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CIVIL AND POLITICAL RIGHTS: FREEDOM OF EXPRESSION

Albania*, Andorra*, Armenia, Australia, Austria, Belgium*, Bulgaria*, Canada*, Croatia, Cyprus*, Denmark*, El Salvador*, Estonia*, Finland*, France, Georgia*, Greece*, Guatemala, Iceland*, India, Ireland, Italy, Japan, Liechtenstein*, Lithuania*, Luxembourg*, Mexico, Netherlands, New Zealand*, Norway*, Poland*, Republic of Korea, Romania*, San Marino*, Sierra Leone, Slovakia*, Slovenia*, Spain*, Sweden, Switzerland*, Turkey*, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay*: draft resolution

2004/... The right to freedom of opinion and expression

The Commission on Human Rights,

Recalling its previous resolutions on the right to freedom of opinion and expression, inter alia its resolution 2003/42 of 23 April 2003,

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

Recognizing that the exercise of the right to freedom of opinion and expression, including by women, is instrumental to the emergence and existence of effective democratic systems and essential to full and effective participation in a free and democratic society,

Recognizing also that the effective exercise of the right to freedom of opinion and expression is an important indicator of the level of protection of other human rights and freedoms, bearing in mind that all human rights are universal, indivisible and interdependent and interrelated,

Deeply concerned that violations of the right to freedom of opinion and expression continue to occur, including attacks directed against and killings of journalists and media workers, and stressing the need to ensure greater protection for all media professionals and for journalistic sources,

Stressing the need to ensure that invocation of national security, including counter-terrorism, is not used to unjustifiably or arbitrarily restrict the right to freedom of opinion and expression,

Stressing also the importance of full respect for the freedom to seek, receive and impart information and of effective and equal access to information and availability of information and communication technologies, including for preventive education and treatment related to HIV/AIDS and other diseases,

Welcoming the Declaration of Principles and the Plan of Action adopted at the first phase of the World Summit on the Information Society, held in Geneva from 10 to 12 December 2003,

1. *Reaffirms* the rights contained in the International Covenant on Civil and Political Rights regarding the right of everyone to hold opinions without 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 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;

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.4/2004/62 and Add.1-4) and welcomes in particular his ongoing and increasing cooperation with other mechanisms and organizations;

3. *Expresses its continuing concern* that:

(a) Violations of the rights referred to in paragraph 1 above continue to occur, often with impunity, including extrajudicial killing, arbitrary detention, torture, intimidation, persecution and harassment, threats and acts of violence and of discrimination, including gender-based violence and discrimination, abuse of legal provisions on defamation and criminal libel as well as on surveillance, search and seizure, and censorship, against persons who exercise, seek to promote or defend these rights, including journalists and other media workers and human rights defenders;

(b) These violations are facilitated and aggravated by abuse of states of emergency, without formal declaration and with too vague a definition of offences against State security in a number of cases;

(c) Threats and acts of violence, including killings, attacks and terrorist acts, particularly directed against journalists and other media workers in situations of armed conflict, still occur with impunity;

(d) High rates of illiteracy continue to exist in the world, especially among women, and reaffirms that full and equal access to education for girls and boys, women and men is crucial for the full enjoyment of the right to freedom of opinion and expression;

4. *Calls upon* all States:

(a) To respect and ensure respect for the rights referred to in paragraph 1 above;

(b) To take all necessary measures to put an end to violations of these rights and to create conditions to prevent such violations, including by ensuring that relevant national legislation complies with their international human rights obligations and is effectively implemented;

(c) To ensure that victims of violations of these rights have an effective remedy, to effectively investigate threats and acts of violence, including terrorist acts, against journalists, including in situations of armed conflict, and to bring to justice those responsible;

(d) To ensure that persons exercising these rights are not discriminated against, particularly in employment, housing, the justice system, social services and education, with particular attention to women;

(e) To facilitate the full, equal and effective participation and free communication of women at all levels of decision-making in their societies and in national, regional and international institutions, including in mechanisms for the prevention, management and resolution of conflicts;

(f) To respect freedom of expression in the media and broadcasting, in particular the editorial independence of the media;

(g) To promote a pluralistic approach to information through encouraging a diversity of ownership of media and of sources of information, including mass media, through, inter alia, transparent licensing systems and effective regulations on undue concentration of ownership of the media in the private sector;

(h) 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;

(i) 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;

(j) To adopt and implement policies and programmes to effectively promote awareness of, and disseminate information and education on, prevention and treatment of HIV/AIDS through all appropriate means, including through the media, and targeted at specific vulnerable groups;

(k) To facilitate equal participation in, access to and use of information and communications technology such as the Internet, applying a gender perspective, and to encourage international cooperation aimed at the development of media and information and communication facilities in all countries;

(l) To review their procedures, practices and legislation as necessary to ensure that any limitations on the right to freedom of opinion and 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;

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

(n) While noting that article 19, paragraph 3, of the International Covenant on Civil and Political Rights provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on:

- (i) Discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups;
- (ii) The free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship;
- (iii) Access to or use of information and communication technologies, including radio, television and the Internet;

5. *Calls* on all parties to armed conflict to respect international humanitarian law, including their obligations under the Geneva Conventions of 12 August 1949 for the protection of victims of war and the two Additional Protocols thereto of 8 June 1977, whose provisions extend protection to journalists in situations of armed conflict;

6. *Recognizes* the positive contribution that the exercise of the right to freedom of expression, particularly by the media, including through information and communications technologies such as 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 information and communication technologies such as the Internet for purposes contrary to respect for human values;

7. *Invites* the Special Rapporteur, within the framework of his mandate, to continue to carry out his activities in accordance with its resolution 2002/84 of 26 April 2002 on human rights and thematic procedures and paragraph 17 (a) to (d) and (f), of its resolution 2003/42, in particular his cooperation with other mechanisms and human rights treaty bodies and organizations, including regional organizations and non-governmental organizations;

8. *Appeals* to all States to cooperate fully with and assist the Special Rapporteur in the performance of his tasks, to provide all necessary information requested by him and to consider favourably his requests for visits and for implementing his recommendations;

9. *Invites once again* the United Nations High Commissioner for Human Rights, the working groups, representatives and special rapporteurs of the Commission and human rights treaty bodies to pay attention, within the framework of their mandates, to the situation of persons whose right to freedom of opinion and expression has been violated;

10. *Welcomes* the participation of the Special Rapporteur on the right to freedom of opinion and expression in the first phase of the World Summit on Information Society, and stresses the importance of the active participation of the Special Rapporteur and the High Commissioner for Human Rights, within the framework of their mandates, in the second phase,

including preparatory meetings, of the World Summit on Information Society, to be held in Tunis from 16 to 18 November 2005, to provide information and expertise on matters related to the right to freedom of opinion and expression;

11. *Again requests* 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;

12. *Requests* the Special Rapporteur to submit to the Commission at its sixty-first session a report covering activities relating to his mandate and decides to continue its consideration of this question at that session.
