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PROMOTION AND PROTECTION OF HUMAN RIGHTS

Impunity

Report of the Secretary-General

Executive summary

The present report contains a summary of the replies received from Governments and intergovernmental and non-governmental organizations pursuant to resolution 2002/79 of the Commission on Human Rights.

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I. INTRODUCTION

1. In its resolution 2002/79, the Commission on Human Rights requested the Secretary-General to seek the views of Governments and intergovernmental and non-governmental organizations on the Set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/Sub.2/1997/20/Rev.1, annex II) [hereinafter the “Set of Principles”] and on the follow-up thereto. Additionally, the Commission requested the Secretary-General to seek the views of Governments and intergovernmental and non-governmental organizations on the issue of impunity regarding violations of economic, social and cultural rights. The Commission also requested the Secretary-General again to invite States to provide information on any legislative, administrative or other steps they have taken to combat impunity for human rights violations in their territory and to provide information on remedies available to the victims of such violations. The Commission further requested the Secretary-General to collect the information and comments received pursuant to that resolution and to submit a report thereon to the Commission at its fifty-ninth session. The present report, which was prepared in accordance with resolution 2002/79, contains a summary of the replies received from Governments and intergovernmental and non-governmental organizations.

2. In response to a note verbale dated 1 August 2002 and letters dated 26 August 2002, information was received from the Governments of Argentina, Canada, Chile, and Portugal. The Organization for Economic Co-operation and Development as well as the following non-governmental organizations also provided their comments: the Europe-Third World Centre, International Commission of Jurists, International Federation of Human Rights Leagues, Pax Christi International and World Organization against Torture.

II. REPLIES RECEIVED FROM GOVERNMENTS

Argentina

3. The Government of Argentina, in a follow-up to its submission related to the policy of redress, dated 17 August 2001 and reproduced in the document E/CN.4/2002/102, provided additional information relating to what has been termed the “right to truth” and proceedings in progress for the offence of child stealing. The right to truth has its origins in the case law of Argentina’s courts and relates to the fate of missing persons. The Government mentioned the decision of the Federal Criminal and Correctional Appeal Court of the Federal Capital, from 10 July 1996, ordering the implementation, with or without an individual request, of all procedures deemed capable of achieving the objective of finding and identifying the remains of missing persons and any contribution that might reveal appropriate information. Subsequently, a number of actions have been taken to ascertain the fate of missing persons. The decision also had a multiplier effect on other courts. As of July 2001, approximately 3,570 instances of human rights violations and enforced disappearances, which occurred under the last military Government, are being investigated in the various truth trials throughout the country. Truth trials may be initiated ex officio through the Ad Hoc Commission of Prosecutors established by the Procurator General, or at the request of the party concerned.

4. The Government also provided information on the establishment and work of the Ad Hoc Commission of Prosecutors; action by members of the Office of the Public Prosecutor in the truth trials, including detailed information on the initiated cases; tasks and achievements of the Truth Commission; and activities within the Office of the Procurator General.

5. The Government further stated that the scope of the laws known as the Due Obedience Law (No. 23.521) and the *Punto Final* Law (No. 23.492), which were repealed by the National Congress in Act No. 24952 of 25 March 1998, did not include the offence of child stealing. At the present time, several persons are being tried for the offence of child stealing under the former de facto Government (1976-1983). The aim of the trials is to identify the persons politically responsible for those offences. In the course of 1998, the Argentina justice system reactivated cases involving investigation of the possible existence of a systematic plan to steal the children of missing persons during the last military dictatorship. The Government also provided information on the accused linked to the cases of child stealing.

