was the Chairperson, Ms. Maria Eugenia Acena of Guatemala and Mr. Myung-deok Kang of South Korea each presented a paper. The representative from the Philippines was the Rapporteur. The participants emphasized that fight against terrorism must take place within the framework of human rights and the rule of law, not outside of it. There are certain fundamental principles all can agree on. The Group did not, of course, propose a definition of terrorism. However, it is the responsibility of States to fashion a legal definition of terrorism if it is to legislate against it. Moreover, this definition can not be so broad as to confound the rule of law and human rights norms. The concept of terrorism must not be open to abuse by authorities. The discussion touched on the concern that terrorism must be carefully considered in the context of national liberation struggles and the exercise of the right to self-determination, which is guaranteed for example in the International Covenant on Civil and Political Rights.

However, reprehensible incidents such as the Beslan hostage-taking and the killings in Russia remind us that unquestionable and indefensible acts of terrorism can occur in all political settings. The principle of the rule of law must also be respected at all times. In this respect, the Group took note of the Berlin Declaration of the International Commission of Jurists, setting out key principles to be respected in the context of the struggle against terrorism. These include the fundamental requirements of due process and fair trial, as well as respect for human dignity. The presumption of innocence applies at all times. No one should be subject to indefinite detention without review, least of all without access to counsel and family. The Group underlined the need for a remedy, in cases of alleged infringement of human rights in counter-terrorism measures. There are times when exceptional measures might be justified, but they must be narrow in scope, and their implementation must be subject to independent review. The courts thus play a key role.

NIs have several vital contributions to make in the context of protecting human rights, including civil and political rights, while countering terrorism. They can serve a unique role as a bridge between Government and civil society. The first area of action is preventative. They can review legislation, make public interventions against measures based on discrimination, racism, or that otherwise threaten human rights, and raise sensibilities and awareness about both the origins of terrorism and the most effective, comprehensive responses. NIs must commit themselves to stimulating and leading public debate.

Moreover, the discussion group discussed the importance of a free and aggressive media. NIs, for example Korea, Guatemala, Malaysia and Australia referred to specific

instances in which they played a leading role in public debate and scrutiny over controversial draft counter-terrorism measures. The media was crucial in these public debates and in galvanized public opinion in favor of a human rights perspective. Moreover, the participants agreed that the struggle against terrorism itself is not only a military struggle or a financial one, but in the last analysis, it is also a struggle of ideas. This debate must take place in the open

III. Outcomes

Closely linked to free expression is human rights education. NIs can take a leading role in disseminating awareness of human rights standards throughout society, including in legal circles, such as among judges, as well as in communities most affected by counter-terrorism measures. We noted the emphasis of our NGO colleagues on human rights education. The NI role of monitoring national legislation and state counter-terrorism measures serve to identify potential violations of human rights and incorporate a human rights perspective in the crafting of this legislation ultimately better addressing the challenge the conflicts and terrorism represents.

National Institutions must reach out to those vulnerable communities that a most at risk. The NGO representative stated and the participants concurred that human rights defenders are on the front line among those vulnerable groups and are more at risk because of their vocal advocacy of human rights. Therefore, NIs must closely monitor state measures that affect them. Utilizing networks of support open to NIs is crucial to their efficaciousness. They must seek out international mechanisms as well, UN and regional mechanisms as well. Participation in these bodies will enhance the NIs credibility and stature among the respective national media. Their partnerships with civil society groups will serve this aim as well.

****

Working Group 3- Paper 1

Ms. Margaret Sekaggya
Uganda Human Rights Commission

The Role of National Human Rights Institutions in Conflict Situations

I. Introduction

A conflict is a relationship between two or more parties (individuals or groups) who have or think they have, incompatible goals. It comprises three components: contrasting aims, conflict attitudes and conflict behaviour. Conflicts are an inevitable part of life, which arise from a breakdown in community relations where people are intolerant or feel that their needs are not being met or that their identity is threatened. This is usually demonstrated by unequal social status, unequal wealth and access to resources and unequal power, which lead to discrimination, unemployment, poverty, oppression and crime. There are three main stages of conflict: pre-escalation, open conflict and outcomes.

The pre-escalation stage progresses from an initial conflict through realisation, manifest conflict and polarisation. Antagonistic contrasts and intolerance breed a number of irreconcilable goals of the various actors in conflict. When the actors become aware of these contrasts and feelings of frustration manifest themselves, conflict follows. A crisis situation forms: tensions become acute and self-intensifying. Depending on how the government acts, this crisis can easily be averted, as at this stage there are many possible preventative measures. These may vary from hard repression to meeting the grievances of the agitating actors. At this stage prevention primarily involves keeping the situation of conflicting aims under control in order to prevent a further escalation of violence. When the government involved denies the existence of the crisis or remains indecisive, the situation worsens. Repression may also produce this effect. Acting severely eventually provokes a reaction from the oppressed actor and in certain cases is controlled by the potential rejection or sanctions from abroad. When a conflict remains 'unresolved', the polarisation becomes even greater

and an open- conflict situation ensues.

Open conflict is that point where the conflict escalates, in extent and means employed into an outright confrontation between the various actors. During the pre-military stage there is occasional, isolated and short-lived physical violence. At the military stage, organised, lasting violence covers large stretches of the territory. In the final stage there is a face-to-face showdown in order to establish a different political and/or social structure throughout all or parts of the territory on a permanent basis. At that point the conflict is of such an extent that its existence cannot be objectively denied by anybody. The number of remaining curative means is already greatly reduced by this stage. As long as total escalation has not yet taken place, there is still a chance for diplomatic initiatives to be taken. After that, all that can be hoped for is that the worst-case scenario can be avoided. Any favourable long-term prospects are put at risk, owing to the extremely uncertain short-term course of events. At this point, when the confrontation turns into open warfare, conflict prevention is, of course, out of the question. Any intervention from that point on is geared towards enforcing a freeze in the conflict or containment.

The control of the conflict as described above is in most cases superficial and geared towards buying time. When these remedies fail to do away with the social inequalities, which lie at the root of the conflict, the conflict continues to smoulder and may flare up again at any given moment. This is what is described as the outcomes stage. At this stage, this sort of conflict does not easily come to an end. However parties may ultimately become exhausted and see compromise as the only means to ensure their survival, as was the case in Sudan.

Depending on how the conflict is handled at the various phases, it can lead to destructive violence or constructive change. If they are resolved without violence it often leads to an improved situation for most or all of those involved because they make people aware of the problems, promote necessary change, improve solutions, raise morale, foster personal development, increase self awareness and enhance psychological maturity. However violent conflict causes physical, psychological, social and environmental damage and often prevents people from reaching their full potential.

Peace cannot be brought about by one single action. It takes a lot of effort to rebuild trust, address legitimate grievances, to reward combatants who chose to give up the fight and to build incentives into the pace process that would assure the continued commitment of people on both sides of the conflict. As such there are various actors with different roles who should work in an integrated, coherent and comprehensive

framework to handle conflict situations. Such actors include National Human Rights Institutions (NHRIs).

Although there is no specific provision on the role of NHRIs in conflict situations in the Paris Principles, their role is obvious and inherent from their mandate to promote and protect human rights. Given the nexus between conflict and human rights violations, there is no way that NHRIs can detach themselves from conflict situations. Human rights are a foundational issue in conflict situations. Denial of human rights will ultimately be opposed and such opposition often begins with a non violent protest which if not heeded may become an armed struggle. The struggle for respect for human rights will often lead to conflict because there can be no peace where there are violations of human rights. Although the role of NHRIs in conflict situations is dependant on their respective mandates and the existing mechanisms for conflict resolution in their respective countries they generally have a role to promote conditions in the country that are conducive to the resolution of conflicts and to ensure that there is respect for human rights.

This paper discusses the general role of NHRIs in conflict situations and particularly shares the experience and challenges faced by the Uganda Human Rights Commission (UHRC) in dealing with conflict.

II. The Role of NHRIs in Conflict Situations

i) Early Warning and Prevention of Conflicts from Escalating

Early warning systems were first developed for natural disasters such as earthquakes, drought, famine and floods, and the effects of these disasters on people. However, there has been a growing interest in early warning systems, which are designed to detect and signal conflicts for the purpose of making possible the use of preventive action instead of reactive action. It is cheaper to prevent a conflict than to have peacekeeping and peace-enforcing operations. As such many organisations like the United Nations and its specialist organisations, research institutes and Non Governmental Organisations (NGOs) have developed early warning systems in order to avert conflict.

At the pre-escalation stage, NHRIs through their functions of complaint receiving, investigations, monitoring and recording human rights violations in the country are in position to note the early warning signals of potential conflict situations. This is because they have access to clear, accurate, meaningful, recent, adequate and valid information. It is possible for NHRIs to develop indicators that enable them to follow the progress of conflict. They can develop very explicit indicators, which reveal both the background conditions against which conflicts come about and the escalation

dynamics of conflicts. These indicators can be regularly updated to trace potential conflicts at a very early stage. Specific indicators include repeated expressions of grievance by the same group, which seem not to be heard or redressed, social and political tension and unbalanced development among others.

However there is no hard and fast rule to definitively indicate whether a conflict will actually develop. Early warning will always remain a question of evaluation and interpretation. Nevertheless any signs of potential conflict can be drawn to the attention of the relevant authorities and other concerned members of the community and something can be done to avert the conflict. If NHRIs perform this role, the outbreak of violent conflict can be prevented.

ii) Conflict Analysis

At all stages of the conflict, conflict analysis is important because it enables; understanding of the background and history of the situation as well as current events, identification of the relevant groups involved, understanding of the perspectives of the various groups, identification of factors and trends that underpin conflict and enables learning from failures as well as successes.

NHRIs in the course of their duties can engage in an ongoing process of conflict analysis by examining and understanding the reality of the conflict from a variety of perspectives. This understanding forms the basis on which strategies can be developed and actions planned. NHRIs are in a position to keep themselves updated on the stages of the conflict, which enhances their understanding of the various conflicts making it possible for them to find an entry point for action. In this regard they are in position to give advice to the conflicting parties on their rights and responsibilities during the conflict period.

iii) Mediation and Conciliation

Although NHRIS cannot resolve the conflict they can facilitate the conflict resolution process. Where necessary and it is acceptable to the conflicting parties, NHRIS can help in resolution of the conflict through mediation and conciliation of the conflicting parties. Through Mediation and conciliation NHRIs can restore broken relationships, between individuals, communities, ethnic groups or nations. Through dialogue with the facilitation of NHRIs a feeling of interdependence can be stimulated, common identities can be emphasised and the conflicting parties can be helped to understand the other side's position. Conflicts often erupt when relationships break down and NHRIs can help by bringing the conflicting parties together to come to an understanding. Such mediation and conciliation by NHRIs should take each conflicting party's grievances seriously. If group grievances are not taken seriously, then even a well-meant mediation and conciliation process can lead to the further deterioration of

a conflict situation. Also, NHRIs as mediators must be willing to work with both sides and to work out an agreed solution by both sides.

iv) Peace and Human Rights Education

NHRIS can carry out human rights and peace education so as to promote peace and respect for human rights to make people acquire skills and values of peace and human rights. This can be done both as long-term programme or focused activity. The long term programme would be broad based focusing on important problems and trends of the particular society, mostly through schools and colleges while the focused activity would be aimed at addressing or preventing a specific conflict.

This education can help in empowering the people by increasing their control or mastery over their own lives and the decisions that affect their lives. It would enable them to recognize the human rights dimensions and their relationship to a given conflict or problem. Peace and Human Rights Education would help to eradicate intolerance, prejudices, stereotypes and discrimination. It would enable people to learn that it is possible for us all to live in harmony with each other and would help to develop attitudes of self-respect, tolerance, empathy, justice and fairness. It would also strengthen or develop local capacities for peace.

Furthermore NHRIs can raise awareness about the various human rights violations, mobilise allies and build coalitions for individuals, groups and organisations that can join them to put pressure on those who have decision - making power. This can be done through lobbying and campaigning to bring about respect for human rights.

v) Peace Building Through Promotion and Protection of Human Rights

Peace is a process and it must be built up over a long period of time. Peace is not abstract but must be an organic process growing at all levels of society. Peace cannot be built just through exclusive conclaves of the leaders of conflicting parties but rather has to be built on long-term strategic relationships, which reach across the dividing lines of conflict in society. Peace building involves undertaking programmes designed to address causes of conflict and grievances of the past to promote long-term stability and justice.

Much can be done to bring about peace if the NHRIS are willing to make a difference. NHRIs can engage in the process of peace building with other actors by addressing some of the underlying causes of conflict such as unequal social status, unequal wealth and access to resources and unequal power, which lead to discrimination, unemployment, poverty, oppression and crime. Through enforcement of human rights like the right to equality and non-discrimination NHRIs can redress the causes of conflict and thus contribute to the peace building process. This brings hope and

stimulates people to disengage themselves from war.

vi) Cooperation and Networking with Other Stakeholders
NHRIs can network and cooperate with other stakeholders in peace building in an integrated, coherent and comprehensive framework. Efforts in peace building can only be effective if they are done in partnership with the various stakeholders like members of the national governments, civil society, religious and cultural leaders and even members of the international community from whom they can learn from their experiences.

III. The UHRC Experience and Challenges

The UHRC is situated in the great lakes region, which is riddled with conflict. In Uganda the government forces have been engaged in fighting the Lord's Resistance Army (LRA) in northern Uganda for the last eighteen years. There are also conflicts in the western and eastern part of Uganda. The UHRC was set up in 1996 and started its operations in 1997. Regarding the various conflicts in Uganda the UHRC has particularly done the following:

i) Opening of Regional Offices in Conflict Areas
The UHRC has opened up offices in conflict areas in order to address various issues. There are regional offices in the northern, western and eastern region, which were particularly opened to address the existing conflicts. The presence of the UHRC has constituted a form of protection for the civilians, which potential perpetrators of violations of human rights must take into account. The UHRC has quasi-judicial powers and hears cases of violations of human rights. Circuit tribunal hearings are conducted and compensation is awarded to victims. Usually the violations comprise of torture, arbitrary arrests – violation of the right to liberty. The presence of the UHRC in the regions has served as a deterrent to abuse.

ii) Visiting Internally Displaces Peoples (IDP) camps
As a result of the war in the country many people have been displaced and they have been put in camps for their protection. However the rebels have also attacked these camps. The UHRC regularly visits these camps to assess the conditions of displaced persons and brings their concerns to the attention of the government. The UHRC has been involved in working out a government policy on IDPs that calls for better protection, coordination of humanitarian assistance and provision of education to the children in camps. The UHRC is also involved in receiving and redressing complaints of human rights violations by security agencies.

iii) Networking with other stakeholders

In some areas the UHRC has joined religious leaders and other NGOs to sensitise the population on peace building, resolution of conflicts and the issue of amnesty where it is applicable.

iv) Civil Military Centres

The UHRC has set up civil military centres in Karamoja to help bring about cordial relationships between civilians and the military. These centres help in sensitisation of the population about the operation of the military, getting people to inform the military about the movements of the enemy. In some instances this has led to getting the people to form their own militia to defend themselves.

v) Getting involved in the Disarmament Process

The Commission was also involved in the disarmament process in Karamoja. It insisted on respect for human rights by government and helped in the collection of guns, which had been illegally obtained by the Karamajong and were used to raid their neighbours' cattle. The government provided security while the Commission helped to resolve complaints from the Karamajong.

vi) Research

The Commission has carried out research and written reports on the disarmament process in Karamoja and the situation in the IDP camps. These reports have helped to inform the process when working out government policies. Recently the UN Secretary General's Special Representative on IDPs visited the Commission to be briefed about the conflict and the position of IDPs and he was given a summary of the reports.

vii) Publicising the Conflict Problem Nationally and Internationally

Since conflicts exist in only some parts of the country while other parts are peaceful, there has been inadequate information flow through the media. However the UHRC has played a big role in publicising the conflict through production of documentaries, radio programmes and press releases for example on the Karamoja disarmament process and the UHRC visit to an IDP camp in Barlonyo where the rebels massacred over 200 people. The visit to Barlonyo was greatly publicised and this prompted government to take action to give humanitarian assistance and a decent burial to the dead. The research reports, press statements and annual reports on issues regarding the conflict are posted on the UHRC website.

viii) Monitoring Government's Compliance to Enforce their Obligations under Various International Instruments

The UHRC is involved in monitoring government's compliance with international

instruments. Efforts are made by the UHRC to ensure that government respects its human rights obligations under both the Constitution and the ratified international human rights instruments and that it applies the standards set out under international humanitarian law in conflict situations. For example the UHRC strives to ensure that the offenders are given a fair trial. Instances of summary execution of soldiers have been condemned by the UHRC through press statements, which has helped to reduce such incidents. It has also urged the non-state actors (rebels) through the press to respect human rights and to apply humanitarian law during the war. The UHRC has continually condemned violations of human rights by both the government and the rebels.

ix) Training of Security Agencies

The UHRC has carried out training of security agencies on issues of human rights in order for them to acquire conflict resolution and peace building skills. Last year the UHRC trained 1000 soldiers in human rights and humanitarian law. The UHRC emphasised among others about the issue of non-recruitment of children into the armed forces and the treatment of civilians during the war.

x) Challenges faced by the UHRC in dealing with conflict situations

Security

Security in areas of conflict is not guaranteed. The UHRC staff are exposed to danger and risk being killed. At times they are unable to effectively carry out investigations of human rights violations or to carry out sensitisation seminars because of the insecurity brought about by the war.

Financial constraints

Operations in conflict areas are expensive. For example it is very difficult to move to the conflict areas because one has to travel by air or else risk being attacked if they travel by road, which is much cheaper.

Dealing with non-state actors

It has been difficult for the UHRC to enforce respect of human rights by the non-state actors (rebels). Furthermore, it is not clear what the agenda of the rebels is which has made it difficult to resolve the conflict through peaceful means.

Conflicting statements from government

There have been conflicting statements from government regarding the conflict. There are instances where peace talks are mentioned but then the military option takes precedence. There has been a controversy between the executive and the legislature. The parliament has sought to declare the north a disaster area while the executive

does not consider it necessary to do so.

IV.Conclusion and recommendations

NHRIs have an important role to play in conflict situations in light of their mandate to promote and protect human rights. Each NHRI has to consider to what extent their role can be conflict resolution alongside other mechanisms for conflict resolution in their countries and their particular mandate. They have to link conflict management and resolution to their mandate because conflict inevitably affects the promotion and protection of human rights. In light of that fact they have to ensure that their structures are adequate to handle conflict by developing conflict-sensitive capacity through training of their staff or appointment of staff that have conflict and peace related skills. NHRIs should develop operational guidelines for working in conflict areas so that they are able to provide early warning to prevent conflict and to use their position to analyse the prevailing conflicts to advise, mediate and reconcile the conflicting parties. They also have the duty to provide peace and human rights education so as to equip the people with conflict management and resolution skills. If NHRIs with other stakeholders engage in conflict management and resolution and peace building in an integrated, coherent and comprehensive framework the conflict situation can be effectively handled.

****

Working Group 3- Paper 2

Professor Brice Dickson
Northern Ireland Human Rights Commission

The Role of National Human Rights Institutions in Conflict Situations

Introduction

Today most conflicts in the world are characterized by the resort of one or more of the disputants to terrorist tactics. By definition terrorism is a phenomenon which strikes fear in the hearts of all of us. Those of us who have lived during conflicts which have been plagued by terrorists understand only too well the degree to which it can affect daily life. Knowing how to resolve conflict situations without at the same time descending to the level of terrorists is something which all governments around the world have now to consider. When they are doing so they could be significantly assisted by the contribution of national human rights institutions (NHRIs). It is, in my view, a responsibility of those institutions to ensure that governments are kept well informed of what is or is not compatible with international human rights standards when measures for addressing conflict situations are being contemplated.

In this short presentation I shall try to indicate various ways in which national human rights institutions can be of positive and constructive assistance in this field. I will try to give examples of where such assistance has been provided, drawing in particular on my own experience in Northern Ireland. There, fortunately, the intensity of the conflict has declined enormously in the last few years. We now have only a dozen or so terrorist murders each year, compared with hundreds per year in the 1970's, 1980's and 1990's. More than 3,700 people have been killed in Northern Ireland since the end of the 1960's in the so-called "Troubles." One of the main goals of the current Northern Ireland Human Rights Commission is to seek to ensure that such a degree of civil unrest never again breaks out in our country. Putting in place effective measures for preventing and discouraging conflict, as well as for dealing with it fairly and squarely once it has occurred, is a major concern of the Commission.

Publicising international standards

One of the most useful functions of an NHRI is to make everyone in society, especially those with responsibilities in government, more aware of the full range of international standards which currently exist on human rights. There is in fact a much higher number of these standards than even lawyers usually appreciate. Since 11th September 2001 discussion of new standards have proliferated, but even before then there were already in place a number of conventions dealing with, for example, the suppression of bombings, the trading of weapons, the protection of nuclear sites, the extradition of alleged terrorists and, perhaps most importantly of all, the financing of terrorism. It is amazing how infrequently even international human rights lawyers consult these documents or take into account their detailed provisions. One important thing which a NHRI can do, therefore, is to publicise, discuss and campaign for the implementation of these various conventions. NHRIs should, in my view, seek to have meetings with officials in government to ensure that the full import of the international agreements is brought home to those in power.

Accepting that violence is usually a breach of human rights

At the same time as publicizing international standards on human rights NHRIs should, in my opinion, make it clear that violence is usually itself a breach of those standards. In some quarters this will be a controversial claim, given that international standards are first and foremost addressed to states and not to non-state agencies. There is a growing acceptance of the view, however, that human rights standards are applicable to non-state agents just as much as to state agents, even though only the latter have officially signed up to them. Certainly in common parlance it is accepted that a great variety of organizations, public or private, can commit human rights violations. To my mind it does the cause of human rights no service to pretend that the atrocities committed by terrorists and other violent elements of society are not themselves breaches of the basic human rights of the people who are killed or injured by those activities. When NHRIs are reminding state governments of the internationally accepted standards on human rights, it will therefore be appropriate for them to preface such remarks by indicating that violent acts themselves are clearly a violation of those standards unless they can be justified in terms of self-defence. This should help to prevent any alienation on the part of the state government from the views of the NHRIs in question.

It may also be appropriate for NHRIs to play a greater role in developing international human rights standards which are unequivocally applicable to non-state agents. The United Nations is itself continuing to develop a "framework for humanity" which will

combine human rights standards with humanitarian standards to produce a set of principles and rules which non-state agencies, such as freedom fighting organizations or even undoubtedly criminal organisations can, without loss of face, sign up to. Giving such organisations the option of doing so is not to confer legitimacy on them – it is rather to encourage them to recognize certain basic standards. Even for war time such standards have been developed.

Giving advice

One of the prime functions of an NHRI is to advise the government and other criminal justice agencies in the state as to which steps should be taken to ensure compliance with international standards, as well as domestic standards, on human rights. Considering which advice to give, and formulating it carefully and coherently, are challenging tasks. National institutions are not purely non-governmental organisations and therefore need to take into account a wide range of considerations before coming to settled conclusions on what would be good policy, law or practice for state agents to adopt and follow. The first duty of state governments is to protect the citizens of the state and NHRIs must take this fully into account. If state governments do not take positive action to resolve conflicts which are endangering people's lives, they can be said to be failing to comply with this most basic duty.

The advice given by national institutions should be based first and foremost on the multiplicity of international standards already set down. These include not just the conventions already mentioned in this paper but also the jurisprudence developed on the basis of those conventions. In this regard the case law of the Inter-American Court of Human Rights and of the European Court of Human Rights, and to a lesser extent of the UN Human Rights Committee, is worthy of deep consideration.

Advice should be given, if possible, in advance of measures being taken by state agencies. NHRIs must be alive to the likelihood of such measures being considered and the need for them to be constantly reviewed. NHRIs can gain credibility and an enhanced reputation if they are proactive in suggesting to government and other agencies in the criminal justice system what steps can legitimately and effectively be taken to combat terrorism and other forms of violence while still recognizing the principles of human rights. Advice to the police service, and to the prosecution service, is particularly valuable. It is natural for such services to exercise the powers conferred on them to the fullest extent possible, and NHRIs can therefore perform a useful function in reminding such services that a more moderate exercise of those powers may be appropriate in the circumstances. In particular they should be reminded that draconian powers should not be used in situations where more ordinary

powers are likely to be just as effective. Using extraordinary powers can itself confer a victory on the very armed disputants who are targeted by the powers. It can give a propaganda coup to terrorists and others and make it easier for them to recruit new adherents. It can also "infect" the ordinary legal system and corrupt it for years to come, long after any "emergency" has faded away.

Advice to prosecutors, lawyers and judges is also appropriate. NHRIs should not, of course, interfere with individual cases unless they are themselves professionally engaged in those cases, but they can and should provide more general advice on how prosecutors, defence lawyers and members of the adjudicating bodies (judges and jurors) can best perform their functions while adhering to human rights standards. There are already a number of these standards, both hard law and soft law, in existence. Constant repetition of what they say and simplification of what they mean in practice would allow NHRIs to contribute significantly to their mission.

Monitoring compliance

Once state agencies have adopted measures to deal with terrorism and other forms of violence it is beholden on NHRIs to ensure that the implementation of these measures complies with international human rights standards. Finding out exactly what is happening in practice, and gathering relevant statistics, are not always easy tasks. To perform them properly NHRIs may well need to work hand in hand with a variety of other state agencies and non-governmental organisations. The contribution of the media in this context should also not be ignored. The NHRIs should try to publicize their findings in regular reports and at every stage correlate the findings with the standards accepted internationally. Where there are failures to comply with those standards these should be clearly identified and measures for remedying those failures should be recommended. Where appropriate, comparisons should be drawn with experiences of other countries facing similar problems. No state is in a unique position in this regard, and lessons learned elsewhere should be applied as universally as possible. NHRIs, given the way in which they are already networked, are in a good position to apply this comparative approach.

A key stakeholder in receiving and publicizing such information is the United Nations itself. The UN Commission on Human Rights, the UN Human Rights Committee and other treaty monitoring bodies within the UN system all deserve and need to be kept regularly informed about compliance at the national level with human rights standards relevant to the struggle against terrorism and to the resolution of conflicts. If such inter-governmental organizations are to develop appropriate standards and positively assist state governments to adopt effective measures they need to be provided with

appropriate information at the national and sub-national level. The experts within the UN system, especially the Special Rapporteurs and Special Representatives, should be a particular target for the distribution of such information. NHRIs should keep in close regular contact with such individual experts.

Taking cases to court

Some NHRIs have the power to support individual applicants who are taking cases to court or to take cases to court themselves. In addition, or instead of these functions, an NHRI may be empowered to apply to intervene in court cases to give the judges the benefit of the NHRI's expertise in human rights. Whatever the extent of the NHRI's powers in this regard, they should be exercised to the full. While litigation is not always the cheapest or most effective way of ensuring that international human rights standards are adhered to, they can play a part in appropriate circumstances in ensuring that state agents comply with their legal duties. The Northern Ireland Human Rights Commission has extensive experience of involvement in court cases which are connected to the conflict in Northern Ireland. A few years ago, for example, it made a submission, to the European Court of Human Rights when it was considering a series of cases concerning the duty of the state to investigate killings effectively. I am glad to say that the import of what we argued in our submission was reflected in the eventual judgment of the European Court. We have also intervened in local cases concerning, for example, the right to life of an informer, the right of families to have the deaths of their loved ones properly investigated and the duty on prosecutors to give reasons why certain prosecutions are not pursued. While it is not always easy to persuade local judges of the significance of international standards which are not directly enforceable at national level, repeated submissions based on international standards can, over time, have a persuasive effect in changing the culture of a judicial system.

Some dangers to be avoided

Northern Ireland has extensive experience of legislating against terrorist activity and other forms of violence (although paradoxically Northern Ireland is actually one of the safest places in the world – the "ordinary" crime rate is comparatively low). Over the past 30 years or so a number of important lessons can, I think, be drawn from that experience. In particular I would highlight the following:

- Laws addressing terrorism and other forms of violence should not be enacted in haste with little parliamentary scrutiny. Knee-jerk reactions are inappropriate in this context, because in the immediate aftermath of an atrocity, when passions are running high, it is tempting, but wrong, to adopt measures which sacrifice basic human rights on the altar of vengeance. Within the United Kingdom, laws dealing

with terrorism were too hastily enacted in the early 1970's and the legal system suffered significantly from this precipitate approach for the following generation. It meant, for example, that when experts were reviewing the legislation on behalf of the government it was difficult to persuade the latter that the measures were not a proportionate response to the danger being faced.

- Laws should not be enacted merely to reassure the general public that something is being done about the conflict in question. There must always be a clear indication that the measures in question will be effective. In Northern Ireland, as elsewhere, a number of measures have been adopted in order to give the impression that the authorities are on top of the terrorist and criminal problems, when in reality the laws in question have made little difference to the threat facing society. Such laws only undermine the rule of law and the credibility of the legal system, without doing anything to make people safer. They again help the men of violence to achieve the very thing which their own activities were aiming for.
- Laws dealing with conflicts should not call in aid the concept of "national security" in the belief that this concept can excuse all manner of interferences with ordinary legal procedures. There are very few courts in the world which are bold enough to go behind the concept of national security, which traditionally, in common and civil law countries, is taken to be a field of interest which only the government of the day, not even parliament, is able to administer. NHRIs should seek to ensure that mechanisms are put in place, if the courts themselves are unable to perform this function, to guarantee that actions taken in the name of national security can be independently assessed, with reports being made public. Northern Ireland is again an area where, regrettably, the authorities have resorted to the concept of national security in order to mask what seemed to be very underhand practices in the fields of intelligence gathering, entrapment and admissibility of evidence in court. So called "public interest immunity certificates" have been used in order to deny the court a full explanation of why or how certain actions were taken by the state. While it is of course understood that covert surveillance must be used if effective preventive steps are to be taken against (for example) would-be terrorists, there are certain lines which should not be crossed. In Northern Ireland, unfortunately, these lines have been crossed on many occasions. It would seem that there has been collusion in some instances between legitimate forces of law and order and illegitimate paramilitary organisations. Such criminality on the part of the state does absolutely nothing to achieve success against supporters of violence as a means of resolving conflict, certainly not if the supporters of violence in question hope to persuade a section of the population that what they are fighting for is just and desirable and that the state itself is corrupt and immoral.
- Laws which permit the detention of suspects without trial should be completely

unacceptable in any society. I regret to say that the United Kingdom is one of the states which, in the wake of the events of 11th September 2001, took legislative steps to enhance security by, for example, empowering the police to detain non-British citizens suspected of terrorist activities. These are people who cannot be deported because their home countries are ones in which their lives might be at risk. Although the number of such people detained in the United Kingdom is small (approximately a dozen), the practice of internment without trial is inherently inhumane and pragmatically unwise. When this practice was adopted in Northern Ireland between 1971 and 1975 it operated as a recruitment drive for the illegal Irish Republican Army. The leaders of that organization were able to point to the lawlessness of the state as a reason for adopting anti-state programmes of action. Even if internment without trial is accompanied by a system of independent review, this will never be enough to remove the blemish which the phenomenon represents within a society based on the rule of law.

- Laws should avoid creating special courts to deal with people involved in the conflict. The main justification for creating such special courts is that lay people involved in such courts could well be in danger of their lives if their identities were made known to the colleagues of the suspects under trial. In Northern Ireland this fear was used as the main reason for abolishing jury trial in cases involving suspected terrorists. The so-called Diplock Courts, which were established in 1974 and still operate today, have been extremely controversial in Northern Ireland, as has the Special Criminal Court in Dublin, which uses three-judge courts to try suspected terrorists (and other persons accused of very serious offences) in the Republic of Ireland. Researchers and commentators differ as to whether the quality of justice in juryless courts is any less than that of courts presided over by judges only, but the very fact that two different systems of trial can operate in the one legal system for very similar if not identical offences, means that there is an inequality before the law which, on the surface at least, breaches international guarantees. The Northern Ireland Human Rights Commission has recommended on many occasions to the UK government that certain steps be taken to reform the Diplock Court system in Northern Ireland, but to date our advice has not been accepted.

Conclusions

No-one should underestimate the horror and perversity of terrorism, or the difficulties involved in minimizing armed conflicts. Actual and potential victims of conflicts deserve a rigorous approach by governments and law enforcement bodies to discourage what armed conflict represents. At the same time those victims and society as a whole should not be used as pawns in a political game played out by a variety of

sources with extensive weapons and ammunition. Amongst the clash of arms the rule of law must not be silent. Terrorism is the antithesis of the rule of law, and therefore NHRIs should do their utmost to ensure that the rule of law is kept very healthy and vibrant during any struggle against it. While some conflict is probably always inevitable, NHRIs should strive to ensure that discussion over how to balance conflicting rights replaces the taking up of arms. Those of us who work for NHRIs should at this time prioritize our concerns in this field and, where possible, collaborate to ensure that at the regional and international level all appropriate steps are taken to combine a committed adherence to international human rights standards with a firm determination to reduce the incidence of conflict in all its guises.

****

Working Group 3-Discussion Summary

I. The Problem

The various roles of National Human Rights Institutions in promoting and protecting human rights during conflict and while countering terrorism is, in a sense, the foci of every Working group, but here the problem is specifically how they can better play an early warning and mediation role to prevent conflict. During conflicts they can continue to monitor respect for human rights to ensure accountability. They can play a mediation role and monitor the respect of peace agreements and promote the adoption of measures for national reconciliation. Specifically, The NIs' representatives looked at the problem of how they should help National Governments identify security measures, which is important because such cooperation both addresses legitimate threats and ensures respect for fundamental rights and freedoms.

The NIs looked at various institutional functions in the context of the theme of the conference. They addressed the function of review and analysis of proposed legislation. They also discussed their role of the promotion through public education campaigns and outreach of respect for human rights exactly at those times of crisis. Because of their institutional role, they can raise sensitive questions that private citizens, standing alone, might hesitate to express publicly. The NIs participating in this working group discussed their role in preserving peace and the rule of law when emergency situations threaten social stability. They discusses their role in the context of counter-terrorism and share experiences and practices drawn from practical experiences at the national level

II. Discussion

Justice Nayan Khatri, Chairperson of the Nepal Human Rights Commission, was the Chairperson. Mrs. Margaret Sekaggya, Chairperson of the Uganda Human Rights Commission and Mr. Brice Dickson, Chairperson of the Northern Ireland Human Rights

Commission made comprehensive presentations regarding the role of NIs in conflict situations. As far as early warning mechanism is concerned, NIs' capacity to receive complaints permits them to detect when a conflict is likely to arise. It also provides for indicators of possible systemic issues which need to be addressed to avoid conflict. Additionally, it was important for NIs to avail themselves of existing knowledge on early warning systems and build their capacity in this regard. Through investigation and monitoring of alleged violations NIs have access to clear, accurate, and meaningful information; it is therefore possible for them to develop indicators against which conflict can be foreseen. Timely intervention can prevent the situation from escalating. Finally, there were no applicable human rights standards for situations of conflict such as those provided in the Geneva Conventions; but the existing human rights framework is an important point of reference.

