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CIVIL AND POLITICAL RIGHTS: FREEDOM OF EXPRESSION

Albania*, Andorra*, Argentina, Austria, Belgium, Bulgaria*, Cameroon, Canada, Chile, Czech Republic*, Denmark*, Dominican Republic*, Estonia*, Finland*, France, Germany, Greece*, Hungary*, Iceland*, India, Ireland, Italy*, Japan, Liechtenstein*, Lithuania*, Luxembourg*, Malta*, Mexico, Netherlands*, Norway*, Poland, Portugal*, Republic of Korea, Romania*, San Marino*, Slovakia*, Slovenia*, Spain*, Switzerland*, United Kingdom of Great Britain and Northern Ireland and United States of America: draft resolution

2003/... The right to freedom of opinion and expression

The Commission on Human Rights,

Guided by the Universal Declaration of Human Rights, which affirms the right to freedom of opinion and expression and mindful of the International Covenant on Civil and Political Rights, which reaffirms, in article 19, the right of everyone to hold opinions without

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* In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

interference, as well as the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice and noting that these rights and freedoms are among those which give meaning to the right to participate effectively in a free and democratic society,

Considering that the effective promotion and protection of the human rights of persons who exercise the right to freedom of opinion and expression are of fundamental importance to the safeguarding of human dignity,

Noting that restrictions on the exercise of the right to freedom of opinion and expression could indicate a deterioration in the protection, respect for and enjoyment of other human rights and freedoms, bearing in mind that all human rights are universal, indivisible and interdependent and interrelated,

Mindful of the need to ensure that unjustified invocation of national security, including counter-terrorism, to restrict the right to freedom of expression and information does not take place,

Recalling the Johannesburg Principles on National Security, Freedom of Expression and Access to Information adopted by a group of experts meeting in South Africa on 1 October 1995 (E/CN.4/1996/39, annex), as well as the Principles on Freedom of Information Legislation (The Public's Right to Know) (E/CN.4/2000/63, annex II),

Reaffirming the need to raise awareness about all aspects of the interrelationship between the use and availability of new media of communication, including modern telecommunications technology, and the right to freedom of expression and information, and noting the efforts made in this regard in a number of international and regional forums, and mindful of provisions of relevant instruments,

Reaffirming the important role of women in the prevention and resolution of conflicts and in peace-building, stressing the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and recognizing that their contributions to these efforts are often constrained by the lack of full and effective enjoyment of their right to freedom of expression,

1. *Reaffirms* the rights contained in the International Covenant on Civil and Political Rights;

2. *Takes note* of the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (E/CN.4/2003/67 and Add.1 and 2) and welcomes in particular his ongoing and increasing cooperation with other thematic and country-specific mechanisms and with other organizations, and his efforts to promote respect for the right to freedom of opinion and expression;

3. *Expresses its continuing concern* at:

(*a*) The extensive occurrence of detention, extrajudicial killing, torture, intimidation, persecution and harassment, abuse of legal provisions on defamation and criminal libel as well as on surveillance, search and seizure, and censorship, threats and acts of violence and of discrimination, often undertaken with impunity, against persons, including professionals in the field of information, who exercise the right to freedom of opinion and expression, including the right to seek, receive and impart information, and the intrinsically linked rights to freedom of thought, conscience and religion, peaceful assembly and association and the right to take part in the conduct of public affairs, as well as at persons who seek to promote or defend these rights and freedoms, including legal professionals and human rights defenders;

(*b*) The number of cases in which the violations referred to in paragraph 3 (*a*) are facilitated and aggravated by several factors such as abuse of states of emergency, exercise of the powers specific to states of emergency without formal declaration and too vague a definition of offences against State security;

(*c*) Killings of and attacks on journalists in situations of armed conflict, as well as other threats and acts of violence, including terrorist acts, against media professionals;

(*d*) The lack of full and effective enjoyment of the right to freedom of expression by women, which contributes to inadequate action by Governments in the integration of the human rights of women into the mainstream of their human rights activities;

