



PUBLICATIONS OF
MINISTRY FOR FOREIGN
AFFAIRS

# Government report to Parliament

on the human rights policy of Finland 2004

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# OBJECTIVES OF THE HUMAN RIGHTS POLICY OF THE FINNISH GOVERNMENT

**Human rights are among the Government's priorities.** The Government's human rights policy consists of active measures and initiatives, based on transparency and cooperation with civil society, both in domestic and international fora.

**The Government aims at increased consistency in its human rights policy.** The Government has set a particular objective of increasing consistency in its human rights policy, in order to better identify the human rights issues relating to different sectors of activities. More attention will be paid to human rights training with a view to increasing expertise.

Human rights are universal and belong to all. Finland's international human rights policy aims at de facto improving the human rights situation in different countries, in accordance with the provisions of international human rights conventions. In particular, Finland pays attention to the rights of women, children, minorities and indigenous peoples, and of persons with disabilities, because these groups of persons face a greater risk of discrimination than others. It is most important to address the situation of the most vulnerable groups.

**International human rights policy and national protection of human rights are closely interrelated.** As a country showing respect for human rights, social equality, the rule of law and good administration, Finland has the capacity and credibility needed to also promote these principles in the international fora. Improvements are needed in the human rights situation in all parts of the world, and there are also problems in the protection of human rights in Finland. In this respect, the recommendations given by the international treaty bodies provide a good starting point to address the problems.

Active human rights policy is also needed in difficult conditions. Since the terrorist attacks of September 11, 2001, the conditions for international cooperation in the protection of human rights have been rather difficult. However, civil societies in the different parts of the world support the work for the implementation of human rights and, in the long term, human rights will play an increasingly important role in the international agenda. Finland has also underlined the importance of respect for human rights and the rule of law in the international fight against terrorism.

**Finland aims at an even distribution of the benefits of globalisation.** From a human rights perspective, the threatening inequality in the enjoyment of rights by women and different minority groups, for example, is a problem that needs to be addressed. The increasing movements of persons across national borders have certain positive aspects relating to human rights but they also present great problems. Finland has paid particular attention to the prevention of trafficking in human beings and the Government intends to prepare a national programme to that effect. Furthermore, the Finnish refugee policy will be reviewed in the light of human rights obligations in the next few years.

**Eradication of extreme poverty constitutes a challenge for the protection of human rights.** Finland aims at improving the possibilities of participation of different population groups and enhancing good administration as part of the eradication of poverty. Finland's development cooperation policy is also based on the human rights based approach to development.

The Finnish presidency of the EU in 2006 provides an excellent opportunity to pursue the Government's human rights policy. The European Union is a relevant forum in which Finland may actively aim at pursuing its objectives with regard to the protection of human rights. In 2006, Finland will hold the presidency of an enlarged Union and will also bear the responsibility for enhancing the consistency of the Union's human rights policy and the development of the human rights policy.

**Finland aims at contributing to a more effective international system of protection of human rights.** Finland has presented its candidature for election to the United Nations Commission on Human Rights for the years 2005 to 2007, which would provide an opportunity for the de facto promotion of human rights instead merely participating in the debate which is often politicised. The Finnish initiative, within the framework of the Council of Europe, for the setting-up of a European Roma forum, is meant to be implemented in 2005 at the latest.

#### 1. INTRODUCTION

Human rights are among the priorities of the Finnish Government's foreign policy. In accordance with the Government's political programme, the Government pursues an active human rights policy both in bilateral relations and within the frameworks of the European Union and other international organisations. The Government supports the primary role of the United Nations in the promotion of universal respect for human rights as well as the work of the Council of Europe and the Organization for Security and Co-operation in Europe in the field of human rights.

This report outlines the objectives and means of the Government's active human rights policy. It also gives account of the development since the submission of the previous Report by Minister for Foreign Affairs Erkki Tuomioja to the Foreign Affairs Committee of Parliament on the Human Rights Policy of the Finnish Government in 2000, and particularly of the ways in which the objectives set out in that report have been met. Certain questions are addressed in more detail, in order to provide concrete examples of the situation and of the Government's activities. The most relevant objectives of the Government are summarised at the beginning of the present report as well as at the beginning of each section of the report.

The Government's human rights policy must be consistent and based on the same principles both in Finland and in international fora. The Government's international human rights policy and the application of human rights law at the national level are in many ways interrelated. The Foreign Affairs Committee of Parliament, in its comments on the aforementioned report of 2000, also expressed a wish for consistency in the measures to be taken at the international level and within a national framework. Accordingly, the present report addresses the national implementation of human rights in the same context with international action, in respect of certain relevant issues. In this respect, the report is more extensive than the earlier ones given by the Minister for Foreign Affairs.

The recommendations issued by international treaty bodies monitoring the implementation of human rights conventions have been used as criteria for the selection of the national aspects included in the present report. The issues in respect of which also national aspects are given are those to which the treaty bodies have particularly drawn attention to. It has been necessary to limit the scope of the report to certain issues only because the protection

of human rights is a complex topic and it is not possible to address all its dimensions. As a follow-up to this report, the national aspects may be extended in later reports.

The earlier reports on the Government's human rights policy were submitted to the Foreign Affairs Committee of Parliament by the Minister for Foreign Affairs in 1998 and 2000. The present report of the Government covers a longer period of time and sets out the Government's objectives more clearly. The Foreign Affairs Committee has also found it reasonable to only receive one report for each elected Parliament.

The present report begins with a summary of the general objectives and principles relating to Finland's human rights policy. The activities of Finland within the framework of the European Union are addressed in one section. Considering that the European Union is, however, an important forum for Finland's human rights policy, the EU activities are referred to throughout the report. The section which addresses the activities of the most relevant organisations in the field of human rights, gives account of recent developments and sets out Finland's objectives. Finland's activities in the neighbouring regions are discussed as a separate entity. The section focusing on global issues addresses various issues of worldwide interest, concerning particularly human security, terrorism, human rights and trade, development cooperation, and refugees. As for issues relating to refugees, the situation in Finland is also given account of. Finally, the report addresses the priorities of Finland's human rights policy and certain other thematic questions in detail, from both international and national perspectives.

There have been rather difficult global problems during the period of time since the submission of the previous report by the Minister for Foreign Affairs. Before the terrorist attacks of September 11, 2001, the protection of human rights had been strengthening for a considerable time at the international level. Thereafter, however, human rights have been confronted in a new way with security interests, and the political atmosphere in the human rights bodies of the United Nations has also been difficult.

Although the situation has changed since 2001, the harder political atmosphere is still visible in the human rights debates. There are still attempts to restrict the rights of the individual in the name of combat against terrorism. Such attitudes are reflected, among others, in the debate on the rights of women. The international agenda is different as a result of the events of

September 2001. It has more often been necessary to defend the rights already attained instead of aiming at further progress. Most importantly, however, there is still a clear need and place for the promotion of respect for human rights. With regard to an active and credible human rights policy, it is necessary that the policy finds support in civil society, both at the national and international levels.

The Government of Finland is committed to consistently underlining human rights aspects in different policy sectors.

# 2. FINNISH ACTION FOR THE PROMOTION OF RESPECT FOR HUMAN RIGHTS: MAIN PRINCIPLES

- The universality and indivisibility of human rights, the principle of non-discrimination, and transparency are the main principles on which the human rights policy of the Government of Finland is based. Finland's international human rights policy and the implementation of human rights at the national level are interdependent.
- , The mainstreaming of human rights in the different sectors of administration is a particular objective set by the Government for the next few years.
- , The work for the protection of the rights of women, children, minorities and indigenous peoples is continued. In the next few years, the Government will pay particular attention to the enhancement of the rights of persons with disabilities.
- , The Government is committed to the provision of human rights training and to cooperation with the non-governmental sector.
- , The possibilities for the establishment of a national institution for the protection of human rights will be assessed in the next few years.

One of the Government's objectives for the next few years is to increase consistency in its human rights policy. By the dissemination of information on human rights, the Government aims at making it easier to identify those factors that affect, either at the national or at the international level, the de facto enjoyment of rights.

The mainstreaming of human rights in new sectors requires, however, critical assessment of the concrete means by which the Government's human rights policy is pursued. Also means other than political ones are important in order to ensure effectiveness. The objective of the Government's development cooperation policy for the next few years, for example, is to better identify the means of affecting the implementation of human rights in the partner countries by means of bilateral and multilateral development aid.

The Finnish Government is, within the framework of its human rights policy, committed to dialogue and cooperation both in its bilateral relations and in the European Union. Within the framework of the United Nations, Finland also aims at finding ways to overcome contradictions. The purpose of human rights dialogue is to improve the human rights situation. The

main purpose cannot, however, be the pursuance of a dialogue and the dialogue cannot exclude the possibility of criticising defects found. Transparency and an open public debate are an integral part of the international promotion of respect for human rights. However, the possibility of resorting to sanctions cannot be excluded either. The European Union, for example, has increasingly used the possibility of temporary suspension of agreements, which is included in the human rights clauses of development cooperation agreements that EU has with third countries. The application of sanctions must, however, be subject to careful scrutiny as means of human rights policy, as they may mainly affect the most vulnerable groups of persons.

For the purpose of setting objectives for Finland's human rights policy, it is important to define the main principles. These principles are presented in the following.

#### 2.1 Universality

Human rights are universal and belong to all human beings. It was declared already in 1948, in Article 1 of the Universal Declaration of Human Rights, that: "All human beings are born free and equal in dignity and rights."

The universality of human rights is also one of the main principles of the human rights policy of the Government of Finland. The protection of human rights is based on a large number of international conventions which have been widely ratified. The most important principles enshrined in the Universal Declaration of Human Rights are considered part of international customary law binding on states irrespective of whether they have ratified conventions containing the same principles. Therefore, the promotion of respect for human rights is not a western or otherwise culture-bound value but is a worldwide obligation and challenge.

The legitimate right of the international community to intervene in the human rights situation in any country of the world derives from the universality of human rights. The Government of Finland also finds that the monitoring of human rights situation is an integral part of the international system of protection of human rights based on treaties and monitoring mechanisms. The debate on "interference in the internal affairs of a country", or on certain human rights cultures differing from universal standards,

has settled but has not entirely died out yet. In the United Nations Commission on Human Rights (CHR), for example, there is still discussion on the legitimacy of the right of the international community to discuss issues relating to certain countries, despite that the principle of universality of human rights was affirmed by consensus in the United Nations World Conference on Human Rights in Vienna in 1993.

The Government still aims at strengthening the international human rights mechanisms¹ and their resources, including those of the United Nations High Commissioner for Human Rights whose resources are still rather limited. Finland also accepts the monitoring of its own human rights situation. The Government of Finland submits its periodic reports to the treaty bodies monitoring compliance with human rights conventions transparently and on time, with a view to ensuring high-standard implementation of international human rights obligations in Finland. Finland also aims at enhancing such an open attitude towards the monitoring of human rights within the whole European Union and at the international level.

The situation of conscientious objectors in Finland is an example of issues that have received wide international attention. Human rights organisations have considered the duration of civilian service in Finland to be too long and of a punitive nature, when compared with the length of military service. This problem will be addressed by the Government in the context of reviewing the system of civilian service.

## 2.2 Indivisibility

From the perspective of protection of human rights, it is important to ensure the highest possible degree of implementation of all the different rights. In the view of Finland, it is not possible to draw a line between the civil and political rights and the economic, social and cultural rights, and nor to juxtapose them, but they are in many respects interdependent. The challenges brought by the increasing globalisation have underlined their interdependence. The economic, social and cultural rights are not, however,

<sup>&</sup>quot;The international human rights mechanisms" mean the treaty bodies monitoring compliance by states with their human rights obligations, such as specific working groups or special rapporteurs designated for that purpose.

always given sufficient attention in the discussion on human rights and nor are the monitoring mechanisms in respect of them at the same level with those applied to civil and political rights. The enhancement of respect for economic, social and cultural rights is among the particular objectives of the Finnish Government.

Finland also welcomes the development of new rights (such as the right to environment) and assesses them in the light of their relevance for the effectiveness and scope of the protection of human rights. It is important to ensure respect for the existing rights. However, new human rights conventions should not be excluded either as they may serve as means to strengthen the implementation of existing rights in respect of certain groups of persons (such as the persons with disabilities or indigenous peoples) or to strengthen the monitoring mechanism (e.g. the system of regular visits relating to the prohibition of torture).

The modern list of fundamental rights in the Constitution of Finland lays down a solid foundation for enhancing respect for human rights, covering the different sectors of life, also at the international level.<sup>2</sup> The list of fundamental rights in the already repealed Constitution Act of Finland was extended by a reform of the fundamental rights provisions in 1995 to cover not only the traditional fundamental freedoms but also new rights such as the right to the necessary subsistence and care (section 19), written in the form of a subjective right, and environmental rights (section 20). In the drafting of the Charter of Fundamental Rights of the European Union, Finland rather successfully worked for the inclusion of economic, social and cultural rights and environmental rights as well as the right to good administration in the Charter. These rights are interdependent, as for example respect for the principle of good governance is an essential requirement for the proper implementation of human rights.

For the purposes of this Report, "human rights" mainly refer to those rights which are included in international human rights conventions, whereas "fundamental rights" refer to the lists of rights included in national constitutions.

#### On the definition of human rights and fundamental rights<sup>3</sup>

Human rights are universally recognised rights codified in international human rights conventions. All human rights — including civil and political, and economic, social and cultural rights — are equal, interdependent and complementary in nature. The Universal Declaration of Human Rights and international human rights conventions place states under an obligation respect and guarantee the rights defined in them for both their own citizens and other persons residing within their territories. International human rights conventions have been implemented in Finland by legislative acts and are part of Finnish law and therefore, in principle, applicable as law in the same way as any other statutes.

Fundamental rights are the equivalent of human rights in national law and are defined in Chapter 2 of the Constitution of Finland. In 1995, a reform of the provisions on fundamental rights was carried out in Finland, whereby the provisions were better harmonised with the human rights guaranteed by international conventions. The reformed provisions were included as such in the new Constitution which entered into force in 2000. After the reform of the fundamental rights provisions, the contents of certain rights have been made more precise at the level of acts of Parliament. Such acts include the Freedom of Religion Act, the Sámi Language Act and the Act on the Exercise of Freedom of Expression in Mass Media, which were all passed in 2003.

At present, the Finnish provisions on fundamental rights are relatively strong when compared with those of other countries. Fundamental rights and human rights have become part of the national legal order and they are invoked as provisions affording subjective rights. In the preparatory work for the reform of fundamental rights provisions, it was particularly required that

The reports of the Parliamentary Ombudsman and the Chancellor of Justice have been used as sources for this chapter.

the courts and other authorities refer to the provisions on fundamental rights where they are applicable.

Under sections 108 and 109 of the Constitution, the Chancellor of Justice and the Parliamentary Ombudsman supervise the implementation of fundamental rights and human rights. The supervision mainly takes place by means of investigating complaints lodged by citizens and by carrying out on-site inspections of governmental agencies and institutions. The supervisory authorities may also on their own initiative undertake to investigate cases. In the context of supervision, attention is also paid to the requirements of good and appropriate administration of justice and of good administration. The Constitutional Law Committee of Parliament has required that the Chancellor of Justice and the Parliamentary Ombudsman include a specific section on the implementation of fundamental and human rights in their yearly reports to Parliament.

In the report of the Parliamentary Ombudsman of 2002, Parliamentary Ombudsman Riitta-Leena Paunio drew attention to a few problems in society that might lead to serious violations of fundamental or human rights in Finland. These problems include domestic violence, homelessness, the situation of children with most problems, and the intolerance towards and discrimination against minorities. These problems are addressed in section 6 of this Report.

The concept of fundamental rights is also used by the European Union. The European Union is based on respect for freedom, democracy, human rights and fundamental freedoms and on the rule of law. In the European Council meeting in Nice in December 2000, the Charter of Fundamental Rights of the European Union was adopted. The Charter contains both civil and political rights and economic, social and cultural rights. The status of fundamental rights in the EU may, however, further strengthen as it has been proposed that the Charter be included as such in the draft Treaty establishing a Constitution for Europe which is currently being discussed by the Inter-Governmental Conference (IGC).

#### 2.3 Principle of non-discrimination

The equal implementation of rights without discrimination because of origin, sex, age, religion, opinion, disability or sexual orientation or other comparable reason, is a principle on which the protection of human rights and the Finnish Government's human rights policy are essentially based. The prohibition of discrimination is included in the most important human rights conventions and in the Constitution of Finland (section 6), as well as in the Charter of Fundamental Rights of the European Union.

It is clear, however, that the de facto enjoyment of human rights or fundamental rights is not equal. For example women and persons belonging to different minorities still face discrimination in various parts of the world.

In the first Report by Minister for Foreign Affairs to the Foreign Affairs Committee of Parliament on the human rights policy of the Finnish Government, submitted in 1998, the rights of women, children, minorities and indigenous peoples were designated as areas of special emphasis. There is still reason to continue the efforts to improve the status of these groups, in view of the extent of the human rights problems faced by these groups as well as of the Government's aim at increasing consistency in its human rights policy.

Furthermore, the protection of the rights of persons with disabilities deserves special attention. The rights of persons with disabilities are inadequately implemented in all parts of the world. The protection of their rights is a topic currently subject to debate e.g. in the form of negotiations on a new comprehensive and integral international convention on the protection and promotion of the rights and dignity of persons with disabilities. Finland is able to provide high-level expertise in respect of issues relating to persons with disabilities. Finland has also adopted guidelines concerning such issues in the context of development cooperation.

## 2.4 Transparency

Although governments are responsible for the implementation of human rights in their respective countries, the responsibility for the promotion of respect for human rights cannot be solely vested in governments. Effective human rights work is not possible without the compilation of information, networking and influence by non-governmental organisations, and without

the participation of the media and other relevant actors of civil society. Parliaments also play an important role in the setting of guidelines for the governments' human rights policies and in the European organisations.

The Finnish Government is committed to a transparent human rights policy. The Government has set an objective of enhancing transparency at the national level, in the European Union and in other international organisations. Transparency directly affects the credibility and productivity of human rights policy.

At the national level, transparency requires, firstly, that the human rights policy is not pursued in isolation but is rather actively mainstreamed in the different sectors of administration. This applies to both foreign affairs and other sectors of government. The Government has set an objective of making human rights issues more easily identifiable, increasing expertise in human rights and more consistently applying the Government's human rights policy guidelines in the different sectors of state administration.

Transparency requires an open approach by the government to other actors of society, such as the human rights organisations. Already now are the Government's contacts with the non-governmental sector rather extensive. For example, there is an Advisory Board for Human Rights operating under the auspices of the Ministry for Foreign Affairs, which is responsible, among others, for the provision of opinions, taking initiatives and organising seminars in the field of human rights. It also serves as a useful channel for the exchange of information and contacts between the Government and non-governmental organisations in the field of human rights. The Advisory Board is an independent body but the Government is committed to ensuring the possibilities for its work for example by the provision of secretarial resources. The Government aims at further developing contacts with the non-governmental sector.

The idea of establishing a national human rights institution in Finland, in accordance with the so-called Paris Principles adopted by the UN General Assembly, is mainly based on an initiative taken by the non-governmental organisations. Currently, the duties based on the said principles are performed by several bodies, including the Parliamentary Ombudsman, the Chancellor of Justice and the Advisory Board for Human Rights, as well as certain non-governmental organisations and research institutions, but there is no human rights institution designated particularly for that purpose. The

Government considers that the advantages and problems relating to the establishment of such an institution must be examined before taking any measures, paying attention, among others, to the resources available for human rights work and their effective and appropriate use. The nongovernmental organisations and other bodies, which are currently responsible for the performance of the relevant duties, must have a central role in the discussions on an independent national human rights institution.

#### 2.5 Human rights training

The increasing of the role of human rights in foreign and security policy was set as a particular objective in the previous report on the Government's human rights policy submitted by the Minister for Foreign Affairs to Parliament in 2000. Human rights training has been provided for persons performing managerial functions both in the foreign service and in other sectors of government. Such training will be continued and provided at different levels of administration, in respect of various issues relating to the protection of human rights. Furthermore, support for research in the field of human rights will be continued particularly in such issues as are relevant for the Government's human rights policy.

In order to strengthen respect for human rights, human rights education should start already at school. In Finland, human rights education is provided both at comprehensive school and at upper secondary school. According to the national guidelines for comprehensive school education, the discussion on ethical values at school is based on the Universal Declaration of Human Rights. The principle of non-discrimination has been paid attention to in the field of education for example by including studies in cultural diversity in the training of teachers. The Government aims at further increasing the human rights education of children and young persons.

Non-governmental organisations play an important role in the promotion of respect for human rights. The Government has provided financial support for publications and projects of non-governmental organisations in order to enhance the dissemination of information on human rights. For example, at the beginning of 2004, Internet pages<sup>4</sup> were opened, compiling

<sup>4</sup> See http://www.ihmisoikeudet.net.

materials on human rights particularly for schools and educational institutions. The Finnish League for Human Rights, Amnesty International Finland and the Finnish UN Association carried out the project in cooperation with teachers, human rights research institutes and certain nongovernmental organisations.

#### 3. EUROPEAN UNION AND HUMAN RIGHTS

- , The EU is has an important role in the field of the protection of human rights worldwide. One of the greatest challenges for the human rights policy of the EU is to ensure its consistency and coherence, which is also a particular objective set up by the Finnish Government.
- , For the internal development of the EU, it is relevant to give a real meaning for the fundamental rights.
- , The Finnish Government aims at ensuring the accession of the EU to the European Convention on Human Rights.

#### 3.1 Strengthening the protection of fundamental rights within the EU

#### 3.1.1 Assessment of the Charter of Fundamental Rights

The solemn proclamation of the Charter of Fundamental Rights of the European Union in the European Council meeting in Nice in 2000 significantly strengthened the protection of fundamental rights in the European Union. The objectives of the Finnish Government in the drafting of the Charter were largely achieved. The provisions of the European Convention on Human Rights were taken into account in the drafting of the text and, apart from the traditional civil and political rights, certain economic, social and cultural rights were also included in the Charter. In addition, upon the proposal of Finland, among others, provisions on good governance and environmental rights were included in it. However, the provisions on the rights of minorities, for example, do not meet the objectives that Finland had.