Participants also discussed how NIs can better protect vulnerable groups in the midst of conflict situations. In the context of giving advice to organisations dealing with conflict, NIs need to be clear and recognise that it is the primary obligation of states to protect their citizens and that it is their right to have this done. In performing the task, states must recognise that there is a balance to be maintained between protecting society and ensuring that the rights of individuals, who are accused of offences connected with terrorism. Also, they agreed NIs should be better networked internationally, so they are well-positioned to exchange best practices in the area of conflict and countering terrorism. The role of the United Nations, its subsidiary bodies and regional organizations were highlighted, and NIs have an obligation to engage with them and keep them informed as to whether conflicts in their societies are being properly addressed from a rights-based approach.

Moreover, expanding NIs' reach is crucial in this regard. This means opening regional offices, even in areas where conflict occurs. Such offices are vulnerable but it is important that they remain open as long as possible. Some NIs, for example Uganda, have quasi-judicial powers and provide compensation to victims. The plight of internally displaced persons (IDPs) is among the most severe during conflict. The Uganda Human Rights Commission, for example, has helped ensure that the government provides education, health, and humanitarian assistance to IDPs living in camps. Complaints are received from the IDPs in camps in particular regarding security forces' abuses. One challenge is to deal with individuals who are recruited or abducted from camps, especially children, into military action. Measures, including the granting of amnesty, are used to help reintegrate such persons into their home society.

III. Outcomes

There were many outcomes of the discussions at this Working group. The Working group made a slew of useful recommendations. Among them, the participants jointly suggested that NIs should have mandates which are broad enough to enable them to deal with conflict and ensuring respect for human rights while countering terrorism; prioritize their concerns in these fields to ensure effective implementation of their mandates; act in a proactive way by placing human rights concerns in a broader societal context, and seek ways of overcoming limitations posed by statutory remit or conventional expectations. They should also encourage state compliance with international human rights law, including through its diffusion. NIs are uniquely positioned to draw on and utilize alternative dispute resolution methods and traditional resolution methods in the implementation of their human rights mandate, especially in so far as such methods allow for the constructive settlement of human rights related disputes that come to the attention of NIs; develop operational guidelines to ensure that early warning works; use information technology to disseminate information rapidly in the context of early warning; condemn all actions which are contrary to human rights; Additionally, they can provide peace and human rights education, with particular attention to security forces; ensure that their interventions in times of conflict and when terrorism are timely and that information is accurate.

NIs are also well-positioned between civil society and the power brokers of their respective societies to pressure their National Governments, to the extent they are able, to develop plans, strategies and mechanisms for the peaceful and negotiated resolution of conflict in their respective countries. They can work with them to put in place mechanisms for early warning and early action to address intra-state and intra-community conflicts that could lead to grave violations of human rights. They can coordinate methods for the timely detection of potential areas of conflict and the timely management of conflicts on the national level, including methods for effectively dealing with the aftermath of violent conflict and addressing the root causes of conflict. NIs should also help their governments understand how the long-term protection of human rights may serve to decrease the potential for violent conflict in their respective societies.

****

Working Group 4- paper 1

Mr. Manuel Aguilar Belda
Deputy Ombudsman of Spain

The Activities of the Ombudsman of Spain in the Protection of Human Rights of Migrants During Conflict Situations

As we all know, it is fundamental to our democracy to appropriately deal with two typically contradictory values, freedom and security, by alternating between securing our rights and protecting our countries from terrorist attacks. The effect this has on the rule of law arouses a classic debate between freedom and security.

Recently, after the March 11th terrorist attack in Madrid, one news media debated at what point avoiding new terrorist attacks and more victims justifies the erosion of certain civil liberties. In other words, the media raised a question over when is it necessary to protect people's freedom, and reject exceptional counter-terrorist measures. In other words, to what extent should protecting civil liberties, which are the distinguishing characteristic of democracy, take a backseat to counter-terrorism measures in exceptional circumstances.

Recently, a Spanish author described the current political situation in an essay entitled, "Weimar within us". In the essay, he asserts that if we want to avoid succumbing to barbaric absolutism, as German Republic of Weimar did in the 1920s and 1930s, we must firmly maintain the profound convictions that during the last two centuries have permitted the construction of democratic societies under the rule of law.

In the working group where we have assembled to analyze migratory movement due to conflict and counter-terrorism, I would like to refer to the activity of the Ombudsman of Spain, the constitutional institution that I represent here, which in recent years has strengthened our country's protection of asylum-seekers and refugees.

Territorial asylum, as a protective human rights institution, currently has its foundation as an internationally recognized right with regards to the jurisdiction the State exercises over its own territory. In our opinion, the right of asylum belongs to the state granting asylum, not the individual pursuing it. Therefore, the right of asylum should be deemed as a protective device for certain human right violations rather than a genuine right that should be protected internationally. Those particular rights are specifically: the freedom from political, religious, racial persecution, the right not to be oppressed for the struggle against colonialism, the freedom from persecution unless there is reason to believe that a common crime, a crime against the peace, a war crime or a crime against humanity has been committed, as defined in the international instruments drawn up to make provisions in for such crimes.

Therefore, a person's right is limited to seek and enjoy asylum. Under appropriate conditions, a state has an obligation to grant at least temporary asylum for those who seek it. This is stated in the United Nations Declaration on Territorial Asylum. However, though this declaration is an international document that expresses the legal principle agreed to by the majority of international community, in the strictest sense, it does not contain a legally obligatory provision for the state.

In 1987, Spain incorporated into its Constitution the possibility that foreigners and stateless people might enjoy the right to asylum in Spain, although the conditions for the enjoyment of this right were to be established through parliamentary law.

In this way, Spain has joined nations such as France, Germany, and Portugal, in having elevated to constitutional importance the treatment of a problem that, to the disgrace of humanity, continues to be a burning reality.

As a general rule, compared to other European countries, the number of applicants for asylum in Spain is relatively small. Recent statistics show that approximately 6,000 applications were filed annually. Most of them were filed within national territory, 10 to 15 percent at the border, and the rest (less than 1%) were filed at Spanish embassies overseas other than the asylum seekers' country of origin.

The Spanish asylum system has a preliminary filtering system that is carried out before the actual admission process starts. A high percentage of applicants (usually above 80%) fail to pass the preliminary step. For those who pass the step, the procedure, which is usually completed within six months, begins. However, some cases may take demonstrably longer, for example cases of asylum-seekers from Colombia, which have frequently been delayed by over two years.

Spanish law protects asylum seekers who qualify under relevant refugee statutes or other documents derived from international or national laws concerning foreigners. Annually, a small number of people, hardly exceeding 300, are granted asylum, after which they become the recipient of the system mentioned above (Half of them are granted asylum under the 1951 Geneva Refugee Convention).

There are not many complaints filed concerning matters of asylum with the Ombudsman of Spain. That is because, first of all, the total number of asylum seekers is low, and the number of people who start the admission procedure is even lower. Also, the fact that the existence of the Ombudsman is little known to the asylum-seekers is probably one of the reasons.

Nevertheless, the result of the survey conducted by our office should be added along with the complaints filed by citizens. Examined as a whole, our institution has influenced almost every aspect of the asylum procedure over the years.

In chronological order, the most outstanding studies classified by type are as follows:

1. After researching the legislative policies and provisions related to refugee issues, the Ombudsman of Spain discovered that there was the possibility of violating the Constitution in some cases. Therefore, in 1994, the law was revised to allow asylum seekers to stay for up to seven days in accommodations other than detention centers in border areas, while their qualifications for the asylum admission procedure were being decided. However, although our institution insisted that the restriction of freedom be authorized on case-by-case basis only, the Constitutional Court did not accept our opinion.
2. A common concern that we have had at the Ombudsman has been whether the asylum applications are properly filed if one asks for asylum in free legal aid centers within the territory or in border areas. These aid centers guarantee services for all the citizens of our country.
3. In 2003, an overall investigation was launched for the asylum applications filed in Ceunta City. The investigation was done thoroughly, including visits to the city and detailed analyses of hundreds of files. The conclusions and recommendations written by our institution influenced numerous questions related to the asylum admission procedure. Moreover, it raised a question as to whether the social safety net for asylum seekers is sufficient.
4. Another problem we frequently face is the possibility of illegal immigrants entering the country through Spanish coasts and ports. To solve the problem, the Ombudsman took actions including inspection visits to especially relevant Spanish coastal defense areas.

5. The Ombudsman also receives complaints from people whose applications for asylum are rejected. In those cases, our institution focuses on analysis of the entire system rather than the specific details of a case. We voluntarily limit the extent of our involvement in such way because we recognize in accordance with Spanish law that the UN High Commission for Refugees, with its international expertise, global reach, and independent mandate, is in a better position than the Administration to evaluate the merits of individual cases and the criteria involved. For this reason, the Ombudsman of Spain maintains a close relationship with Spanish delegation to the UNHCR.
6. Once the start of the asylum admission procedure has begun, asylum seekers' main complaints are about the delays in the completion of the process and evaluation of the files (the Administration has a specialized department called the Office of Asylum and Refugee). As mentioned earlier, the process is intended to be completed within six months, however, it is sometimes delayed two years, and in complicated cases, more than two years.
7. Connected to the delay of determining asylum, complaints about the time limit for temporary stays in the refugee attention centers (CAR) are filed. Generally, stays in refugee camps are not supposed to exceed one year. Applicants may receive authorization to work outside the centers; however, because it requires a series of steps to obtain prior permission, the process is often delayed.
8. Other than these, the Ombudsman, on rare occasions, receives complaints about the financial condition and daily routines in some refugee attention centers.
9. Some applicants file complaints on behalf of their families who are denied asylum due to delays in acquiring asylum status, and are sometimes under oppression in their countries of origin.
10. Also, some asylum seekers state their disagreement with the denial of their asylum request by the Spanish administration. In these cases, as in the application procedure mentioned above, a similar process is taken. In other words, the role of our institution is to analyze all the matters related to the statutes rather than specific details. On this occasion, UNHCR's arbitration plays an important role.
11. Given the strict judicial control over matters concerning asylum, some asylum seekers have raised concerns about the wide range of legal restrictions they face, particularly questions concerning social welfare and continuity of work permits for those who already possess them while their case is before the courts.
12. Currently, the Ombudsman is investigating problems concerning legal services for foreigners. Its findings will thoroughly analyze the quality of such services and will contain a chapter devoted specifically to issues pertaining to asylum and refugee matters.

The variety of prior problems presented makes it hard to judge the overall efficiency of the Ombudsman. Nevertheless, as a parameter of the institution's ability to carry out its tasks, it can be said that the recommendations made by the institution are widely accepted by the administration. Furthermore, in certain cases, the administration accepts those recommendations that it officially rejected at first, which leads to a change in its principles and attitudes over the long term.

****

Working Group 4- Paper 2

Dr. Purificacion C. Valera Quisumbing
Chairperson, Commission on Human Rights of the Philippines

Migration in the Context of Conflict and Terrorism

Introduction

With the onslaught of terrorism, the advent of counter-terrorist measures, and the continuing internal armed conflict in many parts of the world, we are indeed facing a very difficult time. It is difficult but very challenging especially for us human rights advocates and protectors. One particular phenomenon which conflict and terrorism have a very strong impact on and which impact is strongly felt globally, is migration.

Migration, that is, the movement of people, especially of whole groups, from one place, region, or country to another, has occurred since the emergence of humans as a species. The difference today is that there are far more migrants now than in any period of human history. Further, the causes of migration today are no longer the same as before. People do not migrate to form colonies, to expand frontiers, to spread religious beliefs, or to exercise power in another country. Rather, economic hardship, the search for better opportunities, political, religious, and ethnic persecution, and relief from natural and man-made catastrophes remain the primary causes of migration. Thus, when we speak here of migrants, we must include those who have moved more or less "voluntarily" such as short-term or long-term skilled or unskilled workers, laborers and professionals, as well as those whose movement is in some sense "forced" such as refugees, bona fide asylum seekers and the internally displaced who are victims of violence, civil strife, disasters, and poverty.

Inherently and structurally, migrants, because of their status as non-nationals or their condition of being away from home, are particularly vulnerable to human rights abuses. As subjects of human rights, migrants are vulnerable because they are denied recognition and power. They are considered as "outsiders" in the receiving societies.

They are vulnerable because of the failure of the receiving States to apply international human rights standards either to regular or irregular migrants. Negative perceptions of migration, xenophobia, racial discrimination and the resultant hostility toward migrants are prevalent attitudes in many countries around the world. Such attitudes lead to a denial of migrants' rights, violations of rights, exploitation and abuse.

The situation of migrants however has been rendered much worse especially with the development of weapons of mass destruction. This has resulted in conflict and violence, now becoming the greatest factor in instigating involuntary departures from homelands. Two world wars and some 130 armed conflicts since 1945 have given rise to millions of mass displacements and exoduses in the world.[1] Further, the situation of migrants had been exacerbated since the terrorist attack on the United States on 11 September 2001. The War on Terror has been equated to a "War on Immigrants," rendering the migrants more vulnerable, more stigmatized, insecure and disempowered by the international legal order.

Consequently, the large and continuously increasing number of migrants in the world and their need of protection should alarm and mobilize all of us. The International Organization for Migration's (IOM) World Migration Report 2000 shows that there are more than 150 million migrants. The number is expected to be around 230 million by the year 2050.[2] Clearly, migration in this present time is a very important issue that must receive urgent political attention.

Human Rights Implications of Conflict and Terrorism in Relation to Migration

The discussion of human rights issues related to migration and migrants requires a look at the factors motivating contemporary migration. The decisions made by migrants to uproot themselves, leave their homes and homelands to go somewhere else are shaped by political, economic, social and environmental factors. Thus, any work or discussion to address issues related to migration must likewise consider all these factors. Many people who migrate are constrained to do so in order to survive and for the safety, dignity and well being of their families.

Forced Migration as a Result of Conflict

Armed conflict such as civil wars, generalized violence and persecution due to nationality, race, religion, political opinion or social group has forced many people to flee their homes. The number of armed conflicts all around the world has escalated and many of the more recent conflicts have been based on national, ethnic or religious separatist struggles. The number of refugees and internally displaced persons has also

increased since displacement seems to have become a strategic tactic used by all sides in the conflict.

In the Philippines, fighting between the Moro Islamic Liberation Front (MILF) with government forces continues to cause the destruction of communities. The MILF has been waging a decades-long rebellion to set up an independent Islamic state in Mindanao. As a result of continued counter-insurgency operations and related military activities, the number of displaced families has soared. In the year 2003, the number of displaced persons was outstanding with 415,233 persons or 82,012 families accounted by the Department of Social Welfare and Development in its status report dated October 9, 2003.

Forced migration results from and certainly constitutes a violation of basic human rights: the right to physical integrity, freedom of movement, right to food, freedom from torture, right to health, right to an education, among others. Internal displacements have been known to have devastating impacts on families and communities, with the greatest damage to children, women, and other disadvantaged sections of society. It denies the victims access to land and livelihood. It deprives them of shelter and security. It shatters their right to live in peace and their right to development. This state of dispossession and deprivation often leads to the worsening of the insurgency. In countries where it has become a recurring phenomenon, displacement has perpetuated a climate of hostility as a result of the denial of justice and respect for human dignity.[3]

Impact of Terrorism and the War on Terror on Migration

The September 11 terrorist attacks and the resultant anti-terrorist measures urgently established created deep repercussions for migrants. Migrants are suddenly regarded with more suspicion than before, and whether they are asylum seekers, refugees or migrant workers, many are being seen as potential enemies and threats to national security. The September 11 attacks resulted in a flurry of activities and legislation such as preventive detention, secret hearings, and increased surveillance aimed at preventing more attacks but affecting mostly migrants. Hundreds of foreigners were held in preventive detention because they were of special interest in connection with the 9/11 terrorism investigation. Some had deportation hearings that were closed to the public and many were deported. Ethnic profiling, immigration policies and border-controls since September 11 are likewise on the rise. This raises important concerns about racism and the right of non-discrimination based on race, color, religion, gender and creed.

To illustrate, between December 2002 and April 2003, it was reported that some 144,513 Muslim men from 25 Arab, African, Asian and Middle Eastern countries in the United States reported to local offices of the Bureau of Citizenship and Immigration Services (BCIS) for photographs, fingerprinting and interviews under a special registration program. 2,783 were temporarily detained, 99 remained in custody in June 2003, including 11 suspected terrorists. About 13,434 of those who registered face deportation because of visa violations. Many of the men who registered said the process deepened fear and disillusionment among law-abiding Muslims. Immigration advocates said that government was "selectively enforcing" immigration laws.[4]

In Security Council Resolution No. 1373, the member States of the United Nations were called upon to take measures to ensure that no asylum seeker be a terrorist. States have obligations to refugees and asylum-seekers under the Convention on the Status of Refugees. For instance, States are forbidden to return asylum-seekers to countries where they may face serious violations of their human rights such as torture or execution. However, such international obligations may be ignored in instances where an asylum-seeker comes from a race or region associated with terrorism. In the present atmosphere of global fear, immigration officials would rather err on the side of 'security' even if it entails a violation of international human rights.[5]

Filipino migrants, who have always been victims of discrimination, have experienced increased harassment and discrimination as a result of the intensification of anti-terrorist measures and restrictive immigration policies. Several homes of Filipino migrants were reportedly raided after the September attacks, and the migrants were arrested and interrogated as suspected terrorists. Thousands of Filipino baggage screeners in the U.S. were reportedly laid off with the passing of the US Aviation Security Law, which restricts non-citizens from working as baggage screeners. Paranoia, fear and distrust among immigrants, people of color and citizens are markedly being fomented.[6]

Continued Exploitation of Migrant Workers

Within the context of counter-insurgency and anti-terrorist actions of States, the traditional exploitation of migrants continues especially in marginal, low status, inadequately regulated or illegalized sectors of economic activity. Migrant labor has been observed to fill the "three-D" jobs, meaning the dirty, dangerous and difficult jobs. For example, migrant labor has been used in many countries to ensure low cost provision of agricultural produce, to provide domestic service, and to provide services in the "sex industry".

Migrants, especially those without authorization for entry and or employment, are at the margin of protection by labor workplace safety, health, minimum wage and other standards. Often, they are employed in sectors where such standards are non-existent, non-applicable or simply not respected or enforced.

Migrants have often been perceived as able to work long hours at low pay and to have limited possibilities to demand benefits or other protections. They are often hired without payment of benefits, payroll taxes and other costs. Organizing migrants into unions or organizations to defend their interests and rights is often extremely difficult. Organizing is easily disrupted and intimidated by the threat or actual practice of deportation.

In the Philippines, the exodus continues. An estimated 2,500 Filipinos continue to leave the country every day to seek employment abroad due to the continuing economic crisis in the Philippines. According to the Philippine Overseas Employment Administration, 602,679 OFWs were deployed in 2000. In 2001, the number rose to 615,697. The majority are land-based and deployed to countries in the Middle East and Asia, with a significant number deployed to Europe. Like the fate of other migrants, our countrymen have been victims of unjust imprisonment, mysterious deaths, exploitation, trafficking, discriminations and other various human rights abuses.[7]

International Standards

The foregoing discussion is merely a glimpse at some of the danger, misery and abuse, among a myriad of many others that our migrants endure in today's so called civilized society. There is no single set of standards which aim to address all these issues and protect the rights of all persons who move from one place to another, voluntarily or involuntary, internally or externally, legally or illegally. Rather, their rights are guaranteed by a number of separate instruments on human rights and humanitarian law, migrant workers, refugees, and the like.

The central concept of human rights articulated in the Universal Declaration of Human Rights is the pronouncement that certain principles are true and valid for all peoples, in all societies, under all conditions of economic, political, ethnic and cultural life. In reality, however, it became evident that the principles elaborated were not applied to a number of important vulnerable groups. As a result, specific instruments explicitly extending these rights to victims of racial discrimination, migrants, refugees and now the internally displaced, have been formulated for States' commitment.

The most significant achievement in recent years as regards protection of migrants' rights has been the adoption in 1990 by the General Assembly of the United Nations of the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families. The Convention mandates that the principle of equality of treatment between all migrant workers and nationals is to be applied especially with respect to remuneration, other working conditions and before the courts and tribunals. Equality is also to be respected in such fields as medical assistance, access to education, housing and social services. The Convention grants additional rights to those migrants who are documented or in a regular situation. For example, documented migrant workers and members of their families are given the right of liberty of movement in the territory of the host state, and the right to form associations and trade unions.

Another relevant instrument is the Convention Relating to the Status of Refugees which sets the minimum standards of treatment of refugees, including the basic rights to which they are entitled. It also establishes the juridical status of refugees and contains provisions on their rights to gainful employment and welfare. The Convention prohibits the expulsion or forcible return of persons having refugee status. Other provisions deal with such rights as access to courts, education, social security, housing and freedom of movement.

The prohibition of forced movement of civilians and the protection of the displaced is found in Protocol II or the Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflict. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacement have to be carried out, all possible measures should be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health and nutrition. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

The latest legal protection for the internally displaced persons is the United Nations Guiding Principles on Internal Displacement. The Principles represent the international standards specific to internally displaced persons and their specific needs. The Principles provide protection against arbitrary displacement, offer a basis for protection and assistance during displacement, and set forth guarantees for safe return, resettlement and reintegration.

The drafting of these instruments is a significant move by the international community in the recognition and promotion of the rights of migrants. It reflects a growing

awareness of the problems and discriminatory treatment that face many migrant workers, as well as an acknowledgment of the enormity of the issue of migration, of whatever nature. Now, however, more than ever, these instruments and the provisions thereof must be brought to life and given force by ratifications of States and implementation.

Specific issues related to migration today further jeopardize respect for the rights guaranteed by international law. These instruments must be activated especially at the present time when international human rights protection for non-nationals in host countries is urgently needed. Particularly and most evidently in the backlash of September 11th, the implementation of national security measures undertaken by States to fight terrorism are posing a threat to the rights of immigrants, refugees and communities of color. Prudence must be exercised to avoid using counter-terrorism as a blanket justification for further mistreatment of migrants. Fear of terrorism and concern for security must never be allowed to dominate consideration of migration issues.

Call for Action

To address the human rights aspect of the experience of 150 million of the world's people, that is one in every 50 human beings, living outside their country of origin as refugees, migrants, or internally displaced persons, is indeed a very tall order. Contravention of the basic human rights of migrants is closely linked to their structural vulnerability, as a result of their powerlessness in a foreign country. The most important question then is how do we guarantee the enjoyment of their human rights?

One dimension of the problem is the gap between the capacity of a State to respect human rights and its willingness to do so. Enforcement procedures for treaties exist, yet compliance with international norms in this area remains problematic. Some States could and would respect human rights standards, while others lacked the capacity and/or willingness. It is not enough that a country simply ratify the relevant human rights instruments. It must also ensure their effective application. Even when a State had ratified a human rights convention, it might fail to implement it fully, either because it lacked the political will or because it did not have the necessary capacity. That makes external monitoring of the situation, including a systematic diagnosis of the causes of non-implementation of standards, critically important.

We must then ask some of the most important questions related to migration:

How do we uphold human rights of migrants in these times of conflict and terrorism? What are the strategies and practical measures to protect human rights during conflict and terrorism? How do we facilitate conflict resolution and peace building?

To what extent are human rights and international law being used to contain the challenges posed by cross border movements?

How is it possible to preserve the rights of children and protect them effectively in migratory movements?

How can we ensure that the experience of involuntary displacement ends as quickly as possible and that the displaced are offered the most appropriate durable solution?

How can we ensure that the reforms imposed by structural adjustment programs do not result in the violation of the core human rights of the most vulnerable, including forced migrants, and especially women, children, elderly, victims of torture, minorities, etc?

Is anyone or any institution to be held accountable for guaranteeing that the human rights of the displaced are respected? What channels for action are there to ensure the accountability of States and non-state actors? What mechanisms must be established for justice and accountability?
How do we find ways to ensure that States respect their obligations to international human rights law and humanitarian law in the context of the security regime? How can governments combat terrorism through military means and still respect human rights and democratic values? How do we fight terrorism without developing an immigration system based on racial profiling and discrimination, without spurring social disintegration?
What are the main institutional, social and economic obstacles to the full enjoyment of the human rights of migrants?

Finally, and most importantly, we need to ask and answer what is the role of national human rights institutions to protect human rights of migrants? This will be the challenge for all of us.

Conclusion

The fulfillment of migrants' rights is a crucial test and barometer of the indivisibility, universality and inalienability of human rights, that is regardless of where the individual is. The migrants' situation is a classic example of the interdependence of the

international community. It fully demonstrates how the problems of one country can have immediate consequences for other countries. The transnational nature of the migratory problem demands action on the part of both countries of origin and countries of destination, as well as international organizations. It is also an example of interdependence between issues. The problems related to migration are multi-dimensional. Any approach or solution would therefore have to be comprehensive to address all aspects of the issue, from the causes of mass exodus to the amplification of the necessary global response.

It is also important to note that while efforts to counter terrorism and insurgency must be prioritized, it should not be done at the expense of universal humanitarian values. Migrants and asylum-seekers will continue to come and go. They must be dealt with in a way that help societies meet their obligations to protect and uphold human rights.

The Commission on Human Rights of the Philippines looks forward to closer cooperation with the other national human rights institutions in the region. For after all, migration is evidently not merely a domestic matter. Problems of migration especially in the present context of pervasive conflict and very active counter-terrorism efforts must be resolved by an equally active and vigilant regional cooperation and partnership amongst us.

Thank you and I look forward to the fruitful discussions ahead.

[1] Human Rights and Refugees, Human Rights Fact Sheet No. 20.
[2] Human Smuggling: Definitions and Statistics, http://edition.cnn.com/2002/WORLD/asiapcf/auspac/03/01/smuggling.stats/
[3] A Primer on Internal Displacement in the Philippines, BALAY Advocacy Program
[4] Migration News, http://migration.ucdavis.edu/mn.
[5] Report of the Think Tank On Promoting Human Rights and Democracy in the Context of Terrorism, http://serveur.ichrdd.ca/english/prog/intHRadvocacy/thinkTank2002FinalReportEng.pdf.
[6] Seven years after Flor... Conditions of Overseas Filipino Workers Worsen, by *Hetty C. Alcuitas for IBON Foundation Inc.* http://www.newfilipina.com/members/pngayon/02.03/HettyIBON.html.
[7] Supra

****

Working Group 4-Discussion Summary

I. The Problem

Conflicts invariably displace huge numbers of people, sometimes in the millions. Simply for their protection and that of their loved ones and families, these people migrate without proper documentation, including through irregular migration channels. The problem is that most of all receiving countries view them as a threat, and increase the restrictiveness of their asylum policies, making their migration more secretive, more shadowy. Moreover, these governments sometimes do not comply with their obligations for refugee protection, and conditions for refugees are precarious in terms of safety, employment opportunities and the possibility of integration in the host society. As the line between migrant and asylum seeker progressively blurs in the public mind, so does the distinction between migration control and refugee protection in the policies of some states.

Indeed, National Governments have adopted a number of measures to control migration, impacting on the ability of individuals or groups to seek and enjoy their right of asylum. The fact that these individuals or groups cannot find protection through the institution of asylum means that in practice they are not necessarily protected from refoulement. This grey area in international protection, which results from a weak implementation by States of international obligations, puts these non-recognized refugees in a place of vulnerability, similar to that of migrants. More in general, the strengthening of security policies and the tendency to consider migration as a matter falling under State security plans pose a threat to the human rights of migrants.

Participants in this working group discussed their experience in promoting and protecting the rights of irregular migrants in situations of conflict and in the context of counter-terrorism. They discussed their role in promoting the rights of their nationals abroad, as well as the rights of irregular migrants in their country including

strengthening cooperation among NIs; awareness raising; case handling; prevention of irregular migration; prevention of abuses against migrants in the context of interception, detention and deportation; legislation monitoring; and public education.

Governments' strategies and policies adopted in response to the challenges presented by migration in its present dimensions have often failed to ensure respect for Governments' human rights obligations vis-à-vis migrants. There are several outstanding factors that impel people to search for improved living conditions abroad. When these forceful push-factors are coupled with restrictive asylum and immigration policies, there can be an increase in the use of alternative migration channels, including smuggling, with serious consequences for the human rights of the people involved.

II. Discussion

The participants discussed present examples of conflicts that drive people to flee their homes. Receiving national governments have reacted coldly to their needs in many cases, because of suspicions concomitant with the War on Terror. Their counter-terrorism measures have further compromised the rights of both refugees and asylum seekers. Indeed, the discussants declared, these measures have compromised the rights of migrant workers in general, particularly those who by virtue of their nationality or religious beliefs are perceived as a threat to national security. Furthermore, the participants reviewed how the overall present environment of conflict, terrorism and counter-terrorism have compounded the already precarious human rights situation for refugees and migrant workers.

There is a need for governments to manage migration issues as well as to seek ways to better manage conflict, taking into account human rights standards. This includes a recognition of the importance of family reunification, the granting of citizenship, promoting understanding and acceptance, and actively supporting settlement. Not only governments, but also other non-state actors, including business corporations, need to be held accountable. Existing international treaties should be more effectively used to protect the rights of refugees, asylum seekers and migrant workers and their families. The issue is one of ratification, implementation and monitoring. In particular, the Convention on the Rights of All Migrant Workers and Their Families needs to be ratified and implemented in domestic legislation.

The right to asylum has been seriously compromised by many states, particularly by receiving countries. Many participants agreed that this occurred by way of denying asylum seekers access to the bureaucratic channels required to lodge their claim to

asylum. This is accomplished in some situations by confining displaced peoples into "safe havens," essentially refugee ghettos, which has the effect of denying them the protection of international refugee law. The increased detention of asylum seekers and other non-citizens without legal recourse is also a major concern. In order to prevent possible ill treatment of this particularly vulnerable category of detainees, governments should ratify and implement the Optional Protocol to the Convention Against Torture.

While a large investment is made in freeing up the international movement of capital and services, the freedom of movement of labor remains severely restricted, and steps to achieve greater freedom of movement of labor should also be placed on the international agenda at the same level as freedom of movement of capital and services. Internal displacement arising from internal conflicts was identified alongside international displacement as a major problem. In both contexts, the temporary expedient of refugee camps and other temporary shelters has become a permanent arrangement and has marginalized significant groups of people sometimes for generations, and made them vulnerable to further exploitation.

III. Outcomes

The participants came away with many new conclusions on ways to improve their work with regard to promoting and protecting migrants' rights during conflict and while countering terrorism. They re-affirmed NIs' advocacy role, (especially toward governments of migrant receiving countries). In particular, this is salient with regard to the ratification of the Convention on the Rights of All Migrant Workers and their Families. Furthermore, the participants recognized that the treaty body reporting processes, including such entities as the CERD, the CEDAW and the CRC are crucial to their work on the national level, especially when they are considering issues relating to migrant workers and the particular issues facing migrant women and children.

The participants concluded that their respective NIs must establish cooperation between the NIs of sending and transit countries and receiving countries. Regionally, they concluded that much must be done to better address the issues of migrant workers' rights, including for example the establishment of inter-national hot-lines to the NI of the country of origin. Actively monitoring the rights of refugees, asylum seekers and migrant workers, in cooperation with UNHCR and NGOs, including in particular the rights set out in the Convention on Migrant Workers (e.g. legal representation, fair processes, appeal rights, employment conditions, access to services, family reunification), conditions of detention (including inspection of detention camps), and treatment by police and immigration authorities.

Finally, NIs should remain steadfast in the monitoring of National Government legislative proposals, in order to ensure that the human rights of migrants are not transgressed by counter-terrorism legislation. The participants reiterated that it is national governments' responsibility to ensure the economic and social welfare of refugees and migrant workers and their families, and to halt practices such as mandatory testing for HIV/AIDS. The participants further concluded that NIs should redouble their focus on refugees, asylum seekers and migrant workers' issues. They should also provide or support practical services such as hot-lines and information centers. NIs should consider new ways they can initiate or contribute to conflict resolution processes. Additionally, they should address issues of discrimination, the promotion of the respect for cultural diversity and fostering intercultural communication on these issues. They could also promote programs of human rights awareness for migrant workers at pre-departure and post-arrival, and also promote programs facilitating the reintegration of returning migrants, especially women migrants who often face stigmatization on their return.

****

Working Group 5- paper 1

Dr. Sima Samar
Afghan Independent Human Rights Commission

Women's Rights in the Context of Conflict

Introduction;

In Afghanistan, we are living in a time when pre-conflict, conflict, and post-conflict situation are mixed up and occur at the same time. Our country is emerging from 23 years of brutal warfare. But, despite the establishment of an Afghan interim government and the adoption of a new constitution, violence has continued and even escalated in the past few months. our election have had to be split and parliamentary elections have been delayed until next year .

The increased violence we see today in Afghanistan is the direct result of fallowing factors: the failure to fulfill promises to improve security in Afghanistan, the impunity enjoyed by human rights violators.

Lack of Law Enforcement and the Rampant War Economy

Within the next period, our country could either take positive steps toward sustainable peace or deteriorate even further into renewed conflict. The latter is more likely unless lessons are learnt from the past. Women have been the primary victims of the conflict in Afghanistan and women's rights have been ignored by all side during the past tow decades of war. Even the International community who was supporting the fight against the Russian was not talking about women's Rights and women's situation in Afghanistan.

Almost three years ago, the international community heralded the "liberation" of Afghan women from the horrendous restrictions of the Taliban regime. and the situation of women in the country got better. Progress for women was made in our

new constitution , but the reality in the ground for women is improving little, if at all especially in conservative areas of the country . for example , just this June, a bus carrying Afghan women election workers who were registering women voters was bombed by fundamentalist extremists, killing two women and injuring a dozen others. The windows of opportunity for moving forward on women's rights in Afghanistan are being all but closed by the lack of security and the absence of rule of law and the lack or real political will in the country. And dare I say it even among the international community.

In this paper, I first will describe the situation of women's rights in Afghanistan in the past and present and then talk about the work of the Afghan Independent Human Rights Commission to try to end violations of women's rights and to lay the groundwork for improved lives for women in the country.

Violations of Women's Rights: Past and Present

No environment has been more hostile to women's rights than Afghanistan. Afghanistan has always been a patriarchal society, but almost three decades of war destroyed the progress that women had begun to make in the '60s and '70s. Fundamentalism was built and supported by outside countries as the strategy to fight the Soviet Invasion and communism This strategy had horrible consequences for women. With the claim of upholding Afghan culture and observing Islamic values, men victimized women more and with even greater impunity. And during the civil war that followed the Soviet withdrawal, violence against women increased to an unprecedented level.