(*e*) High rates of illiteracy continuing to exist in the world, especially among women, and reaffirms that education is an integral component of the full and effective participation of persons in a free and democratic society, in particular for the full enjoyment of the right to freedom of opinion and expression;

4. *Calls upon* States:

(*a*) To ensure respect and support for the rights referred to in paragraph 3 (*a*), to put an end to the violations referred to in the same paragraph and to bring to justice those responsible;

(*b*) Where any persons have been detained and subjected to violence or threats of violence or to harassment, including persecution and intimidation, even after their release from detention, for exercising the rights referred to in paragraph 3 (*a*), to take the appropriate steps to ensure the immediate cessation of these acts and to create conditions under which these acts may be less liable to occur, including by ensuring that relevant national legislation complies with their international human rights obligations and is effectively implemented;

5. *Stresses* the importance of a diversity of sources of information, including mass media, at all levels, and the importance of the free flow of information, as a way to promote full enjoyment of the right to freedom of opinion and expression, and encourages the facilitation of access to the Internet;

6. *Urges* all States:

(*a*) To respect freedom of expression in the media and broadcasting, and in particular, to respect the editorial independence of the media, and to encourage a diversity of ownership of media and of sources of information, including through transparent licensing systems and effective regulations on undue concentration of ownership of the media in the private sector;

(*b*) To create and permit an enabling environment in which training and professional development of the media can be organized in order to promote and protect the right to freedom of opinion and expression and can be carried out without threat of legal, criminal or administrative sanction by the State;

(*c*) To refrain from the use of imprisonment or the imposition of fines for offences relating to the media which are disproportionate to the gravity of the offence and which violate international human rights law;

(*d*) To take all measures to investigate all threats and acts of violence, including terrorist acts, against journalists, including in situations of armed conflict, and bring to justice perpetrators of such acts;

(*e*) To refrain from using counter-terrorism as a pretext to restrict the right to freedom of expression in ways which are contrary to their obligations under international law;

7. *Calls upon* all States to respect all human rights and fundamental freedoms and calls on all parties to armed conflict to respect international humanitarian law, including their obligations under the Geneva Conventions of 12 August 1949 and the two Additional Protocols thereto of 8 June 1977, whose provisions extend protection to journalists in situations of armed conflict, and to protect media professionals;

8. *Recalls* that the International Covenant on Civil and Political Rights states that the exercise of the right to freedom of expression carries with it special duties and responsibilities and may therefore be subject to certain restrictions as set out in article 19 of the Covenant, and encourages States to review their procedures and legislation to ensure that any limitations on the right to freedom of expression are only such as are provided by law and are necessary for the respect of the rights and reputations of others, or for the protection of national security or of public order (*ordre public*) or of public health or morals;

9. *Calls upon* States to refrain from imposing restrictions which are not consistent with the provisions of article 19, paragraph 3, of the International Covenant on Civil and Political Rights, including on:

(*a*) Dissent, political debate and discussion of government policies, reporting on human rights, government activities and corruption in government, engaging in peaceful demonstrations or political activities, or expression of opinion, religion or belief;

(*b*) The free flow of information and ideas, including practices such as the unjustifiable banning or closing of publications or other media and the abuse of administrative measures and censorship;

(*c*) Access to or use of modern telecommunications technologies, including radio, television and the Internet;

(*d*) Journalists in situations of armed conflict;

10. *Urges* Governments to implement effective measures to eliminate the atmosphere of fear which often prevents women who have been victims or who are living in fear of violence, either in domestic or community settings or as a result of armed conflict, from communicating freely on their own behalf or through intermediaries and to facilitate the effective participation of women at decision-making levels in national, regional and international institutions, including in mechanisms for the prevention, management and resolution of conflicts;

11. *Recognizes* the positive contribution that the exercise of the right to freedom of expression, particularly by the media, and new technologies, including the Internet, and full respect for the freedom to seek, receive and impart information, can make to the fight against racism, racial discrimination, xenophobia and related intolerance, but expresses regret about the promotion by certain media of false images and negative stereotypes of vulnerable individuals or groups of individuals, and about the use of new information technologies such as the Internet for purposes contrary to respect for human values;