Canada

6. The Government of Canada provided information on the legislative steps it has undertaken to combat impunity for human rights violations. It stated, inter alia, that the new Immigration and Refugee Protection Act, which came into force on 28 June 2002, contains a number of amendments that strengthen and streamline the enforcement process applying to suspected war criminals and other categories of persons involved in serious criminality such as organized crime and terrorism. The Government also noted that, with the introduction of the Crimes Against Humanity and War Crimes Act, the Witness Protection Act was amended to allow for entering into agreements or arrangements with any law enforcement agency, international criminal court or tribunal in order to facilitate the protection of persons providing assistance in law enforcement matters. The text of the Witness Protection Act can be accessed online at <http://laws.justice.gc.ca/en/W-11.2/text.html>.

7. The Government also provided information on the administrative steps undertaken to combat impunity, including an update of the last year's information on the work of the Interdepartmental Operations Group. The Group should ensure that the Government has properly addressed all allegations of genocide, crimes against humanity and war crimes against Canadian citizens or persons present in Canada. Furthermore, it should ensure that Canada complies with its international obligations. A major activity of the Group has been the review of all genocide, crimes against humanity and war crimes files, determining the appropriate course of action and channelling the files to the competent governmental authority. During 2001-2002, 272 new files were reviewed. During the same period, 445 individuals were denied entry to Canada because there were reasonable grounds to believe that they had committed genocide, crimes against humanity or war crimes or because they were senior members of regimes that had engaged in terrorism or committed gross violations of human rights. Canada removed 46 such individuals in 2001-2002 under the Immigration Act. An annual report on Canada's War Crimes Program is available at: <http://www.cic.gc.ca/english/pub/war2002/index.html> and <http://www.cic.gc.ca/francais/pub/guerre2002/index.html>.

8. With regard to other steps taken to combat impunity, the Government provided information on the International Criminal Court (ICC) Campaign launched by Canada in 2000. Canada's ICC Campaign, inter alia, sponsored numerous thematic events as well as the publication of the *Manual on the Ratification and Implementation of the Rome Statute of the International Criminal Court*. Canada provided funding to meetings designed to enhance the logistical operation of the Court as well as public awareness campaigns on ICC in Canada and abroad. Canada maintains a web site on ICC at: www.icc.gc.ca/www.cpi.gc.ca. Canada plans to continue its ICC Campaign in 2003-2004. All of the initiatives outlined above stem from Canada's commitment to the elimination of impunity for crimes such as genocide, crimes against humanity and war crimes, and to the creation of a culture of accountability.

9. Additional information provided by the Government of Canada on legislative, administrative and other steps to combat impunity, as well as on remedies available, have been already reproduced in the addendum to the 2002 report of the Secretary-General on impunity.¹

10. The Government also stated that it supports, in general, the 1997 Set of Principles for the protection and promotion of human rights through action to combat impunity. The Set of Principles is especially valuable in view of the fact that they have been disseminated widely and have become well known. The Set of Principles has attained a degree of acceptance and application as a useful guide to States and other actors. Any relevant recent developments on the issue of impunity or in international law since the formulation of the Set of Principles could possibly be captured in an addendum or supplement to the Set of Principles.

11. As to the issue of impunity regarding violations of economic, social and cultural rights, the Government of Canada affirmed that it takes its obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) very seriously. As rights under ICESCR are not immediately enforceable, it is problematic to determine whether there has been a violation and therefore whether there has been a failure to bring to justice those responsible for violations, or impunity. Accordingly, it is not consistent with the nature of economic, social and cultural rights to establish a mechanism concerning impunity for violations of those rights.

Chile

12. The Government of Chile stated that the process of identifying those responsible for human rights violations began in 1990, when democracy was restored. In 1990, the National Commission on Truth and Reconciliation was established. Later, in pursuit of truth and justice, the Government set up the Round Table for Dialogue on Human Rights, which brought together representatives of Chilean society, the military, representatives of civil society, the Church and human rights lawyers. On 25 April 1999, the Human Rights Programme of the Ministry of the Interior was established to help find disappeared persons or determine their fate. The Programme carries on the work of the National Corporation for Reparation and Reconciliation, which was itself the legal successor to the National Commission on Truth and Reconciliation.