The purpose of the Charter of Fundamental Rights was not to create new rights but to compile the rights existing within the territories of the Member States into a single document. For the time being, however, the Charter is not a legally binding instrument and there is no effective mechanism for monitoring compliance with its provisions. The Charter has mainly had relevance for example when the Commission has taken its provisions into account in the preparation of proposals for Community legislation. The European Court of Justice, however, has not founded its judgments on the provisions of the Charter to the extent expected, despite that the Court of First Instance has referred to the Charter in its judgments.

Although the Charter of Fundamental Rights has undoubtedly provided some guidance for the legislative and political processes within the Union, its influence has not been that clear. However, the Charter has also had positive effects in that it has made EU citizens more aware of the existing rights.

#### 3.1.2 Objectives for the strengthening of the protection of fundamental rights

The European Convention on the Future of the Union, preparing the draft Treaty establishing a Constitution for Europe, did not find it particularly problematic to give the Charter of Fundamental Rights a binding nature as an integral part of the Constitution. However, the question of the Union's values, particularly as regards the Christian religious inheritance, has been subject to more criticism than anticipated. Finland finds the planned wording concerning human rights, including the rights of minorities, acceptable.

The proposals of the Convention included one for a distinction between rights and principles. The economic, social and cultural rights were considered to belong to the latter category. The Finnish Government does not find such a distinction necessary and, furthermore, it is inconsistent with the principle of indivisibility of human rights underlined by the Government. However, the Government may consider accepting the distinction in the Inter-Governmental Conference in case it is necessary for the purpose of ensuring the legally binding nature of fundamental rights in the European Union. In such a case, Finland intends to enhance the recognition of the legal nature of economic, social and cultural rights by other means available. The Finnish Government aims at preventing the emergence of a significant difference between the two categories of rights.

In the future years, Finland aims at enhancing the protection of fundamental rights in all sectors of the European Union by the means available for that purpose. The list of fundamental rights should be more clearly taken into account in the preparation of any legislation in respect of which they are relevant. Finland will assess EU projects, including the Commission's proposals for legislative acts of the Union, in the light of their consistency with human rights obligations. Fundamental rights must also be given a more visible role in the external relations of the EU. Guidelines concerning this aspect, which is relevant for the consistency of Finland's EU policy, will be provided for the training of officials responsible for EU issues so that

there are de facto possibilities to actively enhance respect for fundamental rights at different policy levels.

The long-term objective of the Finnish Government concerning the accession of the EU to the European Convention on Human Rights was rather easy to enhance during the preparation of the draft Treaty establishing a Constitution for Europe. In the first place, the Finnish Government aims at ensuring that the binding nature of fundamental rights be maintained in the draft Treaty. Once that has been guaranteed, efforts may be made to ensure as early accession as possible. With regard to the schedule of accession, however, it must be remembered that the accession of the EU also requires an amendment to the European Convention on Human Rights. The amendment is not expected to be very difficult but the process necessarily requires some time. During the process, cooperation between different mechanisms for the protection of human rights, including the courts, should be enhanced. In the long term, the Finnish Government aims at preventing the emergence of two separate human rights regimes by means of ensuring a coordinated development within both the EU and the Council of Europe, which supports the protection of human rights in general.

Non-governmental organisations have considered the human rights policy of the EU to be less credible for the reason that it has no consistent policy that would apply to both the Union's internal affairs and its external relations. Nor has the Union any effective mechanism for the monitoring of human rights development taking place within the Union.

Already in the previous report on the Finnish Government's human rights policy, submitted by the Minister for Foreign Affairs in 2000, did the Government set as an objective the development of the consistency and coherence of the European Union's human rights policy. Finland has taken initiatives e.g. for the horizontal handling of human rights issues in the EU, so that the objective of increasing the coherence of the Union's human rights policy could be better met. Cooperation with the European Parliament is also useful in this respect.

The internal dimension of the EU's human rights policy has also become more pertinent along with the amendment of the EU treaties. The provisions of new Article 7 of the Treaty on European Union make it possible to impose sanctions on a Member State that seriously and persistently breach-

es the principle of respect for human rights and fundamental freedoms, which would also necessitate some kind of a mechanism for the monitoring and assessment of the protection of human rights in the Member States. Article 58 in Part I of the draft Treaty establishing a Constitution for Europe would further strengthen the existing provisions of Article 7. Thus, Finland's objective concerning increased consistency and coherence still deserves to be pursued.

In the European Council meeting in Brussels in December 2003 during the Italian Presidency of the EU, the Representatives of the Member States, in the context of deciding on the seats of certain offices and agencies of the European Union, agreed on building upon the existing European Monitoring Centre on Racism and Xenophobia and on extending its mandate to make it a Human Rights Agency. The Finnish Government wishes to underline that human rights are an integral part of EU policies and cannot be separated to be dealt in isolation by a specific agency. Instead, the resources of the existing EU institutions should be increased to that effect. In case the establishment of a human rights agency is furthered, however, on the basis of a possible Commission proposal, the Finnish Government might consider supporting the assignment of certain monitoring duties to the agency. Even then, it should be ensured that the agency be closely linked with the EU institutions and the Council of Europe which already has monitoring functions.

# 3.1.3 European Ombudsman and the European Parliament Committee on Petitions

The European Ombudsman has competence to interfere with deficiencies found in the EU institutions and to make recommendations for the elimination of maladministration and for the general development of administration. Individual citizens of the Union and other persons residing within the Member States' territories also have a right to file complaints either directly with the Ombudsman or through a member of the European Parliament. In September 2001, the European Parliament adopted the first important recommendation made by Ombudsman Jacob Söderman to the Commission, for a Code of Good Administrative Behaviour. The European Ombudsman and the national ombudsmen in twelve of the old Member States and in all of the ten new Member States, have close cooperation through information exchange, and yearly meetings and seminars, which is particularly useful for the new Member States.

The Committee on Petitions of the European Parliament is a body to which individual persons may submit petitions if they find that a Member State has not complied with its obligations under the Treaty on European Union or has failed to enact legislation concerning a particular issue, or that the legislation is inadequate. The Committee receives 1000 to 1500 petitions every year, of which some 20% concern social security benefits and pensions. In most cases, the petitions relate to transfrontier work and subsequent retirement on pension.

#### 3.2 Human rights in the external relations of the EU

The European Union plays in many respects an important role in global politics concerning human rights. As providers of development aid, the EU and its Member States clearly provide the greatest amount of aid. The Union also has a significant political role. The EU constantly maintains human rights on the agenda in its dialogues with the governments of several states and actively enhances the protection of human rights in international organisations. Since the beginning of the 1990s, the Community has included a human rights clause in its agreements with third countries and thereby human rights have become a relevant part of the EU's treaty relations.

While the enlargement of the European Union further increases the significance of the Union in international fora, it also creates new challenges with regard to the protection of human rights. The EU has by enhanced compliance with the Copenhagen criteria and the status of minorities in the new Member States various means, for example through projects led by the Commission. The continuance of the important work undertaken to improve the status of Roma should also be ensured after the enlargement.

The EU is an important forum for the Finnish Government's human rights policy. The political weight of opinions expressed by the EU is great when compared with that of national views, and the presence of the EU in different parts of the world is clearly more visible than the Finnish representation could ever be. Therefore, from the perspective of the effectiveness of human rights policy, it is justified to give priority to measures taken at the EU level in issues where it is possible. <sup>5</sup> It has proved possible to make great

The rights of minorities are an example of issues in respect of which the EU has no common policy, and in the protection of these rights Finland pursues a policy of its own.

achievements through active and consistent action within the EU. In the field of human rights, the rights of women, for example, are an area where Finland has significantly contributed to the formulation of the EU's policy.

#### 3.2.1 Common foreign and security policy

Already in the reports submitted to Parliament in 1998 and 2000 was it noted that the increase of consistency and coherence in the human rights policy of the EU was one of the Government's most important objectives. Despite its extensive action in the field of human rights, the EU has not been able to maximise the effects of its action in the different countries as the Member States have not been able to use the different means available for the enhancement of human rights in a sufficiently coordinated manner. For example the three-pillar structure of the EU and the related questions of competence have been problematic in this respect.

In order to increase consistency, various measures have been taken in the past few years. In December 2001, the European Union Guidelines on Human rights dialogues were adopted. In June 2001, Council of the European Union adopted extensive conclusions on the basis of the Commission communication on the European Union's role in promoting human rights and democratisation in third countries, with a view to intensifying the Union's human rights policy in different sectors. During the preparation of the conclusions, Finland called for consistency for example between the internal and external actions of the EU. As part of the follow-up to the conclusions, Finland has so far, however, only proposed an extension of the mandate of the Council Working Party on Human Rights operating under the so-called second pillar of the EU. Finland's proposal was implemented at the end of 2003. The extension of the mandate is important as it makes it possible to examine human rights issues in a coordinated way in different contexts.

In order to increase consistency and transparency, Finland has worked for the development of the annual human rights report of the EU so that it would also include an evaluation of the effects and impact of the EU actions and a more extensive section on the internal situation of the EU. Certain improvements have been made in this respect but the report still needs to be further developed.

As for transparency, it may be noted that the EU's meetings with certain important human rights organisations, for example, have also increased

outside the yearly sessions of human rights bodies in the past few years. Finland has not only participated actively in such meetings but has also aimed at ensuring that the information produced by non-governmental organisations is adequately taken into account. Finland has also made efforts to enhance the use of the Internet more efficiently than before for the dissemination of information on EU actions in the field of human rights. New web pages on human rights, maintained by the Council and the Commission, have also been recently introduced<sup>6</sup>.

However, the EU actions still suffer from bureaucracy and slowness, brought about by the inadequate coordination. This can be seen particularly clearly in the Commission on Human Rights of the United Nations where the EU has not been able to achieve sufficiently effective interaction with others.

#### 3.2.2 Human rights clauses in agreements concluded with third countries

Although human rights clauses have been included in agreements concluded by the EU with third countries for about ten years already, their significance remained rather limited for a long time. In the past few years, however, the EU has begun to more actively use this possibility of influence offered by the human rights clauses. They have been used as a basis for negotiations or for the temporary suspension of the operation agreements, for example in the cases of Liberia, Ivory Coast, Haiti and Sierra Leone.

The new human rights clause in the Cotonou Agreement concluded between the EU and the 77 Asian, Caribbean and Pacific Group of States (ACP), which entered into force on 21 May 2003, contains a more developed mechanism for the dialogue and consultations between the parties. More recently, the Commission has also developed other arrangements where the human rights clause is given more weight than before<sup>7</sup>.

The extended human rights clause in the Cotonou Agreement has been applied, in particular, in the case of Zimbabwe. In the General Affairs Council of the EU in the autumn of 2001, Finland supported the holding of

See http://europa.eu.int/pol/humanrights/annualreport/.

See e.g. the agreement concluded with Bangladesh in 2003, providing for a working group on human rights and a possibility to introduce various projects relating to human rights.

consultations with Zimbabwe under Article 96 of the Agreement. However, Zimbabwe was not able to conduct such consultations and a decision on the revoking of the consultations was made in January 2002. The EU decided to apply targeted sanctions within the framework of the second pillar, as well as sanctions affecting the allocation of development aid. Nor have there later been sufficient possibilities for cooperation with the Government of Zimbabwe, such as for the provision of support for elections<sup>8</sup>. Finland would have hoped to see also African states contributing more actively to the development of democracy and respect for human rights in Zimbabwe. The EU and Finland have underlined that no position is taken on land ownership, for example, but that the EU requires, above all, respect for the rules of democracy and human rights. The Finnish Embassy in Harare was closed in August 2002.

Finland finds that the human rights clauses should not only be understood as a legal basis for the application of negative sanctions but rather as allowing a more positive joint action for the enhancement of respect for human rights. Where necessary, however, human rights clauses may also be used as a basis for sanctions. The scope of application of the clauses must not be assessed in isolation but in the light of the EU's human rights policy and of all the political means available.

#### 3.2.3 Human rights dialogue between the EU and third countries

The European Union aims at discussing issues relating to human rights, democracy and the rule of law in all meetings with third countries. This objective is set forth in the Guidelines on Human rights dialogues adopted in 2001. The EU also has entered into dialogues with certain countries focusing specifically on human rights, in the form of regular human rights meetings and seminars. At present, the EU has a human rights dialogue with China and Iran.

A dialogue is rather a means to enhance the protection of human rights than an objective as such. The human rights dialogues should clearly contribute to an improved human rights situation in the target country.

The election observers coming from certain countries, including Finland, were prohibited entry.

A meeting relating to the human rights dialogue with China takes place twice a year. The dialogue has been going on since 1996. The meetings, in which the EU is represented by the Troika, are supplemented by seminars of human rights experts in which researchers from the universities of both parties participate. The topics that have been recently discussed include death penalty, torture, HIV/AIDS and the ratification of the International Covenant on Civil and Political Rights. The situation in Tibet and the labour camps in China are also subject to regular discussions. In addition, the expert seminars have addressed the status of national human rights institutions, the efficacy of the legal system and the protection of civil society.

The EU has expressed concerns over the modest progress that has taken place in China despite the constructive meetings relating to the human rights dialogue. The General Affairs Council has further paid attention in its conclusions to the restrictions of the freedom of expression and the discrimination against minorities, among others.

The human rights dialogue between the EU and Iran was introduced in October 2002. The first meeting relating to the dialogue was held in Tehran in December 2002. Thereafter, two meetings have been held in Brussels, one in March and another one in October 2003. The dialogue takes place in the form of round-table discussions that are attended to by the delegations of Iran and the EU, as well as by representatives of universities, human rights institutes and non-governmental organisations. National parliaments and judiciaries have also been represented. Finland finds it particularly important to have NGO representation in the meetings. The round-table meetings are immediately followed by a restricted meeting of authorities.

The topics discussed in the context of the dialogue between the EU and Iran include the suppression of torture and discrimination. The rights of women and minorities have also been discussed on several occasions. Finland has been of the view that the dialogue should focus on the most important topics. These include the promotion of respect for the rights of women, and Finland has also underlined the importance of having female members in the delegations.

The dialogue has mainly taken place in a good and constructive spirit. However, there have also been some problems. For example, representatives of certain human rights organisations have been refused a visa for Iran. The EU enquiry concerning individual cases was also delayed by Iran.

Nevertheless, the greatest concern has been that the human rights situation has not improved in Iran since the introduction of the dialogue. To the contrary, according to some human rights reports, it has even further weakened. Restrictions to the freedom of expression, inhuman punishments, restrictions to the rights of women and deficiencies in the judiciary are examples of problems that need to be addressed immediately.

The human rights dialogue does not exclude other means of improving the human rights situation of Iran. Therefore, Finland supported the Canadian proposal to the Third Committee of the United Nations General Assembly in the autumn of 2003, for the adoption of a resolution concerning the human rights situation in Iran. Finland, in the same way as most EU Member States, co-sponsored the adoption of the resolution.

The EU Troika has consultations with the United States and Canada twice a year. The consultations take place before the sessions of the Commission on Human Rights and the Third Committee of the UN General Assembly. The EU has negotiated on common strategies and policy outlines with Canada within the framework of the United Nations. Furthermore, the possibilities for more intensive cooperation and removal of conflicts of interests with the United States have been examined, in issues where the EU and the United State pursue different policies. These include the attitudes towards the death penalty, the Convention on the Rights of the Child, the International Criminal Court, and reproductive rights. There have been problems in the consultations but some achievements have also been made. For example, the EU and the United States jointly introduced a resolution concerning the human rights situation in Turkmenistan in the session of the Commission on Human Rights in the spring of 2003.

## 3.2.4 Finnish presidency of the EU and human rights

Finland will hold the presidency of the EU during the second half of 2006. The schedule of the inter-governmental conference and its results may affect the working methods of the presidency to some extent. In any case, it is necessary to be prepared for an active period of presidency of an enlarged European Union, which will be important from a human rights perspective and, considering the horizontal nature of the topic, it will also be complex and demanding. Therefore, it is important to make careful preparations for the presidency so that the officials responsible for the different sectors of activities will have adequate preparedness to identify the problems in the

protection of human rights in their own sectors and to respond to such problems.

The objective during the earlier Finnish presidency was to enhance the consistency and transparency of the human rights policy of the European Union. These are long-term objectives that will undoubtedly also be relevant during the next Finnish presidency. It is not possible to predict all the individual problems that may come up. However, the objectives set in this report with regard to individual organisations and thematic issues will serve as a basis when more detailed objectives will later be set for the Finnish presidency of the EU in respect of human rights.

## EU policy against the death penalty and torture

#### Death penalty

As one means of promoting the protection of human rights, the EU as adopted thematic guidelines in the past few years, first concerning the death penalty and later concerning torture, and finally in the autumn of 2003 concerning children in armed conflict. It is interesting to briefly assess the application of the guidelines.

In the previous reports on the Finnish Government's human rights policy, an objective of contributing to the worldwide abolition of the death penalty has been set. After the year 2000, a number of countries has given up the use of death penalty or has suspended the enforcement of sentences of death penalty. However, there are still thousands of people executed around the world every year, which is why the efforts against the death penalty must be continued.

Finland is against the use of death penalty under any circumstances. Although the death penalty is not as such a penalty prohibited by international law, Finland — in the same way as all

<sup>&</sup>lt;sup>9</sup> See Annex 2 concerning the use of death penalty in the different countries of the world.

the EU Member States — considers that the death penalty is always an inhuman and degrading punishment which does not even have any deterring effect. The Government underlines that all states must comply with their obligations relating to the use of death penalty.

Protocol No. 13 to the European Convention on Human Rights, which prohibits death penalty in all circumstances, including in time of war, entered into force on 1 July 2003. Finland signed the Protocol in May 2002 and the Government Bill to implement it will be submitted to Parliament in the spring of 2004.

In the summer of 1998, the Guidelines for EU policy towards third countries on the death penalty were adopted and the EU takes action in cases where the conditions mentioned in the guidelines exist. The EU contacts the authorities of a state, i.e. makes a demarche, for example if it has abolished the death penalty but reintroduces it. A demarche is also made in cases where a state executes a person who has committed the offence in question before reaching the age of majority, or a mentally ill person, or introduces a particularly cruel or inhuman way of execution, such as stoning. For example, between the summers of 2002 and 2003, the EU made a demarche against the death penalty in the following countries: Burma, Kuwait, the Philippines, Japan, Nigeria, Tajikistan, the Democratic Republic of Congo, the USA, Uganda, Sudan, Indonesia, Qatar, Belize, Barbados, China, Laos, Sri Lanka, Iran, India and the Palestinian Authority.

Apart from the demarches, there are also other ways in which the EU works against the death penalty. The death penalty is often on the agenda of dialogues with third countries. Furthermore, on 30 September 2002, the Council of the European Union gave a Declaration on the death penalty and particularly cruel forms of execution. The declaration was a result of the Shariah-based sentences imposed in Nigeria, enforced by stoning. Since 1997, the UN Commission on Human Rights has proposed for adoption resolutions on the abolition of death penalty. In the spring of 2003, a resolution presented by the EU was finally adopted with 23 votes against 18, while 10 countries abstained from voting. A

record number of countries, i.e. 75 countries, co-sponsored the resolution. Finland and the whole EU pursue an objective of further increasing the number of countries voting for and co-sponsoring the adoption of the resolution. In the opinion of Finland, the issue should also be taken up in contexts other than the sessions of the Commission on Human Rights, such as in high-level meetings between the EU Member States and third countries.

In conclusion, the EU action against the death penalty may be considered to be an established and rather successful part of the EU's human rights policy.

#### **Torture**

The prohibition of torture is absolute and may not be derogated from under any circumstances. Torture is still, however, a serious global problem. The most important convention against torture is the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. An important step in the international work against torture was taken in the autumn of 2002 when the UN General Assembly adopted an Optional Protocol to the Convention. The Optional Protocol strengthens the monitoring mechanism under the Convention by imposing. inter alia, an obligation to establish a national preventive mechanism for the eradication of torture in places of detention. The Optional Protocol further provides for the right of the Sub-Committee on Prevention of Torture to make regular visits to places where people are deprived of their liberty in States parties to the Convention. Finland signed the Protocol on 23 September 2003 and its ratification is being prepared.

In April 2001, the Council of the European Union adopted the Guidelines for EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment. The purpose of the Guidelines is to serve as a tool in the discussions with third countries and to strengthen the work against torture worldwide. Finland finds that the guidelines were an important step in the activation of the work against torture but finds it also necessary to take more concrete measures to prevent torture.

During the Danish presidency of the EU in the autumn of 2002, a working paper on the implementation of the guidelines was adopted. On the basis of the working paper, the EU has introduced a strategy against torture, to concretely intervene in practices of torture in different countries. In the suppression of torture, the EU uses for example country reports prepared by heads of EU representations. As a means to intervene in torture in different countries, the EU has made the issue an integral part of its training and assistance projects. The EU also aims at issuing more opinions and declarations relating to the suppression of torture than before.

The implementation of the Guidelines has, however, proved to be very difficult. The idea of having pilot countries, i.e. choosing certain countries in the different regions of the world to which the guidelines would first be applied, did not work out. The Council Working Group on Human Rights, COHOM, decided at the end of 2003 that a plan of action would be prepared for the implementation of the Guidelines in the different parts of the world. The purpose of the plan of action would be to include the suppression of torture as an issue in all relevant political dialogue meetings with third countries.

Finland finds it very unfortunate that the implementation of the Guidelines has been unsuccessful so far, and considers that it is necessary to concretely implement them in order to maintain the credibility of the EU's human rights policy. Torture is a phenomenon that is difficult to address, as governments tend to deny its existence. Therefore, the situation is different from that concerning the death penalty.

The EU is also preparing a proposal for a Council regulation preventing the trade in such equipment and products as may be used for the enforcement of death penalties, torture and other forms of cruel, inhuman or degrading treatment or punishment. Finland finds the proposal to be of utmost political importance and considers that, as a legally binding instrument, the regulation will also strengthen the EU action against torture.

