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CONSEIL DES DROITS DE L'HOMME
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Point 3 de l'ordre du jour

**PROMOTION ET PROTECTION DE TOUS LES DROITS DE L'HOMME,
CIVILS, POLITIQUES, ÉCONOMIQUES, SOCIAUX ET CULTURELS,
Y COMPRIS LE DROIT AU DÉVELOPPEMENT**

**Informations présentées par la Commission indépendante des droits de l'homme
de l'Afghanistan, l'Institut danois des droits de l'homme, la Commission
nationale consultative des droits de l'homme de la France, l'Institut
allemand des droits de l'homme et la Commission nationale
grecque des droits de l'homme¹**

Note du secrétariat

Le secrétariat du Conseil des droits de l'homme a reçu la communication² ci-après, reproduite conformément à l'article 7 b) du règlement figurant dans la résolution 5/1 du Conseil des droits de l'homme, qui dispose que «la participation des institutions nationales des droits de l'homme s'exerce selon les modalités et les pratiques convenues par la Commission des droits de l'homme, y compris la résolution 2005/74 du 20 avril 2005».

¹ Toutes les institutions nationales des droits de l'homme présentant des informations sont dotées du statut A auprès du Comité international de coordination des institutions nationales pour la promotion et la protection des droits de l'homme.

² La communication est reproduite en annexe telle qu'elle a été reçue, dans la langue originale seulement.

ANNEXE

National human rights institutions and the promotion and protection of human rights while countering terrorism

In line with the Paris Principles, national human rights institutions (NHRIs) have a broad mandate to promote and protect human rights at the national level, and to monitor governments' compliance with international norms and standards. NHRIs' activities and responsibilities include research and legislative advice.

NHRIs have increasingly carried out activities on the protection and promotion of human rights in the context of the fight against terrorism. NHRIs are concerned about specific activities of intelligence agencies and about the general lack of legislation or regulation of such activities.

Because intelligence agencies often wield legal and/or considerable de facto powers, including surveillance, arrest, interrogation and detention, their activities typically affect the full enjoyment of human rights of individuals. NHRIs are deeply concerned by reports and allegations of cases of torture, disappearances, unlawful detention and other human rights violations by intelligence agencies. Furthermore, their activities, mandates and working methods are necessarily often secretive in nature, and hence make difficult effective monitoring and evaluation of these agencies and their accountability of such activities by other stakeholders, including civil society.

The principle of the rule of law requires that the scope of powers and limitations of such agencies be clearly defined.

Major organizational features of intelligence agencies include that they are usually closely directed from the government, and that the Parliament or other external oversight bodies have very limited control powers over such agencies and their activities. Some services are under control of the military.

In many cases, individuals may not have recourse to the judicial system to challenge potential violations of their human rights.

Another matter of concern for NHRIs are intelligence agencies activities being carried out in the third countries and in cooperation with friendly intelligence agencies. Such cooperative activities may include arrest, interrogation and detention of suspects. It is necessary to clarify the legal provisions applicable in such situations and to independently review such activities on the basis of international human rights law and other relevant international norms and standards.

On the occasion of the review, rationalization and improvement of the mandate of the Special Rapporteur on the protection and promotion of human rights while countering terrorism by the Human Rights Council at its 6th session in December 2007, NHRIs emphasized the need to pay further attention to the roles and responsibilities of intelligence agencies from a human rights point of view.

It is therefore with great appreciation that NHRIs welcome the new report by the Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism. The report provides a comprehensive analysis on the issues at hand, and sets forth creative and stimulating recommendations, which will inform the future work of NHRIs.

We fully support the Special Rapporteur's conclusions and recommendations. We urge States to implement his recommendations at the national level in the design and practice of national security policies.

NHRI recommendations

By virtue of their mandates, and by virtue of human rights obligations and the requirements of the rule of law, NHRIs wish to support the Special Rapporteur's findings and make the following recommendations to States: **PANEL D: DISCUSSANT SUMMARY**

1. The establishment of a clear political and legal framework for the work of intelligence agencies is necessary, including on lines of responsibility, accountability and remedies. This framework must be in conformity with states' human rights obligations.
2. A clear institutional mechanism within Government should be identified, which is responsible for control over activities of agencies;
3. A review mechanism by Parliament should be set up, providing powers to conduct independent investigations and to inform the public on a regular basis about its work;
4. The judicial system should have jurisdiction to deal with cases of violations of human rights and other violations of law;
5. An individual complaint mechanism should be established, which would be managed by an institution empowered to undertake an independent investigation;
6. Cooperation between intelligence agencies should be governed by law, especially international human rights law. Moreover, government control should be exercised and parliament should be informed.
7. Data protection should be taken into account with a view to surveillance activities of agencies. There should be clearly defined data protection legislation, with a specialist state agency empowered to monitor implementation and receive individual complaints about violations. It should have access to data, powers to bring violations to the attention of the relevant state authority including parliament, and to engage in legal proceedings. It should report to the public about its findings. There should also be established an individual complaint mechanism against violations. Individuals should also have a right to information, which can only be temporarily abridged by a verdict of a court of law;³

³ See Human Rights Committee, General Comment No. 16 (1988), para 10: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation.

8. Intelligence agencies should have no secret or extra-judicial role in particular in the transport of aliens to third countries and detention;

9. The Human Rights Council should remain seized of this issue and develop guidelines in consultation with relevant actors, including NHRIs and civil society. The HRC Advisory Committee could be requested to undertake this task.