13. The Human Rights Programme has the following tasks: (a) to provide the necessary social and legal assistance to relatives of the victims of human rights violations to ensure their access to the reparations provided for in Act No. 19,123 of February 1992; (b) to provide legal assistance to ensure the implementation of the right recognized in article 6 of Act No. 19,123,

concerning the whereabouts and fate of the victims identified by the National Commission on Truth and Reconciliation and by the National Corporation for Reparation and Reconciliation, including disappeared or executed detainees whose remains have not been produced; (c) to conserve and serve as the depositary of the documents and archives of the former National Corporation for Reparation and Reconciliation and those produced by the Programme itself; and (d) to keep and conserve the property of the former National Corporation for Reparation and Reconciliation. The Government further noted that article 18 of Act No. 19,123 specifies the relatives entitled to the benefits provided for in the Act. As of 31 December 1996, a total of 4,630 of the victims' relatives were entitled to the lifelong pension benefit and 988 children of victims were entitled to educational benefits. Article 6 of the Act further states that "the location (recovery) of disappeared detainees and the bodies of those who were executed and of the circumstances of their disappearance or death is an inalienable right of the victims' relatives and of Chilean society". The Government pointed out that the Human Rights Programme also provides assistance to Chilean relatives of persons acknowledged by the Argentine authorities to have disappeared or been killed in that country, and offers them support and legal advice. With regard to the location of victims' remains, the Programme takes judicial action and carries out separate investigations that may produce information that would justify requesting or taking action in cases pending before the courts of law. Measures have been taken to expedite all court cases involving investigations into the crime or crimes committed against the victims.

14. The Government provided additional information regarding the work of the Human Rights Programme, including its cooperation in the investigations and further processing of cases of human rights violations committed in Chile between 1973 and 1990. Several obstacles hindering the Programme's work were noted, including insufficient data for establishing identities of the victims. In this regard, the reorganization of the Programme in 2001 was described.

15. The Government also noted additional initiatives which it supported in order to prevent impunity for human rights violations, including: (a) promotion of the Round Table for Dialogue on Human Rights, (b) request for the appointment of special judges for the cases of disappeared detainees; (c) conduct of judicial proceedings brought by the Human Rights Programme of the Ministry of the Interior (in accordance with Act No. 19,123, the Programme should be a party to all judicial proceedings); (d) strengthening the Human Rights Programme; (e) the role of the State Defence Council in court cases involving human rights violations.² The Round Table, which met until 13 June 2000, acknowledged that serious human rights violations had been committed under the former military regime. As a result, the Government passed a special law under which anyone who has information on the fate of a victim and passes it on to the inspecting magistrates is protected by professional privilege. The law does not establish impunity for the perpetrators of human rights violations, their accomplices or those who covered up such violations. On 5 January 2001, the commanders-in-chief of the armed forces and security forces handed over to the President of the Republic a list containing 180 names of victims as well as information on a group of 20 unidentified victims.

16. The Government of Chile concluded that it continues its efforts to prevent impunity for the most serious human rights violations committed in the country under the former military regime and also to prevent such violations and breaches of international humanitarian law by taking appropriate measures. Likewise, Chile has taken all possible and necessary measures to

bring to justice the perpetrators of violations of human rights and humanitarian law, together with their accomplices and those who have covered up such violations. Additionally, efforts aimed at setting up a genetic bank were noted. The interpretation of the 1978 Amnesty Law needed to be clarified so that it does not become an obstacle to establishing the truth and determining criminal responsibility for the crimes committed between 1973 and 1978, which are currently under investigation. So far, the Chilean courts have interpreted the law in such a way as to exclude from amnesty crimes for which no amnesty is permissible under international humanitarian law, such as crimes against humanity, war crimes and enforced disappearances of persons.