Although none of the warring sides respected the human rights of women, the actions of the Taliban were the most extreme. When the Taliban took over, from 1996 some people said that they brought peace and security to Afghanistan. But, what kind of peace and security was it for women when they could not leave their homes, they were beaten in the street, and they were not allowed to work? What kind of security was it when giving a girl a pencil and a notebook was considered a crime? Today the world condemns the Taliban, but the International community looked the other way due to the security which was brought by the Taliban at that time.

We cannot forget that the Taliban were removed from power in retaliation for 9/11 terrorist attack on the U.S. and not to restore women's rights and human rights. For years, we warned the international community that the Taliban, Al Qaeda, and terrorism posed a threat to humanity, but because the first victims were women the world paid little attention claiming respect for the Afghan culture.

In Afghanistan, the women's rights situation now is somewhat better than it has been in the past two decades of war. Women are now able to work and go outside of their homes, and girls can attend school. But the exercise of women's rights and human rights, reconstruction, sustainable peace, and democracy are in great jeopardy. the changes which we expected and which are necessary have not gone beyond the surface.

Opponents of women's rights remain a strong force in our country. Afghanistan is a country where the gun still rules and violations of women's rights continue with impunity. We still see local authorities imposing restrictions on women. The central government has neither the power nor the will to change this situation.

Factional fighting has not ended. And the Taliban have not been defeated. Women face rape and displacement in the warfare. In one district, women fled the fighting with their children and ran to the river to escape being raped by military commanders and private militias. These women drowned in the river, choosing to die in this way rather than to be brutalized by the men.

The media shows thousands of girls going to school, but they do not show what the quality of education is. They also do not show the girls who stay at home because there are no schools for them to attend. And, the media and the politicians certainly do not show the more than 30 girls' schools that have been set on fire or bombed by fundamentalists.

Tactics of intimidation are used to stop people and especially women from exercising their human rights. Intimidation tactics have been directed at women who participated in the Emergency Loya Jirga of June 2002 and the Constitutional Loya Jirga this past December. At both Loya Jirgas, women were taunted and threatened with death for advocating for justice and human rights. Women are threatened and harassed daily about not wearing the clothes which some of the man like, about walking alone, and about working.

Women do have the right to vote in Afghanistan, but this right has little reality when women election workers are killed as they register women voters. It also has little reality when only 36% of the registered voters are women.

Women, like men, are imprisoned in horrible conditions, and often illegally. Prisoners suffer from a lack of space, lack of sunlight, and overcrowding. Prisoners are routinely denied medical care or only treated within the prison. Female prisoners have had to give birth in detention centers. where they have to look after them selves with out any

facilities. The majority of women detained are in prison for breaches of the social code. Such as leaving their husband s that have beaten them or simply being without male relatives. Rather than for any real criminal activity. Our Human Rights Commission with the Ministry of justice installed complaint boxes in Kabul male and female prisons. Of the 35 female prisoners, 28 submitted complaints. Our legal system and courts are markets, where "justice" can be bought by the rich while the poor suffer in silence.

Trafficking of women and children continues. The kidnapping of children for labor, sexual exploitation, and other cruel and illegal practices happens throughout the country.

In the face of forced marriages and hopelessness about their lives, many young women are committing suicide by self-immolation or by jumping into the river.

Without security and without the rule of law, women have no protections. They have no opportunities. They have no rights.

AIHRC Strategies to Protect and Promote Women's Rights

The Afghan Independent Human Rights Commission is now entering its third year. This is the first Human Rights Commission in our country's history. The Commission was established in June 2002 as one of the requirements of the Bonn Agreement, which set in place the interim and transitional government for Afghanistan after the fall of the Taliban. Initially established for tow years. in January this year, we won inclusion of the Commission in the new Afghan constitution. t will now be a permanent institution to protect and promote women's rights and human rights in the country.

Our Commission is nearly gender-balanced, with five women and six men commissioners. I would now like to talk about some parts of our work to protect and promote women's rights and how we are dealing with these issues in the in the current challenging context of conflict in Afghanistan.

Pressing for Security and Disarmament

First, we are advocating for increased security and disarmament in the country. One of the main reasons that advances for women's rights in our country are so fragile is the lack of security and the absence of the rule of law. During situations where security is absent, women are often the primary victims of violence from all sides. This was the case over the past two decades of war in Afghanistan. It is the case today.

Security is the first priority of women in Afghanistan. Without security, no human being can be free and women's situation will never get better.

Since the day I took office as Minister of Women's Affairs in the Afghan Interim Administration in December 2001, I – along the Afghan government and the United Nations – have urged the expansion of international peacekeeping troops beyond Kabul as absolutely necessary to achieving sustainable peace and women's rights in Afghanistan. But the international community's response has been inadequate and too slow to arrive. When the interim authority took office almost three years ago, there were 3,500 peace keeping troops in Kabul. Despite all the promises and the worsening situation, there are still only 6,500 peace keeping troops and only a few hundred of these are working outside of Kabul. NATO recently promised about 3500 more troops for the coming election. We hope that the promise become reality in Afghanistan.

In the wake of the attacks on the female election workers, the massacre of 16 people mostly Hazara, men for registering to vote, and the bomb blast in different part of the country. the Afghan Independent Human Rights Commission has yet again called upon NATO to expand international peace keeping forces. A larger peace keeping presence is absolutely necessary to ensure sufficient stability for free and fair elections. Demobilization, Disarmament, and Rehabilitation, known as DDR, has to be accelerated and the rule of law promoted to ensure respect for human rights and women's rights. We really need help from the international community to support us and to send more peace troops to different parts of the country who can start disarming the different groups.

Security for women also means access to basic human rights such as education and health care, to work that allows them to help support themselves and their families, and to food and shelter. Afghanistan needs resources in order to rebuild the nation's education and health system and its physical infrastructure. The financial resources are needed to demonstrate that there is a divided for peace creates improvements changes in the conditions of people's lives. We also need job opportunities for women, as well as for former war combatants so they can put down their guns and see there is a future without war.

Ending Impunity

Second, the culture of impunity in Afghanistan must come to an end if women's rights are ever to be possible. There can be no peace without justice in Afghanistan. There must be accountability for the human rights violations of the past and the present.

Without accountability and without justice, the culture of impunity will continue.

I am concerned that in Afghanistan we could again be entering a period where women's rights are viewed as a trade-off for so-called security. Some people think that our silence about the past violations is necessary for the stability of the government and for security. Some people do not even consider the violations of women's rights that occurred to be serious violations of human rights. But, as we saw under the Taliban, security based on violation of human rights and women's rights is not security for the people at all. It is only security for those in power and for those who hold the guns. frequent out break of fighting between and among private militias has always left ordinary people, and particularly women and children ,killed displaced or victims of their brutality and inhuman treatments.

Our Commission is mandated to undertake "national consultations and propose a national strategy for transitional justice and for addressing the abuses of the past." We are working to make sure that women are a part of this process and that women's rights violations are taken seriously.

We believes firmly that the process of accountability for past violations will strengthen the rule of law and put an end to the culture of impunity that has governed Afghanistan for decades. Our work includes development of mechanisms for accountability for the past crimes against humanity in accordance with international law, Islamic principles, Afghan tradition and the will of the people of Afghanistan. As a part of our national consultation process, we are conducting a survey of 3500 people and focus groups involving thousands more so that we can find out how the people of Afghanistan want past violations to be handled. Women are at least 50% of the participants of the focus group and survey participants.

Believing firmly that accountability for the crimes of the past is essential to peace, stability and human rights in Afghanistan in the future, AIHRC has worked to build coalitions and develop national and international political will to support justice.

Monitoring and Investigating Violations of Women's Rights

Fourth, another part of accountability is monitoring and investigating current abuses of women's rights and human rights. In the past year, the Commission received over a thousand complaints of human rights violations including extra-judicial killings, forced marriage, rape, property confiscation and destruction, forced migration, torture, illegal imprisonment, kidnapping, beating, and selling of women.

The Commission has intervened successfully in some cases to prevent forced marriages. Although Afghan civil code requires mutual consent for marriage, forced marriages are prevalent and are one of the primary causes of violence against women and self-immolation. Often these marriages are performed on the demand of military commanders. The Commission also has worked to stop the transfer of girls and women to resolve disputes, the devastating practice known as "bad." Domestic violence also is a human rights violation that the AIHRC investigates and for which it seeks protection and remedies for the women. We advocate on behalf of women and girl children so that they are not further victims of cultural and traditional male practices.

In response to reports of high numbers of cases of women setting themselves on fire in suicide attempts, the AIHRC convened a seminar on self-immolation, published a book on the topic, and made recommendations to provide more support to women and to prevent them from attempting to kill themselves.

Through its monitoring of women's prisons, the Commission has won some improvements in conditions, including literacy and vocational training programs for women prisoners and kindergartens for their children. We have also won the release of hundreds of illegally detained prisoners, including women.

We have also investigated complaints against the coalition forces, who in the name of combating terrorism have stormed people's houses, conducted culturally sensitive searchers of women by men, destroyed property, and illegally detained people.

The AIHRC has worked to assess the extent of the trafficking of women and children, to educate law enforcement official about trafficking, and to prepare a national plan of action on child trafficking.

Codifying Women's Legal Rights

Fourth, while working to establish the rule of law, AIHRC also has led efforts to ensure that the laws protect women's rights. The Commission was one of the primary advocates for inclusion of women's rights in the new Afghan constitution. While the final government draft of the Constitution did not include an explicit guarantee of equal rights for women as AIHRC recommendations had urged, at the Loya Jirga we won adoption of a provision stating that "The citizens of Afghanistan – whether man or woman – have equal rights and duties before the law." We did not win all of our recommendations to strengthen women's constitutional rights, but we did at least create some space for women.

Our Commission also won a provision in the constitution requiring the government to abide by the international treaties and conventions to which Afghanistan is a party, including CEDAW. As an independent national human rights institution, the AIHRC works to promote the harmonization of national law and practice with international human rights instruments and to hold the government accountable to these standards.

We also have submitted recommendations for changes in the civil and penal codes to the Judicial Reform Commission, which is charged with proposing new laws. Our Human Rights Commission has urged defining harassment and threats against women's exercise of their rights as a crime. Iran and Pakistan have included similar provisions in their laws. We have urged the establishment of more family courts and the enforcement of marriage registration laws. Marriage registration laws can be an important strategy to protect women against forced marriage and to protect women's property rights in divorce and widowhood. But the road ahead of us is very long one , if we are to make the equality provision in the constitution a reality for the women in Afghanistan.

Ensuring Women's Political Participation and Representation

Fifth, women's political participation is crucial to effectively promote women's rights , as well as enhancing political pluralism and culture of dialogue as basis for a democratic and inclusive society . Women must be full participants in the political, social, and economic arenas, in our country's reconstruction, and in the world's security bodies for the Kaliznokov and war culture to come to an end.

One of the problems with the peace process that gave birth to the new Afghan government is that the negotiations only included representatives of the different warring factions. Afghan women and our sisters in women's rights organizations worldwide called for the inclusion of women in these negotiations and in the new government. But only three women were allowed to attend the meetings as delegates and only two women were included in the cabinet. Clearly, without the advocacy of Afghan women and women's organizations around the world, women would not have been represented, but inclusion of these few women is still not enough.

Discrimination and bias against women in the political arena persists. When women delegates at the Constitutional Loya Jirga last year protested the fact that none of the women candidates for Deputy Chair were elected because male delegates significantly outnumbered female delegates, the Chair of the Loya Jirga told the assembly that women were worth only half as much as men and did not deserve representation.,

this stereotyping of women is never acceptable in any context.

One of the AIHRC's priorities for the new constitution was the setting of quotas for women's representation in parliament. Because of our work and that of our allies, the Constitution now guarantees women about 25-30% of the seats in parliament. We also are fighting for implementation of these constitutional requirements in the upcoming elections including having integrated lists of male and female candidates rather than separate male and female lists.

However, the lack of security and continuing influence of the fundamentalist forces within and outside of the government has had a negative effect on women's political participation. Our Commission will play a leadership role in monitoring the presidential and parliamentary elections to ensure respect for political rights, including freedom of expression , freedom of association nonviolent demonstration and freedom of movement , non-discrimination against women, and political participation of all people.

Providing Education on Human Rights and Women's Rights

Sixth, a major goal of the Afghan Independent Human Rights is to replace the existing culture of violence with a culture of peace and respect for human rights and women's rights specifically. The impact of fundamentalism and the war culture in Afghanistan have caused long-lasting damage to both human rights and to the mentality of the people.

Through workshops, round table , public gathering events, media, publications, short documentary films, and introduction of human rights into curriculum at all levels of education, AIHRC has sought to is inform people that human rights are not something imported from the West, but that these are rights with which everyone is born with throughout the world, regardless of sex, ethnicity, or economic status. To change attitudes and behavior, the Commission has held human rights and women's rights workshops for police, army, journalists, judges, disabled, schools and universities, government employees, doctors, Mullah , religious figures and divers groups of community ,people and leaders.

These are just some of the areas in which the Commission is most active in protecting and promoting women's rights and human rights. We believe that increasing security, ending the culture of impunity, ensuring women's political participation, securing women's legal rights, protecting women against human rights abuses, and providing human rights education are strategies that must be pursued simultaneously and

immediately despite the risks.

Women's rights will not be real unless there is enough security and law enforcement in the country. Lack of security – both physical and economic – is one of the reasons that make women more vulnerable than any other sector of the society during transition from armed conflict to peace and stability . At the same time, real security is not possible unless women's rights are respected and promoted so they become a reality.

It is clear that terrorism is an enemy of every one in particularly of women. But the counter-terrorism campaign as it is being implemented also presents dangers to women's rights, as seen by the increased fundamentalist attacks in Afghanistan against Afghan civilians and international staff.
Finally it is clear that in any conflict zone in the world women and children are the primary victim of the war , and these two part of the society suffer more then the men in the society.

We, as national human rights institutions, cannot allow human rights and women's rights to be sacrificed in Afghanistan or anywhere in the world in the name of anti-terrorism. What happens in Iraq, Palestine or other places affects us in Afghanistan. As we now know, what happens in Afghanistan affects the world. Only through international solidarity on behalf of human rights and women's rights we can achieve respect for human rights and dignity, peace, equality, justice, and a non-violent world.

****

Working Group 5-paper 2

Mr. Déogratias Kayumba
Vice-President, Rwandan Human Rights Commission

Women's Rights In the Context of Conflict

I. Introduction

Rwanda is a landlocked country in Central Africa with an area of 26.338 sq km (10,169 sq miles) and an estimated population of 8,128,553, of which 3,879,448 are men and 4,249,105 are women (see available statistics on www.minecofin.gov.rw).

In 1994, Rwanda suffered serious Human Rights violations because of genocide. It cost the lives of over one million people. In particular, acts of sexual violence and torture were inflicted on women and young girls.

The Transition Government, set up in the aftermath of the genocide, inherited a country with a shattered economy, nearly destroyed basic infrastructures and a badly torn social fabric. It had to face the many challenges associated with the country's reconstruction, including its economic recovery; the prosecution of those responsible for the genocide; the repatriation of its refugees; and, the reconciliation of the Rwandan people.

Thanks to the know-how of Rwanda's sons and daughters and the support of the international community, the country reached a level of stability that enabled its government to launch integral and sustainable development strategies for the benefit of its people.

In 1995, as the United Nations was preparing the Fourth Global Conference on Women in Beijing, Rwanda was recovering from one of the most traumatizing experiences known in modern history. In 1994, more than a million Rwandans had been killed because of genocide. Utter devastation of the country's human resources

and of its economic and social infrastructures were among the disastrous consequences of this tragedy. Rwandan women had suffered a great deal and, to a certain extent, they had borne more ills than men. Because rape had been used as a bludgeoning weapon during the genocide, many women had been the raped.

Despite this profound distress, the Rwandan government joined other nations to express its commitment to promote gender equality and equity both nationally and internationally.

It is within this context that the National Union government adopted Beijing's Agenda and undertook strategic actions aimed at tackling the 12 critical areas identified by the Beijing Platform. This was done in conjunction with the creation of a Committee for the follow-up of the Beijing Conference Plan of Action.

II. Political accomplishments: The Creation of Public Institutions

By tradition, women's participation in public life and the decision making process had always been insignificant in Rwanda, particularly at the highest echelons of power; a situation exacerbated by an especially centralized administrative system. As a result, Rwandans did not participate in the decision-making process on matters that had a bearing on their future.

As it adopted policies aimed at promoting gender equality and women's integration to the development effort, the Rwandan government fostered the emergence of non-governmental organizations advocating the human rights cause in general, with a particular interest in women's right, and created institutional mechanisms, some at the highest level of government, such as:

a) the Ministry for Gender Equality and the Advancement of Women
At the inception of the transition government, in 1994, the responsibilities in matters of Gender Equality and the Advancement of Women had been given to the Ministry of Family and the Advancement of Women, from 1994 to 1997. In 1997 until 1999, they were entrusted to the Ministry for Gender Equality, Family and Social Affairs.

In 1999, these responsibilities were transferred to a Ministerial Department created to that effect: the Ministry for Gender Equality and the Advancement of Women.
In 2001, that Department became the Ministry for Gender Equality and the Advancement of Women with, as its main task, the follow-up and implementation of policies in favor of the advancement of women.

There is now a National Policy on Gender Matters containing guidelines in the following areas:

- Poverty reduction;
- Agriculture and food security;
- Health;
- HIV/AIDS;
- Education and professional training;
- Governance and decision-making;
- Human Rights and wartime gender violence;
- Peace and Reconciliation;
- New information and communication technologies;
- Environmental protection.

Since its creation, the Ministry has distinguished itself by its many achievements in matters of education and the advancement of women's rights. It organized training sessions, solidarity camps and awareness campaigns on women's rights, targeting a varied audience, including women themselves and the authorities.

b) The National Agency for the follow-up of the Beijing Conference (5 February, 2002)
This agency ensures the follow-up and coordination needed to implement the Beijing Conference recommendations. It is comprised of a Coordination Committee and its Standing Executive Secretariat.

c) The National Board of Women
The Board was created under the Ministry for Gender Equality and the Advancement of Women, in compliance with Article 187 of the Constitution (4 June, 2003), and was given legal authority and financial autonomy.

The purpose and mission of the National Board on Women is:

- Gather Rwandan women's ideas, barring none;
- Encourage Rwandan women to analyze and solve their problems together;
- Encourage Rwandan women to participate in their country's development process;
- Help Rwandan women better grasp the concepts of patriotism and serving one's country;
- Empower Rwandan women so they may have a say in the country's governance and better participate in government programs;
- Encourage Rwandan women to fight for equality and a complementary interaction between men and women.

d) The National Human Rights Commission:
Its general mission involves the consideration and prosecution of human rights violations perpetrated by any person on the Rwandan territory, particularly those carried out by entities of the State, by individuals who acted under State pretense, and by any organization working in Rwanda.

It also is responsible for educating and creating greater awareness of human rights.

e) The Gender Observatory:
Article 185 of the current Constitution created this national and independent institution. The details of its organization and operations shall be determined by a specific law. Its current responsibilities are as follows:

- Monitor, for the purpose of ongoing evaluation, the respect of "Gender" indicators from a standpoint of sustainable development, and act as guiding and reference model in matters of equal opportunity and equity;
- Address pertinent recommendations to the various institutions on the issue of "Gender" perception.

III. The Advancement of Civil Society

Several human rights advocating non-governmental organizations (NGO's) in Rwanda, often acting together according to the specific rights on which they focused their efforts, cooperated with the public institutions concerned with the rights and advancement of Rwandan women.

a) CLADHO
The Collective alliance of Human Rights Defense Leagues and Associations in Rwanda (CLADHO) has been active since 1993. The initiative that led to its creation was the result of four associations who had decided to join their efforts to oppose the numerous human rights violations that afflicted the country at the time. It was officially recognized in January 1994 and is now comprised of five member associations. Its experience and its reputation were acknowledged when it was granted Observer status by the African Human and Peoples Rights Commission. With respect to Women's rights, it is a member of the National Coordinating Committee for the follow-up of the Beijing Conference.

b) Pro-Femmes/TWESE HAMWE (Pro-Women)
Created in 1992 by 13 associations, this joint entity has grown to include 39 organizations who act in pursuit of the advancement of women. It has taken on the

following tasks:

The socio-economic development of women;
Fostering peace and education toward peace attainment;
Reinforcing the institutional and organizational capabilities of its members;
Contributing to the drawing up of policies in favor of women.

With respect to the rights of women and children, *Pro-femmes* member associations have led the following actions:

Educating the public in matters of human rights in general and women and children rights in particular;
Providing assistance, thanks to HAGURUKA a.s.b.l, one of its members, in the area of administrative and legal procedures;
Advocating girls' school attendance, women participation in decision-making activities, non-violence, etc.;
Participating in law revision and identifying sectorial policies in matters of women's rights, including the right to advancement and development.

c) Legal accomplishments

- The June 4, 2003 Constitution states, in its Article 9, that the Rwandan State shall adhere to the fundamental principles in it inscribed, among which, to create and uphold a State of Law and a pluralist democratic regime, preserve equality among all Rwandan citizens and equality among men and women. It also establishes, in its Article 11, the principle of equality as a fundamental right of the individual: "All Rwandans are born and remain free and have equal rights and obligations. Any discrimination based especially on race, on ethnic, clan or tribal origin, on skin color, gender, region, social origin, fortune, cultural differences, language, and social situation, physical or on mental impairment, or any other type of discrimination are prohibited by law". Finally, its Article 16 establishes that: "All human beings are equal in the eyes of the law. All have the right, without distinction, to equal protection".

- Law nº 22/99 of November 12, 1999 on property rights subject to matrimonial relationships, estates and liberties, establishes the right for women and girls to inherit their own families' personal estate (Article 50), and ascertains the mandatory mutual agreement of both spouses to donate any real estate assets or any asset held by the couple, or to acknowledge any other right related to said assets (Article 21).

- Law n° 27/2001 of April 28, 2001 on the rights and the protection of children

against acts of violence, acknowledges a woman's rights to pass on her nationality to any child born of her, even of a foreign father. It thus eliminates the interdiction previously made to women to pass on their nationality to children recognized as having been fathered by a non-national.

Law n° 47/2001 of December 18 2001 on the repression of sectarian criminal discrimination and practices, clearly defines the forms of discrimination it targets, regardless of the instigator's qualifications, i.e., any person acting individually and holding a position of responsibility in the public or private sector, in a political association or political party, or a candidate to an election; having used any of the following instruments: oral or written word, or proven intent, on televised or radio transmissions, in public meetings or in public places.

d) Adoption of special measures fostering positive reinforcement:
As part of instituting equality among men and women, the Government adopted laws providing, very specifically, a minimum quota of women in all decision making bodies.

Law n° 42/2000 of 15 December 2000 on organizing elections at the rank and file levels, as amended by Law n° 13/2002 of 3 December 2002, establishes a minimum quota of 1/3 of women.

To that effect, the Constitution adopted on 4 June 2003 automatically provides 24 Congressional Seats to women and at least 30% of Senatorial seats. After the legislative elections held between 29 September and 3 October 2003, 36 women were awarded Congressional seats vis-à-vis 44 men, that is 45% of women and 55% men. For the Senate, 6 out of 20 Senators are women, thus 30%. The current government administration consists of 18 ministers, of whom 4 are women, and 11 Secretaries of State, of whom, 5 are women.

IV. Basic Services: Education

The literacy program is one of the government's major concerns in matters of education. The 2001 Literacy Survey showed a literacy level of up to 47,8% for women and 58,1% for men.

In its "Vision 2020" development program, the Government intends to provide free schooling up to the end of junior high school. This opportunity shall be offered to all persons of both genders. A unique chance was provided to girls by the non governmental organization, FAWE (Forum of African Women Educators) as it opened an all-girls Pilot Secondary school and established an Excellence Award for girls having

shown high merit throughout their basic school years.

Aside from these accomplishments, the government has set the objective of Education for all by the year 2015.

a) Employment

In compliance with Article 11 of the Convention on the elimination of all forms of discrimination toward women, Articles 12 and 84 of the Rwandan Labor Code, prohibits any form of discrimination that might alter equal opportunity employment, equality of treatment or equality of consideration by the courts in case of a labor conflict. Equal salary is also recommended in all cases of equal capabilities and equal performance of the same type of work.

The Rwandan Labor Code also regulates the working conditions of pregnant or nursing women and prohibits the performance of tasks that may exceed their own strength or present a risk or inconvenience to their health condition (Article 67, paragraph 2).

Article 68 of the Code establishes that an expecting working woman is entitled to a 12-week long maternity leave starting at least two weeks prior to the estimated date of delivery and for at least six weeks after childbirth, and makes it unlawful for an employer to give a notice of termination to a woman on maternity leave. On the other hand, it is rather deplorable that a woman on maternity leave is only entitled to 2/3 of the salary she earned before her maternity leave.

Finally, Article 70 of the Code prohibits the termination of a woman employee who, upon expiration of her maternity leave, cannot return to work because of a pregnancy or childbirth related illness, as attested by medical certificate. Termination, in this case, may take effect only after a six-month period, and any violation of the provisions applicable to the work of expecting or nursing women may lead to penal sanctions against the employer.

b) Health

In matters of health, women enjoy the same rights as men. The general objective of the national health policy instituted by the government is to contribute to the well-being of the population (with a majority of women) by providing acceptable and accessible quality services.

To give but one example regarding health care, awareness campaigns have been launched throughout the country to alert the population to the dangers posed by the AIDS pandemic, its mode of transmission and possible prevention either through

abstention or the use of condoms.

The government made all the necessary efforts to afford those infected with HIV/AIDS the needed anti-retroviral medication at reduced costs, and launched a campaign to fight against the stigmatization of AIDS patients.

c) Economy
In an effort to fight against the feminization of poverty, the government set up a Guarantee Fund to help women who wish to obtain bank credits or loans. It also set up, in each district, a Micro-credit Fund, especially for women in rural areas.

Various Women's Associations, among these DUTERIMBERE have also contributed to this effort by setting up savings and micro-credit Cooperatives.

The Association of Women Entrepreneurs of Rwanda currently has its own savings and loans bank.

d) Housing
Grouped dwellings were built to house poor widows and orphans (children heads of household) whose own houses and other belongings were destroyed or ransacked by their husbands' or parents' executioners.

V. Challenges

a) Poverty
Despite their political determination, many families live below the poverty line. The main reason is the lack of land and the rudimentary tools of the trade while more than 90% of the population lives off farming and the national economy remains one of low income.

b) Ignorance
The all too frequent human rights violations so characteristic of Rwandan history throughout its many conflicts have not contributed to the constructive education of the population with respect to the rights of the individual.
Traditional stereotypes and taboos, so contrary to the Universal human rights principles, are still present. Habits that are deeply rooted are slow to disappear and are an obstacle to the advancement of women at a desirable pace.

c) Consequences of the Genocide
The Rwandan genocide was the result of sectarian beliefs, which has had deleterious

consequences on the Rwandan women who have endured so much. It is worth noting that as a result of the violent acts perpetrated against them -and despite profuse efforts to rehabilitate them- their rights to dignity, physical well-being, and empowerment are still lagging because of it.

d) Violence Toward Women

The violent acts toward women are perceived differently depending on the nature of the act. Public opinion has a tendency to think of violent acts only in terms of sexual abuse carried out by third parties who are the object of general disparagement. It considers as acceptable and sometimes even justified the husbands' physical and sexual violence.

However, it is important to make the distinction between the sexual abuses committed during the genocide and in the post-conflict period, on the one hand, and those targeting adult women, and more recently, those perpetrated against children on the other.

During the 1994 genocide, rape had been used as an instrument of war, a way to inflict further pain and humiliation on the victims.
Rapes committed during that period were accompanied by torture of abject cruelty and are condemned by specific legislation, approved in the aftermath of the genocide.

e) Women and Armed Conflict

After the successive bloodsheds that have marred Rwandan history, in this particular instance the 1994 genocide, and as a consequence of the many clashes that still affect the country, Rwandan women have become increasingly aware of the role that they must play to resolve these conflicts.

Aside from the conferences and workshops held in Rwanda on conflict resolution and peace, Pro-Femmes TWESE HAMWE has launched a campaign under the heading of "Action for Peace" which advocates active non violence, mediation, and conciliation.
Women's Associations dedicate their efforts to the peaceful resolution of conflicts, tolerance, unity and reconciliation.
Everyone knows the decisive role played by women in the Gacaca-Jurisdictions, as judges or witnesses.

Nevertheless, we must deplore the fact that women and young women soldiers are still being held as hostages by the combatants of the old guard of the defeated Rwandan army (ex-FAR) and militia "Interahamwe" acting in neighboring countries. Their repatriation and/or demobilization has become all but impossible despite multiple

attempts by the Rwandan government.

VI. Conclusion

At the end of this presentation on Women's rights in the context of armed conflicts: the Rwandan experience, it is important to emphasize that after the 1994 genocide, the National Union Government has dedicated much of its efforts to promoting human rights in general and those of women in particular. Nonetheless, there is still much to be done because socio-cultural attitudes and practices that reinforce the relationships of inequality between boys and girls or men and women, on the one hand, and husbands and wives on the other, remain present in contemporary Rwandan society, even if the laws are clear on this issue.

Consequently, intense efforts are being made throughout the country toward Gender Equality.

In addition, after the 1994 genocide, the Rwandan legislation has given the civil society a broad margin of action which greatly contributes to promoting Women's rights.

Despite the challenges mentioned above, there is room for hope that by the year 2020, Women's Rights should attain the desired level.

****

Working Group 5-Discussion Summary

I. The Problem

Women and the girls are the victims of brutal human rights violations during conflicts, including sexual violence deliberately targeting them because they are female. Women are raped by government and non-government forces, by police responsible for their protection, and indeed, too, by refugee camp and border guards they are maimed or sexually mutilated, and often later killed or left to die. Girls face particular risks during armed conflict and there are specific gaps in protection and assistance to women who are internally displaced. The reports of women kidnapped and trafficked from refugee camps are particularly alarming. Women also face violence and discrimination in the rehabilitation and reconstruction process.

This is tragic, because women make up the majority of household heads in most post-conflict situations. This is acutely worrisome problem for their families and their needs are rarely adequately factored into international donor and reconstruction programs, furthering hampering the distribution of humanitarian aid. The problem is that is it often unrecognized that during conflict when many women become sole bread-winners for their families, single parents, and sole care-givers for the injured, elderly and children. Women are frequently made to leave their homes, property and community behind, so they become particularly vulnerable to violence, disease and hunger. Participants discussed NIs functions and their countries' respective experiences in promoting and protecting the rights of women in these situations of conflict.

II. Discussion

The Chairperson was Dr. Radhika Coomaraswamy, Chairperson of the Human Rights Commission of Sri Lanka. Dr. Sima Samar, Chairperson of the Afghan Independent Commission for Human Rights (AIHRC) presented a report on the situation in her country. Mr. Déogratias Kayumba, Vice-President of the Rwanda Human Rights

Commission was the second presenter. Violence against women is often invisible and unacknowledged during wartime. It is important that NIs play an important role in highlighting these issues, providing remedies for the women and raising awareness about the need to protect women from violence. Participants noted the linkage between violence against women in every day life, such as domestic violence, and violence against women during war time. Sexual violence during war is sometimes part of a deliberate military strategy to terrorize the population. Conflict situations make women victims of trafficking as they become vulnerable to sexual abuse and exploitation. Women refugees are also susceptible to exploitation and abuse as migrant workers.

The participants discussed the importance of having a national legislation that effectively defines sexual violence during wartime along the lines set out in the ICC. Such legislation is important in order to avoid the "invisibility" of violence against women during conflict situations. The participants further noted the importance of implementing Security Council resolution 1325 on women and peace. They reaffirmed the need for the "mainstreaming" of gender in to all aspects of peace keeping. That is, they thought it should be made common practice. Women's participation in peace processes is essential in order to send a message of an inclusive process, to give women experience in political negotiations and a voice to half of the population. The impact of peace processes differs with regard to men and women. Women's participation at every level of peace processes must be ensured. Reconstruction and rehabilitation programs are often formulated and implemented without the participation of women and without taking the concerns of women into consideration. Education and awareness of women's issues are core elements. The empowerment of women through programs is essential so as to ensure their economic self-sufficiency and independence.

III. Outcomes

Participants roundly concurred that their respective countries must be urged to ratify and implement the international human rights and humanitarian treaties (ICC, CEDAW, CAT, ICCPR, ICESCR and the Refugee Convention). They also agreed that NIs should further assist governments in implementing the concluding comments of human rights treaty bodies. Naturally, the universality of human rights should be accepted and promoted by NIs, but they agreed that this should include mainstreaming gendered perspectives in all aspects of conflict resolution as well. A culture of peace education should be fostered and networks for preventing conflict should be supported. NIs should exchange information and dialogue on human rights. Where appropriate, NIs should support the demands for acknowledgement of past

crimes and apologies for violations of human rights in cases of widespread and systematic violence against women during wartime.

They concluded NIs should have an important role in collecting data, receiving complaints and investigating allegations of violence against women during wartime in their countries. NIs should make public their findings of violence against women so as to increase awareness and to bring pressure on governments to comply with human rights obligations. NIs should support and assist programs for reparation and compensation for women victims of violence. Any Commission of Inquiry or Truth and Reconciliation Commission set up as part of peace processes should include a fair representation of women. All NIs should similarly have a fair and equitable representation of women.

NIs should support the setting up of mechanisms for ensuring women's participation in peace processes at all levels. The United Nations Security Council should involve human rights institutions of the United Nations in the peacemaking activities. NIs should assist in the implementation of the human rights component of any peace agreement. The mainstreaming of women's issues should be ensured in all aspects of governance, in addition to creating special units for women. In the rules of business constructed by governments' female ministers must be given equal status. Women's issues should be raised during negotiations for political determination. The negotiations should ensure the enactment of constitutional provisions for equality, affirmative action and the setting up of women's commissions. Law reform should accompany the peace process so as to eradicate discriminatory practices (e.g. inheritance laws, early forced marriage, female genital mutilation). During the peace process, dialogue among women from the different warring groups should be encouraged so as to assist in the process of reconciliation.

****

Thursday, September 16th

Plenary I

Plenary Discussion Summary on Thursday

Mr. Morten Kjaerum of the ICC chaired the plenary. At the plenary, Working group Rapporteurs reported their respective Working groups' deliberations. Upon hearing the Rapporteurs' summaries, the plenary then heard from NGO representatives and engaged in substantive discussion, especially on necessary considerations for the Drafting Committee as it drafts the proposed Seoul Declaration.