# 4. PROMOTION OF HUMAN RIGHTS IN INTERNATIONAL ORGANISATIONS

- The United Nations, as a worldwide organisation, is a particularly important organisation in the field of human rights. The development of the international legal order and multilateral cooperation is necessary for the achievement of worldwide respect for human rights. Finland supports the work of the UN human rights bodies and aims at increasing the resources of the UN High Commissioner for Human Rights. Finland has presented its candidature for election to the UN Commission on Human Rights.
- , The main functions of the Council of Europe are the enhancement of respect for human rights and the strengthening of democracy and the rule of law. The particular strength of the Council of Europe lies in the binding nature of its instruments. The main objectives of Finland in the Council of Europe in the next few years include the setting-up of a European Roma forum and the development of the European Court of Human Rights and other forms of human rights monitoring.
- , The Organization for Security and Co-operation in Europe also focuses on projects for the promotion of respect for human rights and democracy. The particular strength of the OSCE is its field missions and flexible working methods where necessary. Finland supports, among others, projects relating to the prevention of trafficking in human beings and discrimination against minorities.

### 4.1 United Nations

### 4.1.1 General

Within the framework of the United Nations, Finland aims at mainstreaming human rights in all sectors of activities. In view of the universal nature of human rights, the UN is, as a worldwide organisation, an important forum for the promotion of the protection of human rights, and its actions contribute to it in many ways. This section of the report, however, focuses on the activities of the main UN mechanism for the protection of human rights.

The UN actions in the field of human rights are determined in three yearly sessions: the Commission on Human Rights subordinate to the Economic and Social Council of the UN is convened to an annual regular session of six weeks in the spring, the ECOSOC affirming its conclusions meets in the summer, and the Third Committee of the UN General Assembly (discussing social, humanitarian and cultural issues) in the autumn. In the past few years, the sessions have been characterised by hardening attitudes, whereby the work for the enhancement of the protection of human rights has become more difficult. In respect of many issues, there are contradictions between the North and the South. The developing countries are not, however, a coherent group and there are great differences in their attitudes towards the protection of human rights. There are also other kinds of alliances of states. The contradictions between the different groups of states may be explained both by the differences of views concerning human rights and by the impact of political situations on human rights issues. Finland has aimed at reaching compromises and understanding between different groups of states without compromising, however, over the basic principles on which the Government's human rights policy is based.

Particularly country resolutions – of which most are based on a proposal of the EU — have met strong criticism. In the view of Finland, drawing attention to the human rights situation in individual countries has proved to be a rather efficient means, based on the universality of human rights, to address serious human rights violations taking place in different parts of the world.

There has, however, been progress in respect of several human rights issues. The numbers of states co-sponsoring resolutions presented by the EU Member States and other like-minded states have gradually increased. Disputed resolutions have been adopted surprisingly clearly, despite that certain others have been turned down. It must also be noted that the prospects of success of proposals in the Commission on Human Rights and the Third Committee of the General Assembly are somewhat different, due to the restricted number of members of the Commission and its composition.

# 4.1.2 Commission on Human Rights

The Commission on Human Rights (CHR) is the most important body of the United Nations creating human rights law and intervening in violations of human rights. The CHR serves as a forum for the monitoring and treatment of the human rights situations in individual countries. In the context of the country mandates, it is particularly important to apply consistent and objective criteria and, in this respect, it is also important to strengthen the monitoring mechanisms of the Commission. The special rapporteurs, working groups and other mechanisms designated by the CHR must have unlimited access to countries chosen by them, so that they will be able to provide reliable information. Finland has presented all human rights monitoring mechanisms a permanent invitation to visit the country and in Finland's view, all governments should in principle cooperate with such mechanisms.

Finland contributes actively to the work of the Commission on Human Rights every year, taking measures mainly within the framework of the EU. In addition, Finland participates in Nordic cooperation in the framework of which the Nordic countries present joint resolutions and statements. Finland has, for example, presented a joint Nordic resolution concerning the status of the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights. Finland also presents national statements relating to the Government's priorities, such as the rights of minorities.

During the session of 2003, Finland monitored on behalf of the EU a resolution implementing the UN Declaration on Human Rights Defenders. Finland finds the resolution to be of utmost importance. The human rights defenders play an active role in the initiation of reforms but are often themselves the first victims of human rights violations.

Finland has presented its candidature for election to the Commission on Human Rights for the term 2005—2007. The election of members will be carried out in the spring of 2004. The Nordic Countries present their candidatures on alternate turns, and the Finnish candidature is supported by all the other Nordic Countries. Sweden's membership in the CHR expires at the end of 2004. The Nordic Countries bring added value to the work of the CHR with their values and traditions of respect for human rights.

Apart from governments, non-governmental organisations actively contribute to the work of the CHR. Finland considers their contribution an important part of the Commission's work, without which the Commission

would not fulfil its purpose. The delegation of Finland also includes a representative of the NGOs through the Advisory Board for Human Rights.

## 4.1.3 Third Committee of the General Assembly

In the present report, the outcome of the session of the Third Committee which ended in December 2003 is examined as an example.

The session of the Third Committee in the autumn of 2003 was largely characterised by disputes over the procedure and problems relating to the work of the Bureau. There was a clear division between the South and the North, on the one hand, and between groups of states representing different values, on the other.

The EU played an important role in the Third Committee. The EU presented a draft resolution on the rights of the child jointly with the group of Latin American States, on which a vote had to be taken after difficult negotiations. Some progress was made in respect of the advancement of the rights of women as a resolution against domestic violence was adopted. However, it proved to be impossible to adopt a more extensive resolution concerning violence against women.

The resolutions concerning the situations of human rights in Myanmar, Turkmenistan and the Democratic Republic of the Congo, sponsored by the EU, were adopted after a vote. The resolution concerning the situation of human rights in the Islamic Republic of Iran, proposed by Canada and co-sponsored by Finland and most other EU Member States, was also adopted in the Third Committee. Furthermore, a good result was achieved in respect of the resolution concerning the right to development which is important for developing countries, and in respect of the discussions concerning the elimination of racism and racial discrimination. The EU contributed significantly to both issues in the same way as earlier. The resolution proposed by Mexico, concerning the protection of human rights and fundamental freedoms while countering terrorism, was among the priorities of Finland. Voting proved to be necessary but the outcome was rather good insofar as the contents of the resolution were concerned.

Finland presented a resolution on the International Decade of the World's Indigenous People and presented a statement on behalf of all the Nordic

Countries in this respect. The resolution was adopted without a vote, largely in the same form as in earlier years. The results of the Decade and the efficiency of the UN action concerning indigenous peoples will be assessed extensively in the ECOSOC session in the summer of 2004.

# 4.1.4 High Commissioner for Human Rights<sup>10</sup>

The High Commissioner for Human Rights, Mary Robinson, succeeded in making human rights visible both within the United Nations and outside the organisation. During her term of office which ended in the autumn of 2002, the protection of human rights extended into new sectors of activities and was given more weight. Mrs Robinson strongly expressed her opinion on violations of human rights taking place in different parts of the world.

The successor of Mrs Robinson as High Commissioner for Human Rights, Sergio Vieira de Mello, set an objective of giving the Office an established status. Instead of extending into new sectors, the activities are to be intensified and integrated into other UN programmes. Mr Vieira de Mello underlined the importance of worldwide presence of the Office of the High Commissioner for Human Rights, and the Office did contribute to the UN missions in Afghanistan, Iraq and Sierra Leone. After the death of Mr Vieira de Mello in Iraq, the UN Secretary General has proposed the appointment of Louise Arbour, a Canadian judge, as new High Commissioner for Human Rights.

The Finnish Government actively follows and supports the work of the High Commissioner for Human Rights. The voluntary financial contribution of Finland was increased in 2003, the present amount being approximately one million euro per year. The purpose is to further increase the amount of support provided to the Office. In 2003, the priorities for the allocation of funds include the special mechanisms of the Office and field presences in Africa. In addition, Finland supported the Voluntary Funds for technical cooperation, victims of torture and indigenous populations. Support has also been provided for junior professionals working two years for the Office of the High Commissioner for Human Rights. The provision of financial support will be continued and the funds will be primarily allocated to activities supporting the treaty monitoring bodies.

<sup>&</sup>lt;sup>10</sup> See http://www.unhchr.ch.

Since 2002, Finland has had yearly consultations with the Office of the High Commissioner for Human Rights. The consultations offer a possibility for Finland to bring up the Government's priorities and to better target the financial support provided for the Office. The consultations also provide an opportunity for the Office to inform the Government of its projects and needs.

The resources of the High Commissioner for Human Rights have remained rather limited. The increasing of the resources of the Office and the strengthening of its basic functions through payments to the UN regular budget are among the priorities of the Finnish Government in the United Nations. Finland has actively and successfully worked for the increase of the budgetary financing of human rights activities in the EU and the Fifth Committee of the UN, among others. The mainstreaming of human rights in the United Nations requires that the possibilities for an efficient Office of the High Commissioner for Human Rights, with sufficient expertise, be ensured.

# 4.2 Council of Europe<sup>11</sup>

#### 4.2.1 General

The main function of the Council of Europe is to promote respect for human rights. The Finnish Government considers that the Council of Europe significantly strengthens security in Europe by furthering democracy, human rights and the rule of law. The strength of the organisation is its high-standard legal basis and the exceptionally effective mechanism for the implementation of human rights law. The European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter and the European Cultural Convention lay down the foundation for a European human rights area.

The Council of Europe has expanded into a community of 45 member States. Armenia and Azerbaijan acceded to the organisation in 2001, Bosnia and Herzegovina in 2002, and Serbia and Montenegro in 2003. The application for membership filed by Monaco is being examined by the Council of Europe. Thereafter, Belarus will be the only European country outside the organisation, and nor is its accession expected in the immediate future.

<sup>11</sup> See http://www.coe.int/

The monitoring of compliance with the criteria for membership by candidate countries has been an essential part of the organisation's work since the end of the Cold War. Upon enlargement of the organisation, the monitoring gets a different form. The enlargement of the European Union also affects the work of the Council of Europe as 25 of its 45 member States are soon members of the European Union.

The aforementioned changes have raised discussion among the member States of the Council of Europe on the future role and working methods of the organisation. In the view of Finland, the main function of the Council of Europe is still to be determined. The strengths of the organisation continue to determine its role and relationship with other European organisations.

During the period of time covered by the present report, Finland's priorities included furtherance of the initiative made by the President of the Republic for the setting up of a European Roma Forum, and of the reform of the European Court of Human Rights, effective monitoring of compliance with human rights obligations, and strengthening the status of the Council of Europe Commissioner for Human Rights. These priorities are taken into account, for example, in the allocation of voluntary financial contributions of Finland. It is also important to actively participate in the discussion concerning the third summit of the Council of Europe.

# 4.2.2 Relationship between the Council of Europe and the EU

The Government underlines that the Council of Europe has a lot to offer to the EU. The human rights norms of the EU are still developing and for the time being there are no specific mechanisms for the monitoring of compliance with such norms. The expertise and the long experience that the Council of Europe has in the field of human rights are significant and the intensification of cooperation between the two organisations in this respect is also important for the developing European Union.

The Council of Europe has a larger number of member states than the European Union, and has thus experience of activities in countries neighbouring the Union. Therefore, the Council of Europe is able to offer a forum for the handling of matters concerning the new neighbour states of the EU or pan-European matters, particularly of such questions in which the Council of Europe has profound expertise due to its legal basis and forms of action. Finland will draw attention to the importance of this cooperation

within the framework of both the EU and the Council of Europe and in the development of new forms of cooperation so as to ensure its efficiency. However, it is also important to ensure that by developing the coordination of action among the EU Member States, in respect of issues relating to the Council of Europe, it is possible for the EU to present consistent views in different fora. Such EU coordination has indeed increased both in Strasbourg and in the Council of the European Union (COSCE Working Party) in the past few years.

In 2000, Finland made an initiative concerning the accession of the EU to the European Convention on Human Rights<sup>12</sup>. The initiative has been furthered in the negotiations on the draft Constitutional Treaty. Finland will also make efforts within the Council of Europe to enhance rapid handling of the initiative. Already before the accession is it possible to take several measures promoting a coherent European human rights area. Such measures include, for example, the enhancement of cooperation between the European Court of Human Rights and the European Court of Justice.

It has been recognised that the issues handled in the Council of Europe have a link with the prevention of conflicts and the restoration and maintenance of peace. Finland underlines the importance of coordination and cooperation among the EU, the Council of Europe and the OSCE. These three organisations have their own areas of expertise — for example the field presence of the OSCE and the legal standards of the Council of Europe. Consequently, the OSCE has been compared with fire fighters that are capable of rapid on-site action and the Council of Europe has been referred to as a builder of long-term architecture.

# 4.2.3 Third summit of the Council of Europe

The third summit of the Council of Europe is scheduled to take place during the Polish chairmanship of the Council of Europe in the spring of 2005. The summit will focus on the role of the Council of Europe in the construction of "a Europe without dividing lines". The summit has been made necessary by the changes that have taken place in the structures of the organisation:

<sup>&</sup>lt;sup>12</sup> For more information, see section 3.

firstly, the completion of the enlargement of the Council of Europe and, secondly, the enlargement of the European Union. In this situation the need to prevent the formation of new dividing lines and the need for the redefinition of the role of the organisation become more pertinent than before.

The agenda of the summit will be discussed in more detail in 2004. Finland finds it important to have an agenda that makes it possible for the third summit to fulfil its purpose with regard to the strengthening of the Council of Europe and the development of transparent procedures. At the same time, the Council of Europe would also be provided with adequate possibilities to continue to pursue its main function.

# 4.2.4 Development of the treaty framework of the Council of Europe

Regional organisations play an important role in the Finnish Government's human rights policy, supplementing that of the universal level. In this respect, it is necessary that the regional standards are at least at the same level with those of the United Nations, which must also be taken into account in the further development of the treaty basis of the Council of Europe.

At present, a European Convention for the prevention of trafficking in human beings is under preparation in the Council of Europe. The provisions of the new Convention should meet at least the obligations agreed on in the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention, and should enhance the implementation of the said two instruments at the regional level. However, within a regional framework, it is also possible to agree on stricter requirements on which no consensus has been reached among the members of the United Nations. For example, the only legally binding instrument for the protection of the rights of minorities that has been achieved so far is the Framework Convention concluded by the member States of the Council of Europe. Finland will examine the question of whether it would be possible to reach an agreement on good administration, from the perspective of the protection of human rights, for example in the form of a protocol supplementing the European Convention on Human Rights. Finland finds provisions on good administration important as it is in many respects necessary for the implementation of human rights but, for the time being, the rules concerning good administration are inadequate.

# 4.2.5 Monitoring of compliance by member States with their obligations, and recommendations of the monitoring bodies

Both the Committee of Ministers and the Parliamentary Assembly monitor compliance by member States with their obligations, within the framework of their monitoring mechanisms. The country-specific and public monitoring by the Parliamentary Assembly (so-called 'Halonen order') has proved to be effective. However, the monitoring carried out by the Committee of Ministers, being of a thematic and confidential nature, has been more problematic. The monitoring is in principle targeted equally at all member states irrespective of whether there have been human rights violations in their territories. The requirement of equal treatment has partly prevented the focusing of the monitoring mechanism on the greatest challenges.

The Government aims at contributing to a more transparent monitoring system that would better serve the purpose of enhancing respect for human rights. Both new and old member States must be covered by the monitoring. A more consistent use and follow-up to the recommendations issued by the different monitoring bodies would constitute a significant step forward in making the monitoring mechanisms more effective.

In particular, the follow-up to the recommendations given by the Anti-Torture Committee, the Advisory Committee under the Framework Convention for the Protection of National Minorities, the European Commission against Racism and Intolerance (ECRI), and the Commissioner for Human Rights may be further developed. Increase of coordination among the different monitoring mechanisms would also require more joint consultation within the Secretariat. Finland has aimed at improving the monitoring mechanism under the Framework Convention by financing an expert for the Advisory Committee of the Secretariat as of April 2003.

# 4.2.6 European Forum for Roma and Travellers

President of the Republic Tarja Halonen proposed to the Parliamentary Assembly of the Council of Europe on 24 January 2001 that an advisory body be created for the Roma, which would represent them at a pan-European level. The initiative is based on the concern over the inadequate possibilities of the Roma in Europe to participate in decision-making, present their views and invoke their rights. There are approximately eight to ten million Roma living within the territories of the member States of the

Council of Europe. The Finnish Government has an objective of ensuring full enjoyment of rights by the Roma, as defined in international law. The Roma must have a possibility to participate in decision-making at the European, national, regional and local levels.

The Government has actively enhanced the establishment of a European Roma forum under the auspices of the Council of Europe for three years already. The Finnish action has at all stages been based on cooperation with the Roma. The relevant Roma organisations, the Parliamentary Assembly of the Council of Europe, the Secretary General and the Commissioner for Human Rights have supported the Finnish initiative.

In the Council of Europe, under the leadership of Member of Parliament Gunnar Jansson, an ad hoc working group delivered its final report on the objectives, composition and election of the forum, to the Specialist Group on Roma of the Council of Europe in October 2002. A Working Group that operates under the leadership of the Permanent Representative of Finland was set up in March 2003, to examine questions relating to the setting-up of a Roma forum.

In the summer of 2003, Finland and France submitted a joint proposal specifying certain details relating to the setting-up of the Roma forum. The proposal was based on the report of the working group led by Mr Jansson. The most significant change is the independent status of the forum as an international organisation, having a treaty-based special relationship with the Council of Europe.

Finland has been financing a temporary expert for the preparatory work of the setting-up of the Roma forum since 2002.

The enlargement of the European Union means that there will be more Roma living within the territories of the EU Member States, whose social participation may be enhanced by the Forum. This will increase the importance of the Forum for the Union. The OSCE Contact Point for Roma and Sinti Issues and the Action Plan on Roma and Sinti, as well as the initiative endorsed by government leaders of Central and Southeast Europe, with the support of the World Bank and Soros Foundation, for a Decade of Roma Inclusion (2005-2015) and a Roma Education Fund further enhance the prevention of discrimination against Roma and the improvement of their standard of living.

The Finnish Government welcomes the active contribution of the aforementioned organisations and finds it particularly important to coordinate the activities of the EU, the Council of Europe, the OSCE and the World Bank in order to ensure their complementary nature.

# 4.2.7 Guaranteeing the resources of the European Court of Human Rights<sup>13</sup>

The European Court of Human Rights is, as an international court, of a unique nature and it has a significant role in the performance of the main function of the Council of Europe. It is in particular the effective and binding monitoring mechanism that gives the European Convention on Human Rights a special status among the international human rights conventions. Any person residing within the territories of states parties have a possibility, having first exhausted all the domestic remedies, to file an application with the European Court of Human Rights. The citizens of the member States of the Council of Europe are familiar with the work of the European Court of Human Rights and consider its contribution to their protection important.

Upon the increase of the number of member States, the number of applications filed with the European Court of Human Rights has also multiplied. The resources of the Court have not, however, increased and the proceedings before it have been lengthy. The Finnish Government aims at ensuring adequate financial resources for the Court within the limits of the budget of the Council of Europe and supporting the Court's work with voluntary contributions to the budget.

Apart from the question of financial resources, the increased caseload of the European Court of Human Rights requires that the possibilities to increase the effectiveness of the entire system be examined. This includes, in particular, giving priority to such human rights complaints as have particularly significant implications, and reducing significantly the length of proceedings. Finland supports the reform of the European Court of Human Rights so that the right of individual complaints, constituting the core of the monitoring mechanisms, is secured. Finland has found the right of individual complaints so important that it must not be weakened in the context of the reform of the Court. Finland has underlined the importance of hearing the views of civil society in the reform process, and Finland has allocated voluntary contributions for the purpose of organising such a hearing.

<sup>&</sup>lt;sup>13</sup> See http://www.echr.coe.int.

# Applications against Finland before the European Court of Human Rights

In 2000—2003, a chamber of the European Court of Human Rights examined 83 applications made against Finland, of which 36 were declared admissible, either partly or entirely. One case was referred to the Grand Chamber. A final judgment was given in 22 cases. These cases concerned, among others, public care of children and the right of access, such as the case of K.A. v. Finland (judgment of 14 January 2003) and the case of K. and T. v. Finland (judgment of 12 July 2001) which was the first case in the Court's history referred to the Grand Chamber after a chamber judgment. One case that was important also from an international perspective was the case of Nikula v. Finland (judgment of 21 March 2002) that concerned the freedom of expression of a legal counsel in a court hearing. A further example worth mentioning is the case of Suominen v. Finland (judgment of 1 July 2003) which concerned the right to a fair trial. In these four cases, the European Court of Human Rights found a violation of the Convention.

# 4.2.8 Giving effect to the judgments of the European Court of Human Rights

The Ministry for Foreign Affairs is responsible for ensuring the implementation of the judgments and decisions of international judicial and investigative bodies.

The implementation entails both individual and general measures. The individual measures include ensuring the payment of appropriate compensation to the victim of the violation by the governmental or other authority responsible for the violation. In addition, repealing of the national decision may be necessary in some cases. For example in the case of Z. v. Finland, the Agent of the Government of Finland requested the Chancellor of Justice to apply for the repealing of the judgment of the Supreme Court for the purpose of implementing that of the European Court of Human Rights. The Supreme Court gave a precedent in the case, repealing its earlier judgment and issued a new decision that was in conformity with the European Convention on Human Rights.

The general measures may include amendment of national legislation or court or administrative practice, provision of information on judgments and decisions, instructions for national authorities, and training of officials, among others. As for the judgment of the European Court of Human Rights, its enforcement is considered complete as soon as the Committee of Ministers has given a resolution to that effect.

### 4.2.9 Establishment of the status of the Commissioner for Human Rights

The office of the Commissioner for Human Rights, set up on the proposal of Finland, has quickly acquired an established status in the Council of Europe. The duties of the Commissioner for Human Rights include, among others, promotion of education in and awareness of human rights, provision of advice and information on the protection of human rights, facilitation of the activities of national ombudsmen, and contribution to the promotion of the effective observance and full enjoyment of human rights in the member States. The mandate of the Commissioner for Human Rights is six years. The first appointed Commissioner, Spanish lawyer Alvaro Gil-Robles, assumed his office on 15 October 1999. His active work is generally appreciated in the member States. Mr Gil-Robles has, among others, actively aimed at improving the situation in Chechnya, finding a fair solution for the protection of minorities in the Baltic States and improving the living conditions of the Roma minority in Europe.