Portugal

17. The Government of Portugal stated that the fight against impunity is one of the core elements of Portugal's human rights policy, and is effected mainly through law enforcement authorities. The Government indicated that it has been endeavouring to ensure effective remedies and reparation for all victims of human rights violations within its jurisdiction. The provisions of the relevant instruments directly apply, in the Portuguese legal order, both to public and private entities. Therefore, victims of violations of any of the rights set forth therein can apply to the court for the award of reparation or compensation for the damage suffered. Perpetrators can be subject to civil as well as criminal liability.

18. The Government of Portugal noted that it recognizes the competence of all committees which have the capacity to examine individual communications. Portugal is also a party to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and has been among the first 60 States to ratify the Rome Statute of the International Criminal Court which contains relevant provisions regarding the reparation of victims. At the regional level, Portugal is a party to the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms and has ratified the European Convention on the Compensation of Victims of Violent Crimes.

19. The Government of Portugal also provided information about the INOVAR Programme, which was created in 1999 to train law enforcement officials assisting victims of crime, with particular emphasis on groups with special needs. The programme also aims at renovating victim reception sites, creating databases with information on all institutions able to provide support to victims, and collecting statistical data. The Government further noted that a special regime has been established for women victims of violence, comprising a public network of shelters that are run by a multidisciplinary team including psychologists, lawyers and social workers. In 1999, legislation was enacted to guarantee the possibility for victims of domestic violence to be paid advanced compensation by the State.

III. REPLIES RECEIVED FROM INTERGOVERNMENTAL ORGANIZATIONS

20. **The Organisation for Economic Cooperation and Development** pointed out that the chapter on "Peace processes, justice and reconciliation" in the Development Assistance Committee (DAC) Guidelines on Helping Prevent Violent Conflict: Orientations for External Actors³ addresses human rights violations by setting the issue of impunity in the context of efforts at post-conflict justice and reconciliation.

IV. REPLIES RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

21. **The Europe-Third World Centre (CETIM)** stated that the draft Set of Principles should reflect recent developments, including the relevant provisions of the final Durban Declaration and Programme of Action and the establishment of the International Criminal Court. CETIM proposed that the Commission on Human Rights name an expert with a mandate to prepare a revised version of the Set of Principles.

22. With regard to the question of impunity for violations of economic, social and cultural rights, CETIM stated that the establishment of a working group on the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights would constitute an important step in the fight against impunity for violations of economic, social and cultural rights. However, the adoption of the Optional Protocol would not be sufficient by itself. CETIM thus proposed that the Commission on Human Rights name an expert mandated to prepare draft principles and guidelines on impunity related to economic, social and cultural rights and to explore the possibility of enlarging the competence of the International Criminal Court to deal with violations of economic, social and cultural rights. Finally, CETIM stated that the suggested mandates could be exercised by the same individual, if he or she has the ability and capacity to do so.

23. **The International Commission of Jurists (ICJ)** considered the problem of impunity as a core issue for the full observance of all human rights and the rule of law. It noted that the phenomenon of impunity is incompatible with the international obligations of States and is a major obstacle to the full enjoyment of human rights. Furthermore, ICJ pointed out that international human rights bodies and procedures have repeatedly stated that impunity is a violation of international human rights law and, in particular, of the obligations to investigate violations and to prosecute and punish their perpetrators. They have also stated that impunity is the main factor which allows a recurrence of human rights violations.

24. ICJ further stated that it has cooperated with two experts appointed by the Sub-Commission on the Promotion and Protection of Human Rights to study impunity in connection with civil and political rights and with economic, social and cultural rights. In particular, it has been actively associated with the preparation of the Set of Principles. ICJ noted that the issue of impunity in connection with civil and political rights, on the one hand, and with economic, social and cultural rights, on the other, gives rise to different problems in each case and has not been developed to an equal extent in international case law and doctrine.