Working Group One

Mr. Suk-tae Lee summarized the deliberations of Working group 1. He described how they discussed the negative impacts on ESC rights by conflict. The NIs' effectiveness is dependent on the respect they receive, their credibility. So, credibility issues are salient for their potency on the national level. They should generate an awareness of human rights and related issues. Working group 1 agreed that NIs should play an early warning function in this regard, he reported. Preventive measures then could be taken. In another words, the group affirmed the old adage 'a stitch in time saves nine.' He went on to describe the constructive addition the NGO delegates represented and said they included their contribution in the Working group report.

Professor Karima Bennoune of Amnesty International represented the NGO perspective at the proceedings of Working group 1 and delivered the NGO presentation including recommendations to the plenary. She described how delegates failed to garner a consensus definition of terrorism and that general recommendations and comments in common should be streamlined.

Working Group Two

Mr. Wilhelm Soriano of the Philippines presented Working group 2's report to the plenary. He described how they discussed aspects of terrorism and found that it shows

itself in many forms, including during conflict. They agreed that states have the responsibility to protect its citizens. Though as in Working group 1, they could not agree on a definition of terrorism, they did agree that it is incumbent on national governments to forge concise language in legislating against terrorism. This is necessary in order to avoid abuses from vague and broad laws and mandates. He reported that the delegates all agreed that they must fight terrorism in the context of the rule of law and human rights. He also noted that the Berlin Declaration was a particularly useful guide, and that they affirmed this fact during their Working group.

Mr. Ian Seiderman of the International Committee of Jurists represented the NGO point-of-view. He described the consensus sentiment among NGO delegates that the present time is a globally perilous moment in terms of the assault on human rights due to the War of Terror, including, inter alia, assassinations, the rise in acts of terrorism and detentions. He said that they did not anticipate this bleak beginning of the new Millennium. He said that they see the importance of resolutely confronting this now more than ever. He made 4 recommendations: (1) NIs should develop and evaluate their respective national government's laws and practices in relation to counter-terrorism measures and their impacts on human rights in consultations with civil society as well as 'rapid reaction strategies' when an act of terrorism occurs; (2) strengthen the rule of law and human rights protections in the laws of their respective countries, and as for international ones, they should push their states into conformity with them using the Berlin Declaration as a useful guideline; (4) regional and international mechanism, e.g. the Spring 2004 61st Session of CHR.

Working Group Three

Mr. Pyakurel of Nepal summarized the deliberation from Working group 3. He described how the participants agreed that national government accountability is crucial to their work. It is vital that NIs better hold their respective national governments accountable. This is related also to ensuring rebel and security forces' respect for human rights. Therefore, they concluded that NIs should actively exercise a broad mandate. He described how their Working group discussed ways to do this, for example (1) early warning and prevention; (2) mediation and conciliation; (3) protection of victims of conflict; (4) limitations; and, (5) recommendations. NI recommendations should reflect this, he stated.

Michelle Parlerliet of the Center for Conflict Resolution presented the NGO perspective. She thanked the NIs for the opportunity to observe the conference and present an NGO point-of-view, and thanked the chairperson for his guidance. She observed how different NIs differ in their mandates as well as in terms of the context

in which they work. They need to maintain relevance in their individual contexts. They must address their issues head on, considering their mandates and contexts. She suggested they pursue this approach. human rights violations are both consequences and causes of conflict Essentially, human security and sustainable development are goals for NIs as they seek to address human rights violations. Their roles change as contexts change. State actors and non-state actors commit violations and so both must be addressed by NIs. Structural conditions must be addressed if NIs are to achieve their role of finding preventive means to conflicts and terrorism, and to solve problems before they become crises. Consequently, their credibility within the larger society and with their respective national governments is crucial. There are limitations in their direct facilitation role.

Working Group Four

The working group was on migration. These key points were constructed by NGOs and NIs jointly so we shall combined them as such as a single report. Receiving National Governments have reacted coldly to their needs in many cases, because of suspicions concomitant with the War on Terror. Their counter-terrorism measures have further compromised the rights of both refugees and asylum seekers. Indeed, the discussants declared, these measures have compromised the rights of migrant workers in general, particularly those who by virtue of their nationality or religious beliefs are perceived as a threat to national security.

One of the characteristics of this war on terror is its international character. In that regard, CTMs have an extraterritorial holding of detainees, its disregard of national practices and acceptance of torture, extracted confessions as long as the torture occurred beyond its own borders. There are some disturbing legal developments among some national governments as far as their approach to terrorism and counter-terrorism is concerned. For example, the kidnapped migrant workers we read about in the news are now common incidences all over the world. Non-nationals detained in a differential manner in terms to their human rights. Asylum seekers, refugees and migrant workers. The legal regimes that protect these groups are different. So, they are treated differently. These distinctions are blurred and outsiders are demonized. Push factors should be understood. It is seldom that there is a purely economic migrant. There are political reasons for a failure to get work or survive. This represents a systematic degradation of human rights on seeking asylum. Not simply because they are refused, but they are denied even to be able to “seek” it. This happens because they exclude them from even entering. So, mass-displacement, safe havens and not prohibiting people from crossing borders together contribute to the present situation. Regional and international refugee conventions are seen as not apart

of international human rights but they are actually. NI role as a focal point for migrant workers is crucial, giving advice and advocating on their behalf. Transit and receiver countries and NIs there can cooperate and exchange information. Exchanging information and cooperating. NGOs can be used as a resource.

Working Group Five

The Chairperson was Dr. Radhika Coomaraswamy, Chairperson of the Human Rights Commission of Sri Lanka. She stressed how violence against women is often invisible and unacknowledged during wartime. She described how the participants noted the linkage between violence against women in every day life, such as domestic violence, and violence against women during war time. Sexual violence during war is sometimes part of a deliberate military strategy to terrorize the population. She further emphasized that the participants further noted the importance of implementing Security Council resolution 1325 on women and peace. They talked about "mainstreaming" of gender in all aspects of peace keeping was reaffirmed Conflict situations make women victims of trafficking as they become vulnerable to sexual abuse and exploitation. Women refugees are also susceptible to exploitation and abuse as migrant workers.

A NGO representative emphasized women's rights as one of major human rights. And they are indivisible. Conflict and counter-terrorism measures intensify the degree and number of human rights violations. She noted that violations of human rights are worse still for women and girls. Violations are related in war and in peace. So, the starting point is protecting them in peace time as well. Unfortunately, she noted Peace Keepers exploit women. Sometimes antiterrorism is used in this way, too. She added that at pre-ICC NGO Forum NGO delegates welcomed the cooperation between NIs and NGOs on this issue. NIs should therefore integrate gender perspectives into their work more systematically. She agreed that UNSC Resolution 3125 on women and security is very important. She exclaimed that NGOs concerned with women issues should be tapped by NIs. Additionally, NIs should redouble their efforts to organize international pressure against the violation of women's human rights.

Conclusion

After the Working group and NGO reports, the plenary engaged in substantive debate on the thematic issues. There was especially attention to the issues of migrant women's human rights, specifically how best NIs can work to promote and protect these groups. They discussed how best to apply such consideration to the drafting of the Seoul Declaration. The chair made the general observation that the deliberation have hitherto proved rich and interesting and "to the point." He reflected that there

was a danger to remain too abstract, but that this has not been the case at all. He expressed particular thanks to the NGOs for helping them see the NI function in their respective societies more clearly. He added that this was very promising for their collective future collaboration. He then adjourned the plenary until the following day.

****

Friday, September 17th

Plenary II

Plenary Discussion Summary on Friday

Mr. Kyung-whan Ahn chaired the second plenary. Rapporteur General gave a summary of the work done by the Drafting Committee, upon which there was vigorous plenary discussion. Spirited discussion continued concerning various issues of importance to the Seoul Declaration. Then, the participants adopted the Seoul Declaration. Finally, the four regional representatives reported their perspectives to the plenary.

Dr. Birgitte Olson of the UN HCHR summarized how the Draft Committee did its work the previous night following the Thursday's plenary, including the process of consideration. She noted the clear NI transparency and vibrant efficiency was evident. They concluded they have built on those principles constructively. She highlighted key points and some specific issues, representative issues. The draft declaration was structured the following way: first the role of NIs was integrated into the four themes. The speeches delivered on the first day, the reports of the working groups, and the active inclusion of civil society were included. Strengthened and engaged consultation with NGOs was fruitful and will continue being constructive in our working relationship. Monitoring as well as UN regional cooperation is crucial to NI work. She concluded her summary talking about some themes. These important themes included women in conflict; the integration of gender perspectives in NIs' daily work, not just for a special working group, but throughout; and, the requirement of the independence of NIs from their national governments.

Mr. Livingston Sewanyana, the Executive Director of the Ugandan Foundation for Human Rights Initiative, presented the NGO point-of-view and recommended ways to improve the Seoul Declaration. He expressed their deep gratitude to the organizing committee and to the delegates to the various NIs, and to the Republic of Korea. Additionally, he expressed the NGO delegates' heartfelt appreciation to all the human rights activists in attendance. The human rights NGOs felt a deep solidarity with the NIs in working to ensure the protection and promotion of human rights. He said they

certainly recognize the challenge that NIs and NGOs face together in reaching out to the vulnerable segments of their societies. With a grave sense of responsibility, he pledged solidarity with all the NIs in their mutual goal. He then promised to their best to work closely with NIs in order to achieve their aims.

The Rapporteur-General then summarized the draft Seoul Declaration. It had the following components: the Drafting Committee consisted of the four regions representatives, the Chairman of the ICC, and herself. It based its work on the proposal they got from the Korean Commission. It also integrated the working groups' opinions and recommendations as well as the discussions they had during the Thursday's plenary. She reported that the Seoul Declaration would include a preamble, some factual statements about the conference, and references to some founding conventions and treaties.

It would include general principles, generic commonalities and other duties of NIs and the four other sections (1) ESC rights in the context of the role of NIs; (2) CP rights; (3) migration; (4) women's rights. It concludes with the Seoul Commitment, which should mandate aspects in fulfilling the first 2 sections and a gender perspective within the work of the NIs. The Seoul commitment is a promise to implement the declaration. Implementing measures include among other things a requirement to report to the ICC in April 2005.

The Chairperson led the plenary in the adoption of the Seoul Declaration. The Seoul Declaration was adopted to applause and hurrahs from the floor. It was accepted on the condition that mistakes would be cleared up and edited and that additional suggestions or amendments would be considered by the ICC chairperson and his staff.

****

Case Presentations: The African Perspective

Mrs. Margaret Sekaggya
Chairperson of Uganda Human Rights Commission/ Chairperson of the Coordinating Committee of the African National Human Rights Institutions

Upholding Human Rights during Conflict and while Countering Terrorism

I. Introduction

Conflict and acts of terrorism are a threat to human rights, democracy and the rule of law. They destabilise the authority of governments and undermine civil society. Acts of terrorism are a symptom of prevailing conflict. There has been an escalation of terrorist attacks worldwide. Africa has not been immune to these attacks. East Africa was particularly a target of terrorist attacks in 1998. There were bomb blasts at the US Kenyan and Tanzanian Embassies that injured and killed many people. It was said at the time that the bomb attacks were meant to simultaneously detonate in Uganda, Tanzania and Kenya but security alerts averted the attack in Uganda. However, Uganda also experienced a wave of terrorism especially in the late nineties, which created tension and fear among the public. Bombs were detonated and thrown into bars, buses and markets. Many innocent people were injured or killed. This has also been happening in Northern Uganda where the Lord's Resistance Army rebels attack villages to maim, injure and kill people.

The rising number of incidents of terrorism worldwide especially the September 11 attack in the United States and other terrorist attacks in the recent past have made states to take all due measures to eliminate it. Many governments have taken up their right and duty to protect their nationals and others against terrorist attacks by ensuring that the perpetrators are brought to justice. Most countries in Africa were caught off-guard by the wave of terrorism and their response to the issue has had far-reaching implications on the respect for human rights. This paper discusses the reaction by governments in Africa to counter terrorism. It also discusses the role played by various African National Human Rights Institutions in upholding human rights in such circumstances.

II. Reaction by Governments in Africa

The counter-terrorism efforts in Africa have mostly involved ratification of the both the UN and regional instruments on terrorism, enactment of anti-terrorism legislation, illegal detention of suspects who are subjected to torture and not guaranteed the right to a fair trial. Some countries have taken to stringent controls on immigration especially of people of a particular nationality, ethnicity, religion, race, colour or descent.

2.1. Ratification of UN and Regional Instruments relating to Terrorism and Enactment of Anti-Terrorism Legislation

A number of countries have ratified all or some of the UN and Regional anti-terrorism instruments. For example Mali, Rwanda and Tanzania have ratified all the UN Conventions and Protocols relating to terrorism while others like Nigeria, Sierra Leone, South Africa and Uganda have ratified some. Some countries have enacted anti-terrorism legislation examples include countries like Egypt, Tanzania and Uganda. However some of the anti-terrorism legislation drafted is repressive and threatens human rights by having a wide and vague definition of terrorism that can also be used by various governments to oppress political opponents or civil society. The legislation also threatens the rights to freedom of expression and assembly. This is the case with the Suppression of Terrorism Bill in Kenya and was the case in Uganda when the Suppression of Terrorism Bill was first presented.

2.2. Illegal and Long Detention of Suspects

In response to acts of terrorism some governments on the continent have responded by incarcerating persons suspected of terrorism not only for long periods but also in illegal detention places before being brought before courts of law. In Uganda, terrorism suspects have been detained in illegal detention places euphemistically called ‘safe houses’ which undermined the rule of the law and contravened the Constitution. Terrorism suspects are usually arrested without sufficient evidence or cause and are kept incommunicado, denied access to: next of kin, lawyers and sometimes even medical care.

Torture

The invoking of 'counter-terrorism' has offered a measure of cover to those who commit human rights abuses. Most security agencies regard terrorism suspects as people whose rights, especially the right to protection against torture, can be infringed in any manner because of the nature of the offence they are charged with. Most of the complaints regarding torture before the Uganda Human Rights Commission Tribunal are from former terrorism suspects.

Under international human rights law the prohibition against torture is absolute and no circumstances, no matter how extraordinary, can be used to justify it. However terrorism suspects are often subjected to torture, cruel and inhuman degrading treatment while in detention in order to extract information. Indeed torture is also facilitated by prolonged and incommunicado detention of terrorism suspects, which occurs in some countries.

Unfair trials

Trials of terrorism suspects on the continent have not followed due process. Although all countries usually provide for the right to a fair hearing and have ratified international conventions providing for the same this right is abridged in most instances. The presumption of innocence until proven guilty is usually overridden in terrorist cases and the Executive usually interferes with the judicial proceedings. There are instances where special courts have been established with special rules of procedure that do not observe the safeguards of a fair trial.

Strict controls on immigration on basis of nationality or ethnic origin, race, religion, colour or descent

As a result of terrorism, some African countries have become so strict on the immigration of certain people of certain nationalities or ethnic origin, race, religion, colour and descent. Such people are usually taken through rigorous checks. Moreover in effecting the anti-terrorism law, police and other law enforcement officers rely on nationality or ethnic origin, religion, race, colour or descent as a basis for determining whether an individual is involved in terrorist activity.

III. Best practices by African National Human Rights Institutions in upholding human rights during conflict and while countering terrorism

African National Human Rights Institutions are engaged in monitoring their respective government's compliance with international human rights standards and opposing anti-terrorism legislation. They handle complaints and enforce human rights respect and observance, carrying out human rights and peace education, engage government officials, get involved in the conflict management and resolution process in order to uphold human rights in conflict situations and while countering terrorism.

3.1. Monitoring governments compliance with international human rights obligations during conflict and in countering terrorism

National Human Rights Institutions have the duty to monitor their respective government's compliance with international human rights standards. In line with this duty some African National Human Rights Institutions have been involved in reviewing

proposed anti-terrorism legislation to ensure that repressive legislation is not passed and that the legislation passed complies with international human rights standards. They have vehemently opposed the passing of repressive anti-terrorism laws and have encouraged their governments to ratify all the international instruments related to terrorism.

For example the Uganda Human Rights Commission has encouraged the government to ratify all the UN Conventions and Protocols relating to terrorism and also scrutinized the Suppression of Terrorism Bill when it was brought before Parliament for the first reading. The Bill had the potential to, among others, abuse the rights of refugees, the right to a fair trial, and the right to protection from political persecution. It had such a wide and vague definition of terrorism, it reversed the presumption of innocence until proven guilty and could prohibit the freedom of the press and expression. The Uganda Human Rights Commission pointed out these anomalies in its presentation to the Parliament on the potential effect of the Bill on human rights observance. The Parliament amended various clauses that were pointed out and some of these were not included in the Anti-Terrorism Act that was passed in 2002.

Other African National Human Rights Institutions like Kenya and others have also been involved in opposing repressive anti-terrorism legislation.

Complaints handling and enforcement of human rights standards
Most African National Institutions are involved in handling complaints of various human rights violations including violations of the rights of terrorism suspects. They investigate and find means of giving remedy to victims of such violations. Some National Human Rights Institutions like the Uganda Human Rights Commission have given orders depending on the nature of human rights violations found in order to give appropriate remedy to the victims. Other African National Human Rights Institutions make recommendations following their finding of human rights violations in relation to providing a remedy to the victims, which can be enforced in court. Regarding the deplorable economic conditions on the continent, which make the enforcement of economic, social and cultural rights difficult, some national institutions have participated in programmes of alleviation of poverty. In Uganda, the national institution ensured that human rights are integrated in the poverty alleviation programme.

Human Rights and Peace Education
Many National Human Rights Institutions in Africa are involved in the sensitisation and dissemination of information on human rights issues. They play an important role in educating and informing the public about peace and human rights values and

concepts as provided in their respective constitutions and international human rights instruments. Through the provision of human rights and peace education people have acquired knowledge of their rights and responsibilities and have acquired basic skills such as critical thinking, communication skills, problem-solving and negotiation, tolerance and non-discrimination all of which are essential for the effective implementation of human rights standards and in the promotion of unity and peace building.

Particularly targeting conflicts and terrorism, some National Human Rights Institutions like the Uganda Human Rights Commission have trained the army on issues of human rights and humanitarian law in order for them to acquire conflict resolution and peace building skills. Human Rights and Peace Education has also been targeted to civil servants, security agencies, police and prison officials to enable them appreciate their role in maintaining peace and upholding human rights in an era of conflict and terrorism.

Engaging Government Officials

Various African National Human Rights Institutions engage government officials through dialogue on various human rights issues including the protection of the rights of terror suspects and upholding human rights even in conflict situations. This has enabled better protection of the rights of terrorism suspects. For example the Uganda Human Rights Commission had a dialogue with government officials over the use of 'safe houses', long detentions and torture of terrorism suspects, which led to a decrease in the number of such complaints.

Conflict Management and Resolution

Given the link between conflict and human rights violations, there is no way that African National Institutions can detach themselves from the conflicts prevailing in their various countries. As such various African National Human Rights Institutions have been engaged in attempts to provide early warning to prevent conflict through their periodic reports. Some use their position to analyse the prevailing conflicts to advise, mediate or reconcile the conflicting parties.

They cooperate with other stakeholders in conflict management and resolution so as to enable the peace building process in their countries to be done in an integrated, coherent and comprehensive framework. This enables their countries to handle conflict situations and terrorism in a better way. For example, the Uganda Human Rights Commission has, among other things, set up civil military centers in Karamoja to help bring about cordial relationships between civilians and the military. These centres help in sensitisation of the population about the operations of the military, getting people to inform the military about the movements of the enemy. In some instances this has led to getting the people to form their own militia to defend themselves. Also, the

Ugandan Police Force has instituted Community Policing as a way of involving the public in the management of security issues.

Cooperation with International Bodies to Eliminate Terrorism and Ending Conflict
African National Human Rights Institutions cooperate with international bodies to eliminate terrorism and to end conflict. This is usually through providing information on the situation in the country and giving recommendations on what should be done about the situation. For example the Uganda Human Rights Commission has provided information to Officials from the International Criminal Court on the situation in Northern Uganda.

IV. Challenges of African National Human Rights in upholding human rights during conflict and while countering terrorism

African National Human Rights Institutions have faced challenges in providing redress to victims of war and terrorism attacks, effectively protecting of the rights of terrorist suspects amidst demands that security needs should override human rights issues and the prevailing deplorable economic conditions on the continent. It is harder for African National Human Rights Institutions to operate in conflict-stricken areas.

4.1. Providing Redress to Victims of War and Terrorist Attacks

It is not easy to provide redress to victims of terrorist attacks not only because it is harder to identify and bring the perpetrators to justice but also no appropriate remedy can be given. Wars and terrorist attacks usually result into the loss of life and no amount of money is sufficient to compensate such loss. As such African National Human Rights Institutions are at a loss of remedies to give to victims of war and terrorist attacks. Some countries have set up a victims fund to assist those affected by terrorist attacks. This however remains a challenge even globally.

4.2. Effectively Protecting the Rights of Terrorism Suspects Amidst the Notion Brought on by the Era of Terrorism that Security is Overrides Human Rights

The war on terror has given an excuse to some governments to condone and encourage human rights abuses as expedient in combating terror. Although publicly condemned, the use of torture is one such case. Terrorism and conflict situations have led to disregard of human rights standards by security agencies. This often puts National Human Rights Institutions in a difficult position to enforce human rights observance. They have had to rise up to the challenge by insisting on the respect, observance and protection of human rights at all times even in the era of conflict and terrorism.

However it has been found that it is easier to enforce the rights of suspects of other crimes than to enforce the rights of those suspected of terrorism. The Security Agencies regard terrorism suspects as people whose rights, especially the right to protection against torture, can be infringed in any manner because of the nature of the offence they are charged with. They argue that security of the nation overrides human right concerns. Most of the complaints of torture, illegal and long detentions against government registered at the Uganda Human Rights Commission are by former terrorism suspects.

4.3. Deplorable Economic Conditions

The prevailing deplorable economic conditions on the African continent escalate conflicts because of the struggle for meager resources. In such circumstances human rights continue to be threatened. It is harder for National Human Rights Institutions to operate in conflict areas because their own security is at stake and operations are more expensive. Poor economies also put most African governments in a position where it is difficult to effectively combat terrorism. Some terrorists use such sophisticated technology in attacking nationals, which cannot be challenged by many African governments. As such Africans are continually at risk of the devastating attacks of such terrorists.

V. General Recommendations

National Human Rights Institutions all over the world should work together and share the best practices.

National Institutions should campaign for the establishment of a victims fund in their respective countries.

Although security issues are of prime importance, human rights of the person are equally important. Measures should be taken to ensure that security issues do not override human rights concerns. Issues of good governance, human rights and democracy are very vital to elimination of conflicts. National institutions should endeavor to incorporate in their agendas programmes that inculcate the culture of respect for these values in addition to the need for respect of the rule of law and justice.

National Institutions should work with the regional mechanisms i.e. the African Union, the African Commission on Human and Peoples' Rights and others to put pressure on African countries that are not measuring up to the international standards on issues of democracy, good governance, observance of human rights and the rule of law.

Regarding poverty, countries should put economic, social and cultural rights at the forefront and as a prerequisite for elimination of conflict. Concerted efforts should be made by National Institutions to equally address these issues with the same importance as they attach to civil and political rights.

VI. Conclusion

There is no doubt that African governments have legitimate reasons to take all due measures to eliminate terrorism which is an affront to human rights, democracy and the rule of law. However the war on terror should not be carried out in such a manner that threatens human rights. Repressive legislation and illegal counter-terrorism measures in some countries have put too much power into the hands of African governments who have or are likely to abuse it.

African National Institutions have responded by opposing any counter-terrorism measures that involve the violation of human rights; and have struggled to enforce human rights protection amidst conflict and terrorism. They have carried out human rights and peace education to bring about long-term solutions to conflict and terrorism. However they have faced challenges in providing adequate relief to victims of war and terrorist attacks, effectively protecting the rights of terrorist suspects amidst demands that security needs should override human rights issues and operating amidst the prevailing deplorable economic conditions on the continent that are continuous cause of conflict. Moreover, it is harder for African National Human Rights Institutions to operate in conflict-stricken areas.

In this regard it is recommended that victims funds be set up in countries to provide for terrorism victims, that security concerns should not override human rights concerns and National Institutions should endeavor to promote and protect human rights including working together with the regional human rights mechanism to put pressure on their governments to respect human rights especially economic, social and cultural rights.

In order to uphold human rights in conflict situations and while countering terrorism, it takes the concerted efforts of all and not just National Human Rights Institutions.

****

Case Presentations: The Americas Perspective

Mr. Walter Alban Peralta
Defensoria del Pueblo del Pere

The Americas Regional Report
[As no regional report was submitted, this material results from notes recorded at Friday's plenary]

Thank you, Chairman. I am representing the Americas. Our presentation was prepared only shortly before. We will represent only some countries from our region: Mexico, Peru, Venezuela, Gautemala, and just a few others. Each country is different, but we will try to combine the common problems, situations they face as a region.

Concerning terrorism generally, there are over 160 definitions of terrorism in the world. The various types of conflict, terrorism and counter-terrorism differ not only by region, but also from one country to another. Likewise, the problems that the NIs from our region face differ accordingly. Indeed, conflict may not even exist in one particular country. Non-state actors (NSAs) play a part in some conflicts, but not in others. Peace treaties were signed in countries that still suffer from terrorism. In still other countries, truth commissions might be a defining feature. Columbia faces, for example, some real problems. In Mexico and Bolivia, however, social problems and migration problems are more salient problems than the problem of terrorism. And sometimes these are addressed by regional bodies, like the Organization of the Americas. In other countries, women's rights are a serious challenge, too. In several countries, we are about to ratify some international conventions and treaties at the national level.

National governments' laws must be monitored. This is paramount in our countries. NGOs can help here. Conflict situations, vulnerable groups have their rights violated more often here as in other regions.

Thank you.

****

Case Presentations: The Asia-Pacific Perspective

Mr. Sushil Pyakurel
The National Human Rights Commission, Nepal

Best Practices for Upholding Human Rights during Conflict and while Countering Terrorism: The Asia-Pacific Regional Perspective

> *"We should all be clear that there is no trade-off between the effective action against terrorism and the protection of human rights. On the contrary, I believe that in the long term we shall find that human rights, along with democracy and social justice, are one of the best prophylactics against terrorism"(UN Secretary General's statement at the 4453 Meeting of the Security Council in 29th April 2002)*

Every armed conflict bears some characteristics of terrorism. The term terrorism has not been defined authoritatively. However the international community has identified some core elements of it through conventions, declarations and other international instruments. The General Assembly Resolution 49/60 of 1994 states that terrorism includes criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes. It is also accepted that such acts are unjustifiable in any circumstances.

Terrorism has a serious impact on the exercise of human rights. The first and foremost impact is in the exercise of rule of law. The virtue of the principles of rule of law expressed in most well known statements such as “no body is above the law” and “no one can indulge in any activities forbidden by law and if any one found violating laws, law itself provides remedy through a mechanism called judicial system” are very important in this regard. There are some heinous crimes punishable under law such as killing, rape, extortion of money, abduction and torture. But when the violence escalates, occurrence of such crimes is common and the state mechanism fails to take legal action against those criminals resulting in a state of impunity and blatant violation of the rule of law.

Further serious human rights issues include the violation of right to life in general and extrajudicial killings in particular, along with disappearances, and illegal detention. In a violent conflict situation there are difficulties in the exercise of basic liberties such as the right to movement, right to expression and the right to assembly. There are other serious socio-economic and cultural rights issues such as right to health, food, and education. There are also concerns of displacement and several socio economic impacts resulted by this phenomenon. Mostly, the vulnerable section of the population such as children, women, and the marginalized are affected more in a conflict situation which have contributed to the trafficking in women and children.

Upholding human rights during conflict is a daunting task. When armed conflict spreads to most of the parts of a country, the situation becomes even more complex. The state machinery with the legitimate powers under the law to suppress terrorism has great responsibility to protect the citizens. It is also expected that all other players of the society also play a prominent role in assisting the government to achieve this goal. In a conflict situation, most of the human rights violations are contributed by non-state actors, creating an environment where the state's endeavor to protect human rights becomes ineffective. In such a situation, making only the state actors responsible for all violations is not justifiable. However, it is also true that the act of a state in the name of suppression of terrorism has contributed to human rights violation to a large extent. Therefore, there has to be a balanced approach in dealing with non-state actors such as insurgents and the state actors as regards to the violation of human rights particularly in an armed conflict situation. An important challenge is how to make the non-state actors responsible for their actions and how to help the state to maintain rule of law and uphold human rights.

There are several strategies followed by the states in a conflict situation for the suppression of illegal activities. Those strategies include
Application of anti-terrorist legal measures
Application of special anti-terrorist laws with the excessive power to the state machinery
Suspension of human rights
Application of emergency provisions
Declaration of civil war and special power to the army

Terrorism is a threat to the security of a state. Therefore, it is the responsibility of the state to suppress such activities and guarantee its citizens their rights and protect the state. Human rights law also allows state to address such serious and genuine security concerns. But it also requires that there has to be a fair balance between legitimate national security concerns and the protection of fundamental freedoms.

Existing human rights instruments such as International Covenant and Civil and Political Rights (ICCPR) allows for derogation from some rights with some specific exception. Non-derogable rights include right to life, freedom of thought, conscience, and religion, freedom from torture and cruel inhuman or degrading treatment or punishment and the principles of precision and non-retroactivity of criminal law.

But derogation from human rights is permitted only in the special circumstances. Such measures must be of exceptional character, strictly limited in time and to the extent required by the exigencies of the situation, subject to regular review, consistent with other obligation under international law must not involve discrimination.

In such a situation, the Covenant further requires that the UN Secretary General to be informed of such derogation and the reasons for such derogation.

General Comment no 29 to Article 4 of ICCPR further clarifies that even in such a situation, all persons deprived of liberty must be treated with respect for their dignity while hostage taking, abduction and unacknowledged detention are prohibited. Furthermore, persons belonging to minorities are to be protected. The principle of non-discrimination must always be respected and special efforts have to be made to safeguard the rights of vulnerable groups. Counter-terrorism measures targeting specific ethnic or religious groups are contrary to human rights principles and would carry the additional risk of an upsurge of discrimination and racism. It also stresses that states parties cannot invoke Article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence.

On August 6, 2002 a report of Policy Working Group on the UN and Terrorism was submitted to the General Assembly which states that all relevant parts of UN system should emphasize that key human rights must always be protected and may never be derogated from the independence of judiciary and the existence of legal remedies are essential elements for the protection of fundamental human rights in all situations involving counter terrorism measures.

It is clear that terrorism is a threat to the security of a country and particularly a threat to the protection of human rights. National institutions thus have to play a unique role in protecting human right in such a complex situation.

1. Conflict in Asia Pacific Region

Most of the countries of this region are experiencing the devastating effect of armed conflict. Many countries have adopted anti-terrorist measures to control such armed conflict. Such measures have contributed to a large extent to the violation of human rights of people. Some common nature of violations is as follows.

1. Detention for a long time without any charge or opportunity for adequate judicial review
2. Incommunicado detention
3. Detention in unauthorized places such as army barracks
4. Extra-judicial killings, such as in fake encounters
5. Grant of impunity for gross violation of human rights
6. Crimes such as killings, rape, destruction of development structures, extortion of money, abduction, terrorizing mass population, forceful displacement, torture and inhuman behavior by the non-state actors and granting impunity to them.
7. Misuse of anti-terrorism legislation to stifle legitimate political dissent and other fundamental freedoms
8. Failure to provide adequate safeguards in anti-terrorist legislation to prevent their misuse
9. Extension of anti-terrorism law for a long period
10. Set mind of the authorities that the use of arms is only remedy to suppress violent conflict and inadequate attention to address root cause of conflict.

2. The Making of Anti-Terrorist Laws

As explained above, under the human rights law regime, a state can make anti-terrorist laws. But such laws must be of a temporary nature, and should respect the principle of rule of law. It should not derogate from any right that is not allowed under the international human rights standards. Similarly, it is also required that the concerned authority should not use excessive power beyond that permitted limit by the Act.

In Sri Lanka, the Prevention of Terrorism Act of 1979 as amended in 1982 and 1988 suspends important legal safeguards in the Constitution of Sri Lanka. The PTA was initially introduced a temporary law but was made part of permanent law by the amendment of 1982.

In Australia anti-terrorist legal measures includes Australian Security Intelligence Organization (Terrorism) Act 2003 also called the ASIO Amendment Act, which imposes some restriction in the exercise of rights. Restrictions on access to a lawyer,

restriction of communication with family, requirement that the detainee answer all questions are some of the examples of derogation.

India has also undertaken the application of several anti-terrorist legal measures. Those measures include the application of Prevention of Terrorism Act, 2002. There are also various human rights concerns of this Act, such as undermining the rule of law thereby eviscerating the very foundation of public order and national security. It also fails to offer even the minimum and absolute safeguards of due process of law.

Other several countries in the region have applied special laws to combat terrorism. Egregious violence has taken many lives of this region. It is seen that when violence escalates, the state organs fail to handle it and they become ineffective to maintain rule of law. Basically the police forces fail to maintain law and order and turn inactive in their crime prevention function. On the other hand, the judiciary also becomes weak in the implementation of its orders. The same happens to other organs of the state machinery and eventually it creates a situation in which the states fail to carry out any of its functions. The Philippines, India, Indonesia are some countries in which several parts of the respective countries are severely affected by conflict. We have also seen the situation in Afghanistan and in Iraq. Similarly, there is no doubt that the conflict situation in Nepal has affected most of the parts of the country. There are a lot of human rights concerns when the conflict sweeps away the country.

3. The Role of National Institutions

There is no doubt; the responsibility of protection of human rights lies with the State in a broader sense and with the government in particular. The obligations are two-fold. Firstly, there is an obligation to protect rights of one citizen from being infringed by other citizen. Secondly, it is also an obligation of a state not to violate the rights of citizen through the state authorities. The State develops laws and appropriate institutions for the purpose of the protection of human rights. National Human Rights Institutions (NHRIs) are established with an independent status to contribute to the protection of human rights. In a conflict situation, the importance of these institutions becomes paramount. It is also because of ineffectiveness of traditional institutions of the state national institutions have a challenging task of the protection and promotion of human rights.

3.1. Best Practices

It is very much desirable to highlight some practices developed over a period of time. National institutions are a new kind of mechanism and have evolved only very recently. Moreover, many conflict-affected countries in the past could not benefit from national

institutions. Therefore, it is obvious that there are no extensive good practices as regards to their effective role. Many institutions have to develop practices based on ground realities and they are bound to pave the way by themselves setting the best practices befitting their respective areas of activities. Experiences have proved that there is an ample scope for the national institutions to grow. In a normal situation in which the judiciary is very strong and criminal justice system is scientific and reliable, there is a minimum chance for human rights violation. Thus the role of national institutions also becomes a minimum. But when human rights violations increase, the role of national institutions increases tremendously. As explained earlier, conflict situation is always a situation in which human rights violation is rampant thus demanding the active role of national institutions. There are some examples, where these institutions can play a prominent role. These examples may be drawn from the experience of Nepal, which is one of the conflict prone countries of the world.