The Commissioner for Human Rights prepared a report concerning Finland in 2001 and, upon his request, further information was provided on those measures that had been taken in Finland for the reducing the problems referred to in the report. In his report, the Commissioner for Human Rights drew attention to the situation of foreigners and asylum seekers, and to national minorities, conscientious objectors and children's rights. Considering the importance of land rights for the traditional Sámi occupations, the Commissioner further found that it is important that Finland take steps to ratify the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. The Commissioner has also given an opinion on the Government Bill for the enactment of a new Aliens Act.

The Government supports the work of the Commissioner for Human Rights and its future development. The Ministry for Foreign Affairs has, in addition to the voluntary financial contributions, been financing an expert for the office of the Commissioner as of 2002.

# Treatment of human rights crises in international organisations: the case of Chechnya

International organisations and human rights mechanisms often aim at affecting the human rights situations in individual countries. In this report, the case of Chechnya, located in the Russian Federation, has been chosen as an example. The situation in Chechnya has been subject to debate in both regional organisations and in the Commission on Human Rights of the United Nations.

The Organization for Security and Co-operation in Europe (OSCE) set up an OSCE Assistance Group to Chechnya in 1995. The mandate of the Assistance Group was to monitor the human rights situation in Chechnya, the provide support for the rule of law and democratic institutions and humanitarian assistance. The Assistance Group also carried out mediation between the parties to the conflict at the final stage of the first war in Chechnya, and strongly contributed to the so-called Hasav-Jurt peace agreement. During the second war, the Assistance Group had no significant mediating role.

The Assistance Group withdrew from Chechnya because of the war in December 1998 and was not able to return until in the summer of 2001. Thereafter, the Assistance Group was the only independent field mission of an international organisation in Chechnya. The main partners of cooperation of the Assistance Group were the Chechen administration in Grozny, the authorities of the Russian Federation, non-governmental organisations and several international organisations.

In 2002, the Russian Federation found that the situation in Chechnya had improved to the extent that the mandate given to the Assistance Group in 1995 had expired, and refused its extension. Russia required that a new mandate be given, under which the Assistance Group would no longer monitor the human rights situation and provide support for democracy and the rule of law, but would exclusively focus on the coordination of humanitarian assistance. The other participating states of the OSCE could not

accept such a sharp reduction in the mandate and the Assistance Group terminated its operation on 31 December 2002.

The last year of operation of the Assistance Group was led by Ambassador Jorma Inki. The work was of a pragmatic nature, including contacts with authorities, small-scale projects, hearing of people and transmission of information and inquiries. The Assistance Group regularly reported on its observations to the governments of the OSCE states.

The Assistance Group drew the attention of national and international actors to the complaints concerning disappearances and killings. The Assistance Group followed the development of the humanitarian situation, particularly concerning internally displaced persons, and reminded the authorities of the principle of voluntary return. Due to its limited resources, the Group focused its projects on the provision of assistance for children and young persons. Such projects included the arrangement of children's day care, mental rehabilitation of children, provision of winter clothes for children at pre-school age, and provision of equipment for the children's hospital in Grozny. The Assistance Group also participated in the renovation of two schools, provided support for a university and helped in finding international cooperative partners for Koran schools. Efforts were also made to include human rights education in school curricula. The Assistance Group also arranged courses for adults e.g. in computing and accounting and provided various forms of support for civil society. However, the security problems in Chechnya made the implementation of projects difficult.

The termination of the operation of the Assistance Group was a backlash for all the parties contributing to its work. The international community no longer receives first-hand information from the area, the Chechen administration is not provided with efficient international assistance and the possibilities of providing international support for a policy aiming at peace are virtually non-existent. The idea of continuing the OSCE activities in the area for example within the framework of the Office of Democratic Institutions and Human Rights (ODIHR) has not been implemented.

In March 2003, the ODIHR carried out a small technical mission to follow the referendum concerning the draft Constitution of the Chechen Republic. The experts of the Council of Europe (Venice Commission) provided assistance in the drafting of the constitution. Due to the security problems, however, both the OSCE and the Council of Europe decided not to send election monitors to monitor the presidential elections held in the autumn of 2003.

The mandate of three Council of Europe experts in Chechnya has been extended until the end of 2004. The first decision on the placement of the experts in the office of the Special Representative of the Russian President for human rights in Chechnya was made on 4 April 2000. The experts were withdrawn from Chechnya to Strasbourg after a bomb attack on 21 April 2003. and since then they have continued their work in Strasbourg because of the bad security situation. It has become necessary to review and adjust the mandate of the experts as their work in Strasbourg does not fulfil the original purpose. The original mandate of the experts who first worked in the office of Special Representative Vladimir Kalamanov and later Special Representative Abdul-Khakim Sultygov, included the reception of complaints and meetings with authorities and non-governmental organisations, strengthening of the capacities of authorities, assistance in the preparation of legislation, assistance in the development of the educational system, mental rehabilitation of women and children, and support for the work of various consultative hodies

The Council of Europe and Russia reached an understanding at the end of 2003 on the contents of programme of cooperation of the Council of Europe in Chechnya. The agreement on cooperation, which is in force for a year instead of the earlier practice of six months, is based on prior experience but it also takes account of the recent political developments in Chechnya. The experts of the Council of Europe still continue to follow the situation in Chechnya but the new agreement on cooperation shifts the focus to the implementation of concrete programmes. The experts carry out their work in Strasbourg but they make short visits to Chechnya to make the implementation of the programmes possi-

ble. The first programme of the Council of Europe relates to the provision of consultative assistance for the office of Special Representative Sultygov in those cases of alleged violations of human rights in respect of which a complaint has been filed.

The Parliamentary Assembly of the Council of Europe (PACE) appointed Swiss parliamentarian Andreas Gross as Assembly rapporteur on Chechnya. Mr Gross was the successor of Lord Judd whose requirement for the postponement of the referendum in March led to a situation where he no longer was able to work properly. In a report prepared by German parliamentarian Rudolf Bindig, it was proposed that an independent war crimes tribunal be established to handle the human rights violations in Chechnya.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) gave a declaration in July 2003 in which it assessed that torture and other forms of inhuman treatment were still common among the army troops and police forces in Chechnya. The declaration was given after a visit made to Chechnya in May.

An increasing number of complaints against Russia concerning events in Chechnya is expected to be lodged with the European Court of Human Rights. There are already more than 100 applications concerning alleged violations pending, according to which the Russian Government is guilty of illegal use of force against civilians in Chechnya (illegal executions, torture and bombing of civilian targets, as well as disappearances). The EU has underlined that all states must cooperate with the Court and comply with its judgments.

A delegation of the European Parliament, under the leadership of MEP Reino Paasilinna, visited Ingushia and Chechnya in June 2003. The delegation found that the situation in Chechnya was very difficult. Some progress was expected but it is not sure that the political process will succeed.

In October 2003, the Presidency gave a Declaration on behalf of the European Union on the presidential elections in Chechnya. The EU finds that there is need to do more to ensure that human rights are respected in Chechnya and charges are raised against those guilty of human rights violations.

The EU has also made a demarche against the forced return of internally displaced persons, the latest one being in December 2002.

In the Commission on Human Rights of the United Nations, the EU has proposed a resolution on Chechnya in the sessions in 2000—2003. In the draft resolution proposed in 2003, it was acknowledged that the Government of the Russian Federation had the right to defend its territorial integrity, to fight against terrorism and crime and to protect its population but it was also recalled that military actions and the fight against terrorism had to be conducted wit the utmost respect for human rights. On the one hand, a wish was expressed to the effect that the referendum leads to a political process. On the other hand, the draft resolution paid attention to the violations of human rights and humanitarian law, such as disappearances, torture and illegal deprivations of liberty. In 2000 and 2001, the resolutions proposed by the EU were adopted but in respect of those proposed in 2002 and 2003, more states voted for their rejection due to active lobbying by Russia.

Many of the thematic special rapporteurs under the mandate of the UN Commission on Human Rights have expressed a wish to be invited to visit Chechnya but so far no such visits have taken place. The Special Representative of the Secretary-General for children and armed conflict (Otunnu) as well as the Representative of the Secretary-General on internally displaced persons (Deng) have nevertheless visited the area.

Finland has underlined the importance of suppressing a culture of impunity and of enhancing a good and open cooperation between all states and international human rights monitoring mechanisms.

## 4.3 Organization for Security and Co-operation in Europe (OSCE)14

## 4.3.1 Finland's priorities in respect of the human dimension

In the Finnish Government's view, the human dimension of the OSCE has become one of the most relevant dimensions of the European human rights policy. In the Charter of Paris of 1990, adherence to shared values was stated and, among others, the first internationally agreed definition of democracy was adopted.

The OSCE is a value-based organisation of 55 participating states, committed to a cooperative concept of comprehensive security, making its politically binding decisions unanimously on the basis of consensus. According to the he Final Act of the Conference on Security and Co-operation in Europe adopted in Helsinki in 1975, equal attention shall be given to the promotion of all the three dimensions: politico-military, economic and human dimensions.

In its activities, the OSCE applies a so-called concept of common and comprehensive security the basis of which was created already in the Final Act of the CSCE in the form of a three-part compromise on a voluntary basis, although a shared interpretation of the concept of comprehensive security was not possible until after the Cold War. The principles of respect for human rights, the rule of law and democracy are increasingly recognised as factors of security, and failures to secure democratic institutions are considered to constitute a breeding ground for conflicts, organised crime and terrorism.

In the 1990s, the main duties of the OSCE have been the maintenance of a system of early warning, conflict prevention, crisis management and post-conflict rehabilitation. At the beginning of the 21st century, these duties have been added by new duties such as those relating to the prevention of terrorism, prevention of uncontrolled spread of small arms and light weapons, police-related activities, border monitoring, and prevention of trafficking in human beings and drug-trafficking.

The Finnish Government considers the so-called frozen conflicts in Moldova, Georgia and the region of Nagorno-Karabakh as well as the situations

<sup>14</sup> See http://www.osce.org.

in Chechnya and Central-Asian countries and the reconstruction of the Balkans to constitute the most relevant issues to which Finland contributes in the OSCE. The mission of President Martti Ahtisaari as the Personal Representative of the Chairman-in-Office of the OSCE in Central Asia is also a significant step in the development of bilateral cooperation with these countries. The OSCE Action Plan to Combat Trafficking in Human Beings and the OSCE Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area are useful for the targeting of the measures taken by the Government and national authorities. Finland is able to use the expertise and contacts of the OSCE and its human rights instruments not only for the enhancement of universal human rights but also for the development of bilateral relations with those countries that cooperate with the OSCE. Since 1998, Finland has been responsible for the handling of the questions of Chechnya and the Roma in the EU coordination within the framework of the OSCE.

Although the OSCE action is still mainly divided into the three traditional dimensions, the new duties of the organisation typically touch upon two or all the dimensions. The OSCE Strategy to Address Threats to Security and Stability in the Twenty-first Century, adopted in the ministerial meeting in Maastricht in December 2003 also highlights the new threats. In the Strategy, the participating states commit themselves to intensifying the efforts to find solutions to the long-lasting conflicts in the OSCE area, decide to combat terrorism and organised crime, decide to step up efforts to counter threats arising from discrimination and intolerance and to strengthen pluralistic democracy, civil society and the rule of law as well as respect for human rights. An annual security review conference provides a regular opportunity to review the Strategy and its implementation by the OSCE participating states.

In the 11<sup>th</sup> Ministerial Council in Maastricht, on 1 to 2 December 2003, a decision on combating trafficking in human beings and a decision on the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area were adopted. In addition, the meeting adopted decisions on tolerance and non-discrimination and on elections. The decision on tolerance and non-discrimination ensures the continuance of action against anti-Semitism, racism, xenophobia and discrimination within the OSCE framework in 2004. In the decision on elections, the participating states commit themselves to considering ways to improve the effectiveness of the ODIHR to participating States in following up recommendations made in ODIHR

election-observation reports, and to considering the need for additional commitments on elections, supplementing existing ones.

In the decision on combating trafficking in human beings, underlining respect for human rights, the most important elements are the protection of and assistance to victims as well as investigation, law enforcement and prosecution, to the effect of preventing trafficking. A new follow-up and coordinating mechanism is to be set up under the auspices of the OSCE, to ensure the implementation of recommendations. The mechanism will be led by a politically known person assisted by a specific Anti-Trafficking Unit to be established in the Secretariat.

The purpose of the Action Plan concerning the Roma is to combat racism and discrimination, address socio-economic issues, improve access to education, enhance participation in public and political life, protect the Roma and Sinti in crisis and post-crisis situations, and enhance co-operation and co-ordination with other international organisations and NGOs. The Action Plan of the OSCE supports the plan of setting up a European Roma Forum at the Council of Europe and the objectives of such a Forum.

The most important human rights mechanism of the OSCE is the Office for Democratic Institutions and Human Rights (ODIHR). In addition, the High Commissioner on National Minorities, the OSCE Representative on Freedom of the Media and the field missions of the OSCE perform duties relating to the human dimension.

# 4.3.2 Office for Democratic Institutions and Human Rights<sup>15</sup>

The Office for Democratic Institutions and Human Rights was established in 1990 and its mandate was extended by the Helsinki Document of 1992. The main function of the ODIHR is to assist the 55 OSCE participating states in the enhancement of respect for human rights and fundamental freedoms, in the maintenance of the rule of law, in the enhancement democratic principles, in the strengthening of democratic institutions and in the enhancement of tolerance. There are more than hundred people working in the Office located in Warsaw. Since March 2003, the ODIHR has been led by Christian Strohal from Austria. The work of the ODIHR is

<sup>&</sup>lt;sup>15</sup> See http://www.osce.org/odihr.

financed with the general budget of the OSCE, which is approved by the participating states every year, and with voluntary contributions. The funds reserved for the financing of the Office in the general budget amounted to 9.6 million euro in 2003, which covered approximately two thirds of the expenses.

Finland is one of the biggest providers of voluntary contributions. In addition, the Ministry for Foreign Affairs has financed two temporary experts in questions concerning the Roma to work at the Roma and Sinti Contact Point of the ODIHR, during the period of time covered by the present report (in 2003-2004). Finland has also sent election monitors to participate in missions organised by the ODIHR. Part of experts recruited for OSCE missions work in the field of human rights. The expenses of temporary experts are covered with funds reserved for civil crisis management (see section 5.3 on civil crisis management).

The Finnish Government finds it justified to give the budget of the ODIHR a more established status by covering an increasing share of it with the funds of the general OSCE budget. In order to secure the sustainability and continuance of the work of the ODIHR, it is also important to give most of the Office staff a permanent assignment. However, the Government is prepared to continue its voluntary contributions to the financing of the ODIHR and further intensify its cooperation with the Office, also in respect of questions of substance and particularly those relating to the Roma, equality and combat against trafficking in human beings. The Ministry for Foreign Affairs organises, in cooperation with the ODIHR, a conference in Helsinki on 23 and 24 September 2004, entitled "Ensuring Human Rights Protection in Countries of Destination: Breaking the Cycle of Trafficking". The objective of the conference is to draw attention to the measures of countries of destination to prevent trafficking in human beings and to protect the victims.

The most important duties of the ODIHR include the promotion of democratic election processes (election observation and assistance), provision of practical support in consolidating democratic institutions and civil society, assistance for OSCE field missions in implementing their human dimension activities (training, exchange of experiences, and regional co-ordination), monitoring of the implementation of the OSCE human dimension commitments by participating States, provision of regular human rights training for government authorities, civil society, and OSCE staff, assistance for

participating States with the implementation of international legal obligations and OSCE commitments on terrorism in line with human rights principles, serving as an OSCE contact point for Roma and Sinti issues, promotion of the full integration of Roma and Sinti groups into the societies in which they live, and organisation of regular meetings on the implementation of human dimension commitments. The ODIHR holds an annual Human Dimension Implementation Meeting (HDIM) in Warsaw, a yearly human rights seminar and so-called Supplementary Human Dimension Meetings. Geographically, the operation of the ODIHR focuses on Southeastern Europe, Caucasus, Central Asia and the so-called new neighbouring states of the EU.

The Human Dimension Implementation Meeting is the biggest human rights conference held at the European level. The decision on the yearly organisation of the Meeting was made by the Helsinki Summit of 1992. The Meetings have been characterised by the equal participation of governments and non-governmental organisations. Especially the NGOs have used the possibility of taking up country-specific problems and human rights violations. The Meetings do not produce negotiated results but the chairman prepares conclusions compiling all the recommendations presented in the Meeting. The Permanent Council of the OSCE adopts a position on the recommendations and issues any decisions on their further preparation e.g. for the ministerial meetings.

Since 2002, the HDIM has been held in two parts. In the first part of the Meeting, an extensive overview of the implementation of OSCE commitments by the participating states is made, whereas the second part of the Meeting focuses on three thematic issues of special interest. The new arrangement is meant to make the Meeting more interesting. The EU contributes actively to the Meeting and prepares statements on all thematic issues discussed in it. The participants may hold separate events in the context of the HDIM and particularly the NGOs have taken advantage of this possibility. The EU has also organised events presenting EU action in the field.

The EU Member States have discussed among themselves the possibilities of developing the forms of their participation in the HDIM. The recommendations of the ambassadors of the EU Member States note that the EU should consider the promotion of a more strategic approach to the development of the HDIM, with a view to integrating the Meeting in discussions

pursued in other fora, such as the human rights debate within the framework of the United Nations. Furthermore, the weight and visibility of the EU in the Meeting should be increased.

During the period of time covered by the present report, the priorities of the Finnish Government in the HDIM have been the national minorities, in particular the situation of the Roma, and combat against trafficking in human beings. During the period of the Dutch chairmanship in 2003, active measures were taken in the field of the human dimension. A specific meeting discussing the situation of the Roma, a meeting on the freedom of religion, a seminar on the participation of women in public and economic life, a meeting concerning anti-Semitism, and a meeting on racism and xenophobia, as well s a meeting discussing the prevention of torture on 6 to 7 November 2003, were held. The topics of these meetings corresponded to the priorities of the human rights policy of the Finnish Government.

In 2004, the work on the thematic issues of discrimination, racism and xenophobia will be continued with three meetings, of which the meeting to be held in Berlin in April will focus on anti-Semitism, the meeting of Paris in June will discuss the relationship between racist, xenophobic and anti-Semitic propaganda on the Internet and hate crimes, and the meeting to be held in Belgium in September will discuss the same themes in more general terms. Bulgaria, holding the chairmanship of the OSCE in 2004, will focus particularly on the education theme.

The Finnish Government supports the participation of representatives of civil society in the HDIM and the Ministry for Foreign Affairs continues to provide financial assistance for Finnish NGOs working for security and cooperation in Europe, that wish to participate in the Meetings. The Ministry for Foreign Affairs will increase its cooperation with the OSCE delegation of the Finnish Parliament and encourage the participation of members of Parliament in the HDIM. The Meetings constitute a forum for the exchange of experiences and for the dissemination of information on good solutions concerning society. Well-known Finnish politicians and experts are actively invited to attend the Meetings as speakers. During the period of time covered by the present report, for example, Elisabeth Rehn has been the main speaker in a human dimension seminar on the participation of women in public and economic life and in a seminar on terrorism and human rights held by the OSCE president and the ODIHR in 2003.

## 4.3.3 Relationship between the EU and the OSCE

The Finnish Government underlines the importance of cooperation between the EU and the OSCE. All the EU Member States are also OSCE participating states and members of the Council of Europe, and these two organisations constitute useful fora for cooperation with countries not part of the EU. Finland and the whole EU must use the tools offered by the two organisations in the implementation of the Wider Europe initiative, in order to avoid internal dividing lines within Europe. The Government also supports cooperation between the OSCE and the Council of Europe in order to make their actions more efficient, particularly to avoid contradictory actions and to ensure consistent policies.

The Finnish Government finds that the influence of the EU Member States on the OSCE activities must further be increased in relation to the United States and Russia. In the conclusions adopted by the Council of the European Union, it is stated that the cooperation between the EU and the OSCE is based on common principles and values but that the difference between the two organisations must also be taken into account in the cooperation. The EU and the OSCE must avoid overlapping of their activities and assess the additional value and supplementary nature of their respective measures. The cooperation concerning the compilation and exchange of information and analyses, diplomacy and resolutions, as well as the coordination of training and field missions may be increased. The EU could increasingly contribute to the OSCE crisis management operations and develop common or coordinated programmes of post-conflict measures. In the political dialogue with OSCE participating states, the EU must systematically take advantage of the possibility of enhancing the EU policies and programmes in respect of issues relating to the OSCE, particularly with regard to the agreements between the EU and its partners of cooperation. The EU will also pay particular attention to the OSCE commitments concerning democracy and human rights in the preparation of EU legislation. The implementation of the conclusions of the Council of the European Union is at the responsibility of the Presidency and the High Representative for the common foreign and security policy/Secretary-General of the Council of the EU, and of the Commission.

# 4.3.4 OSCE Representative on Freedom of the Media

The office of the OSCE Representative on Freedom of the Media was

established in 1997. The office of seven employees is placed in Vienna and was led until the end of 2003 by Freimut Duve from Germany. The Representative has two main duties: 1) observance of relevant media developments in the participating states and to give early warnings concerning violations of the freedom of expression; and 2) provision of assistance for the participating states in full compliance with OSCE principles and commitments in respect of freedom of expression and free media. The Representative aims at direct contacts with the participating states and other parties in the search for resolutions to problems.

The Finnish Government finds that the office of the Representative is still necessary and underlines the importance of cooperation between the Representative and other OSCE institutions.

# 4.3.5 High Commissioner on National Minorities

The office of the High Commissioner on National Minorities was established under the auspices of the OSCE in 1992. The office is placed in The Hague and it has been led by Swedish Rolf Ekeus since 2001. The main duty of the High Commissioner is provide 'early warning' and, as appropriate, 'early action' at the earliest possible stage in regard to tensions involving national minority issues in participating states. The High Commissioner may submit a report to the government of the participating state in question, containing recommendations for the resolution of the situation. The High Commissioner has also a duty of submitting early warnings to the OSCE of possible conflict situations.