25. ICJ pointed out that the 1997 draft Set of Principles is frequently quoted as a reference by many international human rights bodies. The Human Rights Committee has affirmed the validity of many provisions of the Set of Principles and the Committee against Torture has made similar observations. In the past five years, there has been further legal progress in combating impunity both internationally and nationally. In addition to the adoption of the Rome Statute of the International Criminal Court, a large body of relevant case law has been produced. An instrument, such as the Set of Principles, should take account of these developments.

26. ICJ was convinced that the adoption of an international instrument like the Set of Principles will be a valuable contribution to the eradication of impunity as well as a valuable tool for States in the fulfilment of their international obligations. In this regard, ICJ welcomed the decision taken by the Commission on Human Rights in its resolution 2002/79 to resume its consideration of the Set of Principles. ICJ recommended that the Commission on Human Rights appoint an independent expert on the question of impunity in relation to civil and political rights, with a mandate to submit a revised version of the Set of Principles, taking account of developments in international law and the observations made by States and intergovernmental and non-governmental organizations, with a view to its adoption by the Commission on Human Rights.

27. ICJ stated that the question of the impunity of the perpetrators of violations of economic, social and cultural rights should be studied in greater depth and that standards should be proposed. ICJ thus suggested that the Commission on Human Rights appoint an independent expert with a mandate to study in depth the question of impunity in regard to violations of economic, social and cultural rights and to identify and propose relevant international standards. ICJ believed that it is of the utmost importance that the issue of impunity be a matter for consideration by the special rapporteurs, working groups and other thematic and geographical mechanisms of the Commission on Human Rights, as provided for in a number of resolutions adopted by it.

28. **The International Federation of Human Rights Leagues (FIDH)** provided a compilation of documents on impunity *FIDH/80 Years of Fight against Impunity*, published in June 2002, as well as a report entitled *Victims in the Balance* on the situation of victims before the International Tribunal for Rwanda, published in October 2002.

29. **Pax Christi International** provided information on various aspects of alleged violations of economic, social and cultural rights in El Salvador. This included a reference to the proposal concerning the possible establishment of a mechanism to address the matter.

30. **The World Organization against Torture (OMCT)** stressed that the Human Rights Committee and Committee against Torture, when examining States party reports, have consistently recommended that Governments adopt measures to combat impunity. OMCT saw the creation of the ad hoc international tribunals as a clear refusal of impunity for most serious crimes committed in certain situations. OMCT viewed the creation of the International Criminal Court as evidence of the high degree of consensus that exists among the international community on the issue.

31. OMCT believed that, if adopted, the draft Set of Principles would represent an important tool in the struggle against impunity. OMCT considered it noteworthy that the draft Set of Principles has already become a reference cited by international human rights organs and bodies, in particular within the Inter-American system. In view of the fact that important developments have taken place since the completion of the draft Set of Principles in 1997, OMCT considered that the Commission on Human Rights should name an independent expert on the issue mandated to revise the present text with a view to facilitating its prompt adoption by the Commission. This is in addition to the continuing attention being given to the question of impunity by the Commission's various mechanisms. OMCT also suggested that the Commission

name an independent expert with a mandate to carry out an additional study of the issue of impunity for violations of economic, social and cultural rights, and to propose international standards in this respect.

32. The full text of all replies is available for consultation in the Secretariat files.

V. CONCLUSIONS AND RECOMMENDATIONS

33. **The information received indicates broad agreement that there should be no impunity for human rights violations, war crimes, crimes against humanity and genocide.**

34. **Member States provided information on important developments in combating impunity at the national level. This included information on actions undertaken by courts, truth commissions and special programmes, as well as relevant legislative changes, administrative procedures and national dialogue. The contributions highlighted the importance of pursuing prosecutions; finding and publicizing the truth; assisting and protecting victims, witnesses and other participants in the proceedings; and providing reparation and remedies.**

Notes

¹ See E/CN.4/2002/102/Add.1.

² This independent body represents the State in judicial matters involving or affecting the public purse and has become a party to court cases involving human rights violations with a view to preventing impunity for such crimes.

³ Available at <http://www.oecd.org/dac>.