3.2. Maintaining Neutrality

Effectiveness of a national institution entirely depends on its ability to maintain neutrality in its works. Basically human rights violation issues are always directed towards the State because only the state actors can violate human rights. Therefore, from the point of view of the government, all the activities of the national institutions may look that they are against the government and in support of the non-state actors. The reality is that the National Institutions are concerned about human rights violation of citizens; it does not concern itself whether the citizen is a terrorist or a normal citizen. But this does not mean that these institutions should not assist the state authorities to address serious criminal activities of the non-state actors. There is growing recognition that the national institutions can play a vital role in dealing the atrocities of the non-state actors.

National institutions no doubt are the product of the State. It sometimes gives impression that it is their organ and it should not go against the government. Basically security forces have this perception. It is unbearable for the security forces when National Institutions make public the atrocities of the government authorities. Thus it is a challenge for NHRIs to convince all the stakeholders about their neutral role.

Based on the Nepalese experience, the human rights commission can play an important role for the protection of human rights even in a conflict situation through the implementation of the following measures:

3.3. Monitoring Human Rights

Monitoring of human rights in a conflict situation is different from monitoring in peacetime. In a conflict situation, particular type of human rights violations such as

disappearances and displacement increases and that requires urgent intervention from National Institutions. As such, the Nepalese Commission has started extensive monitoring of human rights focusing on conflict and in conflict prone areas. The objectives of monitoring are manifold. The main objective is to identify the trend of human rights violation based on some leading cases and publicize it for the purpose of sensitizing the government authorities and also public at large. Another important objective is to document, wherever possible, the atrocities of the Maoists and bring them to public attention.

3.4. Visiting Detention Centers

In a conflict situation, there are number of complaints relating to illegal detention and disappearances. Human rights commissions have a challenging task to visit detention centers and ensure that no body is suffered from violation. The Nepalese Commission is faced with a unique situation regarding this mandate. While the army has been mobilized to suppress terrorist activities, most of the complaints received by the Nepalese Commission are against them. Legally they are not allowed to detain any person in army barracks. But it is obvious that many people have been detained there even though the security agencies have on several occasions denied access to any type of surprise visits by the Commission with the contention that they have not detained anyone in the barracks, as they are not allowed to do so. It is the cause for the rapidly increasing number of cases on disappearances filed at the Commission. However, regular visits wherever possible, have helped to reduce the violation.

3.5. Investigation of Serious Human Rights Abuses

In the conflict prone areas, it is not easy for the government authorities to have access and carry out regular law and order related works. Crime investigation and prosecution is one of the regular tasks of police. But in many parts of Nepal, crimes committed by the Maoists are not even registered or documented. The Nepalese Commission has attempted wherever possible to at least document cases and complaints and send it to the government for further action.

Training on human rights and humanitarian laws to the security forces

Conflict situation and terrorist activities are different from the normal situation. Use of specific laws such as TADA and application of international humanitarian laws requires more training and exposure to the security forces. Regular orientation programs aimed towards specific security related laws and international human rights principles to be considered in counter-terrorism measures are very relevant. There are international standard practices on code of conduct of the law enforcement officials, and other guidelines to minimize human rights violations in such a situation. Interaction

programs on those areas have been very helpful in this regard.

3.6. Making the Army Accountable

In a conflict situation, most of the times the army is mobilized and they are sometimes given more powers to deal with terrorist activities. In a normal situation, only para-military forces and police forces are concerned with the violation of human rights; therefore many countries which have not experienced armed conflict may not have experience in dealing with the army. The Indian Human Rights Commission has shown its concern time and again to the Chief of the Army Staff on the violation of human rights by the army and there has been commitment from the army as well. In the Philippines, they have adopted different strategies in dealing with the army. There is a MoU signed between the Commission on Human Rights and the army, whereby, in getting promotion and other benefits from the army, it is required to get a clean chit from the Commission saying that the said personnel is not involved in any human rights violation. It is one of the difficult areas for the Nepalese Commission in dealing with the army for the protection of human rights. The commission is still insisting army to be more responsible in their activities.

3.7. Dealing with Non-State Actors i.e. Terrorists or Insurgents

If one looks into the traditional structure of a state, there is no place for such armed groups to operate. International framework also presupposes that there is a state of citizens who abide by the law. There is legal provision to take action to those who do not obey the law and commit crimes. It is also presupposed that the states are capable to take action against them. It was never thought that a group might operate in the state without any control of the state authority.

It is also assumed that only the state can claim the monopoly of legitimate coercive force with a given territory and which other states recognizes as such. It is also clear that the state is empowered to protect human rights of people and it is the sole responsibility of a sate to protect human rights, which means that if the state fails to protect, it is made liable for that.

As a result, even gross violations by non-state actors were regarded merely criminal violence that fall within the domestic jurisdiction of sovereign states. But these old assumptions no longer hold. Now there is a common understanding among the world community on the issues of non-state actors and need to deal with them with new international framework. However, the tools available to the international community to deal with these are still inadequate.

4. The Asia-Pacific Perspective and Best Practices

In November 2002, the APF and its member institutions held a meeting in New Delhi to discuss the issue of the primacy of the rule of law in countering terrorism world-wide while protecting human rights. In response to this meeting, the APF's Advisory Council of Jurists[1] produced a report in May 2004 titled "Reference on the Rule of Law in Combating Terrorism". In this report, the Advisory Council of Jurists (ACJ) made recommendations to the APF member institutions on the interpretation and application of international human rights law as it relates to each country's domestic anti-terrorism laws.[2] Some examples of the respective NHRIs in the Asia Pacific region are as follows:

India

In addition to its complaint-handling mechanism, the National Human Rights Commission of India has been developing policies such as research projects for effectively handling human rights violations caused by conflict and terrorism; it has organized workshops and seminars for educating police authorities, the judiciary and prison officers.

New Zealand

The New Zealand Commission is monitoring proposed legislation to ensure that it reflects human rights values, and endeavouring to ensure that where legislation is designed to address concerns relating to terrorism, the appropriate international covenants and Security Council Resolutions are respected.

South Korea

Specifically, the Korea Commission's principle aim is to eliminate the possibility of human rights violations in the initial stages of legislation or policy-making because of the tremendous cost to correct institutionalized legal instruments or policies hostile to human rights. The Commission's opposition to the *Counter-Terrorism Act* is an effort to live up to this principle.

5. Challenges

1. Non-state groups do not have formal political status, they are not susceptible to the same political pressures as government.
2. Since such groups are fighting for political recognition, any formal dealing with them is likely to be diplomatically controversial.
3. It may be illegal and difficult or dangerous to contact non-state actors at all, let alone openly;
4. Constituencies in war zones may not have the political freedom, information,

capacity or energy necessary to challenge their non-state actors and there may be few established means of doing so;
5. Non-state actors are generally fluid organizations without an automatic carry-over of commitments from one leadership to the next; it is not always clear how much impact decisions taken by the leadership will have on the non-state actors;
6. Non-state actors may be particularly suspicious of information gathering and monitoring activities;
7. There are very limited international legal framework in dealing with the non-state actors

5.1. Other challenges

1. Non-state actors mostly are not obeying existing laws of a particular country. It means that they are operating illegally. Consequently, the state machinery is not capable to bring them to law and all the crimes go unpunished.
2. If only the government is made liable even for not being able to bring them to law, it will not work in real sense. There will be no change.
3. Suffering of the common people has to be reduced and they should be able to exercise their rights properly. People suffer from the activities of non-state actors as well. As such the outstanding question is how to make them liable for their actions.
4. With some experiences of dealing with the non-state armed groups, there are some areas where NHRIs can play a vital role in making them accountable for their actions, which have contributed to the violation of human rights.
5. Condemnation of their acts, NHRIs should always condemn their atrocities
6. Regularly insisting them to respect basic human rights norms
7. Reminding them their obligation to abide by international humanitarian laws
8. Insist also not use child as soldier, keep education centre zone of peace, not to hinder food and medicine supply, not to destroy development infrastructure, and not to kill, torture, abduct people.
9. Monitoring of the atrocities committed by them
10. Suggesting them the minimum step to be followed to respect human rights

6. Cooperation with the Judiciary

In a conflict situation, for effective protection of human rights there is a need of cooperation among various organizations working in this field. The Supreme Court has ultimate sanctioning power for the protection of human rights. The conflict situation however does not allow even the Supreme Court to function effectively. No response to the summons of the court by the Army, providing false information, and arrest by the security forces immediately after the court releases someone; non-compliance of

the court orders, and no access of the court staff in many parts of the country are some of the hurdles faced by the courts.

So far protection of human rights is concerned, merely decision of the court based on the evidence that is presented before it is not sufficient. It is more than that. Therefore once the case is decided, it is the function of other institutions to lobby and bring the issue to public for the effective implementation of court decisions. The Nepalese experience shows that there are ample opportunities when NHRIs can provide information to the courts. In a number of *habeas corpus* and other writ petitions on disappearances, the Supreme Court of Nepal has requested NHRC to conduct investigation and provide information. The Supreme Court has in some cases issued *habeas corpus* considering the information provided by the NHRC. There are other cases under consideration where NHRC has provided very important information.

7. Review of Security related laws

This is one of the important tasks of NHRIs. There is a need of continued review of security laws to bring them inline with human rights norms. The Indian Commission has provided recommendations to make POTA human rights friendly. Nepalese Commission is also in the process of reviewing all security related laws. It is very much important that NHRIs are required to keep their eyes on the promulgated laws for the purpose of suppression of terrorism.

8. Cooperation with the Human Rights NGOs

Conflict situation is different from a normal situation also because of urgency of action. NHRIs cannot have access to all the parts of the countries. But it is also true that NHRIs may be benefited from reliable and credible NGOs for information sharing and even for the investigation of the cases of human rights violation. Nepalese Commission has cooperation with the NGOs even to receive complaints of violation of human rights and in many occasions, they have assisted to the commission's monitoring function and also investigation of violation cases. Thus NGOs are helpful to the commission to act promptly. NGOs are also good friends of the commission to add voices on human rights issues.

9. Nepalese Experience In Peace Process

In many countries, peace process is seen as a political agenda and it is also regarded that it is the business of politicians to be involved in the process. However, from a human rights perspective, peace cannot sustain without respect to human rights. Moreover, it is also true that terrorists or insurgents get birth when human rights are

not properly and timely addressed. Therefore it is believed that protection of human rights helps bring the conflicting parties to the negotiation table. Discussion on human rights might be an entry point in dealing or addressing terrorist or insurgents.

Urging the conflicting parties for ceasefire: The Commission time and again has urged the conflicting parties for ceasefire. The commission also assisted the parties in drafting a code of conduct applicable during the ceasefire period. It is unfortunate that several attempts of a conclusive dialogue were failed.

Initiation for peace education and conflict management: During the third round dialogue between the conflicting parties last year the Commission initiated discussions among the civil society, political parties, human rights NGOs and other various professional organizations on various aspects of conflict management and role of all sector of society in peace building.

Drafting of human rights accord: A Human Rights Accord serves two objectives. Firstly it helps parties to come closer through an agreement on human rights. Secondly this type of agreement facilitates the function of the Commission. In a conflict situation, if there is an agreement on human rights protection between the conflicting parties it gives assurance to the staff safety and free movement of NHRC representatives to monitor human rights situation. The Nepalese Commission for last one year is taking initiation for such an agreement. It has already drafted such an agreement and sent to both the parties for consideration.

Recommendation to both the parties for the respect and protection of human rights: The Commission is serious on the increasing number of human rights violations and responsibility of both the parties to the conflict. The Commission is of the view that there has to be immediate minimum practical step by both the parties to minimize the incidents. The Commission drafted documents outlining minimum immediate steps for the parties in conflict to respect and protect human rights and international humanitarian law. The documents were then submitted to both the parties for consideration. The government took note of it and brought a commitment paper for the protection and promotion of basic human rights.

Urging both the parties to declare education sector zone of peace: It is experienced that in an armed conflict situation, mostly education sectors are targeted to terrorize common people. Abduction of school children in mass, conducting non-educational activities in schools, frequent strike in the education sector, targeting teachers and students for joining the insurgents, and other several activities which affects normal education sector severely. It is also found that even the government has misused the

school premises for military purposes. Nepalese commission with the help of several other NGOs has urged not only the Maoists but also the government to restrain from any activities, which have an adverse impact on educational sectors, and to declare these sectors as zone of peace. It could be an entry point to create an environment where conflicting parties can have a common forum.

10. Conclusion

NHRIs have the capacity to make a substantial contribution to the realization of human rights by transforming the rhetoric of international instruments into reality. Their ability to understand national circumstances and local challenges often means that NHRIs are better placed than external evaluators to monitor the human rights performance of governments. NHRIs thrive best in an environment where other national democratic institutions are robust and there is a high degree of human rights literacy. NHRIs are most effective when the nation's democratic institutions operate with a clear understanding of their own roles and functions, when the nation's institutions understand the roles and functions of other democratic national institutions and when the public can command and demand respect for human rights. The roles of NHRIs will need to evolve as the nature of human rights challenges evolves.[3]

[1] The Advisory Council of Jurists is an independent body of eminent jurists established in 1998 to advise the APF and its member national human rights institutions on the interpretation and application of international human rights law. Further information is available at www.asiapacificforum.net/jurists/index.html.

[2] The associated background papers and the final report of the Advisory Council of Jurists can be obtained at http://www.asiapacificforum.net/jurists/terrorism/intro.htm

[3] National Human Rights Institutions – Best Practice(2001) Commonwealth Secretariat.

****

Case Presentations: The European Perspective (English Version)

Mr. Gerard Fellous
Commission Nationale Consultative des Droits de l'Homme, France

Respect for Human Rights During Conflict and while Countering Terrorism

Ladies and Gentlemen,

Human rights have paid a heavy tribute to terrorism. Our first thoughts are to honor Mr. Sergio Vieira de Mello, the United Nations High Commissioner for Human Rights, and the members of the UN Team, killed in Iraq on 19 August 2003. Mr. Sergio Vieira de Mello's courage will inspire our working meetings, as he used to say: "We all have our part to play to turn Human Rights into everyone's reality". In October 2002, he stated that "The best – the only – strategy to isolate and defeat terrorism is to respect Human Rights, promote social justice, reinforce democracy and re-affirm the precedence of the rule of law". He died on the Human Rights battlefield, victim to the contemporary scourge of terrorism.

When the founding fathers created the United Nations and the international human rights instruments, leaving behind them the Second World War, their main concerns were Peace restoration and putting an end to massive armed conflicts and to colonization. They were not thinking of terrorism, least of all as it materialized at the beginning of the 21st Century. Today, it has become a new trial that challenges the international community and the respect of human rights.

International terrorism is much too complex a problem to be relegated to the bounds of a single explanation or of a simple solution. We must grasp all aspects of the appalling dialectic between human rights and terrorism. On the one hand, terrorism is a crime, the negation of all human rights, a crime for which no cause or ideology, much less a religion, could find justification. We must reject this culture of death which shatters innocent lives and wills the escalation of fear, hatred and violence. Beyond the immediate challenge that terrorism poses to their security, the States' duty is to

ensure the protection of its citizenship; it is through this long-term cultural challenge, which defies open societies, the "trusting societies", that terrorism is most dangerous.

The riposte to blind terrorism cannot be blind war, it would be turning back to a primitive natural state in which "man is a wolf to man". In the presence of the contagion of ruthless cruelty, we need more than ever the ramparts of the law. The first should be the international humanitarian law, the boundary marker in any emergency situation. Fighting terrorism must in no way lead to outlawed activities and burgeoning no-law zones. The international community is the sole legitimate authority empowered to provide a sustainable peace, here and elsewhere, and to ensure full enjoyment of human rights. Likewise, the legitimate global effort against terrorism must not become an excuse to muzzle peaceful opposition or freedom of expression, or get independent NGO's to play to a given beat.

Neither may researching the causes of terrorism be an attempt to explain it or understand it, much less justify it. However, terrorism is not without roots; they are found in the fertile soil of muddled societies. As the international community intensifies its action to resolve the regional and local crises, it will have a greater impact on the hubs of tension and instability. In addition, this effort will undoubtedly need to include the democratization and modernization of political regimes that lock themselves up all too often in the cycle of repression and fanaticism.

Terrorism is trapping democracy inasmuch as it impels it to relinquish part, if not all, the principles on which it stands in its attempt to fight it effectively.

At the national and intergovernmental level, the attention focuses on judicial cooperation and extradition, and on the exchange and sharing of information, with the condition that these instruments not encroach on the fundamental principles and civil liberties.

Likewise, if prosecution of certain detainees is warranted for acts of terrorism or other criminal activity, whether these detainees are prisoners of war or not, such fundamental guarantees as an equitable trial and legal counsel must be granted in accordance with the international humanitarian law and human rights provisions. Full assurance of these legal guarantees is mandatory in every instance, even in a state of exception, in compliance with Article 4 of the Pact on civil and political rights.

The international community has already availed itself of the pertinent legal mechanism, though it might need to be completed and reinforced.

The first issue at hand concerns the definition of terrorism, a matter that has fueled many long debates. Among the several attempts, we will mention those of the International Convention for the Suppression of the Financing of Terrorism adopted of 9 December 1999. It specifies, in Article 2 paragraph 1b, that this applies to "Any [other] act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act."

It is important to distinguish acts of terrorism perpetrated in times of peace from those perpetrated in times of armed conflicts, since the applicable laws are not the same. Without further detail, I would simply point out that, in times of peace, 12 instruments are universally applied against terrorism, adding to this the many regional sets of laws.

In times of armed conflicts, the International humanitarian law, that is, the 4 Geneva Conventions of 1949 and the 2 additional Protocols of 1977, regulate, as they forbid, recourse to terrorism, as well as military operations launched within the context of what is called the "War on terrorism".

Several issues are still outstanding, among these that of international criminal justice. Let us simply mention the extent of the International criminal Court (ICC) jurisdiction. The ICC Statute establishes that the perpetrators, accomplices, organizers and financial sponsors of terrorist acts in times of war will be brought to justice, whenever these crimes seriously violate International Humanitarian Law. Paradoxically, the repression of terrorist acts committed in times of peace is left to the relative discretion of the individual States. The experts will need to further dwell on the matter, specifically on terrorist acts that match the criteria of crimes against humanity, as they may fall under the Court's jurisdiction.

Our attention should also concentrate on the specific matter of the victims of terrorist acts. For the sake of the human rights that refer to them as a main concern, it is necessary not only to "express our solidarity with the victims of terrorism", as established in a 2002 decision of the Commission on Human Rights, it is also necessary to establish a "voluntary fund for the victims of terrorism, as well as ways and means to rehabilitate the victims of terrorism and to reintegrate them into society", as proposed by the United Nations Secretary-General, in that same resolution. It seems, therefore, essential to harmonize the rights of the victims both from the perspective of damages resulting from acts of terrorism as well as that of their active participation to legal procedures.

***

The French National Advisory Committee on Human Rights is currently chairing the European Committee for the coordination of the National Institutions of Human Rights.

The theme “Respect of Human Rights during armed conflicts and in connection with the fight against terrorism” is at the heart of the European group’s concerns. Thus, much of the work of the upcoming third Round-table with the European National Institutions of Human Rights, to be held on the 25 and 26 October 2004, in Berlin (Germany), will focus on the theme “the protection of human rights in the fight against terrorism”. We will examine – the States’ positive obligations as regards the fight against terrorism; – the protection of privacy in the context of the fight against terrorism, and – the respect of human rights and the legal procedures applicable to terrorism. All the European National Institutions will participate in this effort and will attempt to come to a consensus.

***

At the European regional level, on 11 July 2002 the Council of Europe adopted the “Guidelines on human rights and the fight against terrorism”.

These “guidelines” give particular consideration to the situation of victims of terrorist acts, as concerns compensation for bodily harm or mental damages, on the basis of the 24 November 1983 European Convention provisions on the compensation to victims of violent crimes. A seminar on the implementation of the « guidelines » is to be held in Strasbourg (France), on 20 and 21 June 2005, for the purpose of evaluation.

The “guidelines” concentrate mainly on the “limits to be considered and that States should not go beyond, under any circumstances, in their legitimate fight against terrorism”. They include, for instance the “prohibition of arbitrariness”, the “lawfulness of anti-terrorist measures”, the “absolute prohibition of torture”, the “measures which interfere with privacy”, “arrest and police custody”, “legal proceedings”, and detention, among other provisions.

In addition, the Council of Europe Committee against racism and intolerance (ECRI) has adopted a general policy recommendation dated 17 March 2004. In it the European States, in particular, are asked to “to refrain from adopting new legislation and regulations in connection with the fight against terrorism that discriminate directly or indirectly against persons or groups of persons, notably on grounds of "race",

colour, language, religion, nationality or national or ethnic origin".

The European Union has taken several measures to coordinate the fight against terrorism in the areas of police and judicial cooperation, without specific reference to the fundamental respect for human rights.

***

At the national level, the French National Advisory Committee on Human Rights has issued several statements on the fight against terrorism and the respect of human rights, reiterating that this fight must be conducted using the weapons of Democracy.

Accordingly, during the consideration of legal measures proposed by the French Government to reinforce the fight against terrorism, we stated, in October 2001, that "a democracy has the right and the duty to defend itself", for one, and that it is also "essential to ensure that all measures taken to that effect by the public authorities, as well as any restriction of basic rights and liberties will be duly justified by the needs of the fight against terrorism and remain strictly within those needs", in their nature and in time.

In a November 2002 statement on a proposed governmental bill on internal security, we recalled that "security is not contrary to liberties, more specifically, the respect of human dignity, the freedom to come and go, the rights to a defense, without which there can be no true security".

At the time of the consideration of a proposed bill aimed at adapting legal means to the new developments of criminal activities, we emphasized, in March 2003, that "the fight against criminal behavior and organized crime is a legitimate objective that meets the citizenship concerns and contributes to the security of persons and properties, a pre-condition to the full exercise of liberties and of individual rights", adding by the same token that "the pursuit of this objective must correspond to the respect of the fundamental rights of the individual".

Finally and as example of these stances, I will mention the declaration of the second Euro-Mediterranean meeting of national Institutions held in Athens in November 2001, which proclaimed that "the National Human Rights Institutions should be very vigilant so that measures taken in their own countries, following that attack with a view to combating terrorism, do not encroach on fundamental rights and liberties through restrictions which are disproportionate to their aims. They should also be vigilant so that these measures are not applied in a discriminatory manner, especially

on racial or religious grounds."

In the presence of the contagion of ruthless cruelty, we need, more than ever before, the protection of the law.

Thank you

****

Case Presentations: The European Perspective (French Version)

M. Gérard Fellous
Commission Nationale Consultative des Droits de l'Homme, France

Respect des Droits de l'Homme en Periode de Conflit et dans le Cadre de la Lutte Contre le Terrorisme

Mesdames, Messieurs,

Les droits de l'homme payent un lourd tribut au terrorisme. Notre première pensée va à la mémoire de M. Sergio Vieira de Mello, Haut Commissaire aux droits de l'homme des Nations unies, et des membres de l'équipe des Nations unies assassinés à Bagdad, le 19 août 2003. Le courage de Sergio Vieira de Mello, son engagement et sa pensée vont nous inspirer tout au long de nos travaux, lui qui affirmait : « Nous avons tous un rôle à jouer pour faire des droits de l'homme une réalité pour tous ». En octobre 2002, il déclarait : « La meilleure – la seule – stratégie pour isoler et vaincre le terrorisme est de respecter les droits de l'home, de promouvoir la Justice sociale, de renforcer la démocratie et d'affirmer la primauté de la règle de droit ». Il est tombé au champ d'honneur des droits de l'homme, victime de ce fléau contemporain qu'est le terrorisme.

Lorsque les pères fondateurs des Nations unies et des instruments internationaux des droits de l'homme ont conçu ceux–ci, au lendemain de la Seconde Guerre mondiale, leur préoccupation première était l'instauration de la Paix, la fin des conflits armés massifs et de la colonisation. Ils ne pensaient pas au terrorisme, tel qu'il est apparu en ce début du XXI^{ème} siècle. Aujourd'hui il s'agit d'un nouveau défi lancé à la communauté internationale et aux droits de l'homme.

Le terrorisme international est un phénomène trop complexe pour être réduit à une explication unique ou à une solution simple. Nous devons prendre toute la mesure de la dialectique tragique entre droits de l'homme et terrorisme. D'un côté, le terrorisme est un crime, la négation de l'ensemble des droits de l'homme, qu'aucune cause,

aucune idéologie, et encore moins aucune religion, ne saurait justifier. Nous devons refuser cette culture de la mort, qui brise des vies innocentes et vise à susciter l'escalade de la peur, de la haine et de la violence. Au-delà du défi sécuritaire immédiat que les Etats ont le devoir de relever pour assurer la protection de leurs citoyens, c'est ce défi culturel à long terme lancé aux sociétés ouvertes, aux « sociétés de confiance » qui est le plus grand danger du terrorisme.

La réponse au terrorisme aveugle ne peut être la guerre aveugle, le retour primitif à l'état de nature où « l'homme est un loup pour l'homme ». Face à la contagion de la barbarie, nous avons besoin plus que jamais du rempart du droit. A commencer par celui du droit international humanitaire, ce garde-fou face aux situations d'exception. Faire la guerre au terrorisme, ce n'est pas se placer soi-même hors la loi et multiplier les zones de non-droit. Seule la communauté internationale a la légitimité pour fournir le cadre politique à une paix durable, ici comme ailleurs, dans le plein respect du droit international. De même la mobilisation légitime contre le terrorisme ne doit pas servir de prétexte à museler toute opposition pacifique et toute presse libre ou à mettre au pas les ONG indépendantes.

Il ne faut pas que la recherche des causes du terrorisme revienne à l'expliquer, à le comprendre, voire à le justifier. Mais le terrorisme a des racines, il se développe dans le terreau des sociétés en crise. Plus la communauté internationale se mobilisera pour résoudre les crises régionales et locales, plus elle réduira les foyers de tension et d'instabilité. Cet effort passe aussi, sans doute, par la démocratisation et la modernisation de régimes politiques qui s'enferment trop souvent dans le cycle de la répression et du fanatisme.

Le terrorisme tend un piège à la démocratie, en ce qu'il la pousse à renoncer en tout ou en partie aux principes sur lesquels elle repose, pour pouvoir lutter efficacement contre lui.

Au niveau national, comme intergouvernemental, l'attention est portée sur la coopération juridique et l'extradition, ainsi que sur les échanges de renseignements, à la condition que ces instruments n'entament pas les principes fondamentaux des libertés publiques.

Par ailleurs, s'il y a lieu de poursuivre, pour actes de terrorisme ou autres crimes, certaines des personnes détenues, prisonniers de guerre ou non, les garanties fondamentales du procès équitable et de l'assistance d'un conseil, doivent leur être assurées, conformément aux principes du droit international humanitaire et des droits de l'homme. Ces garanties judiciaires doivent être respectées en toutes circonstances,

même en cas de notification d'une situation d'exception, au sens de l'article 4 du Pacte relatif aux droits civils et politiques.

La Communauté internationale est, dores et déjà, dotée d'un dispositif juridique, qu'il faudrait peut-être compléter et renforcer.

La première question qui s'est posée est celle de la définition du terrorisme, qui a provoqué de longs débats. Parmi les nombreuses tentatives citons celle de l'Assemblée générale des Nations unies qui a adopté la Convention pour la répression du financement du terrorisme le 9 décembre 1999. Elle précise en son article 2 paragraphe 1b qu'il s'agit de « Tout acte destiné à tuer ou blesser grièvement un civil, ou toute autre personne qui ne participe pas directement aux hostilités dans une situation de conflit armé, lorsque, par sa nature ou son contexte, cet acte vise à intimider une population ou à contraindre son gouvernement ou une organisation internationale à accomplir ou à s'abstenir d'accomplir un acte quelconque ».

Il convient de distinguer selon que les actes de terrorisme sont commis en temps de paix ou en temps de conflit armé, puisque le droit applicable n'est pas le même. Sans entrer dans le détail, j'indiquerai que, pour la situation en temps de paix, 12 instruments universels contre le terrorisme sont aujourd'hui en vigueur, auquel s'ajoutent plusieurs textes régionaux.

En période de conflit armé, c'est le droit international humanitaire, c'est-à-dire les 4 Conventions de Genève de 1949 et les 2 Protocoles additionnels de 1977 qui réglementent, pour l'interdire, le recours au terrorisme, ainsi que les opérations militaires engagées dans le cadre de ce que l'on appelle « la Guerre contre le terrorisme ».

Restent plusieurs questions en suspens, parmi lesquelles celle de la justice pénale internationale. Je me bornerai à évoquer le champ de compétence de la Cour pénale internationale. En effet, le statut de la CPI prévoir que peuvent être jugés les auteurs, complices, commanditaires et financiers d'actes de terrorisme commis en période de guerre, où ces crimes constituent des infractions graves au Droit international humanitaire. Mais, paradoxalement, la répression des actes de terrorisme commis en temps de paix est laissée à la relative discrétion des Etats. Les experts en auront à débattre, particulièrement sur le fait que certains actes de terrorisme, dès lors qu'ils remplissent les critères d'un crime contre l'humanité, peuvent entrer dans le champ de compétence de la Cour.

Par ailleurs, il est une question qui doit retenir particulièrement notre attention, c'est

celle des victimes des actes terroristes. Au nom des droits de l'homme qui les placent au centre de leurs préoccupations, il est nécessaire, non seulement « d'exprimer (notre) solidarité avec les victimes du terrorisme » tel qu'il est précisé dans une décision de 2002 de la Commission des droits de l'homme, mais aussi qu'il est nécessaire d'envisager la « création d'un fonds de contributions volontaires pour les victimes du terrorisme, ainsi que sur les moyens de réadapter les victimes du terrorisme et de les réinsérer dans la société », comme il est proposé au Secrétaire général des Nations unies, dans la même résolution. Il semble donc indispensable d'harmoniser les droits des victimes, tant au regard de la réparation des préjudices subis du fait d'un acte de terrorisme, qu'au vu de leur participation active aux procédures judiciaires.

***

La Commission nationale consultative des droits de l'homme de France, assure actuellement la présidence du Comité européen de coordination des Institutions nationales des droits de l'homme.

Le thème du « respect des droits de l'homme en période de conflit et dans le cadre de la lutte contre le terrorisme » est au centre des préoccupations du groupe européen. Aussi, une grande partie des travaux de la prochaine troisième table-ronde des Institutions nationales des droits de l'homme d'Europe, qui se tiendra les 25 et 26 novembre 2004 à Berlin (Allemagne) sera consacrée au thème de « la protection des droits de l'homme dans la lutte contre le terrorisme ». Nous y traiterons – des obligations positives de l'Etat en matière de lutte contre le terrorisme ; – de la protection de la vie privée face à la lutte contre le terrorisme et – du respect des droits de l'homme et des procédures judiciaires en matière de terrorisme. Toutes les Institutions nationales européennes apporteront leurs contributions et s'efforceront d'arriver à une position commune.

***

Au niveau régional européen, le Conseil de l'Europe a adopté le 11 juillet 2002, des « lignes directrices sur les droits de l'homme et la lutte contre le terrorisme ».

Ces « lignes directrices » traitent en particulier de la situation des victimes d'actes terroristes, sous l'angle du dédommagement matériel pour les atteintes au corps et à la santé, sur la base des dispositions de la Convention européenne relative au dédommagement des victimes d'infractions violentes du 24 novembre 1983. Un séminaire sur la mise en œuvre de ces « lignes directrices » sera organisé à Strasbourg (France) les 20 et 21 juin 2005, afin d'en faire l'évaluation.

Ces « lignes directrices » traitent principalement des « limites que les Etats ne devraient en aucun cas franchir dans la lutte légitime contre le terrorisme ». Elles portent par exemple sur « l'interdiction de l'arbitraire », sur la « légalité des mesures anti-terroristes », sur « l'interdiction absolue de la torture », sur « les mesures d'ingérence dans la vie privée », sur « l'arrestation et la garde à vue », sur « les procédures judiciaires » et sur la détention, entre autres dispositions.

Par ailleurs, la Commission européenne contre le racisme et l'intolérance (ECRI) du Conseil de l'Europe a adopté une recommandation de politique générale, du 17 mars 2004. Elle demande en particulier aux Etats européens de « s'abstenir d'adopter, dans le cadre de la lutte contre le terrorisme, une législation et des réglementations nouvelles établissant une discrimination directe ou indirecte contre des personnes ou groupes de personnes, notamment pour des motifs de « race », de couleur, de langue, de religion, de nationalité ou d'origine nationale ou ethnique ».

Pour sa part, l'Union européenne a pris plusieurs dispositions de coordination de la lutte contre le terrorisme, dans les domaines de la coopération policière et judiciaire, sans faire particulièrement mention du nécessaire respect des droits de l'homme.

***

Au niveau national, la Commission nationale consultative des droits de l'homme de France s'est prononcée à plusieurs reprises sur le thème de la lutte contre le terrorisme et le respect des droits de l'homme, affirmant que cette lutte doit être menée avec les armes de la Démocratie.

Ainsi, lors de l'examen de dispositions législatives proposées par le Gouvernement français en vue de renforcer la lutte contre le terrorisme, nous avons proclamé, en octobre 2001, d'une part que « toute démocratie a le droit et le devoir de se défendre », et d'autre part qu'il est « indispensable de veiller à ce que les mesures prises à cette fin par les pouvoirs publics n'apportent à l'exercice des libertés et droits fondamentaux que des restrictions dûment justifiées par les nécessités de la lutte contre le terrorisme et strictement proportionnées à ces nécessités », dans leur nature et dans le temps.

Dans un avis de novembre 2002 sur un projet de loi gouvernemental pour la sécurité intérieure nous rappelions que « la sécurité ne s'oppose pas aux libertés, notamment le respect de la dignité humaine, la liberté d'aller et venir, les droits de la défense, sans lesquelles il n'est pas de véritable sécurité ».

A l'occasion de l'examen d'un projet de loi portant sur l'adaptation des moyens de la justice aux évolutions de la criminalité, nous soulignions, en mars 2003, que « la lutte contre la grande délinquance et la criminalité organisée constitue un objectif légitime répondant à la préoccupation des citoyens, et participant à la sécurité des personnes et des biens, condition de l'exercice des libertés et des droits individuels », ajoutant tout aussitôt que « la poursuite de cet objectif doit se concilier avec le respect des droits fondamentaux de la personne ».

