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ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY

Joint written statement* submitted by Friends World Committee for Consultation (Quakers), a non-governmental organization in general consultative status, and World Organisation Against Torture (OMCT), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[4 July 2003]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Juveniles under Military Jurisdiction

Friends World Committee for Consultation (Quakers) and the World Organisation Against Torture (OMCT) welcome the Report on the “Issue of the administration of justice through military tribunals” submitted by Mr Louis Joinet (E/CN.4/Sub.2/2002/4 of 9 July 2002) pursuant to Sub-Commission decision 2001/103, and the Report on the same issue submitted by Mr Emmanuel Decaux (E/CN.4/Sub.2/2003/3 of 27 June 2003) pursuant to Sub-Commission decision 2002/103.

We particularly welcome Recommendations on suppressing the competence of military tribunals over children (minors under 18 years of age) and Recommendations on the abolition of death penalty in that context, notably for minors. We also welcome the fact that work on this important topic will continue within the Sub-Commission.

With this in mind, we wish to raise some general points as well as to bring to the attention of the Sub-Commission some specific instances of children or juveniles being subjected to military justice systems that continue to be a matter of concern to Friends World Committee for Consultation (Quakers) and OMCT (Organisation Mondiale Contre la Torture) as well as other non-governmental organisations :

The issue of juveniles under military jurisdiction raises two fundamental concerns: that the agreed international standards on how children and juveniles should be treated are too little known and even less well implemented; and that where ‘exceptional legal regimes’—whether called anti- or counter-terrorist, state or national security or emergency laws—are introduced, the question of whether these should be applicable to children and, if so, how they relate to the international standards, is given little or no attention¹.

USA/Guantanamo Bay:

In the course of this year, of particular concern was the decision of the USA to transfer juveniles into their detention facilities at Guantanamo Bay, thus removing them from the protection of the US courts as well as opening up the possibility that they will either be detained indefinitely or be tried by the Military Commissions under the Military Order (Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism), signed by the President of the USA on 13 November 2001. The UN Special Rapporteur on the Independence of Judges and Lawyers had expressed concern about the impact of this measure on the rule of law and due process in general (see E/CN.4/2003/65, para. 37) but without taking account of the possibility that juveniles might come within its jurisdiction. All the general issues of concern about these tribunals in relation to, for example, the lack of independent legal representation, the lack of due process safeguards, the kind of penalties which can be imposed - including the death penalty - are of even

¹ Brett Rachel, "Juvenile justice, counter-terrorism and children", UNIDIR: Disarmament Forum 3/2002, pp29-36 (English edition) and pages 31-39 (French edition)

greater concern in relation to the possibility of juveniles being tried by them. At the same time, the fact that juveniles are being detained in these circumstances without adequate judicial process, review, access by lawyers, family, and others is in itself a major matter of concern².

Democratic Republic of Congo

Military trials of juveniles in DRC, including passing of death sentences, remains a great risk despite some recent efforts to normalise the situation as highlighted in a recent appeal by OMCT³, as well as an earlier (12 December 2002) News Release of Amnesty International. The OMCT appeal welcomed the fact that some children who had been sentenced to death were released (after their sentence had been commuted to life sentences, and then to 5 year sentences). However another child died while on death row, and no news was received concerning 4 other child soldiers that had been sentenced. In addition, the problem remains that the moratorium on death penalty is still suspended which means that death penalty can still be imposed (including on children although OMCT is not aware of any new cases).

Israel :

Israeli military law adopts a definition of the Palestinian child which is incompatible with international law and provides, in a discriminatory manner, that the offence of stone-throwing by Palestinian children, which is categorized as a security offence, be tried by the military court system with all its implications. Such legislation, which in fact ensures that a disproportionate amount of Palestinian children come into contact with the military court system, which in practice offers no alternative to imprisonment for children and imposes harsher sentences than the Israeli criminal courts, should be held to be incompatible with article 2.1 of the Convention against Torture. Legislation allowing children to be sentenced on the sole basis of confessions leads to convictions based on confessions by third persons, often obtained through torture or other ill-treatment, in contravention of article 15. While under Israeli law a detainee can be prohibited from meeting with counsel for 21 days, under military law applicable in the West Bank detainees including children can be held incommunicado for up to 90 days. This piece of legislation is inconsistent with article 16 of the Convention, as UN Commission on Human Rights resolutions have asserted that prolonged incommunicado detention can in itself constitute a form of cruel, inhuman and degrading treatment.⁴

² For additional information from other sources, see:

(1) the letter of 24 April 2003 from Human Rights Watch to US Secretary of Defence Donald Rumsfeld;

(2) The Amnesty International Statement of 25 April 2003;

(3) A paper by Matthew Naumann, an LLM student at Essex University, on the legal issues about these children, written under the supervision of Sub-Commission expert Françoise Hampson who might, therefore wish to comment on or add to it.

³ OMCT urgent appeal Case COD 270401.4CC Child concern/Release/Death penalty, May 19, 2003

⁴ *The Treatment of Detained Palestinian Children by the Israeli Authorities*, joint report by LAW The Palestinian Society for the Protection of Human Rights and the Environment, The Public Committee Against Torture in Israel (PCATI), The World Organisation Against Torture (OMCT), November 2001,

Sudan

The Commission on Human Rights Special Rapporteur on Sudan, in his Report (E/CN.4/2003/42, paras. 80-91) of 6 January 2003, raises concerns about the application of justice by "special courts" in Darfur composed of one civilian and two military judges, and noted at least one juvenile amongst the prisoners. This illustrates the need to take into account situations where the military are involved in the administration of justice even if the procedure is not explicitly named as being "military".

Recommendations

The attention given to these issues at the Commission on Human Rights and its Sub-Commission is welcome. Even better would be the universal implementation of the provisions of these recommendations and the international standards relating to the rights of the child and juvenile justice on which they are based. The first step, however, needs to be recognition that the concept underpinning why under-18s need special protection when they come into conflict with the law does not become invalid merely because they are members of the armed forces or because additional or exceptional legal powers apply. The reasons why children and juveniles are recognized as needing and deserving different treatment remain applicable—so should the requisite standards, even if this challenges long-held assumptions⁵.

Friends World Committee for Consultation (Quakers) and the World Organisation Against Torture (OMCT) urge the Sub-Commission to promote this general principle, in compliance with the Convention on the Rights of the Child and other relevant international instruments, in addition to ensuring the full implementation of its welcome Recommendations on juveniles in military jurisdictions, particularly in the situations described above.

Secondly, and because of the frequent failure to in practice recognise the special status of children and juveniles in conflict with the law, is to ensure that in all situations, the question of whether in law or practice juveniles are coming within the remit of military or other exceptional legal regimes, is given attention.

⁵ Brett Rachel, "Juvenile justice, counter-terrorism and children", *ibid.*