12. *Appeals* to all States to ensure that persons seeking to exercise these rights and freedoms are not discriminated against, particularly in such areas as employment, housing, social services, and education, and in this context to pay particular attention to the situation of women;

13. *Expresses* its appreciation to States which submitted to the Special Rapporteur comments on their programmes and policies with respect to access to information for the purposes of education on and prevention of human immunodeficiency virus (HIV) infection, and notes with interest the compilation of best practices prepared by the Special Rapporteur;

14. *Stressing* that the effective exercise of the right to freedom of opinion and expression, including the right to seek, receive and impart information, is of the utmost importance for ensuring effective education and information campaigns to prevent HIV/AIDS, *urges* Governments to adopt and implement policies and programmes to promote awareness of and disseminate information and education on prevention and treatment of HIV/AIDS, through all appropriate means, including the media, and targeting specific vulnerable groups;

15. *Invites once again* the working groups, representatives and special rapporteurs of the Commission to pay attention, within the framework of their mandates, to the situation of persons detained, subjected to violence, ill-treated, intimidated or discriminated against for having exercised the right to freedom of opinion and expression;

16. *Appeals* to all States to cooperate fully with and assist the Special Rapporteur in the performance of his tasks and to provide all information necessary in order to permit him fully to carry out his mandate, including giving serious consideration to requests from the Special Rapporteur for in-country visits, to follow up communications received and to consider implementing relevant recommendations of the Special Rapporteur;

17. *Invites* the Special Rapporteur, within the framework of his mandate:

(*a*) To draw the attention of the United Nations High Commissioner for Human Rights to those situations and cases regarding the right to freedom of opinion and expression

which are of particularly serious concern, and encourages the High Commissioner, within his mandate, to take into account reports in this regard in the context of his activities to promote and protect human rights with a view to preventing the occurrence and recurrence of human rights violations;

(*b*) In cooperation with the Special Rapporteur on violence against women, its causes and consequences, to continue to pay particular attention to the situation of women and the relationship between the effective promotion and protection of the right to freedom of opinion and expression and incidents of discrimination based on sex, creating obstacles for women with regard to their right to seek, receive and impart information, to consider how these obstacles impede the ability of women to make informed choices in areas of particular importance to them, as well as in areas related to the general decision-making processes in the societies in which they live and to consider joint reports with the Special Rapporteur on violence against women;

(*c*) With a view to promoting greater efficiency and effectiveness, as well as enhancing his access to the information necessary for him to fulfil his duties, to continue his efforts to cooperate with other special rapporteurs, special representatives, independent experts, working groups, other United Nations mechanisms and procedures in the field of human rights, specialized agencies, including the United Nations Educational, Scientific and Cultural Organization, and regional intergovernmental organizations and their mechanisms and further to develop and extend his network of relevant non-governmental organizations, particularly at the local level, with a view to ensuring that he has the full benefit of all pertinent information from such non-governmental organizations;

(*d*) To consider approaches taken to access to information with a view to sharing best practices;

(*e*) To continue to provide his views, when appropriate, on the advantages and challenges of new information technologies, including the Internet, for the exercise of the right to freedom of opinion and expression, including the right to seek, receive and impart information and the relevance of a wide diversity of sources;

(*f*) To continue to seek the views and comments of the Governments and others concerned in the elaboration of his report, as well as to continue to carry out his work with discretion and independence;

(*g*) To seek to participate in the World Summit on the Information Society to provide information and expertise on matters relating to the right to freedom of opinion and expression;

18. *Expresses once again its concern* at the inadequate resources, both human and material, provided to the Special Rapporteur and accordingly reiterates its request to the Secretary-General to provide the assistance necessary to the Special Rapporteur to fulfil his mandate effectively, in particular by placing adequate human and material resources at his disposal, including for the translation and dissemination of his reports;

19. *Requests* the Special Rapporteur to submit to the Commission at its sixtieth session a report covering activities relating to his mandate, including the issue of security and protection of media professionals, and decides to continue its consideration of this question at that session.