



INTER-PARLIAMENTARY UNION

Third Committee of the General Assembly

**Agenda items 67b (human rights questions),
and 67c (human rights situations)**

**Statement presented by Ambassador Anda Filip
Permanent Observer**

**United Nations
New York, 30 October 2006**

Check against delivery

Mr. Chairman,

The independence and impartiality of the judiciary and respect for fair trial guarantees are essential ingredients of democratic government, which is based upon the principle of separation of powers and the system of checks and balances it implies. The relationship between parliaments and the judiciary is not always easy. The experience of the Committee on the Human Rights of Parliamentarians - the IPU body mandated to look into human rights violations of members of parliament - amply demonstrates that asking questions about the functioning of the judiciary and the justice system in general, denouncing abuses in a particular case, is very often considered an undue interference with the independence of the judiciary.

The annual seminar for members of parliamentary human rights bodies, held in September at IPU Headquarters in Geneva, dealt precisely with this problem: what exactly is the role of parliaments and their members in ensuring due administration of justice? This question has taken on particular importance in the context of the fight against terrorism and the very serious risk of an erosion of the most fundamental human rights guarantees that it entails.

The first question the seminar addressed was therefore the problem of torture. In the past years, the absolute prohibition of torture has been more and more called into question and practices have been put into place by some States which actually circumvent it. States have indeed introduced legislation which allows some measure of torture for the sake of security. The seminar clearly stated that such practices are unacceptable. If parliaments are to protect democracy, they need to guarantee respect for certain non-negotiable principles, one of which is the prohibition of torture, just as the absolute prohibition of slavery is a principle which no-one today would call into question. Torture should be defined as a crime in the criminal codes of all countries, appropriate punishment should be meted out to torturers and those who order it, and testimony obtained under duress should not be used as evidence in court. Participants also stressed that a well-trained police force does not need to resort to torture to obtain information and that parliaments should ensure that resources are provided for appropriate training of the police. Participants also called on all parliaments which have not yet done so to ratify the Convention against Torture and its Optional Protocol which provides for visiting mechanisms to detention centres.

Detention and imprisonment is another important issue in this context. Participants agreed that detainees and prisoners retain all human rights, except their right to liberty, and that the primary purpose of punishment should be rehabilitation. Unfortunately, the conditions of detention and imprisonment in the majority of countries are such that this objective is difficult to obtain. Overcrowding is a enormous problem and the practice of privatising prison has not been seen by participants as a viable alternative. Prisons are an integral part of the criminal justice system, they argued, and it is therefore the sole responsibility of the State to enforce prison sentences. More generally, the IPU meeting encouraged all parliaments to follow the practice of an increasing number of parliaments to visit detention centres and prisons. Such visits can indeed make a difference and, most importantly, prevent torture and other cruel, inhuman and degrading treatment.

The practice of administrative detention is a phenomenon which is being increasingly resorted to by States to tackle the problem of migration. Receiving States tend to consider asylum seekers and migrants, especially when they come from certain

countries, as criminals or potential criminals and treat them accordingly. The result of current immigration policies is all too often that those who are most needy and vulnerable being the ones who are the least assisted. The problem is such that participants suggested the holding of a seminar on precisely this topic.

Mr. Chairman,

The fight against terrorism has not only resulted in questioning the absolute prohibition of torture, but also in the erosion of essential fair trial guarantees, enshrined in Article 14 of the International Covenant on Civil and Political Rights. The seminar clearly stated that crucial rights such as habeas corpus cannot be derogated from under any circumstances, that only very limited exceptions are permitted to the right to a public hearing and that defendants and their counsel must be treated on a equal footing with the prosecution; they must be entitled to question the source and the significance of the evidence held against them.

Of course, only an independent judiciary will ensure that justice is done and seen to be done. However, all too often the judiciary is subservient to the executive branch and corruption is a widespread phenomenon. The reasons for such corruption are manifold: inadequate training, poor salaries and the fear of the executive are some of them.

Parliaments cannot stand by and do nothing under the pretext that there is separation of powers, when in fact their role is crucial to ensure an independent and impartial judiciary, as well as respect for and implementation of fair trial guarantees. The IPU meeting strongly insisted on this duty and on the constitutional powers parliaments have in a democratic State to fulfil it. In their conclusions, participants stated therefore the following " As legislators, we must build the required legal framework rooted in international and regional human rights standards [...] However, laws alone do not suffice. The best law is worth no more than the paper it is written on if it is not implemented. Our oversight function allows us to ensure that laws are enforced and that our justice systems put the relevant international and regional human rights standards in the field of justice into practical effect. We have the power to set up commissions of inquiry to look into systemic failures in the justice systems. We have the power to publicly question the executive and administrative authorities if we fear that there is abuse of due process of law in a particular case. The principle of the separation of powers is a system of checks and balances, and our duty is to ensure that the laws which we adopt meet the requirements of international human rights law and that they are properly implemented."

Thank you.