#### 4.3.6 Field missions

The OSCE has field missions in sixteen countries: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia, Georgia, Kazakhstan, Kyrgyzstan, the former Yugoslav Republic of Macedonia, Moldova, Serbia and Montenegro, Tajikistan, Turkmenistan, Ukraine and Uzbekistan. The missions have varying natures, but most of them cover support for the development of democracy, assistance in the development of respect for human rights, construction of civil society and development of election legislation. Finnish experts work in different field missions of the OSCE (some 20 missions). The OSCE mission in Albania is led by Ambassador Osmo Lipponen. The rule of law section of the mission is also led by a Finnish expert, Ms Kaarina Buure-Hägglund.

## 4.3.7 Parliamentary Assembly

The OSCE has a Parliamentary Assembly having its secretariat in Copenhagen. The primary function of the Parliamentary Assembly is to monitor and support inter-governmental cooperation within the framework of the OSCE by giving it a parliamentary dimension. By the increasing operative action, the contribution of the Parliamentary Assembly has also obtained new forms. The operative action of the Parliamentary Assembly now consists of election monitoring missions, ad hoc working groups, and visits to the OSCE field offices. All the forms of action are essentially based on cooperation with both other OSCE institutions and other international organisations.

The Finnish Government considers the work of the Finnish OSCE delegation and cooperation with the delegation important.

### 4.4 Council of the Baltic Sea States (CBSS)

The Council of the Baltic Sea States was established after the Cold War, by Copenhagen Declaration in 1992, to provide support for the democratic development in the Baltic Sea area, the dialogue between the Baltic Sea states, the protection of the environment and the economic relations. Particularly the newly independent Baltic States saw in the CBSS a forum to get a profile in the international community.

The members of the CBSS are Finland, Sweden, Norway, Denmark, Iceland, Estonia, Latvia, Lithuania, Poland, Germany and Russia. The European Commission also contributes to the work of the CBSS. In addition, the United States, the United Kingdom, France, Ukraine, Italy, the Netherlands and Slovakia participate in the work as observers. The chairmanship of the CBSS is held alternately by the member states, for a year at a time. The second Finnish chairmanship ended in June 2003.

The Finnish Government finds the CBSS a useful forum for political cooperation, for which the Northern Dimension of the EU provides a framework. The CBSS has served as a tool of including Russia in the European structures and has enhanced interaction between Russia and the Baltic States. The accession of four members of the CBSS to the European Union will most likely affect the CBSS activities, probably shifting the focus to the questions relating to North-western Russia and Kaliningrad.

The Working Group on Democratic Institutions and the CBSS Commissioner on Democratic Development have been the most important bodies in the work for the development of democracy in the Baltic Sea area. Due to the EU membership of Estonia, Latvia, Lithuania and Poland, however, the mandate of the Commissioner was no longer seen necessary and was therefore not extended beyond 2003.

The main duty of the Commissioner on Democratic Development was to support the work and development of democratic institutions in the member states, including human rights institutions. The Commissioner focused particularly on democracy at the national, regional and local levels, good administration, good legislative procedures, local self-government, strengthening of civil society, and enhancement of respect for human rights. The Commissioner received information on the work of democratic institutions and human rights from individual persons, groups and organisations, and reported on them to the Council. During the Finnish chairmanship in 2002-2003, the work of the Commissioner was continued on an active basis according to an established practice. The Ministry for Foreign Affairs assisted the Commissioner in the organisation of a round-table discussion on the situation of detained children in the Baltic Sea area, on the basis of the UN Convention on the Rights of the Child.

Trafficking in children is an increasing problem in the Baltic Sea area. One of the main events held during the Finnish presidency of the CBSS was a conference of experts concerning trafficking in children in the Baltic Sea states, 'Stop Child Trafficking — Modern Day Slavery', held in Helsinki on 1 to 3 June 2003 by the Ministry for Foreign Affairs, the Ministry of Social Affairs and Health, the Ministry of Justice and the embassies of the United States, Canada and Sweden in Helsinki in cooperation with the Council. All the presentations given in the conference were compiled into a file that is electronically updated by the CBSS unit focusing on issues concerning children. It has been proposed that the mandate of the CBSS Task Force on Organised Crime include a more detailed list of measures that may be taken in the prevention of trafficking in children. The Commissioner on Democratic Development published a report on trafficking in human beings in the member states of the CBSS.

# Cooperation for the enhancement of respect for human rights in the neighbouring regions

The objective of regional cooperation is to enhance stability, well-being, equality and peace in society in the target regions, and to prevent threats towards Finland. The projects of regional cooperation support, either directly or indirectly, the enhancement of respect for human rights in Russia and the Baltic States and in the work of regional councils, particularly the Council of the Baltic Sea States and the Barents Euro-Arctic Council.

Funds reserved for regional cooperation have been used, among others, for the following bilateral projects enhancing respect for human rights in Russia: improvement of the environmental health of Northern indigenous peoples in Russia; development of radio broadcasting in the Sámi language in the Kola Peninsula; the development of prosecution service and judiciary and prison administration. In the Baltic States, for example projects on the development of human rights training, support for the implementation of legislation concerning refugees and improvement of the status of women have been carried out.

The extensive cooperation in the field of social affairs and health in the neighbouring regions also enhance respect for human rights. The projects carried out in this field support the development of basic health care, prevention of contagious diseases, improvement of the status of persons with disabilities, and enhancement of healthy ways of living.

Projects enhancing respect for human rights, within the framework of regional cooperation, are supported through both nongovernmental organisations and international organisations. Such projects include, for example, the development of a system of ombudsmen in the Baltic States, development of immigration administrations, and prevention of trafficking in women. In Russia, there are projects for the termination of the use of child labour and for the enhancement of equality and cooperation with women's organisations. A programme concerning the Fenno-Ugrian people in Russia (including Komi and Mari people, Mordvinians, and Udmurts), supported by Finland, focuses on the provision of support for education in both Finland and Russia and on the enhancement of translations and publications. University studies in Finland, training in media relations and journalism, cooperation between museums and libraries, and materials published in the native languages provide young Fenno-Ugrian persons with possibilities to maintain their own languages and cultures.

In the budget for the year 2003, the Finnish Government had allocated 38.5 million euro to regional cooperation, of which 30.3 million euro were to be used by the Ministry for Foreign Affairs and the remaining funds by other Ministries. Projects in the field of social affairs and health are supported with 2.5 million euro a year.

## 4.5 International Labour Organization (ILO)

In the United Nations system, the International Labour Organization is a specialised agency focusing on working life and related social conditions. Thus, it plays a significant role in the enhancement of economic and social rights. The special features of the ILO are its tripartite action and effective treaty basis.

The eradication of poverty, and the enhancement of social justice, equality and employment are among the objectives of the ILO. The strategic objectives were defined in 1999 and they include the enhancement of the basic rights of workers, ensuring of fair opportunities to work and to earn one's living, human working conditions, extension of the coverage of social security, increasing of efficiency, and enhancement of tripartite cooperation and social dialogue. The enhancement of equality and development cooperation are objectives mainstreamed in all activities of the ILO. The objectives are enhanced by offering technical cooperation and counselling in questions relating to working life, by the preparation of international conventions and by the adoption of guidelines and declarations.

The ILO strongly underlines the universal importance of the core conventions and thus the enhancement of the basic rights of workers (enhancement

of the freedom of association and the right to collective bargaining, and removal of forced labour, discrimination and the use of child labour). The Declaration on Fundamental Principles and Rights at Work commits Member States to respect and promote principles and rights in four categories, whether or not they have ratified the relevant conventions. The Declaration is supplemented by a system of Annual Review, the purpose of which is to encourage the member states to enhance the basic principles. For example in 2002, the Review focused particularly on the use of child labour, and in 2003 on discriminatory practices at work and means to prevent discrimination. The review report compiles information on different forms of discrimination, for example discrimination on grounds of sex, race, religion, disability, age and HIV. The results indicated that women faced most discrimination.

The report of the World Commission on the Social Dimension of Globalisation, set up by the ILO and co-chaired by President of the Republic Tarja Halonen and Tanzanian President Benjamin Mkapa, is addressed in the following section on the relationship between globalisation and human rights.

### 5. GLOBAL CHALLENGES

# 5.1 Globalisation and human rights

- , Social inequality relating to globalisation is one of the greatest problems with regard to the protection of human rights. For example women and persons belonging to different minorities are in a danger of being excluded from the enjoyment of the benefits brought about by globalisation.
- , Public information and increasing civil society and consumer activism offer significant opportunities for the protection of human rights.
- , The purpose of the Helsinki process is to develop new means to address the challenges of globalisation. Democracy and human security have been among the most important thematic issues discussed in this process.

#### 5.1.1 General

Globalisation, i.e. increasing internationalisation, is one of those factors that mostly affect the implementation of the rights of individuals in the various parts of the world. For the protection of human rights, globalisation constitutes both a risk and an opportunity for new ways of influence. The links between the process called globalisation and the implementation of human rights are diverse and there are also differences in the effects that globalisation has in different countries and communities, which makes it difficult to define the effects in general terms. However, it is possible to summarise certain effects.

Human rights, in their modern form, are based on an international treaty system. However, the implementation of human rights also requires that individuals and communities understand human rights violations as being a matter of general interest for the international community. The ideas of international and shared responsibility have rapidly gained ground. This development strengthens the legal framework for the international monitoring of human rights.

Furthermore, the rapid development of the transmission of information and networking is very important for the protection of human rights.

Globalisation means that it is more difficult to hide human rights violations — at least in the long run. The networks of human rights activists and organisations extend across national borders and are very efficient, allowing almost real-time transmission of information.

Governments are not immune to criticism concerning the human rights situations in their respective countries. Efficient transmission of information also makes it impossible for other countries and the international community to be ignorant. The changes in the transmission of information and in the networking of civil societies have clearly had positive effects on the enhancement of global respect for human rights.

One element of the strengthening of civil societies is the strengthening of consumer activism. Consumers in different parts of the world are increasingly concerned by the question of whether their goods have been produced in an environmentally sustainable and socially just manner. This is an impetus for companies to operate in a way that is consistent with human rights obligations. In the globalising world, it is relevant for companies to work so that the positive image of their products is not endangered<sup>16</sup>.

The protection of human rights is also enhanced by the increasing wealth brought about by the globalising economy and by the consequently increasing opportunities for the implementation of human rights, including economic, social and cultural rights. The globalisation of economy is part of the complex phenomenon of globalisation. The governance of globalisation requires credible national policies and strong economic structures which are necessary for the financing of social protection. Economic development may also be considered to be closely related with the democratisation of society and the strengthening of the rule of law and good administration, at least in the long run. Good administration and legislation, as well as the interdependence of the national economies of different states created by market economy, support international peace and security.

The increasing movement of people is an essential part of globalisation and a positive phenomenon as such. However, it also creates problems, such as the increasing trafficking in human beings which may lead to serious

For more detailed information on the social responsibility of companies, see section 5.7 on 'Human rights and trade'.

restrictions of the rights of women and children, for example, and which is a modern form of slavery.

One relevant risk relating to globalisation, with regard to the protection of human rights, is the increasing social inequality, which may be reflected both within and across national borders. Not all persons are necessarily able to enjoy the economic and other benefits of globalisation. In the past few years, the differences of income have increased and the gap between extreme wealth and extreme poverty has become greater. Globalisation entails the risk that the rights of those in the most vulnerable position are even further weakened and the most vulnerable groups become marginal. The competition over limited resources also leads to discrimination and, at the worst, to violence. Efforts must be made, by different means, to develop the international system so that it would contribute to a more even distribution of the benefits of globalisation.

The Finnish Government underlines the right of women, children, indigenous peoples and minorities to also be able to benefit from globalisation. For example, the rights and the traditional ways of life of indigenous peoples are all too often endangered by the intensified use of natural resources. It is important to ensure the rights of participation of different groups, i.e. their possibilities to affect decision-making concerning them at different levels of administration. In this respect, it is also important to support the rule of law and good administration, as ways to govern globalisation. These aims are further supported by such actions of the international community as are based on the principles of equality and multilateralism.

The focus of the Finnish Government on economic, social and cultural rights also serves the interests of as equal a distribution as possible of the benefits of globalisation. It is inherent in the economic, social and cultural rights that they must be implemented on the basis of the principle of non-discrimination. For example, guaranteeing education for girls and ensuring the availability of basic health care services for all make a more equal distribution of the benefits of globalisation possible.

There are different reasons for inequality and poverty, and efficient international cooperation plays a key role in their eradication. Finland finds it important to also pay more attention to human rights and democracy in organisations and networks other than those focusing on human rights. There is an apparent need for increasing cooperation among those using

economic and public powers. The positive reactions to the Global Compact initiative of the UN Secretary General, addressing among others the role of companies in responding to the challenges of globalisation, are an indication of the increasing corporate responsibility.

Finland has been active in the efforts to address the challenges of globalisation. A forum for discussion called the Helsinki process has been introduced under the chairmanship of Finland and Tanzania, meant for open discussion on the challenges of globalisation. The President of the Republic of Finland has been one of the chairpersons of an ILO commission on the social dimensions of globalisation. In the following, these processes will be addressed from a human rights perspective. The Ministry for Foreign Affairs is also preparing a separate report on the governance of globalisation, which will be submitted to Parliament in 2004.

#### 5.1.2 Helsinki process

The Helsinki process was launched on the initiative of the Finnish Government in cooperation with Tanzania. The purpose of the process is to find new ways to respond to the challenges of global governance through joint efforts of different interest groups. The Helsinki process is also part of the Finnish Government's political programme. The second conference under the process will be held in 2005.

The open working methods taking into account different views and the objectives of increasing democracy at different levels of administration make the Helsinki process a relevant forum for the enhancement of respect for human rights. There are significant international and national human rights organisations, possessing expertise in the field of human rights, which participate in the process – including both the Helsinki Group and its subordinate working groups.

Human rights have become an important part of the work of the working group focusing particularly on human security. The working group began its work by preparing an analysis of the challenges and forms of influence that are relevant for the implementation of the human security of individuals. The working group found that it was most important to concentrate on the situation of the most vulnerable groups, such as indigenous peoples, persons with disabilities, children and young persons, and immigrants. The gender aspect of social exclusion, extreme poverty and human security must

also be paid attention throughout the analysis. In respect of the most vulnerable groups, the economic, social and cultural rights and the availability of services relating to the reproductive health of women were seen to be of utmost importance.

The Finnish Government offers the framework for the Helsinki process. The process is wide and pluralistic in scope, defining itself the outcome. The Finnish Government welcomes the recognition of the importance of human rights in the search for solutions for global problems.

# 5.1.3 Report of the ILO World Commission on the social dimensions of globalisation

The report of the World Commission on the social dimensions of globalisation, established by the ILO, was published in February 2004. The World Commission was co-chaired by President of the Republic Tarja Halonen and by Tanzanian President William Mkapa. The report highlights the importance of human rights for ensuring a fair basis of globalisation, which makes the report a useful instrument for the Finnish Government's human rights policy.

The World Commission underlines that a fair and inclusive globalisation calls for a focus on the people, meeting their demands for respect for their rights, cultural identity and autonomy, decent work, gender equality and the empowerment of the local communities they live in.

Inequality both within and across national borders has been increasingly subject to public debate. The polarisation between winners and losers has increased. At the same time, however, awareness of problems – including poverty, inequality between the two sexes, use of child labour and pollution of the environment – has increased worldwide independently of the places where the problems exist.

The World Commission underlines that global governance must be based on the respect for universal values and human rights. Women and indigenous peoples are given as examples of groups that are often in the most vulnerable position. The World Commission points out that the situation of women in relation to globalisation has differed from country to another and has largely depended on the status of women's rights in society e.g. before the opening up of the global economy.

The World Commission puts the emphasis on beginning the response to globalisation at home: national and local policies and institutions. In this respect, good governance, the rule of law and civil societies play an important role. The priorities of the World Commission are also relevant for the Finnish Government's human rights policy, and the implementation of the Commission's recommendations is a duty to be carried out within the framework of the Government's policy.

#### WSIS and human rights

The first phase of the World Summit on the Information Society (WSIS) of the United Nations assembled in Geneva on 10 to 12 December 2003. The representatives declare in the Declaration of Principles of the Summit their commitment to build an Information Society premised on the purposes and principles of the Charter of the United Nations and respecting fully and upholding the Universal Declaration of Human Rights. The right to freedom of opinion and expression, as outlined in Article 19 of the Universal Declaration, was also included in the Declaration of Principles of the WSIS as an essential foundation of the Information Society.

The discussions on human rights and freedom of expression were, however, difficult in the context of drafting the Declaration of Principles of the WSIS. The difficulties reflected the differing views of the UN member states, particularly in respect of the significance of the freedom of expression in society.

The western democracies found that the value basis of information society must be based on the Universal Declaration of Human Rights, in particular on its Article 19 according to which everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. According to this view of the western democracies, the Information Society may only be developed on the terms of individuals in an environment of free reception and imparting of information, where any citizen may participate in information society and fully use its services

Certain countries wanted to include an equal reference to Article 29 with that to Article 19. Article 29 defines the nature of limitations to which an individual may be subject in the exercise of his rights and freedoms (only to such restrictions as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the fair requirements of morality, public order and the general welfare in a democratic society).

The outcome of the discussions was finally satisfactory for all the parties. The Declaration of Principles reaffirms the status of the freedom of opinion and expression, as outlined in Article 19 of the Universal Declaration of Human Rights, as the foundation of the Information Society. The subsequent paragraph of the Declaration of principles refers to Article 29 but without a corresponding emphasis. Thus, the provisions concerning the freedom of expression are given priority in the Declaration, whereas limitations to the exercise of this freedom are considered to be of a subsidiary nature. The Declaration of Principles reaffirms a commitment to the principles of freedom of the press and freedom of information, as well as those of the independence, pluralism and diversity of media, which are essential to the Information Society. The Declaration of Principles calls for the responsible use and treatment of information by the media in accordance with the highest ethical and professional standards.

The Declaration of Principles of the WSIS contains a principle concerning the ethical dimensions of the information society. The Declaration of Principles acknowledges the importance of ethics for the Information Society, which should foster justice, and the dignity and worth of the human person. The use of information and communication technology and content creation should respect human rights and fundamental freedoms of others, including personal privacy, and the right to freedom of thought, conscience, and religion in conformity with relevant international instruments. All actors in the Information Society should take appropriate actions and preventive measures as determined by law, against abusive uses of information and communication technology (such as illegal and other acts motivated by racism, racial discrimination, xenophobia, and related

intolerance, hatred, violence, all forms of child abuse, including paedophilia and child pornography, and trafficking in, and exploitation of, human beings).

The Declaration of Principles of the WSIS also include a commitment to ensuring that the Information Society enables women's empowerment and their full participation on the basis of equality in all spheres of society and in all decision-making processes. Within the framework of the WSIS, Finland contributed financially to a project of non-governmental organisations for the empowerment of women, with an amount of 150,000 euro. The project is implemented in cooperation with the United Nations Development Fund for Women (UNIFEM).

## Arab countries and human development

Due to their oil resources, the Arab countries are among the wealthiest states in the world and their cultural heritage offers a great potential for innovations and development. However, their economic growth has been the lowest of the world, with the exception of the sub-Saharan region. According to the first Arab Human Development Report released by the UNDP in 2002, there are three deficits slowing down the development in these countries 1) low extent of freedom, 2) deficit in women's empowerment, and 3) deficit in the access to and use of knowledge. There are serious deficits in the freedom of expression and independence of the media, in political participation – particularly in respect of women — and in literacy.

The challenges of human development are related to the protection of human rights, and the problems in the implementation of rights also affect economic development. According to the Arab Human Development Report 2003, these problems have even increased as a result of the September 11 terrorist attacks, the war in Iraq and the continuing conflict between Israel and the Palestinians.

The worldwide combat against terrorism has exacerbated prejudices which have in turn increased discrimination against Arabs and imposed new problems for the implementation of human

rights in both industrialised and developing states. On the one hand, the restrictions set by certain western countries have weakened the possibilities of Arabs and Muslims to live, study and travel abroad and interrupted cultural exchange programmes between the Arab world and the western countries, which has further isolated the Arab world and reduced interaction. On the other hand, the Arab countries have – following the example of western countries — further restricted civil and political right in an effort to prevent terrorism.

The Arab countries have adopted an instrument called the Arab Charter against Terrorism, under which it is possible to use censorship, restrict access to the Internet and to impose limitations on the printing and issue of publications. Nor does the Charter help challenge the lawfulness of arrests or prohibit torture, and it also in other respects restricts personal freedoms.

The League of Arab States has acknowledged the increasing importance of human rights in international politics and the need to raise the profile of the League in the discussions on human rights issues. The League is preparing a revised text of the Arab Charter on Human Rights adopted in 1994 (so far, no member of the League has ratified the Charter), and is planning to adopt guidelines concerning human rights education and training.

The Finnish Government supports measures to develop cooperation between Arab countries and other nations and cultures and to avoid confrontations. Within the framework of the EU, Finland supports the increasing of political dialogues between the EU and Arab countries concerning good governance, political participation, economic and political freedom and social development. The EU has association agreements with the states participating in the Barcelona Process. The Mediterranean and North African states are also covered by the Union's Wider Europe initiative.

The People and Development campaign of the Ministry for Foreign Affairs focuses on the Arab World in 2004 (the Arab World and Development 2004). In this context, a seminar on the status of women in Finland and North African states will be arranged in the autumn of 2004. Funds of Finnish embassies reserved for local cooperation are used on projects enhancing the rights of women and girls in Morocco, Tunisia and Egypt, among others, and on media projects relating to the imparting of information in the Palestinian territories.

# 5.2 Human rights and human security

- , The Government underlines the importance of the human security perspective. The aim of the Government is to influence situations where the security of individuals is endangered for example during a conflict or due to large-scale human rights violations.
- , Particular attention is paid to the situation of the most vulnerable groups, such as women and children.
- , Finland supports the initiative concerning the responsibility of the international community for the protection of civilians. This responsibility is even more important in failed state situations.
- , The prevention of impunity in cases of serious violations of human rights and humanitarian law is among the Finnish Government's priorities in the field of international law. Finland supports the International Criminal Court.

