

**Statement by the Indonesian delegation on the reports of the
Special Rapporteurs on the
Independence of Judges and Lawyers, Trafficking in persons, and Racism
at the Fifth Session of the Human Rights Council**

Geneva, 11th May 2007

Mr President,

As my delegation takes the floor for the first time at the start of this Fifth session of the Human Rights Council, we should like to begin by expressing our appreciation for the reports submitted by Mr Leandro Despouy, the Special Rapporteur on the Independence of Judges and Lawyers, Ms. Sigma Huda, the Special Rapporteur on Trafficking in Persons, and Mr Doudou Diene, Special Rapporteur on Racism. We are sure that their reports will go a long way in facilitating our discussions today on the pertinent issues raised.

With regard to **the report on the Independence of Judges and Lawyers**, Indonesia notes that the Special Rapporteur's 4th report targeted with precision the issues affecting the equitable promotion and application of the rule of law. In particular, while Indonesia agrees that the independence of judicial systems must be maintained and access to justice should be further facilitated in several countries, we do not believe that this should be to the detriment of national sovereignty and the existing legislative and judicial norms. Without a doubt, the independence of the Judiciary continues to play a key role in the promotion and respect of the national rule of law, and in consideration of their specific needs, States must be allowed the policy space necessary to determine what legislation would best apply to them.

Furthermore, this delegation concurs with the notion that the judiciary is the "guardian of the rule of law" and that the administration of justice is the foundation block for the application of the rule of law. Thus, we believe that in the future endeavours of the Special Rapporteur mechanisms to promote the rule of law must be further strengthened.

In this regard, we would ask the Special Rapporteur if he agrees that domestic rule of law is sufficient during states of emergency and does not necessarily have to fall under international norms, especially given the inherent question of State sovereignty and the heightened imbalance in national security. (Would national norms truly not suffice? – see page 21, point 74 of the report)

X [We would now briefly turn our attention to **the report on Trafficking in Persons**, in which we observe that the Special Rapporteur has focused on the

use of forced marriage as a recognised means of trafficking in persons (as mentioned in the report of the Special Rapporteur on violence against women in her 1997 report). In the Special Rapporteur's report on trafficking in persons, she states that trafficking has detrimental links to access to education and an increased likelihood of gender-based violence, which my delegation agrees are not links that can be ignored.

Moreover, the report goes further to affirm that the distinction between forced and arranged marriages without fully considering the very complex socio-cultural influences that determine the legality of such marriages, are in many instances, tenuous at best. We do not agree that these marriages automatically or necessarily lead to exploitation and abuse.

Indonesia believes it is crucial to offer as much protection as possible to women and children who are very often the most vulnerable victims of trafficking. Indeed, on the national level, various laws exist in Indonesia to protect against this crime, some of which include Article 297 of the Criminal code (KHUP) which strictly prohibits the trafficking in women and children, while other articles include Article 65 of Law No. 39/1999 on Human Rights, which states that "Every child has a right to enjoy protection from exploitation and sexual harassment, abduction and child trafficking...".

The government has also drafted a new law on Anti-Trafficking in Persons under the 2005 - 2009 National Legislative Program. However, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the United Nations Convention against Transnational Organised Crime (TOC) still offers the basic international framework of reference.

All this said, we concur with her observation that it is crucial to "target the demand for exploitation" (page 16) and "promote gender-specific prevention strategies" (page 17) if we are to effectively combat trafficking and its affiliated evils.

We would ask the Special Rapporteur to further develop (in her next report) on the impact of the cultural influences which play an important role in trafficking in some areas of the world and we would seek further clarification on what she considers as an effective way of re-adapting these influences especially in light of other modern practices such as internet marriage brokering agencies.

And finally, Mr President, we would observe from **the report by the Special Rapporteur on Racism**, the need for continued international efforts in the fight against ethnic and racial discrimination, discrimination, racism, xenophobia and related intolerance in the political arena. The normalization and politicisation of these forms of intolerance is cited in the numerous examples Mr Diene presented in his case study on European, African, Asian and Middle-Eastern countries.

My delegation observes once again a thoroughly insightful report which considers in depth the contrariness of advocating democracy and social acceptance in today's multi-cultural society where racism and related intolerance cannot exist peacefully side by side. Indeed, the report paints a grim picture that there is a current and increasing trend towards discrimination, racial, ethnic and related intolerance in the political arena which the Special Rapporteur believes has a particularly negative impact on social cohesion in today's modern world.

The report further urges States to formulate a stronger commitment and political will to combat intolerance if the positive advantages of democracy are to be enjoyed. We agree with this view and believe that inter-cultural and inter-religious dialogue are important in formulating a better understanding among different communities, a necessity in today's multicultural world.

Our only request for clarification (in Mr Diene's report) would be on the methodology for the application of a "voluntary code of conduct". Would this not be difficult to impose as it implies both a willingness and obligation to act? (see page 23).

Mr President,

We observe that all these reports were mandated and submitted pursuant to Council decision 1/102, and demonstrate the ongoing concerns of the Special Rapporteurs, who have all left us all in no doubt as to the importance of working collaboratively for the promotion and protection of human rights in these interrelated fields. In this connection and by way of conclusion, our delegation looks forward to the continued efforts and inputs of the various Special Rapporteurs in the promotion of fundamental freedoms within the scope of their mandate and for the general improvement of mankind.

Thank you.