Enfin je citerai comme exemple de ces prises de positions, la déclaration de la deuxième rencontre euro-méditerranéenne des Institutions nationales, réunie à Athènes en novembre 2001, qui proclamait que les Institutions nationales des droits de l'homme « doivent veiller attentivement à ce que les mesures prises dans leurs pays (à la suite de l'attaque terrorisme du 11 septembre 2001 aux Etats Unies), en vue de lutter contre le terrorisme n'apportent pas aux libertés et droits fondamentaux des restrictions disproportionnées par rapport au but poursuivi. Elles doivent également veiller à ce que ces mesures soient appliquées sans pratiques discriminatoires, notamment de caractère racial ou religieuse ».

Face à la contagion de la barbarie, nous avons plus que jamais besoin du rempart du droit.

Je vous remercie

****

Closing Ceremony

Mr. Kyung-whan Ahn, Chair of the final plenary introduced Mr. Kyung-so Park to lead the closing ceremony of the International Conference of National Institutions. He observed some common elements of the four speakers' regional reports.

Before moving on to the closing ceremony, Mr. Kyung-So Park, a member of the National Human Rights Commission of Korea and member of the Subcommittee for Policy Guidelines and Overseas Cooperation at that Commission conveyed some thoughtful sentiments. He expressed the strong sense of a unique togetherness prevalent during the conference. As the non-governmental organizations met proceeding the conference and as the national institution representatives met the following Tuesday, this strong camaraderie began to manifest. Consequently, as the participants conferred, exchanging their shared commitment to human rights promotion and protection, a common community and a culture of human rights was nurtured. Indeed, a special partnership was forged. With that remark, he also registered the Korean commission's deep appreciation to Mr. Novosad for his hard work. He also emphasized a deep appreciation to NGOs and others because without their sense of common struggle, the conference's success would have not been possible. He finished his remarks with one final thank you and congratulations to Ms. Choi Young-ae for her great role as a head of the Conference preparation team.

Mr. Kyung-whan Ahn then introduced a 'wrap-up slide show,' prepared for the enjoyment of the participants by the Conference Secretariat. It catalogued the International Conference of National Institutions through memorable pictures taken over the four days' proceedings. He then invited Mr. Chang-kuk Kim, who was instrumental in organizing the conference, to address the plenary.

In closing the final curtain on the momentous International Conference of National Institutions, Mr. Chang-kuk Kim thanked the keynote speakers, the moderators, the

presenters and the discussants. He gave particular thanks to the High Commissioner, the ICC chairperson and the Asian Pacific Forum. In Addition, he gave special thanks to the representatives of the non-governmental organizations, for imbuing the conference with creativity and enthusiasm. The conference achieved good results, he noted. Moreover, he expressed his fondest hope to confer once again with all those present as soon as possible.

Mr. Kim then made some final observations of the activities at the conference. He noted that Korea was a place that has suffered many violations of human rights during the Korean War, and indeed throughout the Cold War. The most significant fact he emphasized is the bond between NGOs and NIs to find ways to promote HR in war and while countering terrorism. Examples of that common work are plentiful. One is the affirmation that prevention is more important than redress. Another is the conclusion that national institutions should sharpen their focus on economic, social and cultural rights. And yet another is the potential latent in the emphasis on networking among the NIs, the NGOs and the UN with regards to the country terrorism measures and conflict. As one may see in the Seoul Declaration, he observed, NIs' great asset lies in their personal commitment. That drive will allow NIs to go beyond national interest and ethnic allegiance. In a sense, Mr. Kim declared, "we are fishing dreams here, but when so many people dream together, then it is very possible to make them a reality."

Thanking Mr. Chang-kuk Kim for his inspiring comments, Mr. Kyung-whan Ahn declared the Seventh International Conference of National Human Rights Institutions officially concluded.

****

Seoul Declaration

Seventh International Conference for National Institutions for the Promotion and Protection of Human Rights Seoul, Republic of Korea, 14 - 17 September 2004

The Seoul Declaration

The Seventh International Conference for National Institutions for the Promotion and Protection of Human Rights was devoted to the theme of upholding human rights during conflict and while countering terrorism. The Conference was organized by the National Human Rights Commission of the Republic of Korea from 14 to 17 September 2004 and arranged in consultation with the Chairperson of the International Coordinating Committee (ICC) of National Human Rights Institutions (NHRIs) with the support of and in cooperation with the Office of the United Nations High Commissioner for Human Rights, and with financial contributions from the Asia Pacific Forum of NHRIs and Agence Intergouvernementale de la Francophonie.

NHRIs express their gratitude to the National Human Rights Commission of the Republic of Korea for its excellent organization of the conference and acknowledge the stimulating presentations by the keynote speakers as well as the fruitful discussions and deliberations. Observers from non-governmental organizations (NGO) made a valuable contribution at a pre-conference forum and byactively participating in the conference itself. The conference was further enriched by the participation of the President of the Republic of Korea and the United Nations High Commissioner for Human Rights.

The Seventh International Conference for NHRIs hereby adopts the following Declaration:

The Seventh International Conference for NHRIs,

Recalling the universal instruments agreed upon by States to safeguard human rights and fundamental freedoms, particularly the Universal Declaration of Human Rights,

the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights, and the Rome Statute of the International Criminal Court, and underlining the contribution they can make to international peace and security, alongside the Charter of the United Nations, as well as the relevant regional instruments,

Recognizing that these instruments make provisions for and require States to undertake measures to protect the security of their populations, including from threats of an exceptional nature, but that this must be within the framework of respect for human rights, fundamental freedoms and the rule of law,

Reflecting on the severe and unprecedented human rights challenges posed to the international community and to individual States and their inhabitants by the threats of conflict, terrorism and counter-terrorism measures,

Recalling the United Nations International Convention for the Suppression of the Financing of Terrorism as well as the many relevant resolutions and declarations of United Nations organs relating to conflict and to the threat of terrorism, including, inter alia, the United Nations Millennium Declaration (General Assembly resolution 55/2), Security Council resolutions 1269 (1999), 1325 (2000), 1373 (2001) and 1456 (2003), General Assembly resolutions 49/60 containing the Declaration on Measures to Eliminate International Terrorism, 58/187 on the protection of human rights and fundamental freedoms while countering terrorism, and 58/174 on human rights and terrorism, and resolutions of the Commission on Human Rights as well as those of regional bodies,

Expressing solidarity with these bodies in calling upon States to ensure that any measure they take to combat terrorism fully complies with their obligations under international law, in particular international human rights law, refugee law, and humanitarian law,

Welcoming the guidance and jurisprudence on these issues provided by the human rights treaty bodies and special procedures, including the United Nations Human Rights Committee, especially its General Comment N° 29 (2001) on states of emergency, as well as the judgements and findings of regional organizations and mechanisms,

Stressing the particular role played by NHRIs as expressed in the Copenhagen Declaration adopted by the Sixth International Conference of NHRIs, regarding the provision of early warning of situations which risk escalating into genocide, ethnic

cleansing or armed conflict,

Recognizing the unique role played by NHRIs in applying international human rights standards at the national level, thereby ensuring sustainability of human rights protection. Furthermore, the unique legislative foundation and pluralistic composition of NHRIs, in accordance with the Paris Principles, enable them to contribute to conflict resolution, including through dialogue between public authorities and civil society groups at national level,

Urging therefore the enhancement of the role and participation of NHRIs in the international human rights system,

Declares that:

1. Terrorism has a devastating impact on the full range of human rights, most directly the right to life and personal security. Respect for human rights and the rule of law are essential tools to combat terrorism. National security and the protection of the rights of the individual must be seen as interdependent and interrelated. Counter-terrorism measures adopted by States should therefore be in accordance with international human rights law, refugee law, and humanitarian law.

2. NHRIs have the mandate to protect and promote human rights in conflict situations as well as in countering terrorism. There is a need to strengthen the effective implementation of this mandate especially in light of the increased pressures against fundamental rights.

3. There is a need for increased cooperation and sharing of information and best practices, including the development of specific tools, among NHRIs at regional and international levels.

I. General principles

4. NHRIs play a vital role in reviewing and commenting on the human rights aspects of security legislation and in emphasizing the importance of adopting long-term measures and policies to rectify inequity, injustice, inequality and insecurity, so as to reduce the potential for terrorism and violent conflict.

5. NHRIs should develop early warning mechanisms and related operational guidelines. This should be linked to encouraging States to put in place

mechanisms for early warning and action to address intra-State and intra-community conflicts that could lead to grave violations of human rights.

6. NHRIs should examine violations of human rights committed by the State during violent conflict and advocate against the establishment of national ad hoc tribunals and decision-making bodies. They should also examine infringements of rights by non-State actors in the context of violent conflict and identify potential areas of conflict in a timely and accurate manner.

7. Subsequently, NHRIs should provide advice on human rights and humanitarian law to conflicting parties, or otherwise apply, facilitate and support the utilization of alternative as well as traditional methods of dispute resolution, including mediation.

8. NHRIs and States should integrate these conflict resolution tools into plans, strategies and mechanisms for the peaceful and negotiated resolution of conflict. These strategies should include elements of truth and reconciliation processes and definethe role that NHRIs should play in this respect. Particular attention should be paid to the establishment of a victims fund and payment of appropriate compensation.

9. NHRIs should act in a proactive way by placing human rights concerns in a broader societal context so as to focus not only on the manifestations of violent conflict but also on their underlying causes.

10. In time of conflict and incountering terrorism, NHRIs play an important role in promoting a human rights culture, equal opportunities and diversity. NHRIs should reflect these principles by having a fair and equitable representation of women.

II. Economic, social and cultural rights

11. NHRIs should focus on inequities in society, including their socio-economic dimensions. The realization of economic, social and cultural rights can play a key role in preventing conflict and terrorism. There is a need to promote justiciability of these rights and to monitor discriminatory effects of counter-terrorism measures on the economic, social and cultural rights of vulnerable groups.

12. NHRIs should promote and protect economic, social and cultural rights as an indivisible part of the full spectrum of universal human rights, including a

reinforced capacity to better guarantee the State's respect for its obligations under the International Covenant on Economic, Cultural and Social Rights.

13. NHRIs should call upon States to pay proper attention to issues of corruption endangering the enjoyment of human rights. NHRIs should encourage States to ensure basic needs, including food and shelter, thereby preventing the development of conditions that give rise to terrorism and conflicts.

14. NHRIs should call upon States to enforce the mechanism for fighting poverty according to United Nations General Assembly resolution (A/57/265) establishing the World Solidarity Fund.

15. NHRIs should call upon States to fulfil their obligations under the International Covenant on Economic, Social and Cultural Rights. NHRIs encourage states to ratify the Optional Protocol to the International Covenant on Economic, Cultural and Social Rights.

III. Civil and political rights and the rule of law

16. NHRIs underline that States have the responsibility, and the duty under international law, to protect their inhabitants from all forms of terrorism. In this relation, States should be encouraged to ratify the Optional Protocol to the International Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. NHRIs urge States to ratify the Rome Statute of the International Criminal Court and to adopt domestic legislation in line with the Statute.

17. NHRIs play an important role in strengthening and promoting the efficient protection of civil and political rights before a conflict breaks out as well as during and after conflict.

18. NHRIs should pay special attention to signs of xenophobia and discrimination and disproportionate limitations of human rights so as to anticipate conflict.

19. During conflict and in countering terrorism, any measures that may have an impact on the enjoyment of civil and political rights must be both necessary and proportionate. It is important for NHRIs to monitor the limited and justifiable application of such measures. NHRIs should demand of the State that counter-terrorism legislation is neither enacted in haste nor without prior public scrutiny.

Furthermore, NHRIs should take the necessary measures to prevent violations of derogable and especially non-derogable rights, such as the fundamental requirements of due process and fair trial, respect for human dignity, freedom from torture and ill-treatment, and arbitrary detention.

20. In post-conflict settlements, NHRIs play a key role in investigating violations and protecting against impunity, as well aspreventing the retroactive application of criminal laws.

21. In order to avoid abuse by authorities, NHRIs underline the importance of the principle of legality and precise legal definitions of terrorism and terrorism-related crime. Furthermore, NHRIs stress the need for remedies and judicial review in cases of alleged infringement of human rights in counter-terrorism measures.

22. NHRIs should engage in preventive activities, leading public interventions and debate, and raising awareness about both the origins of terrorism and the most effective and comprehensive responses by including human rights education for the judiciary, the public administration and security forces. Furthermore, NHRIs should stress the media's right to freedom of expression.

23. NHRIs must monitor violations of human rights in the implementation of counter-terrorism measures through periodic review, including their impact on minority communities and human rights defenders.

IV. Migration in the context of conflict and terrorism

24. Terrorism and situations of conflict have affected efforts to ensure protection of migrant workers and other persons who are outside their country of originas well as those displaced within the borders of their country of origin.

25. International standards exist on the protection of migrant workers. Nevertheless, a majority of migrant workers are received in States that have not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

26. NHRIs should promote and ensure the national implementation of international standards on migrant workers, refugees, asylum-seekers, internally displaced persons (IDPs) and victims of trafficking.

27. NHRIs should advocate the ratification of the International Convention on the

Protection of the Rights of All Migrant Workers and Members of their Families, in particular among receiving countries, and engage more actively in the monitoring process by the treaty bodies when they consider issues relating to migrant workers and the particular issues facing migrant women and children. NHRIs encourage States to ratify the additional protocol to the International Convention of the Rights of the Child on children in armed conflict.

28. It is recommended that NHRIs from sending, transit and receiving countries should establish bilateral and regional cooperation among themselves to better address the issues of irregular migrants.

29. NHRIs should actively monitor the economic, social and political rights of refugees, asylum seekers, migrant workers and IDPs, including fair procedures, treatment by police and immigration authorities, conditions of detention, access to services, employment conditions and family reunification, in cooperation with the Office of the United Nations High Commissioner for Refugees andother United Nations and regional bodies, and NGOs.

30. NHRIs should promote programmes of human rights awareness for migrant workers, refugees, asylum-seekers, IDPs and victims of trafficking, and programmes of integration and reintegration, where applicable, especially for returning women migrants.

V. Women's rights in the context of conflict

31. NHRIs should play an important rolein highlighting invisible and unacknowledged violence against women in the context of conflict. This violence is closely linked to violence against women in everyday life, such as domestic and sexual violence. NHRIs should facilitate counselling for women suffering violence.

32. NHRIs should provide education and raise awareness on women's rights to further their economic self-sufficiency and independence.

33. NHRIs should have an important role in collecting data, investigating allegations and receiving complaints of violence against women during conflict.

34. There is a special need for NHRIs to protect and promote the rights of women refugees and internally displaced women. This should include providing a complaint mechanism, inspection of refugee and IDP camps and monitoring

complaints from women in detention centres of other States waiting to receive refugee status, and from forcibly repatriation of women. NHRIs should take measures to protect women refugees and IDPs from being trafficked. NHRIs should contribute tothe formulation and implementation of reconstruction and rehabilitation programmes with the participation of women.

35. Any commission of inquiry, truth or reconciliation commission set up as part of a peace process should address past widespread and systematic violence against women, and should have a fair representation of women.

36. During the negotiations for a political settlement of a conflict, States should enact constitutional provisions providing for equality and affirmative action.

VI. The Seoul commitment

37. In order to implement this declaration, NHRIs hereby agree:

(a) To take all necessary action at the national level as prescribed by the declaration
(b) To promote, where relevant, regional cooperation among NHRIs
(c) To encourage their States to support the establishment of an effective mechanism to monitor the compliance of counter-terrorism measures with human rights standards in the United Nations
(d) To report to the annual meeting of the ICC in April 2005 on national and regional actions taken
(e) To request the ICC to identifyways in which it can further the implementation of this declaration.

****

Annexes

ICC Rules of Procedure

THE INTERNATIONAL CO-ORDINATING COMMITTEE OF NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

PREAMBLE :

The International Co-ordinating Committee is a representative body of National Human Rights Institutions established for the purpose of creating and strengthening National Human Rights Institutions which are in conformity with the Paris Principles[1]. It performs this role through encouraging international co-ordination of joint activities and co-operation among these National Human Rights Institutions, organising International Conferences, liaison with the United Nations and other international organisations and, where requested, assisting governments to establish a National Institution.

It works to create and strengthen National Institutions and to ensure they conform to the Paris Principles.

1. Name

The name of the committee is the International Co-ordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (the ICC).

2. Functions

The functions of the ICC are:

(a) To co-ordinate, at an international level, the activities of National Human Rights Institutions established in conformity with the Principles Relating to the Status and Functioning of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles).

(b) To support the creation and strengthening of National Human Rights Institutions

(National Institutions) in conformity with the Paris Principles.

(c) To ensure regular contacts with the Office of the United Nations High Commissioner for Human Rights and the other international organisations concerned with the promotion and protection of human rights.

(d) To plan and organise with the host institution International Conferences for National Institutions in co-operation with the Office of the United Nations High Commissioner for Human Rights.

(e) To encourage and assist as requested the organisation of Regional Workshops of National Institutions.

(f) To encourage co-operation amongst National Institutions.

(g) To follow up on and, where appropriate, implement recommendations of International Conferences of National Institutions and other relevant United Nations resolutions.

(h) To liaise with such other organisations as may be engaged in the promotion and protection of human rights.

(i) To undertake such other functions as are referred to it by International Conferences of National Institutions and consider matters referred to it by regional meetings.

3. Membership of the Group of National Institutions

(a) Only National Institutions which comply with the Paris Principles shall be eligible to be members of the group of National Institutions.

(b) Only one National Institution per state shall be eligible to be a voting member. Where more than one institution in a state qualifies for membership the state shall have one speaking right, one voting right, and if elected one committee member. The choice of an institution to represent the National Institutions of a particular state shall be for the relevant institutions to determine.

(c) Any National Institution seeking membership shall apply to the Chairperson of the ICC. That National Institution shall supply, in support of its application:

▶ a copy of the legislation or other instrument by which it is established and

empowered

- an outline of its organisational structure including staff complement and annual budget
- a copy of its most recent annual report or equivalent document
- a detailed statement showing that it complies with the Paris Principles or, alternatively, an outline of any respects in which it does not so comply and any proposals to ensure compliance.

(d) All questions of membership, including whether a National Institution complies with the Paris Principles, shall be decided by the ICC or any membership sub-committee it may establish. No decision adverse to the application for membership of a National Institution shall be made without consultation with that institution.

(e) Should the application for membership of any National Institution be declined by reason of its failure to comply with the Paris Principles, the ICC or its delegate may consult further with that institution concerning compliance.

(f) Any National Institution whose application for membership is declined may, with the consent of the ICC, attend meetings or workshops of the group as observer and may reapply for membership at any time.

(g) Where the circumstances of any member of the group of National Institutions change in any way which may affect its compliance with the Paris Principles, that member shall notify the Chairperson of those changes and the Chairperson shall place the matter before the accreditation sub-committee for review of that member's membership.

Where, in the opinion of the Chairperson of the ICC or of any member of the accreditation sub-committee, it appears that the circumstances of any member of the group of National Institutions may have changed in any way which affects its compliance with the Paris Principles, the Chairperson or sub-committee may initiate a review of that member's membership.

On any such review the Chairperson or sub-committee shall have all the powers and responsibilities as in an application under Rule 3.

4. Regional Groupings of Members

(a) For the purpose of ensuring a fair balance of regional representation on the ICC the following regional groups are established:

- ▶ Africa
- ▶ Europe
- ▶ the Americas
- ▶ Asia-Pacific

(b) The members within any regional group may establish such sub-regional groupings as they wish.

(c) The members of regional groups may establish their own procedures concerning meetings and activities.

(d) Regional groups are to elect four members to represent them on the ICC on a regional or a sub-regional basis as they choose.

5. Membership of the ICC

(a) Membership is the prerogative of a National Institution not of any individual and is restricted to institutions approved to be members pursuant to clause 3 of these Rules. There shall be 16 members of the ICC comprising four representatives from each of the regional groups.

(b) Regional group representatives are eligible for re-election.

(c) Regional group representatives on the ICC shall be elected from within each regional group for a term of two years.

6. Chairperson and Deputy-Chairperson of the International Co-ordinating Committee

(a) At its first meeting following adoption of these rules the members of the ICC present shall elect one of their number to be the Chairperson and another to be the Deputy Chairperson.

(b) The roles of Chairperson and Deputy Chairperson attach to the National Institution whose representative is elected.

(c) The Chairperson and Deputy-Chairperson shall serve for a term of one year and may be re-elected at the conclusion of the term.

7. Liaison with Other Human Rights Institutions and NGOs

(a) The ICC may liaise with other human rights institutions including the International Ombudsman Institute and non-governmental organisations.

(b) The ICC may decide to grant such organisations observer status at any meetings or workshops of the group of National Institutions.

8. Meetings

(a) A meeting of the ICC shall be held in conjunction with the annual meeting of the Commission for Human Rights.

(b) A meeting of the ICC shall be held in conjunction with the bi-annual International Conference on National Institutions.

(c) Otherwise, the ICC shall meet at such times and places as it shall decide.

9. Conduct of Business

(a) English/French/Spanish shall be the working languages of the ICC.

(b) A majority of the Members of the ICC shall constitute a quorum.

(c) An agenda for each meeting shall be drawn up by the Chairperson in consultation with the Members. Agenda items may be added at the meeting if approved by a majority of the Members present.

(d) Members of the ICC shall be represented by duly authorised representatives of the institutional members concerned who may be accompanied at meetings by such advisers from the institution as they may require.

(e) Each member shall have one vote. Where possible decisions of the ICC shall be reached by consensus. When consensus is not possible, decisions shall be by a majority of members present and voting. In the event of an equality of votes, the proposal being voted on shall be regarded as being defeated.

(f) Representatives of National Institutions established in accordance with the Paris Principles, other than ICC members, are welcome to attend meetings.

(g) The Chairperson, after consultation with ICC members, may invite National Institutions who are not members of the ICC and any other person or institution to participate in the work of the ICC as an observer without the right to vote.

10. Further Procedure

Should any question concerning the procedure of the ICC arise which is not provided for by these rules the ICC may adopt such procedure as it thinks fit.

11. Amendment of Rules of Procedure

These Rules of Procedure may be amended only by an International Conference of National Human Rights Institutions.

ADOPTED 15 APRIL 2000
AND AS AMENDED 13 APRIL 2002

[1] Commission on Human Rights resolution 1992/54 of 3 March 1992, annex (*Official Records of the Economic and Social Council, 1992, Supplement No. 2* (E/1992/22), chap II, sect. A); General Assembly resolution 48/134 of 20 December 1993, annex.

****

Annotated Program of the Seventh International Conference of National Institutions.

Monday 13 September

APF 9th Annual Meeting (Closed Session)
▶ Venue: Sapphire Hall, Lotte Hotel

Tuesday 14 September

08:30-12:00 Registration

09:00-10:00 Closed Session for working group moderators and speakers
▶ Venue: Emerald Hall, Lotte Hotel

10:00-12:30 Business Session of International Coordinating Committee (ICC)
A separate agenda for this meeting shall be determined by the Chair of the ICC with the support of the ICC Secretariat. The meeting shall be held according to the ICC Rules of Procedure.
▶ Venue: Emerald Hall, Lotte Hotel

12:30-14:30 Break
Luncheon for the ICC regional representatives only
Lunch will be hosted by the National Human Rights Commission of the Republic of Korea

14:30-15:30 Opening Ceremony
Opening remarks: President of National Human Rights Commission of the Republic of Korea
Welcome speech: Chairperson of the ICC
Welcome speech: The United Nations High Commissioner for Human Rights
Congratulatory speech: VIP
Pursuant to Article 6 of the Rules of Procedure of International Conferences of National Institutions for the Promotion and Protection of Human Rights, state representatives may attend the opening of the International Conference.

Pursuant to Article 5 of the Rules of Procedure of International Conferences of National Institutions for the Promotion and Protection of Human Rights, only fully accredited national institutions shall have voting rights at the International Conference. All other participants shall participate as observers without voting rights.
▶ Venue: Crystal Ballroom, Lotte Hotel

15:30-16:00 Break

16:00-16:20 Election of:

- the General Committee;
- the Drafting Committee of Seoul Declaration; and
- the Rapporteur-General.

Pursuant to Article 11 of the Rules of Procedure of International Conferences, at its opening meeting, in the presence of the United Nations High Commissioner for Human Rights or his/her representative, the Chairperson of the ICC and any other official from the host national institution, the International Conference shall appoint the above bodies.

General Committee: It is recommended that the General Committee be comprised of the Chair of the host institution or his representative; the Chair of the ICC or his representative; a representative of each of the regional groups to be selected by such groups.

Drafting Committee: It is recommended that the Drafting Committee be of the same composition as the General Committee.

Rapporteur-General: It is recommended that the Chair of the ICC nominate a person from within his own institution with strong analytical and drafting skills in English.

The General Committee (Article 12 of the Conference rules of procedure) shall determine the length of speaking times for allocated speakers.

▶ Venue: Crystal Ballroom, Lotte Hotel

16:20-17:00 Outline of the main theme for the conference: "Upholding Human Rights in Conflict and while Countering Terrorism"

Introductory speech on Human Rights and Conflict:
Mr. Vojin Dimitrijevic, Director, Belgrade Centre for Human Rights

The purpose of this session is to look at the role of national institutions as early warners of potential conflict and to highlight international indicators in the prevention of conflict. In addition, the statement should assess the particular challenges which national institutions face when operating in an environment of conflict or in post-conflict situations.

Introductory speech on Human Rights and Countering Terrorism: Dr. Hina Jilani, Special Rapporteur on Human Rights Defenders

The purpose of this session is to give a substantive overview of the subject matter and the challenges faced by human rights defenders including national institutions. The importance of the rule of law and respect for human rights will be addressed.

▶ Venue: Crystal Ballroom, Lotte Hotel

17:30-18:30 Visit to the office of NHRC of the Republic of Korea
Those who pre-registered for the visit are requested to come to the lobby of the Lotte Hotel at 5:15 pm.

19:00-21:00 Welcoming dinner and cultural performance
By invitation only
This event will be hosted by the National Human Rights Commission of the Republic of Korea.

Wednesday 15 September

09:00-09:20 Selection of working group rapporteur
Each working group shall have a moderator, who will preside over each working group, and two speakers. The moderator will be confirmed in advance. Proposed speakers are noted below taking into consideration expertise in the subject area, geographic, linguistic and gender balance. Participants to the Conference will be requested to select a Working Group in advance of their arrival (they will be asked to make the choice on the basis of preference from 1 to 3, 1 being the most preferred option). They will then be requested to prepare written papers for distribution to the Members of the Working Group for their consideration. It is hoped that this will mean that statements will not be read but that substantive free-flowing discussion will occur.

09:20-10:10 **Working Group 1: "Conflict and Countering Terrorism: Economic, Social and Cultural Rights"**
▶ Venue: Crystal Ballroom Section #1, Lotte Hotel

Moderator
Mr. Suk-tae Lee, Lawyer, National Human Rights Commission of the Republic of Korea

Speakers
Mr. Volmar Antonio Pérez Ortiz, Defensor del Pueblo, Colombia
Justice A.S. Anand, Chair, National Human Rights Commission of India

Working Group 2: "Conflict and Countering Terrorism: Civil and Political Rights and the Rule of Law"
▶ Venue: Crystal Ballroom Section #2, Lotte Hotel

Moderator
Mr. Omar Azziman, President, Conseil Consultatif des Droits de l'Homme (CCDH) of Morocco

Speakers
Mr. Myeong-deok Kang, Director General of Human Rights Policy Bureau, National Human Rights Commission of the Republic of Korea
Mr. Sergio FernandoMorales Alvarado, Procurador, Procuraduria de los Derechos Humanos, Guatemala
Mr. John Von Doussa, President, the Australian Human Rights and Equal Opportunity Commission

Working Group 3: "The Role of National Human Rights Institutions in Conflict Situations"
▶ Venue: Emerald Hall, Lotte Hotel

Moderator
Justice Nain Bahadur Khatri, Chairperson, National Human Rights Commission of Nepal

Speakers
Ms. Margaret Sekaggya, Chairperson, Uganda Human Rights Commission
Prof. Brice Dickson, Chief Commissioner, Northern Ireland Human Rights Commission

Working Group 4: "Migration in the Context of Conflict and Terrorism"
▶ Venue: Onyx Room Section #1, Lotte Hotel

Moderator
Amb. Salvador Campos Icardo, Executive Secretary, Comision Nacional de los Derechos Humanos, Mexico

Speakers
Mr. Manuel Aguilar Belda, Deputy Ombudsman, Defensor del Pueblo, Spain
Ms. Purificacion Valera Quisumbing, Chairperson, Commission on Human Rights of the Philippines

Working Group 5: "Women's Rights in the Context of Conflict".
▶ Venue: Onyx Room Section #2, Lotte Hotel

Moderator
Dr. Radhika Coomaraswamy, Chairperson, Human Rights Commission of Sri Lanka

Speakers
Dr. Sima Samar, Chairperson, Afghan Independent Commission for Human Rights
Mr. Déogratias Kayumba, Vice-President, Rwanda Human Rights Commission

10:10-10:30 Break

10:30-12:00 Discussion in working groups
The Working Group discussions should be based on the speakers' presentation and be free flowing. They are not meant to be a place of statements but rather one of discourse. Speakers should be encouraged to have prepared a set of questions/issues which can be circulated for discussion. Guidelines for the moderators and speakers can be prepared in advance (once moderators and speakers have been selected and agreed to their role about one month prior to the Conference).

12:00-14:00 Luncheon
By invitation only

14:00:16:00 Discussion in working groups

16:00-16:20 Break

16:20-17:40 Wrap-up in each working group and preparation of report for the plenary
The rapporteur will summarise each discussion and will be tasked to work overnight to

prepare a report to the plenary. It shall be in the language in which the rapporteur is most comfortable.

Thursday 16 September

09:00-09:20 Working group 1 report to the plenary
The Moderator with the support of the Rapporteur shall brief the plenary on the discussions and any suggested areas for action by national institutions for each of the respective working groups. The general conclusions will feed into the Seoul Declaration. These discussions will be chaired either by the Chair of the host institution or his designate, the Chair of the ICC or Deputy Chair of the ICC.
▶ Venue: Crystal Ballroom, Lotte Hotel

09:20-09:50 Discussion

09:50-10:10 Working group 2 report to the plenary
As per above working group

10:10-10:40 Discussion

10:40-11:00 Break

11:00-11:20 Working group 3 report to the plenary
As per above working group

11:20-11:50 Discussion

12:00-15:30 Luncheon and Visit to an ancient palace
Luncheon by invitation only
Those who pre-registered for the visit are requested to come to the Registration Desk at 1:15 pm

16:00-16:20 Working group 4 report to the plenary
As per above working group

16:20-16:50 Discussion

16:50-17:10 Working Group 5 report to the plenary
As per above working group

17:10-17:40 Discussion

17:40-18:00 Overall discussion

18:00-19:00 Drafting Committee Meeting

19:00-21:00 Dinner
By invitation only

Friday 17 September

▶ Venue: Crystal Ballroom, Lotte Hotel

09:00–09:30 Wrap up by general rapporteur and introduction of the Seoul Declaration

Pursuant to Article 4 of the Rules of Procedure of International Conferences of National Institutions for the Promotion and Protection of Human Rights, fully accredited national institutions shall adopt a Final Declaration

09:30–10:20 Discussion and adoption of the Seoul Declaration

Article 13 of the same rules provides that it shall be adopted by consensus. The Final Declaration along with the General Report of the International Conference shall be transmitted to the United Nations High Commissioner for Human Rights, to all national institutions and to observers. Article 14 provides that The Final Declaration and all other documents adopted by the International Conference shall be translated into all the working languages of the International Conference. OHCHR shall undertake, to the extent that its resources permit, such a task (at minimum the Conclusions following the closure of the Conference).

10:20–10:40 Break

10:40–11:00 Case presentations: the African perspective
A representative of the regional group will be asked to synthesize the NIs from the region best practices in relation to the theme of the Conference. Documents for this session will be requested to be prepared in advance for translation and distribution – deadline for submission is 15 July.

11:00:11:20 Case presentations: the Americas perspective
As per case presentations above

11:20–11:40 Case presentations: the Asia-Pacific perspective
As per case presentations above

11:40–12:00 Case presentations: the European perspective
As per case presentations above

12:00–13:00 Closing ceremony

Pursuant to Article 6 of the Rules of Procedure of International Conferences of National Institutions for the Promotion and Protection of Human Rights, State representatives may attend the closing of the International Conference.