#### 5.2.1 General

In respect of security questions, the present report focuses on the aspect of human security. The Government is also preparing a specific report on defence and security policy to be submitted to Parliament in 2004.

Human security may be threatened by various factors. These include armed conflicts but also other kinds of conflict situations where the safety of the life of human beings is endangered. Human rights violations and serious deficiencies in the rule of law and good governance also constitute risks for the safety of human beings. In such situations, the environment, financial means and general security may also be threatened.

Civilian populations have increasingly become the main targets of action in conflict situations. Since 1990, nearly four million people have died in wars, and 90 per cent of the victims have been civilians. It is characteristic of

internal conflicts, in particular, that intense violence is targeted at civilians. The conflicts often severely affect the situation of women, children, refugees and internally displaced persons, among others. There are conflicts of ethnic, political or economic interests behind violations of the rights of civilians. For example rapes and other violence against women have become increasingly usual methods of war.

The weakening of the humanitarian situation in different parts of the world after the Cold War has made the protection of civilians a challenge to the international community. The new security threats — internal conflicts, failed state situations and terrorism — are directly related to human security. Terrorist acts are also increasingly and at greater intensity than before addressed at so-called soft targets. It is the particular purpose of terrorist acts to create fear and a sense of insecurity among the population. State failure in the sense of a collapse of the state's legal order, efficient executive powers and the exclusive right to the use of force has both direct and long-term effects on human security.

New types of threat have also been given attention in the recent European Security Strategy, prepared under the leadership of High Representative Javier Solana. New threats — such as terrorism, proliferation of weapons of mass destruction, failed states and organised crime — are found to be increasingly global and complex in nature. From the perspective of the Finnish Government's priorities, those parts of the strategy that underline the importance of effective multilateral cooperation and good governance in the face of new types of threat are particularly welcome. The implementation of these priorities both supports and requires the inclusion of human rights policy and rule of law aspects in the different sectors of activities of the EU.

Finland has underlined the human security perspective and has required, for example, that the EU guidelines concerning children in armed conflict or the protection of civilians in EU operations be effectively implemented, the implementation take place in a sufficiently horizontal way in the different EU institutions and operations, and adequate resources be reserved for this purpose. The Government intends to continue and draw attention to the aspects of human security and the situation of the most vulnerable groups in international organisations and other relevant contexts. From the perspective of human security, it is important to pay attention to those groups that are in the most vulnerable position, frequently women and children.

## Support for the rule of law

The Finnish Government is committed to supporting the enhancement of the rule of law and actively contributes to projects relating to it. The following provides two concrete examples of such projects.

The Ministries of Justice of Finland and China have cooperated since 1995. This cooperation has covered, among others, issues that are closely related with the judiciary and penitentiary system, and human rights. The implementing programme for the years 2004 to 2006 includes for example issues relating to the status and duties of judges and the rule of law. The Ministry of Justice has also introduced the same type of cooperation with the Russian authorities. The first human rights seminar was held in December 2003 together with the academy of law of the Russian Ministry of Justice. The seminar was attended by representatives of the judiciary from the neighbouring regions, members of the academy of law and students. The purpose is to arrange other seminars touching upon the same issues, meant particularly for judges.

Finland has also actively contributed to the development of the rule of law within the framework of the UN. The rule of law is an extensive issue and it is being examined by several sections of the UN, which do not sufficiently cooperate with one another. In order to make the work in the UN more effective, the principle of the rule of law should be mainstreamed more extensively in the UN actions and the internal coordination of the organisation should be improved. The rule of law plays a particularly significant role in peacekeeping operations. The development of the police, judiciary and the penitentiary system is necessary with regard to the future. Increasing duties require more resources and possibly also reorganisation of the peacekeeping activities of the UN.

Support to the rule of law development was also emphasized in the Brahimi Report discussing a comprehensive review of UN peacekeeping operations. Finland has arranged unofficial meetings with representatives of interested states and the UN Secretariat since the autumn of 2002. In May 2003, Finland contributed to the arrangement of a one-day seminar held at the UN headquarters, 'Rule of Law and the United Nations: the Critical Path to Post-Conflict Justice', in cooperation with the UN Department of Peacekeeping Operations, the UNA-USA and Harvard University. Finland also provided financing for a publication of the UNA-USA and Harvard University, 'A Policy Report of the Partnership Program on Peace-Building and Rule of Law' in the spring of 2003 and handed it out, among others, to all Permanent Representations to the United Nations.

The principle of the rule of law gained wider attention in the United Nations when the United Kingdom chose it as the topic of two thematic sessions during its presidency of the UN Security Council in September 2003. After the sessions, Finland and the United Kingdom have had close cooperation on rule of law issues. A series of seminars will be held by them in cooperation with the International Center for Transitional Justice, with a view to contributing to the first report of the UN Secretary-General on Justice and the Rule of Law. Representatives of the UN Secretariat, member states and non-governmental organisations will be invited to attend the seminars. Each one of the seminars will discuss a particular topic relevant to the rule of law. On the basis of the seminars, an assessment will be made of the role of the UN in the enhancement of the rule of law and legal responsibility. Representatives of both the UN and its member states have reacted positively to the initiative.

The supporting of rule of law development is a natural part of the Government's priorities in the United Nations as it is a principle that serves as a tool for the enhancement of respect for human rights and good governance. Finland has, through its active work, been able to strengthen the country's leading role in the UN insofar as the supporting of the rule of law is concerned. In the future, it is not only important to develop the internal work of the UN but also to activate the member states to provide resources for the organisation.

#### 5.2.2 Failed state situations

Conceptually, human rights counterbalance state sovereignty as the very notion of human rights was born from the need to protect individuals against arbitrary state action. At the same time, effective state action is necessary for the protection of human rights and for their implementation. This is obvious in situations where the institutions of a state have collapsed, and some of the essential functions of the government have been suspended, often during or as a result of an internal armed conflict. Large-scale and systematic attacks against civilian populations are prevalent in situations where the state's judicial system and central institutions are not capable to work. While the existing human rights law is, essentially based on state responsibility in the sense that there is a necessary link between the state's capacity to act and the implementation of human rights, responsibility for the human rights violations becomes diffuse in failed state situations, and it is not always clear how the responsibility may be enforced.

In an armed conflict, the individual is protected not only by human rights law but also by the rules of international humanitarian law. The rules of humanitarian law are essentially based on two basic principles: the applicability of IHL to all armed conflicts irrespective of the reason of the conflict, and the distinction between combatants and civilians. The scope of application of the specific rules depends on the nature of the conflict and on the obligations assumed by the parties, but not on the reason of the conflict. In other words, the applicability of IHL is not dependent on whether the use of force is justified or not. Both principles have been challenged by recent conflicts as it has become increasingly difficult to apply them.. The problem does not, however, lie in the adequacy of the present rules, but rather in the difficulties to find ways to make the rules as universal as possible and to achieve their full implementation.

In the 28<sup>th</sup> International Conference of the Red Cross and Red Crescent in December 2003, a large number of pledges on individual or collective action were given, concerning the implementation of humanitarian obligations in the following four years. The Government of Finland and the Finnish Red Cross pledged themselves, among others, to the development of the tracing activities under the Third Geneva Convention.

In addition, Finland participated in multilateral pledges to take international humanitarian law into consideration as one of the criteria on which arms transfer decisions are made, and to initiate and support an international process of discussions and deliberation aiming to develop a shared understanding of how international humanitarian law should be applied to computer network attacks during armed conflict. Together with the other Member

States of the EU, Finland pledged to raise public awareness in relation to international humanitarian law, particularly among youth and peacekeeping forces, as well as to the ratification and implementation of the Protocol on Explosive Remnants of War adopted on 27—28 November 2003.

The expertise in and coordination of humanitarian law are further developed at the national level through the International Working Group on Humanitarian Law, and at the international level in cooperation with other national societies and the International Committee of the Red Cross (ICRC).

The principle of individual criminal responsibility is particularly important in situations where it is not possible to implement state responsibility. The measures to put an end to impunity for serious international crimes have therefore become increasingly relevant. The International Criminal Court, which assumed its functions in 2003, has jurisdiction, among others, over large-scale crimes that have taken place in situations where the national judicial system has collapsed totally or substantially. It has also jurisdiction in cases where the state itself has contributed to the attacks against civilian populations and to massive human rights violations, or is unwilling to bring the perpetrators to justice. A common denominator for these situations is the absence of an authority that could use state powers in an effective and responsible manner.

If the state institutions have collapsed, or the state authorities themselves are actively involved in the terror against civilian populations, the responsibility for the protection of civilians may be considered to shift to the international community. This responsibility may entail an armed intervention to stop continuing bloodshed, or to prevent a threat thereof, military or civil crisis management, or prosecution of persons guilty of serious international crimes. Typically, several kinds of measures are needed, together with a long-term commitment of the international community to the creation of a durable peace in society, and to the promotion of human rights and democracy. Apart from the those mentioned above, the measures needed in crisis situations include ensuring safe access for humanitarian assistance and the security of humanitarian staff, strengthening of trust and stability by the enhancement of truth and conciliation commissions, strengthening of the local police and judiciary, disarmament and mine-clearing, repatriation and integration of combatants into society, and protection of the interests of women and children.

Finland will contribute actively to the negotiations on the extension of the scope of application of the 1994 Convention on the Safety of United Nations and Associated Personnel, so that the Convention would cover all UN operations and personnel as extensively as possible.

#### 5.2.3 Responsibility to protect

The UN Security Council has played an important role in the developments that have made humanitarian questions and the protection of civilian populations priorities of international cooperation. This is largely due to the practice applied by the Security Council since the early 1990s, under which large-scale violations of human rights and humanitarian law may, as a last resort, be responded to by means of armed intervention. This has been achieved through a new interpretation of the concept of threat against peace and security, referred to in the UN Charter, extending it also to threats against human security. Already in the resolutions concerning Southern Africa in the 1960s and 1970s the Security Council considered that a human rights situation of an individual country may constitute a threat against peace, to which a collective response is justified under the UN Charter. The armed operations implemented beginning from the 1990s in Bosnia, Somalia, Haiti, Rwanda, East-Timor, Liberia and Congo affirm the aforementioned interpretation which is no longer questioned.

In the resolutions authorising armed intervention, the Security Council has named, among others, a humanitarian disaster resulting from a civil war, the weakening of a humanitarian situation and systematic, large-scale and gross violations of human rights and humanitarian law as constituting threats to peace and security. In some resolutions, reference is also made to transfrontier effects, such as refugee flows and disturbances of regional stability, whereas others state that the humanitarian situation as such is a threat to international peace and security. These resolutions form a consistent line of interpretation that defines an attack against a civilian population and a humanitarian disaster as a ground for the use of force authorised by the Security Council.

The project on the question of intervention and state sovereignty introduced by the Canadian Government in connection with the UN Millennium Summit and the resulting report, 'Responsibility to Protect', completed in 2001, aims at reducing the confrontation between sovereignty and human rights. The report starts from a reassessment of the concepts of both

humanitarian intervention and state sovereignty. The concept of humanitarian intervention is considered misleading and it is said to blur the distinction between humanitarian and military action. Instead, the report chooses to use the expression "military intervention for human protection purposes". The report also wishes to shift the emphasis of debate from the question of legitimacy of humanitarian intervention as such to the underlying problems that have given rise to humanitarian interventions.

In this context, the notion of the responsibility for the protection of civilians refers both to the primary responsibility of the state to protect civilian populations in its territory and to the subsidiary responsibility of the international community to intervene in situations where human security is seriously threatened. The responsibility of the international community may be derived, in particular, from the recent developments that have strengthened the status of human rights law, the implementation of humanitarian law and the concept of human security. The report rightly underlines the fact that the responsibility of the international community is not restricted to extreme situations where the armed intervention may be the only possible option. The emphasis must be on the prevention of conflicts and humanitarian crises. Furthermore, a long-term commitment to post-conflict reconstruction is indispensable after any armed intervention.

With regard to armed intervention, the report suggests means to improve the capacity of the Security Council in situations of a threatening humanitarian disaster, e.g. restriction of the use of veto. According to the report, any military intervention should fulfil six threshold criteria: right authority, just cause, right intention, last resort, proportional means and reasonable prospects. These criteria largely meet the practice that has been adopted by the UN Security Council in the 1990s. The last-mentioned criterion mainly requires authorisation of the Security Council and thus excludes unilateral armed action. Unilateral use of force has, however, somewhat overshadowed the reception and consideration of the report. So far the time has not been ripe for discussions on the topic in the UN General Assembly.

Finland finds the Canadian initiative praiseworthy and the approach adopted in the report justified. The discussion has been furthered for example in a regional seminar held in Kirkkonummi, Finland in 2003. In the Government's view, it is particularly important to underline the need to prevent situations leading to armed intervention.

#### 5.2.4 Putting an end to impunity

The attitudes towards war crimes and serious violations of human rights have essentially changed in the past ten years. A general culture of impunity is recognised to disrupt the foundations of peace. The bringing of perpetrators of the most serious international crimes to justice, either at the national or international level, also prevents the repeated commission of those crimes. Until present, the prosecution of perpetrators of international crimes has been at the responsibility of states, with certain rare exceptions. However, such enforcement of international criminal law, based on horizontal cooperation among states, has not been very effective and in respect of the most serious crimes under international law, national jurisdiction is already supplemented by several international arrangements.

The most important one of the aforementioned international arrangements is the International Criminal Court (ICC) the Statute of which entered into force in 2002. The judges and the prosecutor of the Court were elected in 2003 and the Court will soon be operative. The ad hoc war crimes tribunals established by the UN at the beginning of the 1990s, having jurisdiction over crimes committed in the territories of the former Yugoslavia and Rwanda, respectively, have performed important pioneer work in the implementation of individual criminal responsibility. With the support of the United Nations, a Special Court was also established in 2002 to examine crimes committed by the most significant war criminals of the civil war in Sierra Leone. Furthermore, an agreement has been reached between Cambodia and the UN on the creation of Extraordinary Chambers in the Courts of Cambodia. Truth and conciliation commissions, even though they do not aim at the implementation of legal responsibility, also contribute to the elimination of the culture of impunity.

An important feature of the newly established International Criminal Court is that its jurisdiction, in principle, extends over any perpetrator of the exceptionally serious crimes referred to in the Statute, irrespective of official capacity or nationality. Despite the fact that the irrelevance of official capacity and the principle of equality before the law have been recognised already in earlier international trials, the ICC is the first court with jurisdiction that has not been a *priori* limited to persons representing certain nationalities. In fact, it is precisely the principle of equality before the law that has proved to be challenging in the negotiations leading to the establishment of the Court as certain states, which have chosen to remain outside the Statute, have been of

the view that the Court's jurisdiction should not extend over their nationals. Finland has supported the view according to which the credibility and efficiency of the Court requires full implementation of the Statute.

The efforts to put an end to the impunity of perpetrators of serious violations of human rights and humanitarian law are among the Finnish Government's priorities in the field of international law. Finland supported the establishment of the ICC from the beginning and participated actively in the negotiations on the Rome Statute. Upon the ratification of the Statute, Finland adopted implementing legislation making full cooperation with the Court possible, including surrender of perpetrators to the Court and provision of judicial assistance. Finland is also committed to the enforcement of sentences of imprisonment imposed by the Court, decisions on the forfeiture or recovery of proceeds of crime, and fines and compensation ordered by the Court. Finland actively contributes to the efforts to ensure the Court's capacity to act in an independent and effective manner.

Finland has closely cooperated with the international war crimes tribunal for former Yugoslavia under the provisions of a specific act of Parliament adopted in 1994 and of agreements concluded with the Tribunal on the protection of witnesses and enforcement of sentences. Finland is among the rare countries that have agreed to receive persons convicted by the Tribunal to serve their sentences in Finland. The Finnish Government also supports the Special Court of Sierra Leone. The election of a Finnish candidate for a position of an ad litem judge at the Yugoslavia Tribunal in 2002, and another candidate for the position of a judge at the International Criminal Court in 2003, may be considered to be an acknowledgement of the long-term consistent work of Finland for the prevention of impunity. Also the other EU Member States are parties to the Statute of the ICC. A Common Position on the International Criminal Court adopted in 2001 and a supplementary plan of action operationalise the EU's commitment to provide full support for the creation and effective work of the Court.

The United States signed the Statute of the ICC but later informed that it would not ratify the Statute and did not recognise the Court's jurisdiction. The United States has made efforts to ensure that its nationals will not be brought before the Court, including a campaign to conclude bilateral agreements with as many countries as possible to prevent the surrender of US nationals to the Court. Finland has been reserved towards such nonsurrender agreements and supported the relevant conclusions of the Coun-

cil of the European Union adopted in 2002. In those conclusions, the EU affirmed its political support for the Court and found that the initiative concerning the bilateral non-surrender agreements, as proposed by the United States, was in conflict with the binding obligations under the Statute. At the same time, the EU expressed its preparedness to continue discussions with the US on any questions relating to the Court.

In an effort to prevent impunity, the Finnish Government supports the effective implementation of the plan of action of the EU relating to the aforementioned Common Position as well as the development of the dialogue between the EU and the United States. Finland also continues to provide financial support for the ICC. Voluntary contributions will also be allocated to other projects enhancing effectively the prevention of impunity. In addition, Finland has pledged (in the 28th International Conference of the Red Cross and Red Crescent) to promptly ratify the Agreement on the privileges and immunities of the ICC as well as to review the material provisions of criminal law in order to ensure consistency with the Rome Statute. The Elements of Crime of the International Criminal Court will be published in Finnish.

# 5.3 Human rights and civilian crisis management

- Human rights, democracy and security are inseparable and are also among the objectives of civilian crisis management.
- , The Finnish Government supports the development of civilian crisis management and its capabilities within the framework of the EU. Operations led by the EU must emphasise the implementation of the rights of civilians, including the rights of women and children.
- , In the next few years, particular attention will be paid to the development of training and expertise in human rights in civilian crisis management.

Crisis management consists of both civil and military operations which are often overlapping and interdependent. The main objective of military crisis management is to create a safe environment for actions which, by means of civilian crisis management, support the post-conflict reconstruction of society and the creation of possibilities for economic development. There is no precise definition of civilian crisis management. In general, the concept may refer to temporary non-military means used to affect the behaviour of

the parties to a conflict and, in particular, to prevent the existing or threatening situation from developing into a crisis or a conflict, to generally control a crisis situation or to restore the normal situation after a crisis. Close coordination between the military crisis management operation and the civilian crisis management measures is usually necessary in order to ensure the delivery of humanitarian assistance and to make the reconstruction of society more effective.

The training of Finnish peacekeepers includes training in international humanitarian law and human rights. The rights of women and children are taken into account in the training of all peacekeepers. Particular attention is also paid to the rights and status of minorities in the area covered by the operation.

The basis of civilian crisis management is the inherent link between security and democracy. Human rights, democracy and sustainable development constitute an integral part of the objectives of civilian crisis management.

To promote the aforementioned objectives, Finland and Sweden made a joint proposal in the spring of 2000 for the development of civilian capabilities in the management of crises. Finland and Sweden have also in other joint statements in the past few years drawn attention to the increasing importance of civilian crisis management means in conflict prevention and crisis management. Civilian and military capabilities constitute the two sides of a coin, both of which must also be developed within the framework of the EU.

The EU aims at affecting by different means the roots of the conflicts which are also subject to civilian crisis management operations, such as poverty and deficits in the rule of law and the protection of human rights. Recent examples of the efforts to achieve these objectives include the various operations in Bosnia and Herzegovina and the former Yugoslav Republic of Macedonia, and in Central Asia. Another example is the EU Special Representatives in different regions, whose activities may be used to support both short-term and long-term strategic objectives. Finland supports the work of these Special Representatives for example through the recruitment of experts, as has been done in the case of Afghanistan.

The EU also has a particular Programme for the Prevention of Violent Conflicts, adopted in the Gothenburg European Council in 2001, the

purpose of which is to include the aspect of conflict prevention in all external relations of the EU. This also indirectly concerns the national measures of the Member States. Correspondingly, the Commission has introduced a European Initiative for Democracy and Human Rights, in order to support conflict prevention through the promotion of human rights, democracy, good governance and the rule of law, and aims at affecting the roots of conflicts by means of certain projects, such as specific human rights training. In 2001, the Commission introduced a Rapid Reaction Mechanism (RRM) for the purpose of strengthening the civilian capabilities of the EU to rapidly and efficiently intervene in crisis situations in third countries. The Commission has noted that conflict prevention and crisis management are in the core of the common foreign and security policy of the EU. The RRM makes use of the already existing Community mechanisms, including human rights activities, for the alleviation of crises.

In December 2003, the EU adopted guidelines for the protection of civilians in civilian crisis management operations led by the EU. The protection of civilians must be taken into account at the different stages of civilian crisis management operations. The EU must, together with the UN and other international organisations, do its utmost to ensure compliance with the international rules protecting civilians. Particular attention must be paid to the protection of women and children. Furthermore, the Member States are under an obligation to monitor and report and take the appropriate judicial measures in cases where a person participating in the operation is suspected of a violation of human rights or international humanitarian or criminal law. The human rights aspects must be taken into account in the training of persons participating in civilian crisis management operations, and in the relevant principles and materials. Finland has underlined that the adopted guidelines must also be implemented effectively.

The EU considers the organisation of democratic elections and their monitoring an integral part of the "civilian mechanisms" applied to third countries. Elections play an important role in the post-conflict political processes of stabilisation or restoration, and thus in the post-conflict processes of enhancing respect for human rights. The EU has observed elections already for a longer period as part of this process.

The European Union monitoring missions (in particular the EUMM in the WesternBalkans) constitute an important instrument for the implementation of a comprehensive concept of security. Long-term monitoring also

makes it possible to follow the development of the human rights situation in the area in question, and it has been possible to address deficits found already at the beginning. Finland has contributed to the EUMM by seconding experts .

The civilian crisis management unit of the Secretariat of the Council of the European Union has not so far defined the objectives concerning human rights as independent objectives but they are implemented within the framework of four EU civilian crisis management priorities (police operations, rescue operations, development of civilian administration, and the rule of law). This is partly due to the lack of resources at the Secretariat but also a question of political priorities. However, according to some estimates, the situation will change as a result of additional resources provided by the Member States and also by the review and adjustment of the political priorities. There is an apparent need for the implementation of operations that focus more on the rule of law aspects. This is also an objective of Finland with regard to the structure and work of the Council.