13:00–15:00 Luncheon
By invitation only

List of participants

NI Members

Afghanistan
Afghan Independent Human Rights Commission (AIHRC)
Sima SAMAR
Chairperson
Tel. 93 20 2500 676 / 7
Fax. NIL
sima_samar@yahoo.com; aihrc@aihrc.org.af

Afghan Independent Human Rights Commission (AIHRC)
Ahmad LANGARI
Commissioner
Tel. 93 20 2500 677
aihrc@aihrc.org.af;
zialangarii@yahoo.com

Albania
Albanian People's Advocate
Alket JAUPI
Adviser
Tel. 355 4 26 20 03
Fax. 355 4 23 99 89
ajaupi@avokatipopullit.gov.al

Argentina
Defensor del Pueblo de Argentina
Mazzini JUAN CARLOS Jefe
Tel. 54 11 4 819 1607
Fax. 54 11 4 819 1608
jmazzini@defensor.gov.ar

Australia
Australian Human Rights and Equal Opportunity Commission
John VON DOUSSA
President
Tel. 61 2 9284 9765
Fax. 61 2 9284 9850/ 9794
johnvondoussa@humanrights.gov.au

Australian Human Rights and Equal Opportunity Commission
Diana TEMBY
Executive Director
Tel. 61 2 9284 9605
Fax. 61 2 9284 9794
dianatemby@humanrights.gov.au

Bosnia-Herzegovina
The Human Rights Ombudsman of Bosnia and Herzegovina
Vitomir POPOVIC
Ombudsman
Tel. 387 33 666 005/6
Fax. 387 33 666 007
akostodorovic@bl.ohro.ba

The Human Rights Ombudsman of Bosnia and Herzegovina
Ljubic MARIOFIL
International Relations Officer
Tel. 387 33 666 005(EXT.6)/ 006
Fax. 387 33 666 007
sbarosevcic@ohro.ba

The Human Rights Ombudsman of Bosnia and Herzegovina
Svjetlana BAROSEVCIC
Ombudsman's Secretary
Tel. 387 33 666 006
Fax. 387 33 666 007
mjavoric@ohro.ba

Burkina Faso
Commission Nationale des Droits de l'Homme(CNDH)
FRANeOIS DE SALLE BADO
President
Tel. 226 70 25 73 55 / 50 30 64 73
Fax. 226 50 31 64 20
frbado@yahoo.fr

Cameroon
National Commission on Human Rights and Freedoms
Chemuta BANDA
Chairman
Tel. 237 222 61 17 / 60 80
Fax. 237 222 60 82
cdbanda26@yahoo.fr

Chad (Tchad)
Commission Nationale des Droits de l'Homme
Nodjigoto DOMAYE
President
Tel. 235 29 33 42
Fax. 235 52 51 81/ 52 24 84

China(Hong Kong SAR)
Equal Opportunities Commission
Patricia CHU YEUNG Pak-yu
Chairperson
Tel. 852 2106 2123
Fax. 852 2511 8142
eoc@eoc.org.hk; patriciachu@eoc.org.hk

Equal Opportunities Commission
Herman POON
Assistant Legal Adviser
Tel. 852 2106 2178
Fax. 852 2824 3892
hermanpoon@eoc.org.hk

Colombia
Defensorea del Pueblo-Colombia
Volmar PEREZ-ORTIZ
Ombudsman
Tel. 57 1 314 4000 (ext. 2315 or 2317)/ 691 5388 / 691 5500
Fax. 57 1 640 0491 / 314 4000 (ext. 2246) / 691 5566
vaperezr@defensoria.org.co;
asontosdefensor@defensoria.org.co

Denmark
The Danish Institute for Human Rights
Morten KJÆRUM
Executive Director
Tel. 45 32 69 88 88 /59 (Birgit)
Fax. 45 32 69 88 00
mok@humanrights.dk;
center@humanrights.dk

The Danish Institute for Human Rights
Anne-Marie GARRIDO
Project Manager
Tel. 45 32 69 88 93
Fax. 45 32 69 88 00
amg@humanrights.dk

National Department
Birgitte OLSEN
Head of Department
Tel. 45 32 69 88 88
Fax. 45 32 69 88 00
bko@humanrights.dk

Egypt
Egyptian National Council for Human Rights
Mohamed Noman GALAL
Ambassador, Member
Tel. 02 749 0787~9
Fax. 202 5747670

Fiji
Fiji Human Rights Commission
Shaista SHAMEEM
Director
Tel. 679 33 08 577
Fax. 679 33 08 661
sshameem@humanrights.org.fj

France
Commission Nationale Consultative des Droits de l'Homme
Gerard FELLOUS
Secretary General
Tel. 33 1 42 757709 / 7713
Fax. 33 1 42 757714
g.fellous@cncdh.pm.gouv.fr

Germany
German Institute for Human Rights (Deutsches Institut fuer Menschenrechte)
Heiner BIELEFELDT
Tel. 49 30 259 359 0
Fax. 49 30 259 359 59
info@institut-fuer-menschenrechte.de

Ghana
Commission on Human Rights and Administrative Justice
Anna BOSSMAN
Acting Chief Commissioner
Tel. 233 21 668839 / 664561 / 668841 / 662567
Fax. 233 21 660020 / 772017
anna_b21044@yahoo.com;
abossman@hq.chrajghana.org;
CHRAJ@ighmail.com

Greece
Greek National Commission for Human Rights (GNCHR)
Charitini DIPLA
Member of GNCHR
Tel. 30 210 72 33 221-2 / 30 6945493381
Fax. 30 210 72 33 217
info@nchr.gr; hdipla@otenet.gr

Guatemala
Procoraduria de los Derechos Humanos Guatemala
Maria Eugenia Acena de Sierra Morales
Procuradoa Adjunta
Tel. 502 230 0877 / 230 0878
Fax. 502 238 1734
msierraopdh@intelnet.met.gob

India
National Human Rights Commission
Adarsh ANAND
Chairperson
Tel. 91 11 2334 0891 / 2334 7064
Fax. 91 11 2334 0016 /2236 6537 / 2334 4112
chairnhrc@hub.nic.in

National Human Rights Commission
Anil PARASHAR
Deputy Registrar
Tel. 91 11 2334 0891
Fax. 91 11 2334 0016
covdnhrc@hub.nic.in

National Human Rights Commission
Jalaja SUBRAMONIA
Joint Secretary
Tel. 91 11 2334 6243
Fax. 91 11 2334 0016
covdnhrc@hub.nic.in;
sjalajanhrc@hotmail.com

Indonesia
National Commission on Human Rights, Indonesia
Abdul Hakim NUSANTARA
Chairperson
Tel. 62 21 392 5230 (EXT.204)
Fax. 62 21 392 5227
info@komnasham.go.id

National Commission on Human Rights , Indonesia
Mochamad THOYIB Commissioner
Tel. 62 21 392 5230
Fax. 62 21 392 5227
info@komnasham.go.id

National Commission on Human Rights, Indonesia
Enny SOEPRAPTO Commissioner
Tel. 62 21 392 5230
Fax. 62 21 392 5227
info@komnasham.go.id

National Commission on Human Rights , Indonesia
Ruswiati SURYASAPUTRA Commissioner
Tel. 62 21 392 5230
Fax. 62 21 392 5227
andridandu@yahoo.com;
info@komnasham.go.id

National Commission on Human Rights, Indonesia
Ahshari THAYIB Commissioner
Tel. 62 21 392 5230
Fax. 62 21 392 5227
info@komnasham.go.id

Luxembourg
Commission Consultative des Droits de l'Homme du Grand-Duche de Luxembourg
Tammy MULLER Secretoure
Tel. 352 2 620 2852
Fax. 352 2 620 2855
ccdhlux@pt.lu

Malawi
Malawi Human Rights Commission
George KANYAMA PHIRI
Chairperson
Tel. 265 1 750 900/ 958
Fax. 265 1 750 943/ 958
mhrc@sdnp.org.mw;
gykphiri@bunda.sdnp.org.mw

Malaysia
Human Rights Commission of Malaysia (SUHAKAM)
Ranita MOHD. HUSSEIN
Commissioner
Tel. 603 26125600
Fax. 603 26125620
mhranita@gmail.com

Human Rights Commission of Malaysia (SUHAKAM)
SehLih LONG
Officer
Tel. 603 26125600
Fax. 603 26125620
long@suhakam.org.my

Mauritius
National Human Rights Commission
Dheerujlall SEETULSINGH
Chairman
Tel. 230 208 2716/ 208 2718
Fax. 230 208 2858
mhrcdbs@intnet.mu

Mexico
National Human Rights Commission of Mexico
Salvador CAMPOS
Executive Secretary
Tel. 52 55 5135 0592 / 52 55 56 81 81 25 / 56 81 80 32
Fax. 52 55 5135 0595
Salvador_campos@cndh.org.mx

Mongolia
National Human Rights Commission of Mongolia
Suren TSERENDORJ
Chief Commissioner
Tel. 976 113 16 509 / 10 987
Fax. 976 113 20 284
Mongolia@nhrc.mn

National Human Rights Commission of Mongolia
Jadamba DASHDORJ
Commissioner
Tel. 976 11 327136
Fax. 976 11 327136/ 320284
j.dashdorj@nhrc-mn.org

National Human Rights Commission of Mongolia
Nyamaa MUNKHBAT
National Project Manager
Tel. 976 11 327136
Fax. 976 11 327136/ 320284
npm@mongol.net

National Human Rights Commission of Mongolia
Batchuluun KHISHIGSAIKHAN
Director
Tel. 976 11 327136
Fax. 976 11 327136/ 320284
b.khishigsaikhan@nhrc-mn.org

Morocco
Conseil Consultatif des Droits de l'Homme du Maroc(CCDH)
Omar AZZIMAN
President
Tel. 212 37 73 28 64/ 72 22 18/ 72 22 07
Fax. 212 37 72 68 56
presidence@ccdh.org.ma; ccdh@iam.net.ma

Conseil Consultatif des Droits de l'Homme du Maroc(CCDH)
Ali BARGACH
Chef du Departement de la Cooperation
Tel. 212 37 72 22 07/ 73 29 13
Fax. 212 37 72 68 56
ccdh@iam.net.ma;
bargach@ccdh.org.ma; bargachali@yahoo.fr

Conseil Consultatif des Droits de l'Homme du Maroc(CCDH)
Albert SASSON
Member
Tel. 33 1 4532 1521
Fax. 33 1 5519 4248
dan.sasson@wanadoo.fr

Nepal
National Human Rights Commission, Nepal
Nayan KHATRI
Chairperson
Tel. 977 1 552 2709/ 5842
Fax. 977 1 554 7973
nhrc@nhrc-nepal.org.np;
nayan.khatri@nhrc-nepal.org.np

National Human Rights Commission, Nepal
Sushil PYAKUREL
Commissioner
Tel. 977 1 552 2709/ 5842
Fax. 977 1 554 7973
sushil.pyakurel@nhrc-nepal.org.np

National Human Rights Commission, Nepal
Kedar POUDYAL
Acting Secretary
Tel. 977 1 552 2709/ 552 5842
Fax. 977 1 554 7973
kedar.poudyal@nhrc
nepal.org.np

New Zealand
New Zealand Human Rights Commission
Rosslyn Joy NOONAN
Chief Commissioner
Tel. 649 375 8632
Fax. 649 308 9905
rosslynn@hrc.co.nz

New Zealand Human Rights Commission
Joris DE BRES
Race Relations Commissioner
Tel. 644 471 6741
Fax. 644 471 6759
JorisB@hrc.co.nz

Niger
Commission Nationale des Droits de l'Homme et des Libertes Fondamentales (CNDHLF)
Lompo GARBA
President
Tel. 227 725106 / 227 725564
Fax. 227 722654
cndhlf@intnet.ne; lompo_garba@yahoo.fe

Nigeria
National Human Rights Commission of Nigeria
Bukhari BELLO
Executive Secretary and Chief Executive Officer
Tel. 234 9 523 1800/ 234 80 37881004
Fax. 234 9 523 8657
humanrights@mlstn.com;
info@nigeriarights.org

Northern Ireland
Northern Ireland Human Rights Commission
Brice DICKSON
Chief Commissioner
Tel. 44 28 9024 3987
Fax. 44 28 9024 7844
info@nihrc.org; brice.dickson@nihrc.org

Norway
Norwegian Centre for Human Rights
Geir ULFSTEIN
Director
Tel. 47 22 84 20 01
Fax. 47 22 84 20 02
geir.ulfstein@nchr.uio.no

Norwegian Centre for Human Rights
Marius EMBERLAND
Legal Adviser
Tel. 47 22 84 20 01 / 07
Fax. 47 22 84 20 02
marius.emberland@nchr.uio.no

Palestine
Palestinian Independent Commission for Citizens' Rights (PICCR)
Lamis ALAMI
Commissioner General
Tel. 972 2 298 6958
Fax. 972 2 298 7211
piccr@piccr.org

Palestinian Independent Commission for Citizens' Rights (PICCR)
Muhammad MEIARI
Commissioner
Tel. 972 2298 6958
Fax. 972 2298 7211
piccr@piccr.org

Palestinian Independent Commission for Citizens' Rights (PICCR)
Rebecca REYNOLDS
External Relations
Tel. 972 2298 6958
Fax. 972 2298 7211
piccr@piccr.org

Palestinian Independent Commission for Citizens' Rights (PICCR)
Husein Mohamad SHOLI
Secretary
Tel. 972 2 298 6958
Fax. 972 2 298 7211
piccr@piccr.org

Peru
Defensoria del Pueblo del Pere
Walter ALBAN PERALTA
Defensor del Pueblo
Tel. 51 1 426 8033/ 7800
Fax. 51 1 426 6657
defensor@defensoria.gob.pe

Republic of Korea

National Human Rights Commission of Korea
Chang-Kuk KIM
President
Tel. 82 2 2125 9700/9661
Fax. 82 2 2125 9666
nhrc@humanrights.go.kr;
rvou57@humanrights.go.kr

National Human Rights Commission of Korea
Kyung Seo PARK
Commissioner
Tel. 82 2 2125 9605
pks@humanrights.go.kr

National Human Rights Commission of Korea
Young Ae CHOI
Commissioner
Tel. 82 2 2125 9610
yachoi@humanrights.go.kr

National Human Rights Commission of Korea
Dong Woon SHIN
Commissioner
Tel. 82 2 525 3404

National Human Rights Commission of Korea
Duk Hyun KIM
Commissioner
Tel. 82 31 875 3404
Fax. 82 31 875 1960
dhkim500@hanmail.net

National Human Rights Commission of Korea
Heung Rok LEE
Commissioner
Tel. 82 031 772 9728

National Human Rights Commission of Korea
Kang Ja JUNG
Commissioner
Tel. 82 2 737 5763
jungkangja@hanmail.net

National Human Rights Commission of Korea
Man Heum KIM
Commissioner
Tel. 82 031 903 0407

National Human Rights Commission of Korea
Mi-Kyung CHO
Commissioner
Tel. 82 2 2125 9755

National Human Rights Commission of Korea
O-Sup KIM
Commissioner
Tel. 82 2 536 7736/7
Fax. 82 2 536 7738
1205huni@hanmail.net

National Human Rights Commission of Korea
Dae Hoon LEE
Advisory Member
Tel. 82 2 747 5133
dlee@pspd.org

National Human Rights Commission of Korea
Hei Soo SHIN
Advisory Member
Tel. 82 2 392 5252/ 365 4016
Fax. 82 2 365 4017
heisoo@peacenet.or.kr

National Human Rights Commission of Korea
Jae Shik OH
Advisory Member
Tel. 82 2 312 4634
Fax. 82 2 312 4635
Jaeshik_oh@wvi.org

National Human Rights Commission of Korea
Seonghoon LEE
Advisory Member
leesh@paxromana.int.ch

National Human Rights Commission of Korea
Kyong Whan AHN
Advisory Member
Tel. 82 2 880 7582
ahnka@fu.ac.kr

National Human Rights Commission of Korea
Suk-tae LEE
Advisory Member
Tel. 82 2 567 6478
Fax. 82 2 567 8224
stlee@cyberducksu.co.kr

National Human Rights Commission of Korea
Myung Deok KANG
Director-General of the Human Rights Policy Bureau
Tel. 82 2 2125 9904
kmdlaw@humanrights.go.kr

National Human Rights Commission of Korea
Jong Cheol AHN
Director-Generalof the Discrimination Investigation Bureau
Tel. 82 2 21259910
acj518@humanrights.go.kr

National Human Rights Commission of Korea
Seuk Kiu JIN
Director-General of the Administrative Support Bureau
Tel. 82 2 2125 9906
jsukiu@humanrights.go.kr

National Human Rights Commission of Korea
Hee Won HAN
Director-General of the Human Rights Violation Investigation Bureau
Tel. 82 2 2125 9908
lucas@humanrights.go.kr

National Human Rights Commission of Korea
Young Hee NA
Director-General of the Education and Cooperation Bureau
Tel. 82 2 2125 9912
ynh21@humanrights.go.kr

National Human Rights Commission of Korea
Bo Hyuk SUH
Expert Advisor
Suhbh66@humanrights.go.kr

National Human Rights Commission of Korea
Seung Chol CHOI
Expert Advisor
scchoi@humanrights.go.kr

National Human Rights Commission of Korea
Sook Mee PARK
Expert Advisor
psm97@humanrights.go.kr

Rwanda

National Human Rights Commission of Rwanda
Deogratias KAYUMBA
Vice-President
Tel. 250 584025/ 032
Fax. 250 584041
cndh@rwanda1.com

Senegal

Comite Senegalais des Droits de l'Homme
El Hadji Malick SOW
Coordinator
Tel. 221 823 44 27
Fax. 221 821 44 94
malicksow@sunumail.sn; csdh@sentoo.sn

Serbia and Montenegro

Belgrade Center for Human Rights
Vojin DIMITRIJEVIC
Director

South Africa

South African Human Rights Commission
Zonke MAJODINA
Deputy Chairperson
Tel. 27 11 4848300
Fax. 27 11 4848403
zmajodina@sahrc.org.za

Spain

Ombudsman of Spain(Defensorea del Pueblo de Espaea)
Jose-Mauel SeNCHEZ-SAUDINeS
Chief of Cabinet Deputy Ombudsman
Tel. 34 91 310 4843/ 432 7900
Fax. 34 91 308 7027/ 1158
jms.saudinos@defensordelpueblo.es;
registro@defensordelpueblo.es

Ombudsman of Spain(Defensorea del Pueblo de Espaea)
Manuel AGUILAR-BELDA
Deputy Ombudsman
Tel. 34 91 310 4843/ 432 7900
Fax. 34 91 308 7027/ 1158
manuel.aguilar@defensordelpueblo.es;
registro@defensordelpueblo.es

Sri Lanka
Human Rights Commission of Sri Lanka
Radhika COOMARASWAMY
Chairperson
Tel. 94 112 696470/ 694925
Fax. 94 112 696470/ 694924
rcoomaraswamy@yahoo.com; sechrc@sltnet.lk

Tanzania
Commission for Human Rights and Good Governance
Robert KISANGA
Chairman
Tel. 255 22 2135747 / 8
Fax. 255 22 2111533
chragg@chragg.org

Thailand
National Human Rights Commission
Chareonthaitawee PRADIT
Commissioner
Tel. 662 219 2943
Fax. 662 219 2964
info@nhrc.or.th; pradit@nhrc.or.th

National Human Rights Commission
Chareonthaitawee PRADIT
Suwanpakdee PRANOON
Acting Secretary - General
Tel. 662 219 2954
Fax. 662 219 2940
pranoon@nhrc.or.th

National Human Rights Commission
Chareonthaitawee PRADIT
Atchara SHAYAKUL
Acting Director
Tel. 662 219 2954
Fax. 662 219 2940
atchara@nhrc.or.th

The Philippines
Commission on Human Rights of the Philippines
Purificacion QUISUMBING
Chairperson
Tel. 632 928 5655 / 926 6188
Fax. 632 929 0102 / 925 3883
drpvq@yahoo.com; drpvq@chr.gov.ph

Commission on Human Rights of the Philippines
Wilhelm SORIANO
Commissioner
Tel. 632 925 3883
Fax. 632 929 0102 / 925 3883
chr_cga@yahoo.com

Togo
Commission Nationale des Droits de l'Homme (CNDH - Togo)
Masro NYUIADZI
Leelesiatique
Tel. 228 221 1070/ 7879
Fax. 228 221 2436
cndhtogo@yahoo.fr

Uganda
Uganda Human Rights Commission
Margaret SEKAGGYA
Chairperson
Tel. 256 41 348 006/7 or 348 014 / 256 41 348 010 (Direct MS line)
Fax. 256 41 255 261
uhrc@uhrc.org; msekaggya@yahoo.com

Venezuela
Defensorea del Pueblo
Raizabel DeAZ ACERO
Directoa De Asuntos Internacionales
Tel. 58 212 707 0057
Fax. 58 212 707 0061
presidenciafio@defensoria.gov.ve; dgainternational@hotmail.com

Zambia
Human Rights Commission of Zambia
Mumba MALILA
Chairperson
Tel. 260 1 251 327 / 251 357 / 234 620
Fax. 260 1 251 342 / 234 620
phrc@zamnet.zm

NI Observers

Azerbaijan
Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan
Aydin Mohammed SAFIKHANLI Head
Tel. 994 12 498 23 65/ 493 97 39
Fax. 994 12 498 23 65
ombudsman@ombudsman.gov.az; aydin75@mail.ru

Benin
Commission Beninoise des Droits de l'Homme
Dominique ADJAHOUINOU
President
Tel. 229 94 44 36/ 229 93 36 72
Fax. 229 30 52 71
adomisr@yahoo.fr

Georgia
Public Defender's Office of Georgia
Teimuraz E. LOMSADZE
Acting Public Defender (Ombudsman) of Georgia
Tel. 995 3292 2477 /3299 0836
Fax. 995 3292 2470
t_lomsadze@mail.ge

Guyana (British)
Office of the Ombudsman
Shaik MOHAMED
Ombudsman
Tel. 592 226 2294
Fax. 592 226 2294/ 227 2475
ombudsman@sdnp.org.gy

Islamic Republic of Iran
Islamic Human Rights Commission
Esmail HEMATDOOST
Researcher
Tel. 98 21 204 5853/ 6242
Fax. 95 21 204 0541
ihrc@majlis.ir; hematdoost@yahoo.co.uk

Jordan
National Center for Human Rights
Mohd Issam ZAWAWI
Member of Board of Trustees
Tel. 962 6 5518600
Fax. 962 6 5529042
mzawawi@voa.index.com.jo

Mohamed OLWAN
Professor
Tel. 962 77334446

Kazakhstan
National Human Rights Commission of Kazakhstan
Zhanaikhan ABDILDIN
Chairman
Tel. 7 3172 152115
Fax. 7 3172 328251
Tas@global.kz

Ombudsman of the Republic of Kazakhstan
Bolat BAIKADAMOV
Ombudsman
Tel. 7 3172 152970
Fax. 7 3172 321767
ombudsman@mail.kz

Ombudsman of the Republic of Kazakhstan
Arbol ARGYNOV
Chief Expert
Tel. 7 3172 152973
Fax. 7 3172 321767
aarbol@mail.kz; ombudsman@mail.kz

Kenya
Kenya National Commission on Human Rights
Maina KIAI
Chairman
Tel. 254 20 271 7928 / 271 2664 / /271 79 08 / 271 26 64
Fax. 254 20 271 6160
mkiai2000@yahoo.com; haki@skyweb.co.ke

Kenya National Commission on Human Rights
Wambui KIMATHI
Commissioner
Tel. 254 20 2717928
Fax. 254 20 2716160
wkimathi@kwamunet.co.ke; wkimathi@knchr.org

Kyrgyz Republic
The Institute of the Ombudsman(Akyikatchy) of the Kyrgyz Republic
Aleksander TSOI
Head of the Department
Tel. 996 312 21 86 22/ 34
Fax. 996 312 65 08 07
ombudsman@hotmail.kg

Macedonia
Ombudsman Office of the Republic of Macedonia
Branko NAUMOSKI
Ombudsman
Tel. 389 23 129 351
Fax. 389 23 129 359
ombuds1@mt.net.mk

Tunisia
Comite Superieur des Droits de l'Homme
Hatem KOTRANE
Protesscur eu droit
Tel. 216 71 783 858/ 825
Fax. 216 71 874 037
kotrane.hatem@gnet.tn

Ukraine
Secretariat of the Ukrainian Parliament Commissioner for Human Rights
Larysa KHOROLETS
Advisor of the Ukrainian Parliament Commissioner for Human Rights
Tel. 380 44 253 8922/ 2091
Fax. 380 44 226 3122/ 253 8922
foreign@ombudsman.gov.ua;
omb@ombudsman.gov.ua

Authorized Person of the Oliy Majlis for Human Rights Institutions
Mirzatillo TILLABAEV
Senior Legal Officer
Tel. 260 1 251 327 / 251 357 / 234 620
Fax. 260 1 251 342 / 234 620
phrc@zamnet.zm; mmalila@zamtel.zm

Uzbekistan
Embassy of Uzbekistan (on behalf of the NHRC of Uzbekistan)
Alikhanov BAKHODIR
Second Secretary
Tel. 574 6554/ 577 3660
Fax. 578 0576
bakhoshka@yahoo.com

OHCHR

Office of the United Nations High Commissioner for Human Rights
Louise ARBOUR
High Commissioner

Hina JILANI
Special Representative of the UN Secretary General on Human Rights Defenders

Orest NOWOSAD
Coordinator, National Institutions Unit
Tel. 41 22 917 92 83
Fax. 41 22 917 90 18
onowosad@ohchr.org

Marianne HAUGAARD
Human Rights Officer (Organizer), National Institutions Unit
Tel. 41 22 917 92 87
Fax. 41 22 917 90 18
mhaugaard@ohchr.org

Jacqueline BROUSSIN
Organizer Assistant, National Institutions Unit
Tel. 41 22 917 92 83
Fax. 41 22 917 90 18
jbroussin@ohchr.org

Edward J. FLYNN
Human Rights Officer
Tel. 41 22 917 9138
Fax. 41 22 917 9005

Tsedev HULAN
Human Rights Officer
Tel. 41 22 917 92 81
Fax. 41 22 917 90 18
htsedev@ohchr.org

Wan Hea LEE
Acting Regional Representative for Asia Pacific
Tel. 66 2 288 1235
Fax. 66 2 288 3009
leew@un.org

APF Secretariat

Asia Pacific Forum of National Human Rights Institutions
Kieren FITZPATRICK
Director
Tel. 61 2 9284 9845
Fax. 61 2 9284 9825
KierenFitzpatrick@asiapacificforum.net

Phillippa DARGAN
Deputy Director
Tel. 61 2 9284 9644
Fax. 61 2 9284 9825
pipdargan@asiapacificforum.net

Jacqueline Veloria MEJIA
Projects Manager
Tel. 61 2 9284 9869
Fax. 61 2 9284 9825
jakemejia@asiapacificforum.net

Thuy DOAN-SMITH
Development Manager
Tel. 61 2 9284 9607
Fax. 61 2 9284 9825
thuydoan-smith@asiapacificforum.net

Jacqueline Veloria MEJIA
Projects Manager
Tel. 61 2 9284 9869
Fax. 61 2 9284 9825
jakemejia@asiapacificforum.net

NGO

Brundi
UN Associations of Brundi
Fabien Nkurunziza
President

UN Associations of Brundi
Eddy Ruremesha
Member

UN Associations of Brundi
Pierre Nkunguzi
Member

China(Hong Kong SAR)
Asian Human Rights Commission (AHRC)
Sanjeewa LIYANAGE
Programme Officer
Tel. 85 2 2391 2246 / 2698 6339
Fax. 85 2 2698 6367
sanjeewa@ahrchhk.org

Asian Human Rights Commission (AHRC)
Jeong Ho MOON
Intern
Tel. 852 2698 6339
Fax. 852 2698 6367
moonjeongho@ahrchk.net

Congo
CLUB DES AMIS DE L'ONU POUR LA PAIX
Flavien MULUILE-ELUMBA
EMPLOYE

Egypt
Arab Org. Human Rights AOHR
Alaa SHALABY
Senior Researcher
Tel. 202 761 12 34/ 210 648 89 87
Fax. 202 418 53 46/ 202 761 12 38
shalabi@arabhumanrights.org

Fiji
Citizens' Constitutional Forum
Jone DAKUVULA
Director of Programmes
Tel. 679 3306376
Fax. 679 3308380
jdakuvula@ccf.org.fj

India
Asian Center for Human Rights(ACHR)
Suhas CHAKMA
Director
Tel. 91 11 25620583
Fax. 91 11 25503626
features@achrweb.org

CARAM Asia / India Migrants forum
Bernard DURAISAMI
Director of India Migrants Forum
aruno@xlweb.com

Asia Pacific Human Rights Network (APHRN)
Ravi NAIR
Executive Director
Tel. 91 11 2619 2717/ 1120/ 2706
Fax. 91 11 2619 2717/ 1120/ 2706
rnair@aphrn.org

Indonesia
HRWG-Indonesia's NGO Coalition for International Advocacy
Rafendi DIAMIN
Coordinator
Tel. 62 21 70733505
Fax. 62 21 3150137
infobd@dds.nl

ELSAM-Institute for Policy Research and Advocacy
Ifdhal Kasim
Member

Japan
Fukuoka International Law Offices
Makoto KONDO
Attorney-at-Law
Tel. 81 92 781 7440
Fax. 81 92 781 5504
kondo@fukuokakokusai.gr.jp

The International Movement Against All Forms Of Discrimination and Racism
Hideki MORIHARA
Secretary-General
Tel. 81-3-3586-7447
Fax. 81-3-3586-7462
imadris@hh.iij4u.or.jp; imadris@imadr.org

Japan Federation of Bar Association
Fumio TAKEMURA
Tel. 81 3 3580 9741
Fax. 81 3 3580 9840
itoa@nichibenren.or.jp

Asia-Pacific Human Rights Information Center
Nozawa MOEKO
Researcher
Tel. 81 6 6577 3578
Fax. 81 6 6577 3583
nozawa@hurights.or.jp

Malaysia
Education and Research for Consumers Malaysia
Sharon Shalita Nobbel
eratraining@myjaring.netsharonshalita@yahoo.com

Nepal
Youth Alliance for Development
Chauyen Lai Shrestha
President

Youth Alliance for Development
BharatKji Kunwar
Member

Literacy Academy for Dalit of Nepal
Kesh Bahadur Pariyar
President
ladnepal@hotmail.com

Literary Academy for Dalit of Nepal
Devendra Paudel
Program Officer
ladnepal@hotmail.com

Informal Sector Service Center
Bijay Raj Gautam
Director
ladnepal@hotmail.com

Republic of Korea
Korea House for Int'l Solidarity
Hae Dong YI
Representative
Tel. 02-3675-5808
Fax. 02-3673-5627
khis21@empal.com

Korea House for Int'l Solidarity
Hae Dong YI
Hyun Phil NA
Staff
Tel. 82 2 3675 5808
Fax. 82 2 3673 5627
khis21@empal.com

Korean Progressive Network 'Jinbonet'
Jeong Woo KIM
International Coordinator
Tel. 82 2 701 7688
Fax. 82 2 701 7112
patcha@patcha.jinbo.net

Solidarity for New Society
Chang Soo LEE
Chairperson
Tel. 82 2 925 0062
Fax. 82 2 924 0062
chairperson@newsolidarity.org

Solidarity for New Society
Won Suk PARK
Director for Civil Rights Campaign
Tel. 82 2 723 5303
Fax. 82 2 723 5055
stpark@pspd.org

Joint Committee for Migrant Workers in Korea
Gi KO
Secretary General
Tel. 82 2 747 6830
Fax. 82 2 747 6832
princekgb@hanmail.net;
princejoko@yahoo.co.kr

Women Making Peace
Young Hee SHIM
Representative
Tel. 82 2 2275 4860
Fax. 82 2 2275 4861
wmp@peacewomen.or.kr

Women Making Peace
Sook Im KIM
Co-Representative
Tel. 82 2 2275 4860
Fax. 82 2 2275 4861
peacemind21@paran.com;
wmp@peacewomen.or.kr

Sarangbang Group for Human Rights
Young Won KANG

Amnesty International-Korea
Enn tae GO

Good Neighbors
Bupryun
Erica KANG

South Africa
Centre for Conflict Resolution
Bulelwa NGEWANA
Senior Manager
Tel. 27 21 4222 512
Fax. 27 21 4222 622
bluelwam@ccr.uct.ac.za

Centre for Conflict Resolution
Michelle PARLEVLIET
Programme Manager
Tel. 27 21 4222 512
Fax. 27 21 4222 622
mbparl@ccr.uct.ac.za

Switzerland
Association for the Prevention of Torture
Mark THOMSON
Secretary General
Tel. 41 22 919 21 70
Fax. 41 22 919 21 80
mthomson@apt.ch

International Commission of Jurists
Ian SEIDERMAN
Legal Adviser
Tel. 41 22 979 3823
Fax. 41 22 979 3801
seiderman@icj.org

Geneva for Human Rights - Global Training
Adrien-Claude ZOLLER
President
Tel. 41 22 320 27 27/ 41 22 345 82 00
acz.hr@bluewin.ch

International Service for Human Rights
Melissa FERNANDEZ
Christopher SIDOTI
Director
Tel. 41 22 733 5123
Fax. 41 22 733 0826
c.sidoti@ishr-sidh.ch

International Service for Human Rights
Melissa FERNANDEZ
Coordinator
Tel. 41 22 733 5123
Fax. 41 22 733 0826
gtc@ishr-sidh.ch

Association for the Prevention of Torture
Philippe TREMBLAY
OPCAT Campaign Coordinator
Tel. 41 22 919 21 70
Fax. 41 22 919 21 80
apt@apt.ch

Taiwan
Taiwan Association for Human Rights (TAHR)
Ken H.C. CHIU
Attorney at Law; Consultant & Former President
Fax. 886 2 2363 9787
kewnlord@ms19.hinet.net

Taiwan Association for Human Rights (TAHR)
Shih-szu WANG
Consultant
Tel. 886 2 2363 9787
Fax. 886 2 2363 6102
kenlord@ms19.hinet.net

Taiwan Association for Human Rights (TAHR)
Cheng-shang KAO
Consultant
Tel. 886 2 2363 9787
Fax. 886 2 2363 6102
bajack_kao@yahoo.com.tw

Tanzania
Tanzania Human Rights Foundaion
Adam H. Mzee
Youth Leader

Tanzania Human Rights Foundaion
Saidi Pamballelo
Field Worker

Tanzania Human Rights Foundaion
Dennis Pius Mwamsera
Field Worker

Thailand
Asian Forum for Human Rights and Development (Forum-Asia)
Somchai HOMLAOR
Executive Director
Tel. 66 2 276 9846-7/ 693 4940
Fax. 66 2 693 4939
somchai@forumasia.org; info@forumasia.org

Asian Forum for Human Rights and Development (Forum-Asia)
Judy PASIMIO
Resource Officer

The Philippines
Migrant Forum in Asia
William GOIS ASHLEY
Regional Coordinator
Tel. 63 2 433 3508
Fax. 63 2 433 1292
mfa@pacific.net.pk

Initiatives for International Dialogue
Augusto Miclat
Executive Director
gus@iidnet.org

Task Force Detainees Philippines
Aurora Corazon A. Parong
Executive Director
gus@iidnet.org

Coalition for the International Criminal Court
Evelyn Serrano
Asia Coordinator
evelyn@forumasia.orgciccasia@iccnow.org

Uganda
Foundation for Human Rights Initiative (FHRI)
Livingstone SEWANYANA
Executive Director
Tel. 256-41-510276 / 510263 / 510498
Fax. 256-41-510498
fhri@spacenet.co.ug; fhri@starcom.co.ug

United Kingdom
Amnesty International
Karima BENNOUNE
Consultant
Tel. 1 248 546 9479
Fax. 44 2074 956 1157
amirak67@att.net

Amnesty International
Karima BENNOUNE
Rajiv NARAYAN
Researcher
Tel. 44 20 7413 5540
Fax. 44 20 7956 1157
rnarayan@amnesty.org

Oxford Media Research
Richard CARVER
Director
Tel. 44 1865 793948
Fax. 44 1865 721375
richard@oxford-media-research.org

Vietnam
Vietnamese Research Centre for Human Rights
Nguyen LOC
Human Rights Researcher and Lecturer / Human Rights Consultant
Tel. 844 8362 468
Fax. 844 7565 126
nguyenloc1970@yahoo.com

Government Observers

Australia
Australian Government
Amanda GORELY
Deputy Permanent Representative

Australian Government
Steve THOM
Executive Officer
Tel. 61 2 6261 2189
Fax. 61 2 6261 2272
steve.thom@dfat.gov.au

Australian Government
Evelyn LOH
Policy Analyst

Tunisia
Ministry of Foreign Affairs
Abdessalem HTIRA
Director General

Others

Bangladesh
Youth Action for Human Rights of Bangladesh (YAHRB)
Gazi RASHEL
Vice President
Tel. 88 02 9135766
Fax. 88 02 9135766
yahrb@asiamail.com

Youth Action for Human Rights of Bangladesh (YAHRB)
Md. KARIM
Secretary General
Tel. 88 02 9135766
Fax. 88 02 9135766
yahrb@asiamail.com

University of Chittagong
Kamal AHMED
Associate Professor
Tel. 880 2 9134452
kahmed@bdcom.com

Cameroon
APAARC
Nicole FOMETE HATOU
Legal Assistant
Tel. 237 985 36 15
Fax. 237 343 28 89
nfomete@yahoo.fr

Dem. Rep. Congo
CLUB DES AMIS DE L'ONU POUR LA PAIX
Flavien MULUILE-ELUMBA
EMPLOYE
Tel. 243 995 7760
Fax. 1 775 254 5478
flavien_elumba@hotmail.com

Hungary
The International Law Research & Human Rights Monitoring Centre
William EJALU
Deputy Chairperson
Tel. 36 30 4329124/ 36 1 2160592
Fax. 36 1 2160592
nemzetkozijogert@yahoo.com

Ivory Coast
Jean Helene World Circle
Mohamed SOUMAHORO
President
Tel. 225 05 02 46 84
Fax. 225 21 28 11 92
circlejeanhelene@hotmail.com;
yirikro@yahoo.fr

Serbia and Montenegro
Belgrade Center for Human Rights
Vojin DIMITRIJEVIC
Director
Tel. 381 11 432572
Fax. 381 11 3085328
vojin.bgc@sezampro.yu

Somalia
Social Developent Services (SDS)
Hassen MEDER
Tel. 252 242 8137
Fax. 252 225 0006
hassanmadar2000@yahoo.com

Conference Secretariat

Planning and Agenda Development
Young Hee NA
Chief

Byung-hoon OH
Staff

Seung Chol CHOI
Staff

Jae-man PARK
Staff

Susan KIM
Staff

Seung-Ki HONG
Staff

Youseon OH
Staff

Yoon-Ah OH
Staff

Philip Dorsey IGLAUER JR
Staff

Sung-Yong HWANG
Staff

Hong-Jin KIM
Staff

Nicole HALLETT
Intern

Evelina BOZEK
Intern

Ha Hyun BAE
Intern

Haejin LEE
Intern

Protocol and General Affairs
Seuk Kiu JIN
Chief

Hye Woong CHUNG
Staff

Yeung Hi KIM
Staff

Sun Young IM
Staff

Hyo Jin KIM
Intern

Publicity and Publications
Kyu Sun NAM
Chief

Sook Mee PARK
Staff

Seol Ah YOON
Staff

Gang Bae PARK
Staff

Myung Hee SUH
Intern

Working Group Rapporteurs' Reports

Working Group 1: Conflict and Countering Terrorism: Economic, Social and Cultural Rights

Morning Session

The chairman called meeting into order at 10:00 am as the representative of Thailand was not available so a Rapporteur was elected through nomination by Senegal for Egypt delegate Dr. Galal.
The chairman requested every member to introduce him/herself.

The First paper by Justice Anand, former chief Justice of India and chairman of NHRC of India. Chairman introduced the Speaker.

Speaker emphasized that crime existence from advent of mankind. Terrorism is a special crime. It is not only against individual, but also against society. It is an attack on humanity to spread fear thus requires special focus. No consensus on definition of terrorism is reached. In India 1994 Supreme Court draw line between terrorism and law and order. To combat terrorism is a necessity and what happened in Russia recently highlights the issue. Dealing with terrorism has to be brought within parameter of law. State terrorism is no answer to combat terrorism.

Sovereignty of a nation has to be protected but not on the expense of human rights of the people. State objective is to protect the nation i.e. the people. Terrorism hits at the people so if a state violates the law then no difference. National institution can play an effective role to bring the focus on this connection.

Selective approach in dealing with terrorism creates confusion between freedom fighter and terrorist. For freedom fighter to abuse women or to kill children is a great offence to the concept of freedom. Terrorism is undeclared war on society. Total neglect on social and economic rights breed terrorism. It is necessary to tackle the root causes, and frustration and feeling injustice. State and national institutions have an important role. Unemployment, health, education, need for food, utilize the energy of

youth. Justice mentioned the incident of Munich 1982 was an example that terrorism was not born in Sep 11, 2001, He emphasized that collective approach was necessary. He put forward certain suggestions as follows:

There is an urgent need for evolving and putting in place a mechanism for channelising the grievances of the people. Therefore, countries, which have not set up an national institution so far, must do so without any further delay on the guidelines contained in the Paris Principles.
The National Institutions must, on their part, ensure speedy redressal of grievances brought before them.

The National institutions also need to focus on the socio-economic dimensions and related inequities in the society. Therefore, greater co-operation between the institutions for that purpose is necessary.

National Institutions should step up the pace of dialogue and scope of joint partnerships with the non-governmental organizations.

Issues relating to Economic, Social and Cultural Rights and monitoring their implementation should for an important agenda for all national institutions.

Networking between national Human Rights institutions and sharing of information and best practices between them can be very useful.

Meeting is resumed at 10:30.

Upon the request of the chair, Tunisian delegate introduced himself.

Mr. Lee, advisor of Korean Commission of Human Rights read the paper of Volmar Pérez Ortiz of Columbia because of the absence of Columbian participant. The paper focuses on Columbian internal conflict which affects the life of the people. Three issues affect the Columbian armed conflict and their interaction has a bearing on human rights. First, the direct impact of the conflict itself, including military actions by legal and illegal groups whose activities cause the displacement and exile of the population, attacks on infrastructure. Second, legislative and administrative measures adopted by the State in the face of the conflict and demands and administrative measure considerable resources in response to wartime needs. Last, measure, implemented to prevent and fight subversive.

The Columbia conflict is focused around drug problems. The paper narrates a number

of decrees. The armed conflict destroyed wealth and drain resources that would have been used for human development. The paper highlighted seven types of "conflict costs" as follows:

- Direct military spending
- Destruction of tangible assets and infrastructure.
- Economic value of destroyed live.
- Cost of social damages
- Illicit transfer
- Waste due to fear and uncertainty
- Destruction of intangible assets, such as trust

The direct costs of the conflict affect the future economic growth as they destroy the infrastructure, sacrifice human capital, and alienate national and foreign investments, and furthermore, sap the country's growth potentialities. The war reduces the availability and the productivity of factors, themselves variables on which the GDP growth depends.

The Conflict affected the children, young people, ethnic minorities and displacement of peoples.

In Conclusion, the paper states that

- The fight against terrorism required an inevitable ethnical commitment both from the Government as well as from the civil society.
- The armed conflict in Columbian involves two noticeable a transnational crimes: drug trafficking and terrorism.
- Peace and security are the corner stones of economic development and, indeed, the full enjoyment of our rights. The solutions need to be integral and concurrent.
- The chairman summarized that war which lasted for nearly forty years caused serious damages. The conflict was not limited to Columbia but extended to neighboring countries. Then, opened group debate. Dr. Galal from Egypt praised Justice Anand paper which is excellent but is does not elaborate on the issue of foreign occupation and rights to self-determination. Also state terrorism by an occupying power should not be tolerated.
- Delegate from Albania also commended the paper and ask how we could define the state terrorism.
- Delegate from Korea said that the paper is well written. The requested more elaboration on the role of national institutions could act on avoiding conflicts especially in economic grievance.

- Senegal delegate: stated that in order for national institutions to do their role they must be respected and supported by the people. Before we talk about terrorism, the issues are more related to social and economic rights especially in Africa as extreme poverty prevails. Precondition for human rights is democracy and system should act according to international criteria. Human Rights is responsibility of three players, state, civil society and the people.
- Justice Anand responded to questions. For Egypt delegate, he said that the paper is not dealing with specific issues but he agrees that occupation is as bad as all often violations of human rights.

For Albanian delegate, Justice emphasized that state should show act according to the law not above the law. The failure of the state to protect human rights is failure of governance. Inaction of a state could be compulsory or deliberate or voluntarily.
- If state did not take action for the protection of persons in their custody they should be held accountable.

Responding to Mr. Lee from Korea about the role of national institutions, Justice said that they could create awareness about issues of human rights. This could be an early warning approach.
To the delegate from Senegal, Justice agreed that the respectability and credibility of NIs are very important. Prevention is more important than cure. Judiciary plays a very important role. Fair trial is very essential for the victims and witnesses. Justice narrates some cases in Gujarat and other states in India. He emphasized the necessity of the voice of civil society to be heard.

Justice Anand emphasized that economic, social and cultural rights should not be neglected, otherwise they give rise to complex and emerging forms of terrorism, which could threaten democratic societies worldwide.

Exploitation and massive inequalities could breed terrorism and impede enjoyment of human rights.

- Mr. Bello of Nigeria also commended the paper then added that governments used the excuse of terrorism to justify their oppression of their peoples. He referred to the American and British actions in Iraq caused more damage to Iraqi people and that is very serious without condoning the dictatorship of Sadam Hussein. In Africa we have more fundamental issues such as poverty. More emphasize in political and civil rights on the economic and social rights. We can build on Justice Anand recommendations. He also referred to NGO's papers.
  Tunisian delegate made an intervention. Justice Anand paper raised many issues. I

believe that act of Terrorism can not tolerated. All human rights are very valuable and important.

Justice Anand thanked all delegates for their comments and referred to some points in his paper where he emphasized the economic and social rights.

The chairman has summarized the achievements of the working group. He referred to the ideas mentioned by some African delegates on economic and social rights. The chairman alerted the meeting about necessity of the analyzing the root causes of conflict in the afternoon session.
The meeting is adjourned at 12:00.

Afternoon Session

The afternoon session was resumed at 14:10 hour.
The Rapporteur summarized the deliberations of morning session upon the request of the Chairman.
Then the representative of AI took the floor on behalf of the NGO's. She reiterates the indivisibility and interdependence of all human rights. She emphasized that countries should be held accountable for any violations. She emphasized particularly the issue of women and children especially in time of war, parties to a conflict often rape women and girls as a weapon of war.

The NGO's submitted a number of recommendations as follows:

All national human rights institutions should ensure that economic, social and cultural rights are included within their mandates.
They should develop guidelines for their work on economic, social and cultural rights.
National human rights institutions should demand that their home governments submit timely and complete reports to the CESCR, if they are state parties to the International Covenant on Economic, Social and Cultural Rights(ICESCR).
National Institutions consider creating mechanisms to respond in particular to destruction of schools during the course of conflict.
An essential task for national human rights institutions in conflict situations.
National human rights institutions should monitor the economic, social and cultural rights implications of the activities and policies of international financial institutions.
National human rights institutions should closely scrutinize national budget priorities to ensure that the call of the Beijing Declaration and Platform for Action that excessive resources used for military purposes should be redirected to meet human needs.

The chairman proposed to discuss the issue of economic and cultural rights. He requested each delegate to brief about economic rights in his/her country.
Delegate from Indonesia spoke about combating terrorism in his country. He emphasized that governments should redress all damages. They established a committee to follow up the matter. He also support the NGO's statement.

Egypt delegate explained the Egyptian situation as far as economic and social rights are concerned.
Thailand delegate has mentioned some observations such as :
The responsibility of state to cater to the needs of the people.
National institution could help to identify the leaders of each community to help in protecting their own community and negotiate with the state in their regard.
A delegate from Korea emphasized what has been mentioned by AI (Amnesty International) concerning slavery of women and sexual violence against them during Japanese occupation. He added the same practices still up to now happened in commitment of crimes against women in society.

Tunisia delegate mentioned that State has a special role but NI's have also right to draw the attention of their governments to this matter.

Senegal delegate added that the issue of corruption should be included in the recommendations because it violates the human rights. So, Combating corruption is very important.

Nigeria delegate elaborated on the role of Judiciary in Nigeria according to the constitution particularly the economic and social rights.

Justice Anand explained the constitution of India as far as human rights issues. The court practice is varied in their interpretation of the economic and social rights. Justice Anand explained many aspects as practiced in India.

Dr. Galal gave a briefing about Egypt experience on unemployment, health-care and education. Then the difficulties people are facing and the role of national human rights council to refocus the attention on these problems.

India requested adding recommendation on food security and other issues.

Egypt delegate requested adding the concept of international cooperation to help countries to fulfill their obligations in the economic rights of their citizens.

Thailand delegate requested prioritizing the recommendations and this was repeated by the NGO delegates from NGO forum.

A delegate of NGO highlighted the importance of NIs to help disseminate information on humanitarian laws and UN guiding principles on international displacement and assist governments to implement these conventions.

Another NGO delegate emphasized the need to establish more comprehensive structural mechanism for cooperation that will ensure systematic and sustainable relations in various forms.

Senegal Delegate said that parameters should be criteria for judging thing accordingly.

The Working group made the following recommendations:

There is an urgent need for evolving and putting in place a mechanism for channelising the grievances of the people. Therefore, countries, which have not set up a national institution so far, must do so without any further delay on the guidelines contained in the Paris Principles.
The National Institutions must, on their part, ensure speedy redress of grievances brought before them.
The National institutions also need to focus on the socio-economic dimensions and related inequities in the society. Therefore, greater co-operation between the institutions for that purpose is necessary.
National Institutions should step up the pace of dialogue and scope of joint partnerships with the non-governmental organizations.
Issues relating to Economic, Social and Cultural Rights and monitoring their implementation should form an important agenda for all national institutions.
Networking between national Human Rights institutions and sharing of information and best practices between them can be very useful.
Enhanced role of NIs on ESCR
International and/or regional cooperation among NIs in studying measures to protect ESCR
Enhanced cooperation among international HR bodies, NIs and NGOs.
Ensuring food security, especially for the vulnerable sections of population, which would go in a long way in preventing development of conditions which give rise to terrorism/conflicts?
Providing safety-nets to vulnerable sections of society in the context of globalization and liberalization of economy by many of the developing countries
Call upon international community, particularly developed countries to assist the

developing countries to fulfill their obligations to realizing ESCR of their citizens.
Reinforce the capacity of NIs with the view to better guaranteeing the state's respect for their obligation according to ICESCR and support the adoption to its optional protocol.
Call up governments to pay proper attention to deal with issues of corruption which endangers human rights enjoyment.
Countries should not impose any food embargo on other countries which affect negatively the food security of the people.
Enforce the mechanism for fighting poverty according to the UN resolution establishing the World Solidarity Fund.
The group welcomed the recommendations made by the NGOs and decided to enclose them with this report as an annex one to this report to be submitted for consideration by the plenary.

The meeting was adjourned at 5:30 pm after the adoption of the report.

****

Working Group Rapporteurs' Reports

Working Group 2: Conflict and Countering Terrorism: Civil and Political Rights And the Rule of Law

I. We noted that terrorism shows itself in many different forms, including in conflict. However, there is no doubt that States have the responsibility, and the duty under international law, to protect their inhabitants from all forms of terrorism.

Part of combating terrorism is understanding it. This does not mean to justify it, but to be more effective in putting an end to it. It is, thus, not inappropriate to study and to address the root causes of terrorism. NIs must at all times be alert to this fact in their work.

II. The fight against terrorism must take place within the framework of human rights and the rule of law. There are certain fundamental principles all can agree on. The Group did not, of course, propose a definition of terrorism. However, it is a responsibility of States, in conformity with the principle of legality, to define terrorism precisely in the law. The concept of terrorism must not be open to abuse by authorities. It was noted that some argue the concept of terrorism must be carefully considered in the context of national liberation struggles and exercise of the right to self-determination, which is guaranteed for example in the International Covenant on Civil and Political Rights. However, reprehensible incidents such as the Beslan hostage-taking and killings in Russia remind us that unquestionable and indefensible acts of terrorism can occur in all political settings.

Together with the principle of legality, certain other principles must also be respected at all times. In this respect, the Group took note of the Berlin Declaration of the International Commission of Jurists, setting out key principles to be respected in the context of the struggle against terrorism. These include the fundamental requirements of due process and fair trial, as well as respect for human dignity. The presumption of innocence applies at all times. No one should be subject to indefinite detention without review, and without access to counsel, and family. The Group underlined the

need for a remedy, in cases of alleged infringement of human rights in counter-terrorism measures. There are times when exceptional measures might be justified, but they must be narrow in scope, and their implementation must be subject to independent review. The courts thus play a key role.

III. NIs have several vital contributions to make in the context of protecting human rights, including civil and political rights, while countering terrorism. They can serve a unique role as a bridge between Government and civil society. The first area of action is **preventive**. They can review legislation, make public interventions against measures based on discrimination, racism, or that otherwise threaten human rights, and raise sensibilities and awareness about both the origins of terrorism and the most effective, comprehensive responses. NIs must commit themselves to stimulating and leading public debate.

In this sense, the Group emphasized the importance of the free expression of views and freedom of the media. NIs in several countries in our group (Korea, Guatemala, Malaysia, and Australia) referred to specific instances in which they played a leading role in public debate and scrutiny over controversial draft counter-terrorism measures. Moreover, we considered that the struggle against terrorism itself is not only a military struggle, or a financial one -- it is also a struggle of ideas. This debate must take place in the open.

Closely linked to free expression is human rights education. NIs can take a leading role in disseminating awareness of human rights standards throughout society, including in legal circles, such as among judges, as well as in communities most affected by counter-terrorism measures. We noted the emphasis of our NGO colleagues on human rights education.

Next, NIs can serve a **monitoring** role, identifying violations of human rights in the implementation of counter-terrorism measures. This is another area in which it is important to reach out to communities, including minority communities, whose members may be at greater risk. Our Group also noted the NGO statement presented to us, proposing that NIs adopt plans to periodically review counter-terrorism measures, including their impact on human rights defenders in their countries.

IV. Finally, NIs must take advantage of the networks of support that are available to them, as has been evident at this conference. They must seek to use the international mechanisms of the UN and regional bodies to lend further credibility to their interventions. They must learn from and build upon the similar experiences of other

NIs, especially within their regions. And they must build partnerships with civil society in order to strengthen their voice and represent a broader point of view.

****

Working Group Rapporteurs' Reports

Working Group 3: The Role of National Human Rights Institutions in Conflict Situations

The discussion was introduced by Justice Nayan Khatri, Chairperson of the Nepal Human Rights Commission. He provided for the overall context in which national institutions (NIs) such as his operate and the constraints they face. He made the following points: 1. NIs have difficulty in ensuring accountability with respect to non-state actors; 2. particular attention needed to be paid to ensure that security forces respect human rights and humanitarian norms and standards; 3. NIs with a broad based mandate, operating within the parameters of the Paris Principles, can have a prominent role to play in an armed conflict situation; 4. NIs to adhere to human rights and humanitarian standards with particular attention to be paid to vulnerable groups including women and children. While NIs may have the competency to deal with conflict, every country is unique and the specificity of issues needs to be taken into account. Questions which needed to be asked included:

- How to check use of excessive force by security forces in conflict;
- How to encourage the government to maintain the rule of law conducive to human rights protection and promotion;
- How to make non-state actors accountable for abuses of human rights;
- How to get the contending parties to respect human rights and humanitarian law during conflict situations;
- How to transform the environment of fear coupled with impunity;
- How to ensure that the state provides for rehabilitation; and
- How to expand the outreach of NIs in conflict situations.

Mrs. Margaret Sekaggya, Chairperson of the Uganda Human Rights Commission and Mr. Brice Dickson, Chairperson of the Northern Ireland Human Rights Commission made comprehensive presentations regarding the role of NIs in conflict situations. Both statements are included in the final report of the Conference.

Mrs. Sekaggya noted the role of NIs concerning conflict situations this could be assessed in three stages: 1. pre-conflict situations and prevention; 2. during conflict; and 3. post conflict, reconciliation and prevention of conflict reoccurring. The role of an NI in these phases was not easy and the establishment of peace requires time and effort. Respect for human rights and the rule of law provides the foundation to avoid conflict. Where rights are denied then conflict will come. Some existing functions of NIs in relation to situations of conflict include: a mandate to visit places of detention; the undertaking of civic, peace and human rights education; ensuring government compliance with international conventions and treaty obligations; and the submission of reports.

Mr. Dickson's presentation focused on conflict which revolves around terrorist activity. While it was important for NIs to undertake a broad range of activities this was not always possible; sometimes an institution was prohibited from undertaking certain actions due to its legislative mandate. Where an NI took action contrary to that which was not always explicitly, or even implicitly, provided for in its mandate and the NI took action, its credibility and impartiality could be called into question. There are built in limitations to an NI as well as significant resource implications in dealing with such complex issues as conflict and countering terrorism. The review of proposed anti-terrorism legislation is often entrusted to NIs by governments and the views of the latter are taken into account. NIs also can also advise government on issues concerning counter-terrorism.

It was noted that the Pre-Conference NGO Forum emphasised that the roots of terrorism are often similar to the structural causes of violent conflict, such as poverty, deprivation, social and political exclusion, marginalisation, etc. Consequently, NIs should not only review and comment on the human rights aspects of security legislation in their respective countries, but should also emphasize the importance of adopting long-term measures and policies to rectify inequity, injustice, inequality and insecurity so as to reduce the potential for terrorism.

Participants discussed the following main areas:

I. Early Warning and Prevention

1. Some NIs' capacity to receive complaints permits them to detect that a conflict is likely to arise. It also provides for indicators of possible systemic issues which need to be addressed to avoid conflict.
2. It was important for NIs to avail themselves of existing knowledge on early warning systems and build their capacity in this regard. Through investigation and monitoring of alleged violations NIs have access to clear, accurate, and meaningful

information; it is therefore possible for them to develop indicators against which conflict can be foreseen. Timely intervention can prevent the situation from escalating.

3. There were no applicable human rights standards for situations of conflict such as those provided in the Geneva Conventions; but the existing human rights framework is an important point of reference.
4. NIs can prevent conflict by creating a culture of human rights. They should also engage in peace and human rights education with particular attention paid to security forces. It was noted that education can help empower the people to make their own decisions.
5. Peace building through promotion and protection of human rights is a process which is necessary over a long period of time and requires the support of all levels of society. NIs can network with other stakeholders and cooperate with them in peace-building. Working with civil society, religious and cultural leaders and especially the media will facilitate the work of NIs in that respect.

II. Mediation and Conciliation

NIs are impartial actors which can work to ensure that human rights are respected between the belligerent parties. However they are not there to negotiate settlements as this could compromise their independence. However, as in the case of Nepal, the drafting of codes of conduct to ensure that the parties respect human rights, should be considered.

III. Protection of Victims of Conflict

1. In the context of giving advice to organisations dealing with conflict, NIs need to be clear and recognise that it is the primary obligation of states to protect their citizens and that it is their right to have this done. In performing the task, states must recognise that there is a balance to recognise between protecting society and ensuring that the rights of individuals, who are accused of offences connected with terrorism, are protected.
2. Because NIs are networked internationally they are in a good position to exchange best practice in the area of conflict and countering terrorism. The role of the United Nations, its subsidiary bodies and regional organisations were highlighted NIs have an obligation to engage with such bodies (i.e. Commission on Human Rights, Treaty Bodies, and Special Procedures) and keep them informed as to whether conflicts in their societies are being properly addressed from a rights-based approach.
3. The opening of regional offices, even in areas where conflict occurs, constitutes a form of protection for the civilians. Such offices are vulnerable but it is important

that they remain open as long as possible. Similarly some NIs, as in Uganda, have quasi-judicial powers and provide compensation to victims. In situations of conflict torture, arbitrary arrest and detention, and the repression of liberty are main human rights violations.

4. The plight of internally displaced persons (IDPs) is among the most severe during conflict. The Uganda Human Rights Commission, for example, has helped ensure that the government provides education, health, and humanitarian assistance to IDPs living in camps. Complaints are received from the IDPs in camps in particular regarding security force abuses. One challenge is to deal with individuals who are recruited or abducted from camps, especially children, into military action. Measures, including the granting of amnesty, are used to help reintegrate such persons into their home society.
5. NIs, as those in Morocco and Peru, were directly involved in advocating for the establishment of truth and reconciliation type commissions. Once recommendations are issued by these commissions it is important for NIs to take a role in encouraging and monitoring their implementation.

IV. Limitations

Operating in a situation of conflict is expensive for NIs. Transport, often by air is costly and conditions are often very dangerous. Ensuring compliance of non-state actors with international human rights norms is difficult - their agenda is not known and then tend to ignore such norms.

Working Group Rapporteurs' Reports

Working Group 4: Migration in the Context of Conflict and Terrorism

Key points from the discussion, which comprised both NI's and NGO's present:

1. Internal and international conflicts are drivers of both involuntary and voluntary migration, which in turn may cause further conflict. The measures taken by governments to counter terrorism have had the effect of further compromising the rights of both refugees and asylum seekers, and of migrant workers in general, particularly those who by virtue of their nationality or religious belief are treated by authorities as being a risk to national security. The context of conflict, terrorism and counter-terrorism has therefore worsened the situation of refugees and migrant workers.
2. There is a need for governments to manage migration issues as well as seeking to manage conflict, taking into account human rights standards. This includes a recognition of the importance of family reunification, the granting of citizenship, promoting understanding and acceptance, and actively supporting settlement. Not only governments, but also other non-state actors, including business corporations, need to be held accountable
3. Existing international treaties should be more effectively used to protect the rights of refugees, asylum seekers and migrant workers and their families. The issue is one of ratification, implementation and monitoring. In particular, the Convention on the Rights of All Migrant Workers and Their Families needs to be ratified and implemented in domestic legislation.
4. The right to asylum has been seriously compromised by many states, particularly in Europe, by denying asylum seekers access to their countries in order to lodge their claim to asylum. In some situations of mass displacement displaced persons are confined to "safe havens" which has the effect of denying them the protection of international refugee law. The increased detention of asylum seekers and other non-citizens without legal recourse is also a major concern. In order to prevent possible ill treatment of this particularly vulnerable category of

detainees, governments should ratify and implement the Optional Protocol to the Convention against Torture.

5. While a large investment is made in freeing up the international movement of capital and services, the freedom of movement of labour remains severely restricted, and steps to achieve greater freedom of movement of labour should also be placed on the international agenda at the same level as freedom of movement of capital and services..
6. Internal displacement arising from internal conflicts was identified alongside international displacement as a major problem. In both contexts, the temporary expedient of refugee camps and other temporary shelters has become a permanent arrangement and has marginalized significant groups of people sometimes for generations, and made them vulnerable to further exploitation.
7. The plight of the children of undocumented migrant workers is of particular concern. Although the Convention on the Rights of the Child affirms the rights of children in this situation, their plight remains unaddressed in many countries.
8. Good policy and good practices can prevent terrorism, conflict and human rights abuses.

The Role of National Human Rights Institutions

The working group identified the following roles for NHRI's in addressing the issues identified:

1. Advocating to their government (especially in migrant receiving countries) for the ratification of the Convention on the Rights of All Migrant Workers and their Families
2. Taking a more active role in the Treaty body reporting process, including CERD, CEDAW and CRC, when they are considering issues relating to migrant workers and the particular issues facing migrant women and children
3. Establishing cooperation between NHRI's in sending, transit, and receiving countries, as well as regionally, to better address the issues of migrant workers' rights, including for example the establishment of inter-national hot-lines to the NI of the country of origin
4. Actively monitoring the rights of refugees, asylum seekers and migrant workers, in cooperation with UNHCR and NGO's, including in particular the rights set out in the Convention on Migrant Workers (e.g. legal representation, fair processes, appeal rights, employment conditions, access to services, family reunification), conditions of detention (including inspection of detention camps), and treatment by police and immigration authorities.
5. Making representation to governments on legislative proposals,

particularly to ensure that human rights of migrants are not breached by counterterrorism legislation, and on their responsibility to ensure the economic and social welfare of refugees and migrant workers and their families, and halting practices such as mandatory testing forHIV Aids.

6. Having a focal point in the NHRI for issues of refugees, asylum seekers and migrant workers, and providing or supporting practical services such as hot-lines, information centres etc
7. Considering ways in which NHRI's can initiate or contribute to conflict resolution processes
8. Addressing issues of discrimination, promoting respect for difference and for cultural diversity, while being prepared to raise and address difficult human rights issues raised by different cultures and beliefs and fostering intercultural communication on these issues.
9. Promoting programmes of human rights awareness for migrant workers (pre-departure and post-arrival), and for reintegration of returning migrants, especially women migrants who often face stigmatization on their return.

****

Working Group Rapporteurs' Reports

Working Group 5: Women's Rights in the Context of Conflict

The Working Group 5: "Women's Rights in the Context of Conflict" was convened on 15 September 2004, by the Chairperson, Dr. Radhika Coomaraswamy, Chairperson of the Human Rights Commission of Sri Lanka who made an introductory statement on the rules and procedures of the meeting.

The Chairperson welcomed Dr. Sima Samar, Chairperson of the Afghan Independent Commission for Human Rights (AIHRC), as the first speaker of the Working Group who drew the attention of the participants to the country situation in Afghanistan and the accomplishments of the AIHRC. Dr. Samar noted that her country is faced with a pre-conflict, conflict and post-conflict situation which occurs at the same time and that no environment has been more hostile to women's rights than Afghanistan. The strategies of the AIHRC are to: advocate for increased security and disarmament; stress towards the end of the culture of impunity; ensure accountability by monitoring and investigating current abuses of women's human rights; ensure the codification of women's legal rights and political participation and representation; as well as to provide education on human rights.

The second speaker, Mr. Déogratias Kayumba, Vice-President of the Rwanda Human Rights Commission was welcomed by the Chairperson. Mr. Kayumba gave a statement on the country situation in Rwanda and the accomplishment of his Commission. Mr. Kayumba reminded participants about the serious human rights violations which his country had suffered during the 1994 genocide, with particular reference to the acts of sexual violence and torture inflicted o women and young girls. The major accomplishments in Rwanda today are: the creation of public institutions (among which are the National Human Rights Commission, the Ministry for gender equality and the advancement of women, the national agency for the follow-up to the Beijing Conference, the national board of women and the gender observatory) and the advancement of civil society (such as several human rights advocate non-governmental

organizations).

The representatives from the national human rights institutions (NHRI) and non-governmental organizations endorsed the proposal submitted by the chairperson to conduct the interactive dialogue under the following areas, where NHRI should play an important role in protecting women's rights in the context of conflict:

I. General issues with regard to the rights of women during armed conflict
II. Accountability for violence during wartime: monitoring, prosecution and end to impunity.
III. Women's participation in all aspects of the peace process (political and civil rights)
IV. Reconstruction and rehabilitations (economic, social and cultural rights)

I. General issues with regard to the rights of women during armed conflict

Violence against women is often invisible and unacknowledged during wartime. It sis important that NHRI play an important role in highlighting these issues, providing remedies for the women and raisin awareness about the need to protect women from violence. Participants noted the linkage between violence against women in every day life, such as domestic violence, and violence against women during war time. Sexual violence during war is sometimes part of a deliberate military strategy to terrorise the population. Conflict situations make women victims of trafficking as they become vulnerable to sexual abuse and exploitation. Women refugees are also susceptible to exploitation and abuse as migrant workers. Participants further highlighted that:

- Countries should be urged to ratify and implement the international human rights and humanitarian treaties (ICC, CEDAW, CAT, ICCPR, ICESCR, and Refugee Convention). NHRI should assist governments in implementing the concluding comments of human rights treaty bodies.
- The universality of human rights should be accepted and promoted by NHRI.
- Gender should be mainstreamed in all aspects of conflict resolution.
- A culture of peace education should be fostered and networks for preventing conflict supported.
- NHRI should exchange information and dialogue on human rights.
- Where appropriate, NHRI should support the demands for acknowledgement of past crimes and apologies for violations of human rights in cases of widespread and systematic violence against women during wartime.

II. Accountability for violence during wartime: monitoring, prosecution and end to impunity

The importance of having a national legislation that effectively defines sexual violence during wartime along the lines set out in the ICC was highlighted, in order to avoid the "invisibility" of violence against women during conflict situations.
Participants noted that:

- NHRI should have an important role in collecting data, receiving complaints and investigating allegations of violence against women during wartime in their countries.
- NHRI should make public their findings of violence against women so as to increase awareness and to bring pressure on government to comply with human rights obligations.
- NHRI should support and assist programmes for reparation and compensation for women victims of violence.
- Any Commission of Inquiry or Truth and Reconciliation Commission set up as part of peace process should have a fair representation of women. All NHRK should similarly have a fair and equitable representation of women.

III. Women's participation in all aspects of the peace process(political and civil rights)

The participants noted the importance of implementing Security Council resolutions 1325 on women and peace. The mainstreaming of gender in all aspects of peace keeping, was reaffirmed. Women's participation in the peace process is essential in order to send a message of an inclusive process, to give women experience in political negotiations and to voice to half of the population. The impact of peace process differs with regard to men and women. Women's participation at every level of the peace process must be ensured. To this end the participants suggested:

- NHRI should support setting up of mechanisms for ensuring women's participation in the peace process at all levels.
- The United Nation Security Council should involve human rights institutions of the United Nations in the peacemaking activities.
- NHRI should assist in the implementation of the human rights component of any peace agreement.
- The mainstreaming of women's issues should be ensured in all aspects of governance, in addition to creating special units for women. In the rules of business constructed by governments women ministers must be given equal status.

- Law reform should accompany the peace process so as to eradicate discriminatory practices (ex. Inheritance laws, early forced marriage, female genital mutilation).
- During the peace process, dialogue among women from the different warring groups should be encouraged so as to assist in the process of reconciliation.

IV. Reconstruction and rehabilitations (economic, social and cultural rights)

Reconstruction and rehabilitation programmes are often formulated and implemented without the participation of women and without taking the concern of women into consideration. Education and awareness of women's issues are core elements. The empowerment of women through programmes is essential so as to ensure their economic self-sufficiency and independence. Participants emphasized that:

- NHRI should support programmes for psychological counselling when women suffer from trauma due to sexual violence.
- NHRI needs to ensure the economic and social rights of war widows and single women who are often heads of household and economically marginalized in post conflict situations.
- NHRI should work to ensure that women are involved in all aspects of planning and implementing reconstruction programmes.
- NHRI should work with planners to ensure that reconstruction plans include the reproductive rights of women.

NHRI should play an important role in protecting rights of women refugees and the internally displaced persons(IDP) by

- providing a complaint mechanism for refugee/ IDP;
- inspecting refugee and IDP camps to ensure humanitarian standards;
- Taking measures to protect refugees and IDP from Violence by preventing domestic violence, sexual harassment and sexual violence in camps;
- Working toward enacting the DENG Guiding Principles on IDP as part of national legislation;
- ensuring measures are taken to prevent women from being trafficked from refugee and IDP camps;
- monitoring complaints from women in alien detention centres, prior to refugee status;
- ensuring that resettlement plans for women are sensitive to their respective needs and that women should be prepared effectively for eventual resettlement.
- monitoring forced repatriation of people.

The participants welcomed the attempts by the organizers to have working groups as it assisted in the wide-ranged discussion of ideas. It also provided a forum for NHRI and non-governmental organizations to interact in an appropriate manner. The Participants further welcomed the fruitful exchange of experiences as well as the sharing of information, and noted their satisfaction to the chairperson. The Participants recommended that the ICC continue to ensure that the issue of gender remain in next year's agenda as an item of concern.

****