Civilian crisis management requires sufficiently precise information on the country, region, human rights and society in general, as well as several alternatives for the achievement of short-term and long-term strategic objectives. For the compilation and analysis of information and country-specific planning, there is a specific situation centre in Brussels. In its analyses, the situation centre uses the human rights situation of the country in question as one indicator. Finland has supported the work of the centre by providing it with one expert.

Training plays an important role in ensuring that there is sufficient expertise in human rights available in civilian crisis management operations. With financing provided by the European Commission and the Member States, the first special courses in human rights were organised in 2003 for field personnel. The training addressed not only monitoring, compilation of information, different examination methods, monitoring of court proceedings and reporting, but also human rights training, promotion of human rights, confidence building measures and technical assistance. The Ministry for Foreign Affairs partly financed the training element focusing on the rule of law, organised by the Åbo Akademi University. By the end of 2003, approximately 250 experts had been trained. The Ministry is committed to continuing and supporting the training programme of the EU, both politically and financially, also in 2004. Consistent and comprehensive training,

which also underlines the human rights aspects, is an objective worth supporting and possible to implement.

Since the beginning of 2003, the Ministry of the Interior has been responsible for the coordination of the national civilian crisis management resources, including organising civilian crisis management training and recruiting experts to be seconded abroad. The objective is to create an effective system of recruitment and training. As for the organising of training, the Ministry of the Interior has studied different alternatives for the planning and development of training. The planned schedule is to have the necessary arrangements carried out by the end of 2004, in order to start the training in Finland in 2005. In all civilian crisis management training, human rights aspects will play a significant role.

The experts recruited with the funds of the Ministry for Foreign Affairs reserved for civilian crisis management (10.2 million euro in 2003) are an integral part of the aforementioned human rights objectives. For example, an expert focusing on human rights in Afghanistan has been recruited for the office of Special Representative Vendrell in Afghanistan, with funds reserved for civilian crisis management in the budget of the Ministry. However, the recruitment of Special Representative Heikki Talvitie in Southern Caucasus was arranged so that after the initial stages the responsibility for the financing was transferred to the EU at the beginning of 2004. The Ministry for Foreign Affairs has also cooperated with the Ministry of Justice in the training of judges, prosecutors and experts of prison administration for civilian crisis management duties.

In the recruitment of experts, attention is paid to the priorities relating to each region or sector of activities, including objectives of enhancing respect for human rights. In certain cases, the expert posted abroad acts in close cooperation e.g. with the Unit for Human Rights Policy of the Ministry for Foreign Affairs. The number of international experts recruited by Finland is about one hundred. Many experts in practice — and to an increasing extent — also carry out human rights monitoring in their sectors of operation (for example in the sector of prison administration).

The objectives of the EU and the OSCE in the field of civilian crisis management are largely identical. The planning of activities requires close cooperation between these two and other organisations, such as the Council of Europe, the United Nations and NATO (EAPC). In accordance with

their obligation of coordination in security issues under the Istanbul Charter, the EU Member States finance two thirds of the OSCE budget, which adds to the demands of cooperation. Those EU Member States that are also participating states of the OSCE have been preparing a strategy for the OSCE, under which the organisation would also pursue the objectives of the EU in regions where the EU has no representation of its own for the time being (Central Asia, Caucasus). The development of the rule of law is an important part of the activities of the OSCE. In its operations, the OSCE has focused on the development of democracy, including the arrangement of elections, judicial systems or police training on the spot.

Regional conflicts, particularly in the WesternBalkans, have shown that a democratic deficit, repressive actions, instigation of ethnic and religious hatred, discrimination against minorities and other human rights violations may give rise to conflicts which, together with their consequences, also indirectly constitute a significant threat to other states and their nationals in the same region.

The Stability Pact for South Eastern Europe, which was adopted in Cologne in 1999 on the initiative of the EU, supports the peace and democratisation process in the eight countries of South Eastern Europe. The objective of the Stability Pact has been to replace reactive crisis management with a longterm strategy of crisis prevention in former and potential areas of conflict in the Balkans. This has been implemented by applying the Pact in three sectors: democracy and human rights, economic reconstruction, and security, including defence and rule of law issues. The Ministry for Foreign Affairs supports the Stability Pact by financing the work of Elisabeth Rehn, the chairperson of the first-mentioned sector of democracy and human rights, and of her assistant. Mrs Rehn has, in her regular meetings with the authorities of the countries of South Eastern Europe kept the serious human rights problems in the area on the agenda, including trafficking in human beings and human /organs, rights of women and equality issues, the situation of minorities, in particular that of the Roma, and the freedom of the press, and has also aimed at discussing these issues in public both in the countries of South Eastern Europe and in wider contexts.

The OSCE and its Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw have become the most important bodies for the monitoring of elections in wider Europe (expert and parliamentarian monitors). The OSCE has also agreed upon election standards. Part of the funds

of the Ministry for Foreign Affairs reserved for civilian crisis management, are used to finance the work of Finnish election monitors. This sector is very active and supports the international role of Finland in the enhancement of respect for human rights.

In the sector of the development of the rule of law, the police training has advanced well. For example, more than 6000 police officers have been trained at the UNMIK police school in Kosovo. The OSCE is increasing its work for the construction of administrative systems, within the framework of the economic and environmental dimension, particularly in Central Asia and Southern Caucasus

The countries of Caucasus and Central Asia have also been offered training in the democratic control of armed forces. The training includes information on the principles of humanitarian law and group work on the rights and duties of individual soldiers. On the request of the OSCE, such training was organised in Azerbaijan and Armenia. The provision of training supports the implementation of the OSCE Code of Conduct on politico-military aspects of security, and the work of field missions. The training was partly financed with funds of the OSCE field missions and partly with those of the Ministry for Foreign Affairs. In addition, training package has been prepared on the democratic control of armed forces.

The enhancement of democracy, the rule of law and human rights for the prevention of conflicts and post-conflict reconstruction has been particularly relevant for the creation of the concept of democratic stability used by the Council of Europe (CoE) and the OSCE. The enlargement of the Council of Europe has reached Southern Caucasus and in 2003 it finally had all the countries of the Western Balkans as its members. The main objective of the organisation is to enhance respect for human rights and democracy in Europe. Finland has used funds reserved for civilian crisis management to support the work of the Council of Europe in the promotion of human rights, for example by recruiting experts in the field of protection of minority rights and by supporting the work of the Commissioner for Human Rights of the Council of Europe.

## 5.4 Terrorism and human rights

- , The Finnish Government stresses the requirement that the measures taken to suppress terrorism must be in conformity with international law and human rights.
- , Human rights violations and lack of democracy may create a breeding ground for terrorism.

# 5.4.1 Respect for human rights in the suppression of terrorism

In the past two years, it has become apparent that questions relating to terrorism constitute a significant challenge for the international protection of human rights. The changed political atmosphere since the terrorist attacks of September 11, 2001, shifted the focus on security issues. The large-scale terrorist attack in Madrid on 11 March 2004 shocked the world, and the suppression of terrorism will gain even more attention in the EU.

The action against terrorism has been criticised for not devoting adequate attention to the protection of human rights. The combat against terrorism may have strengthened the already existing action against groups constituting threats to governments. Human rights organisations have criticised states for having forgotten the guarantees of a fair trial and for discriminating treatment and illegal arrests of foreigners, particular those having a Muslim origin.

The UN Secretary-General Kofi Annan has, since September 2001, repeatedly appealed to governments for ensuring respect for human rights despite their action against terrorism. The respect for human rights in the suppression of terrorism has been underlined, among others, by the UN commissioners for human rights, the Counter-Terrorism Committee of the UN Security Council and the EU. At the same time, it has become apparent that large-scale human rights violations and systematic suppression of human rights create favourable conditions and breeding ground for terrorism. Failed state situations have also in this respect been recognised as constituting a new kind of a security threat which has extensive effects across national borders. In failed state situations, the general atmosphere of lawlessness lays the foundation for the operation of terrorist groups. The general insecurity may also favour the dissemination of extreme violent ideologies and thus enhance the recruitment of members to terrorist groups.

The Finnish Government has on several occasions underlined the obligation of states to protect their nationals from terrorism, but any measures taken to combat terrorism must be in conformity with international law and human rights. Finland's participation in the international cooperation to combat terrorism has as one of its aims to ensure that such measures are not contrary to the rights of individuals, democratic procedures and the rule of law. This is important for the maintenance of a functional democracy. Finland continues to consistently underline the human rights aspects in the international cooperation within the framework of the EU and the UN, for example, as well as in ongoing treaty negotiations (including those on the review of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and its Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, within the framework of the IMO).

International terrorism is a security threat, the suppression of which may, as a last resort, require the use of force. However, the use of armed force is not a universal and never a sufficient solution to the problem of terrorism, and nor is the use of force against civilian populations acceptable in the name of the suppression of terrorism.

Although the political atmosphere has changed to some extent since 2001, the Finnish Government considers that it is still relevant to underline the importance of respect for human rights in the action against terrorism. Inasmuch as large-scale human rights violations reduce the stability of societies, a fair environment providing equal opportunities for all is safe.

Finland has actively supported the measures of international organisations ensuring respect for human rights in the action against terrorism, despite that the atmosphere has been difficult e.g. in the human rights bodies of the United Nations since September 2001. On the initiative of Mexico, however, a significant step was taken when a Resolution on the protection of human rights and fundamental freedoms while countering terrorism was adopted first in the UN General Assembly in 2002, and later in the Commission on Human Rights in 2003. The resolution underlines the obligation of states to ensure respect for human rights and the fact that the most fundamental human rights may not be derogated from even under exceptional circumstances. Finland would be prepared to go further and designate a particular mechanism for the United Nations (for example a special representative of the Secretary-General) to monitor the compliance of

action against terrorism with human rights obligations. This would strengthen transparency and more effective supervision of the measures taken by states in the combat against terrorism. Finland aims to further this objective in the session of the Commission on Human Rights in 2004.

#### 5.4.2 Treatment of suspects

The question of respect for the human rights of persons suspected of terrorist links or activities has raised concern recently. The Guidelines on human rights and the fight against terrorism adopted by the Council of Europe in 2002 underline the right of persons accused of terrorist activities to a fair hearing and their right to benefit from the presumption of innocence, as well as the requirement that the hearing must be held by an independent, impartial tribunal established by law. Restrictions to the right of defence that may be justified by the imperatives of the fight against terrorism, in particular with regard to the use of anonymous testimony or the arrangements for access to the case-file, must not lead to a situation where procedural rights are drained of their substance. Arrests for an undetermined time are only possible under a special procedure.

The question of inadequate guarantees of protection by law has been raised in situations where the funds and financial assets of private individuals have been frozen in the implementation of sanctions. The freezing of funds is meant to prevent the commission of terrorist acts. In order for the freezing of funds to be effective, it is necessary to implement the relevant measures rapidly and simultaneously in different states. The procedures applied so far do not include guarantees of protection under criminal law relating to the implementation of sanctions, such as the right to be heard. It should be stressed, however, that the freezing of funds is a measure interfering strongly with the right to peaceful enjoyment of possessions. The prohibition of transfer of assets which usually accompanies decisions on freezing may also raise the question of basic necessities of life. The Finnish Government has made efforts, particularly through the EU, to convince the UN Security Council to pay attention to the legal rights of individuals in its decisions on sanctions. The Security Council did adopt, in 2002, Guidelines concerning the list of individuals and entities as well as a Resolution introducing certain humanitarian exceptions into the sanctions regime. Finland finds it important to maintain the issue of sanctions and the legal rights of individuals on the agenda of the sanctions committees of the Security Council.

Apart from the sanctions concerning the listed persons and entities, the Security Council has adopted a Resolution — 1373 (2001) — requiring that all states freeze without delay funds and other financial assets and economic resources of persons involved in the commission of terrorist acts. The EU has adopted specific instruments for the implementation of this obligation, which also aims at responding to the aforementioned human rights and humanitarian concerns. The EU has, among others, defined formal criteria for the listing of persons. In addition, there are exceptions allowed to the freezing obligation which are more extensive than those approved by the UN Security Council. Finland contributed actively to the adoption of the EU instruments and finds that the criteria included in the Common Position could also have relevance in the decision-making of the Security Council. The question of the conformity of sanctions implemented to suppress terrorism with human rights obligations is also being examined by the Court of Justice of the European Communities.

Finland participates in the international discussions on the development of the sanctions systems with a view to strengthening the protection of targeted individuals by law.

The question of prosecution of terrorists has been particularly problematic in connection with the war in Afghanistan. The situation of the prisoners of Guantánamo is still worrying. The United States considers the prisoners unlawful combatants and has refused to grant them the status of prisoners of war. The detention of prisoners at an army base without a trial has given raise to wide international criticism. Finland has, together with several other EU Member States, found that persons captured in a battle field must be considered prisoners of war as long as their case has not been proved by an independent tribunal. This view has been shared, among others, by High Representative for the common foreign and security policy Javier Solana, UN High Commissioner for Human Rights Mary Robinson, and by the International Committee of the Red Cross and the International Commission of Jurists.

A person who has taken part in hostilities and has been captured in a battlefield must be presumed to be a prisoner of war, unless the issue has been resolved to the contrary by a court. Those persons who are not considered lawful combatants are usually civilians who also enjoy protection under humanitarian law, when captured by the forces of another state. Finland has expressed concern over the allegations according to which there is a third category of persons in armed conflicts, falling between combatants and civilians, that does not enjoy the protection of fundamental rights or have the right to a fair trial. Any persons held in detention by a party to a conflict must enjoy humane treatment.

Persons guilty of war crimes must be prosecuted before an independent and impartial tribunal or court established by law. The basic principles of international law protecting individuals are applicable to any armed conflict irrespective of whether there are specific treaty provisions on a particular type of conflict and independently of the adherence of the parties to the conflict to them. Apart from the provisions of humanitarian law, the human rights conventions binding on the United States are applicable, including the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

## 5.5 Refugees, immigration and human rights

- Human rights violations lead to increasing numbers of refugees. An effective human rights policy is a relevant means of preventing refugee flows. The Finnish Government finds it important to take the rights of women and children into account in all measures relating to refugees.
- , The guarantees of international protection for those needing it are still relevant and necessary. The system of protection based on the Convention relating to the Status of Refugees must be developed in the face of new challenges without restricting, however, the rights of persons in need of protection. The access of such persons to the system of international protection must be guaranteed.
- , In the setting of quotas for refugees, flexibility should be increased while, at the same time, respecting the criteria applied by Finland to the admission of refugees, such as the need for protection and humanitarian aspects, to the fullest possible extent.
- The procedure for the examination of applications for asylum must be made as effective and fair as possible. As for the most challenging issues relating to the protection of human rights, particular attention will be devoted to the accelerated asylum procedure, the rights of the child, and the procedures relating to the expulsion of aliens.
- , In the preparation of the Government's programme of immigration and refugee policy, the protection of human rights will play an important role.

#### 5.5.1 General

The protection of refugees is a human rights issue. There are often human rights violations relating to different crisis situations and conflicts which lead to people becoming refugees. Therefore, an effective human rights policy is a relevant means of preventing such situations. However, there are many challenges relating to the movement of persons and the protection of the rights of refugees both in Finland and Europe and in other parts of the world, and they are relevant issues for the protection of human rights.

The increasing movements of persons resulting from globalisation and the increasing effects of internal crises on civilian populations, as well as the fact that ethnic minorities face new forms of persecution and other serious violations of human rights, have introduced new elements into the debate on the protection of refugees. Increasing movements of people, where the persons in need of protection and groups of persons moving for economic reasons constitute so-called mixed flows, the protection of the rights of internally displaced persons and the uncontrolled movement of refugees in some cases across frontiers have created new challenges for the international system.

While human rights violations continue in different parts of the world, the Convention relating to the Status of Refugees, done in Geneva in 1951, cannot be considered out of date. To the contrary, the system created under the Convention, a relevant part of which is to afford protection to those needing it, is very relevant.

The international system of protection under the Geneva Convention of 1951 is the basis of protection of refugees. Finland has consistently aimed at strengthening the recognition of the basic principles of international protection in different fora, such as the UN refugee agency (office of the United Nations High Commissioner for Refugees — UNHCR), the International Organization for Migration and the European Union. The EU affirmed its commitment to the principle of international protection in the Tampere European Council where the asylum questions were attached to the principles of international protection and non-discrimination. Such a comprehensive view on the question is still clearly needed.

Finland is committed to the international system under the Refugee Convention and supports the UNHCR in the monitoring of compliance with the Convention. The Government finds it important to give the UNHCR

sufficient financial and political support in such countries where the system of protection is not effective. In the Government's view, states should work together for the development of the system of protection, in cooperation with the UNHCR. It is important that in the new Member States of the EU and in states wishing to associate with the EU, for example, the effectiveness and fairness of the system is ensured.

The existing system of protection, however, does not always work in the best possible way in responding to challenges imposed by refugee flows. While states examine numerous ill-founded applications for asylum, a great number of persons in need of protection do not get it. One of the greatest challenges today is indeed to try and identify, among the extensive flows of persons, those in need of protection.

The situation of internally displaced persons is also often difficult. The system of international protection, including the Geneva Convention of 1951, does not apply to them. It is clear that human rights belong to all but with regard to internally displaced persons, the governments of their own states are often unwilling or unable to provide protection and international bodies, such as the UNHCR, often have a limited mandate and possibilities of concrete action.

The UNHCR has responded to the new challenge by starting international consultations in 2001 for the strengthening of the system of protection under the Geneva Convention of 1951. After the consultations, an Agenda for Protection relating to the development of protection was adopted, providing concrete instructions for the UNHCR, states and international organisations for the strengthening of international protection.

The Finnish Government finds it important to maintain a debate on the new forms of international protection, such as the development of protection in the first states of asylum and transit states. However, any new forms of protection must be supplementary to the existing system and they must not lead to a weakened status of refugees under the law. Furthermore, they must strengthen international protection. In the context of preparation of the Government's immigration and refugee policy, there will be an opportunity to address these new issues in more detail than before.

After the Tampere European Council in 1999, the EU has started the harmonisation of asylum procedures in Member States. There are several

projects for new Community legislation on refugees and immigration. Human rights organisations have criticised some of these projects for weakening the international protection of refugees. In the discussions on the said legislation, Finland has maintained the question of international protection on the agenda. There has also been a lively debate on the development of the system of international protection through the strengthening of protection in the countries of origin. Furthermore, it has been proposed that the EU should establish centres of examination of asylum applications, to be located outside the borders of the EU, where asylum seekers applying for asylum in EU Member States could be placed. Finland has found it important to examine new approaches to the issues concerning refugees. However, Finland has also brought up several problems which would relate, in particular, to the proposed centres.

Women and children constitute the majority of refugees. The Finnish Government supports all measures to pay attention to the special needs of women and children fleeing from their countries, at the different stages of the process. The Government finds it important, among others, to prevent violence against women at refugee camps and considers that more profound assessment should be made of how violations of the rights of refugee women, based on their sex, could be taken into account in the development of the system of international protection. Questions relating to the status of women and children have been discussed e.g. with the UNHCR and among the administrative bodies of the UNHCR.

It is important to ensure the access of victims of persecution and other serious violations of human rights to the system of international protection in all circumstances. This question has become more pertinent when the control of immigration has been intensified. From the perspective of the protection of human rights, it is important to assess how it is possible to ensure that stricter control does not lead to the prevention of possibilities for international protection. Apart from access to protection, it is important that the system of protection is fair and effective. This must be taken into account in the development of accelerated asylum procedures, in particular.

The Finnish Government supports the efforts of the UNHCR to achieve permanent solutions, such as resettlement of refugees, integration of refugees in the first country of asylum, and voluntary return. In the past few years, positive results have been achieved with voluntary return programmes, and the total number of refugees in the world has been decreasing. Post-conflict measures and coordinated UN action are important for the reconstruction of the areas in question.

## 5.5.2 Quota refugee policy

The admission of refugees within a certain quota is an essential part of the Finnish Government's refugee policy and of humanitarian cooperation with the UNHCR. The most important objectives of Finland in the resettlement policy of the UNHCR have been to contribute to the transparency of its implementation, to enhance the allocation of UNHCR resources to the resettlement of refugees, and to increase the number of states admitting refugees within certain quotas.

Under an established practice, there are ten states admitting refugees in need of resettlement according to quotas set for the purpose. The number of such states is still relatively small and the Finnish Government has an objective of having the number increased, in the same way as the UNH-CR. It would also enable the UNHCR to better foresee and plan its operations in the implementation of the rights of persons in need of protection.

Finland has been admitting and placing refugees offered by the UNHCR within set quotas since 1979. Parliament set the first yearly quota in 1985. Thereafter, the admission of refugees has been based on a quota set by Parliament in connection with the preparation of the yearly state budget. The ministerial group on immigration policy and ethnic relations decides on how the quota is used. The decision is based on the evaluation of the UNHCR on the need of resettlement of refugees in different parts of the world, and on its proposal as to the areas from which refugees should preferably be taken.

In the years 1995—2002, Finland has admitted 4982 refugees within the set quotas. In addition, family members of such refugees have arrived in Finland, and a residence permit has been granted to them on the basis of family ties.

Since the greatest part of the yearly quota is filled in cooperation with the UNHCR, the criteria applied to the admission of refugees are largely

identical. The criteria include, in particular, the need for protection, need for medical treatment, situation of victims of violence and torture and of women fleeing from their country on their own, and possibility to integrate in Finland. It is also required that the rights of the refugees cannot be guaranteed in the country from which they arrive in Finland.

In the decisions on the admission of refugees made by Finland, particular attention is paid to the reasons that have led to the refugees fleeing from their countries of origin. Finland aims at avoiding the separation of family members from each other and at making decisions that are in the best interests of the children. Approximately 10 per cent of the yearly quota has been reserved for refugees in need of urgent protection. In such cases, the decision on their admission is made through an accelerated procedure, on the basis of documents.

The situation in respect of the need for the placement of refugees is constantly changing and the Finnish Government also must consider new forms of operation. In future, it is likely that there will be less long-term operation where refugees are admitted from certain camps during several years. Instead, the proposals for the placement of refugees made by the UNHCR reflect the need to rapidly respond to urgent situations, and the proposals include different kinds of groups whose protection cannot be ensured in their country of residence. Therefore, Finland must also be prepared to apply a more flexible practice to the admission of refugees. In this respect, it is still necessary to ensure that the criteria set by Finland for the admission of refugees are applied, in particular the criterion of need for protection. Aspects relating to the national security of Finland are also taken into account. The rapidly changing situations naturally impose new challenges for the admission of refugees. All the aforementioned aspects are discussed by the working group on the Government's immigration policy, for the purpose of preparing the proposal for the adoption of the Government's following programme on immigration policy.

# 5.5.3 Asylum issues

Asylum issues are without doubt among the most relevant issues relating to human rights in all parts of Europe, including Finland although the number of asylum seekers is still relatively small in Finland. When compared with other European countries, the refugee policy of the Finnish Government is more

clearly based on the admission of refugees within the set quotas. A rather small percentage of asylum seekers have been grated a refugee status in Finland but, on the average, it has been more usual to grant residence permits to asylum seekers on other grounds than in many other EU Member States.

Asylum issues have been given considerable and repeated attention in recommendations of international treaty monitoring bodies concerning Finland. Particular attention has been paid to the so-called accelerated procedure. Due to the introduction of the procedure, recommendations have been given as to the guarantees of legal remedies for the asylum seekers. The UN Committee on the Elimination of Racial Discrimination, for example, noted in its recommendations given on 22 August 2003 that the narrow time limits may not allow for the proper utilisation of the appeal procedure available and may result in an irreversible situation even if the decision of the administrative authorities were overturned on appeal. The Committee urged Finland to guarantee respect for the legal safeguards for asylum seekers and to ensure that all its asylum procedures conform to its international obligations in this field.

The Commissioner for Human Rights of the Council of Europe, Alvaro Gil-Robles, has also paid attention to the provisions of law on the accelerated procedure, underlining the importance of ensuring adequate legal remedies relating to the accelerated procedures applied in different states. The Commissioner for Human Rights also gave an opinion on the Government Bill for the enactment of a new Aliens Act, during its reading in Parliament. He criticised, among others, the short periods of time reserved for appeal and paid attention to the position of children.

The reason for the introduction of accelerated asylum procedures both in Finland and in other states is the increased use of asylum applications as a way to circumvent immigration rules in the past decade. Special procedures have also been necessary for the achievement of the international objective of having the asylum application of one person only examined by one state. Such intensified procedures aim at ensuring that those in real need of protection do not have to wait for the decision for an unreasonable time. It is important to discourage the use of the asylum system for fraudulent purposes, so that the system would better serve persons in real need of protection. The Finnish Government finds it important that persons in need of protection have access to the system of international protection under any circumstances.

There are grounds based on the de facto situation and on international practice for the introduction of accelerated asylum procedures. However, the rapid nature of the procedure and the fact that appeal has no suspending effect on the enforcement of a decision on deportation, for example, set new demands for the implementation of human rights.

In order to ensure conformity of the aforementioned procedures with human rights obligations, it is important to see how the provisions of law are in fact applied. The Finnish Government underlines that the asylum procedure applied by Finland is based on the examination of applications in the light of the circumstances of each individual case. It is also important for the examination of manifestly ill-founded applications, including applications of persons coming from safe countries of origin, that countries of origin are not categorically considered safe but the circumstances are assessed case by case. The Constitutional Law Committee of Parliament has earlier required that lists of safe countries of origin must be based on acts of Parliament instead of lower-level regulations, and that decision-making be based on the assessment of the circumstances of the case in accordance with the conditions set by law.

Parliament is discussing the Government Bill for the enactment of the new Aliens Act. The objective with the new Act is to have clearer provisions and to enhance good governance and the protection of aliens by law. The provisions on asylum are proposed to remain mainly in their existing form. However, some adjustments have been made. For example, the status of women has been clarified by providing that gender may be considered a social group within the meaning of the Refugee Convention and may, when subjected to persecution, constitute a ground for granting asylum.

Parliament also paid particular attention to the provisions on the accelerated asylum procedure and in this respect to the need to systematically monitor the application of the procedure in practice. Parliament noted, for example, that the applications of Roma, who have constituted one of the largest groups of asylum seekers in Finland in the past few years, have mainly been examined through the accelerated procedure <sup>17</sup>. It is important,

Thee greatest part of these asylum seekers came from countries that will become EU Member States on 1 May 2004. According to the additional protocol to the Amsterdam Treaty, the application of a national of another Member State shall be dealt with on the basis of the presumption that it is manifestly unfounded.

and not least for the purpose of allowing open public debate, to compile information on the application of the procedure which raises concern over the protection of human rights. The monitoring duty fits well together with the other duties of the Minority Ombudsman.

Furthermore, the question of ensuring the protection of the rights of the child in the context of asylum procedures has been subject to particular concern. The recommendations given by international treaty monitoring bodies have related, among others, to the interviews of minors arriving without an accompanying adult. It has been recommended that the interview techniques, the training of persons representing minors, and the special needs of children coming from conflict areas be given adequate attention.

The examination of asylum applications of minors has been increasingly paid attention to. The responsibility for the examination of applications of minors arriving without an accompanying adult was transferred from the Police to the Directorate of Immigration in January 2002. The examination is carried out by members of the Directorate's working group on children, who are familiar with facing children and are trained for it. Before the responsibility for the examination of applications was vested in the Directorate of Immigration, the members of the working group participated in a two-year project of the EU concerning minors seeking asylum<sup>18</sup>. Within the framework of the project, the Directorate of Immigration prepared instructions and a questionnaire for the interview of minors arriving without accompanying adults. The instructions contain a specific section on traumatic children. In addition, the facing of traumatic children, coming e.g. from conflict areas, has been given particular attention in the training of the staff of the Directorate of Immigration.

In the context of reforming the Aliens Act, the question of the implementation of the rights of the child was also subject to particular attention. The Government underlines the principle of the best interests of the child in Article 3 of the UN Convention on the Rights of the Child, which must be the primary consideration in all actions concerning children.

<sup>&</sup>lt;sup>18</sup> Children First — Minors in the Asylum Process: A Training Programme for Officials (2001—2002).

The possibility of deportation of persons whose applications have been refused is also inherent in an effective system of protection. It has been characteristic of the Finnish asylum policy that the deportation of such persons has systematically been enforced. Thereby Finland aims at preventing the emergence of communities of socially excluded aliens. However, voluntary return as the primary way of return is to be supported.

With regard to the implementation of international human rights obligations, the moment of deportation of asylum seekers whose applications have been refused is of crucial importance. The principle of non-refoulement in the Refugee Convention and certain other human rights conventions means, in particular, an obligation not to send the alien to an area where his or her rights would be seriously violated. However, deportation situations are also difficult for the enforcing authority.

An example of difficult situations is a case that gained publicity in the autumn of 2003. The European Committee for the Prevention of Torture (CPT) had, in its preliminary observations, criticised Finland for having forcefully injected several members of the same family with sedative and neuroleptic medication in the context of deportation procedure. The final report of the Committee is available in the first half of 2004. The said case led to investigations both in respect of the Police and health care staff. As for the future, it is important to ensure that the instructions and competence of authorities be clear in such situations. The procedure of deportation must also be based on respect for the rights of individual persons and for the principle of proportionality. Any restrictions on human rights must be necessary for the enforcement of the decision in question.

The preparation of the immigration policy programme referred to in the Government's Political Programme has begun. The immigration policy programme is prepared in cooperation among several Ministries, and one of its objectives will be to develop the Finnish Government's refugee policy as a system protecting human rights.

# 5.5.4 Reception of asylum seekers

The reception of asylum seekers is based on the Act on the Integration of Immigrants and Reception of Asylum Seekers. The reception of asylum seekers has been planned so that there is always an adequate number of accommodation places in relation to the number of arriving persons. It is

characteristic of the reception of asylum seekers that the arrivals are difficult to predict, and there are great differences in the numbers of arriving persons. Finland aims at ensuring that the fourteen reception centres operating in the country are in all times able to respond to the need of accommodating asylum seekers.

The reception centres provide asylum seekers access to legal counselling or legal aid. The Refugee Advice Centre gives legal aid free of charge to asylum seekers arriving in Finland. In addition, it provides them with information on the Finnish legislation concerning aliens and the rights and duties of aliens in the asylum procedure. The Refugee Advice Centre is given state subsidies for the provision of legal aid services. Asylum seekers also have the right to use other legal aid services.

The Act on the Treatment and Detention Units of Aliens, as well as the Act amending the Aliens Act, entered into force on 1 March 2002. A temporary detention unit for thirty persons was placed in the localities of former Katajanokka prison in 2002. A permanent detention unit will be placed in Metsälä. The reception centre in Metsälä will have a particular unit for the detention of aliens. This makes it possible to arrange for the accommodation of the family, particularly the children, of the asylum seeker who has been detained.

According to law, detained aliens must be given a fair treatment in due respect for his or her human rights. The rights of an alien may only be subject to such restrictions as are necessary for the purpose and security of the detention and for the maintenance of safety and order. This entails the right to information, the right of contacts, visits and the use of telephone, separation of the alien from others, removal from the reception centre, and decision-making concerning the said rights and obligations. The alien must be informed of his or her rights and obligations. The rights may only be restricted for reasons of investigation or where the restrictions are justified for the purpose of guaranteeing security and order. A detained alien may exceptionally be placed in a police detention unit for a short time. Such exceptional placement must be reported to a district court without delay.

# 5.5.5 Reception of minors arriving without an accompanying adult

In recommendations given concerning Finland, it has been stated in respect of minors arriving in Finland without an accompanying adult that the Government should ensure adequate resources for the training of persons representing such minors. Training has been provided by the Ministry of Labour which is the competent authority concerning the integration of immigrants and reception of asylum seekers, as well as by regional economic development centres and reception centres. In addition, training has been arranged within the framework of two subsequent projects financed by the European Refugee Fund and the Ministry of Labour. The projects have been implemented by the Refugee Advice Centre and the Central Union for Child Welfare in Finland. A report submitted by the Government to Parliament in 2002, on the implementation of the Act on the Integration of Immigrants and Reception of Asylum Seekers, contains several proposals as to the development of the practice concerning the reception of minors seeking asylum. The proposal concerning the creation of a register of persons representing minors has already been implemented. It was also proposed hat a handbook be written for such persons. The handbook will be completed within the framework of the aforementioned projects.

The aforementioned proposals concerning the reception of minors were that family homes meant for minors be given the same status as other child welfare institutions, that the competence requirements of the staff of such family homes be the same as those for the staff of persons working for child welfare institutions, and that the refund system be changed so that the local authorities could request the state to refund the costs of care for minors arriving alone even after they have reached the age of 18, until the age of 21, in the same way as for minors subject to child welfare measures under the Child Welfare Act.

In order to enhance the examination of applications of minors, reception centres have offered their premises for the arrangement of interviews. The interviews are carried out by the Directorate of Immigration.

The family homes responsible for the reception of minors ensure that they are given all the mental services needed. In respect of refugees placed in a municipality, the provision of services is at the responsibility of the local social welfare and health care authorities. The availability of services and lack of expertise in the problems of refugees, the measures applied to their rehabilitation, and language and the use of interpreter have constituted some problems.

### 5.5.6 Rights of immigrants

Human rights questions are essentially related to immigration and the treatment of immigrants. The better transport connections and communications technology have meant that also the movement of persons across frontiers has increased. The freedom of movement may be seen as a positive fact but it also has some negative effects. Due to inequality, such as unequal distribution of economic wellbeing in the world, people do not always have any choice when they decide to leave their home regions. In case the living conditions in one's home country or country of residence are hard enough, the only option often is to search for better possibilities for living in another country. This may also partly contribute to increasing abuse of people, of various degrees. For example, it is possible that foreign labour is subject to conditions differing from those based on law. In extreme cases, the abuse may take the form of trafficking in human beings which in turn is close to slavery. Trafficking in human beings is in fact said to constitute a new form of slavery. Trafficking in human beings is addressed in more detail in section 6.3.

There are more than 100,000 persons of foreign background living permanently in Finland. Most foreigners are others than refugees. Many immigrants have arrived in Finland because of family ties or work. The number of residence and work permits has steadily increased, which has delayed the processing of applications. Shorter processing time is at present the most important objective for the immigration authorities. At the same time, the authorities aim at being prepared for increasing numbers of applications for residence and work permits. Immigration because of work has particularly increased during the still ongoing period of economic growth. The increasing immigration has not been based on changes in immigration policy but it has been a result of a growing demand for foreign labour in the labour market. Flexible response to changes in the demand for labour, both in respect of quality and quantity, has been possible because, unlike many other states, Finland has not set any quotas or restrictions on political grounds for the numbers of work and residence permits to be granted.

Finland, in the same way as many other West European countries, increasingly need labour from other countries due to the changing age structure of their populations. Therefore, it is important to have a well-planned, reasoned and open immigration policy. It is also important to understand the reasons of immigration and give them visibility, which help create more

positive attitudes towards immigrants and make it easier for them to integrate in Finnish society. The provisions of law on immigration and on the status, rights and obligations of immigrants must be clear and adequate and correct information must be available to potential immigrants. Those who have lawfully resided in the country for a long time must have a possibility to get the status of a more permanent resident. It is important to give them a status which is as close to that of Finnish nationals as possible. Equal treatment is important not only from the perspective of the protection of human rights, but also because Finland needs the input by immigrants in the construction and maintenance of society. Those participating in this work must, irrespective of nationality, be able to enjoy the products of their work as equally as possible.

The new Nationality Act entered into force in the summer of 2003. According to the Act, persons who have previously had to give up their Finnish nationality may get it back by declaration. As of January 2004, the fees charged for the processing of nationality declarations were reduced for persons who are 65 years of age or older as well as for persons who left the country between 1939 and 1945 in their childhood because of war.

In accordance with Prime Minister Matti Vanhanen's Government Programme, the Government prepares an immigration policy programme and is prepared to increasing immigration. According to the Government Programme, the immigration policy programme must be comprehensive and define the values of immigration policy with the objective of ensuring respect for human and fundamental rights. The programme is scheduled to be completed by the end of May 2005.

The Government Bill for the enactment of a new Aliens Act, which is being discussed by Parliament, aims at implementing and enhancing good governance and protection by law in immigration issues. The Act would further enhance balanced immigration and provision of international protection in due respect for human and fundamental rights. Apart from the overall reform of the Aliens Act, the Government intends to assess the possibilities to further facilitate the immigration of students and their stay in the country after the completion of studies.

Within the framework of the European Union, Finland has drawn attention to the right of immigrants to fair and equal treatment, and to the need to have a comprehensive immigration policy and respect for human rights.

The conclusions of the Tampere European Council, held in October 1999, underlined partnership with countries of origin, fair treatment of third-country nationals, management of migration flows, and the creation of a common European asylum system. These objectives have later been made more precise and further developed in the Sevilla (2002) and Thessaloniki (2003) European Councils.

### **Integration of Russian immigrants in Finland**

The Russian-speaking persons are at present the largest group of immigrants in Finland and their number has been significantly increasing in the past ten years. There are already as many as 30,000 persons who have declared Russian as their mother tongue (including so-called Old Russians). Although the following observations mainly concern the integration of Russian-speaking immigrants in Finland, they are also largely applicable to other immigrants.

It is a relevant objective of the Government's immigration policy to ensure the integration of immigrants residing permanently in Finland, in due respect for their right to maintain their own languages and foster their cultural backgrounds. The Government finds it very important to prevent the social exclusion of persons belonging to minorities and their total assimilation with the majority population. The Government also encourages minorities to participate in decision-making concerning them at all levels of administration.

A working set up by the Advisory Board for Ethnic Relations gave its report, "Questions relating to the Russian-speaking population in Finland in 2002", to the Advisory Board in January 2003. The report contains 38 recommendations concerning the position of the Russian-speaking population. The recommendations will be submitted to the ministerial group discussing immigration policy and ethnic relations, which was designated by the Government at the beginning of the year.

Although the measures taken by the labour administration in respect of immigrants apply to all of them, the needs of the Russian-speaking immigrants inevitably get attention as the immigrants coming from the area of the former Soviet Union (Ingrian Finns and descendants of Finnish nationals, and their family members) and Russians who have married Finns constitute the largest groups of immigrants using the services of the labour administration.

The immigrants coming from the area of the former Soviet Union are a very heterogeneous group as to their needs for services and information. Therefore, individual assessments and plans are necessary at the various stages of integration. This is also why the different projects concerning immigrants, despite their temporary nature, have led to good results in respect of employment. The integration process of Ingrian Finns starts already before their arrival in Finland as they are provided an orientation course, guaranteed by law. Some of the teachers in the orientation courses are immigrants who have moved to Finland from the area of the former Soviet Union.

The measures aiming at the integration of immigrants, taken by the labour administration, are meant not only to provide the normal labour services but also to support the learning of the Finnish and Swedish languages and preparedness for work. The immigrant training usually includes a traineeship period, often followed by a period of in-work training. This has proved to be the most effective way to ensure access to the open labour market. The capacities of employment agencies to provide services and expertise in immigration issues are actively strengthened e.g. through guidance and training of officials.

There are also large numbers of highly trained persons among the Russian-speaking immigrants, whose employment and access to the labour market it is important to follow. For example the trade between Finland and Russia, tourism and future needs of the labour market require as successful as possible an integration of the Russian-speaking immigrants into Finnish society.

## 5.6 Human rights and Finland's development policy

- , Extreme poverty constitutes a key problem in the field of protection of human rights. The significance of the rights of participation of different population groups is also underlined from the perspective of eradication of poverty.
- Respect for human rights is one of the guiding principles of development policy. An objective has been set for the next few years to clarify the concrete meaning of human rights in development policy. In a development policy supporting enhancement of respect for human right, projects implemented with non-governmental organisations play an important role.

#### 5.6.1 General

Extreme poverty constitutes one of the most significant human rights problems today. Through development policy, Finland may contribute to the eradication of extreme poverty and its different implications, which as such enhances the implementation of human rights. The human rights based approach to development is one of the guiding principles of the Finnish Government's development policy. Human rights, democracy and good governance are also directly enhanced through various projects or by supporting civil society activities.

Finland underlines the importance of the rights of participation. With regard to the objectives of development and eradication of poverty, it is important that all social groups, including those in the most vulnerable position, may participate in decision-making concerning them and in the development of society.

Human rights issues must be strongly maintained on the agenda in the dialogue with partner states. In multilateral cooperation, Finland draws attention to the human rights aspect and enhances the mainstreaming of human rights in the operation of organisations and financial institutions. The enhancement of respect for the rights of women and of the most vulnerable groups is among the priorities of both human rights policy and development policy.

The human rights bodies of the UN have, in their reports concerning Finland, observed that Finland has not achieved the level of 0.7 per cent of

GDP agreed for industrialised states in respect of development cooperation funds. The Government has decided to increase the funds reserved in the budget for development cooperation significantly during the present term of office, and is committed to achieve the level of 0.7 by 2010. The achievement of this objective contributes to the resources of developing countries for the financing of their human rights obligations and increases the credibility of the human rights policy of the Finnish Government.

### 5.6.2 Human rights based approach to development

The development policy programme, adopted by a Government resolution in February 2004, development policy is defined as meaning consistent activity in all those sectors of international cooperation and national politics as affect the situation of developing countries. The programme is the most important instrument in the implementation of the Government's development policy during the present term of office.

The programme sets respect for human rights as one of the guiding principles of development policy. This means that Finland views the different dimensions of development in relation to human rights. Development is assessed not only on the basis of economic criteria but also in the light of respect for human rights. Human rights based approach to development also entails the obligation of all states to comply with their international obligations and the right of individuals to participate in society.

Wide implementation of human rights is, on the one hand, a condition for fair and stable development and, on the other, evidence of such development. The eradication of poverty and discrimination does not only require economic resources but also increasing possibilities of participation in society. The objectives of development and enhancement of respect for human rights thus support one another: the enhancement of human rights and that of development take place at the same time, being both mutually interdependent and complementary processes.

The development policy programme links the objectives of the Finnish Government's development policy with the UN Millennium Declaration and its objectives. Human rights are present in the objectives of development policy both generally and in particular contexts. The eradication of the different dimensions of extreme poverty and inequality is as such work enhancing respect for human rights. The dimensions of poverty defined in

the Millennium Declaration are all questions relating to the protection of human rights. The underlying idea is that all women and men should have a possibility to adequate living, nourishment, education, health, water and decent living environment.

An important element of the Millennium Declaration is that it underlines the responsibility of developing countries for the creation of favourable conditions for development. In this context, respect for human rights, democracy and good governance play an important role. Through its development policy, the Finnish Government supports the efforts made by developing countries to improve the conditions for development.

The cross-cutting issues of development policy are closely related to the priorities of the Government's human rights policy. Those issues are:

- promotion of the rights and the status of women and girls, and promotion of gender and social equality;
- promotion of the rights of groups that are easily marginalised, particularly those of children, the disabled, indigenous peoples and ethnic minorities, and promotion of egual participation opportunities for them:
- consideration of environmental issues.

5.6.3 Use of development cooperation for the enhancement of respect for human rights

## Bilateral cooperation

Human rights questions play an important role in the dialogue that the Finnish Government has with partner countries of development cooperation. The efforts of partner countries to enhance respect for human rights are one of the most important facts affecting the choice of partners. The human rights situation in partner countries is constantly followed in the context of the assessment of the existence of other conditions for cooperation. Finland is committed to long-term cooperation but serious human rights problems may lead to a reduction or end of the development aid.

The bilateral cooperation of the Finnish Government has been focused on a few countries only, and on a limited number of sectors. In accordance with

the Government resolution made in 2001, the choice of partner countries has been affected not only by the need for development aid but also by the commitment of the country in question to development, by Finland's capacity to provide development aid, and by the possibilities of reaching the results aimed at. In the assessment of the commitment of a country to development, attention is paid to the country's commitment to the improvement of its human rights situation, determinate efforts to enhance democracy and equality as well as reduce corruption. The Government's development policy programme for 2004 is based on the same principles as the earlier Government resolution.

Finland's long-term partners of cooperation include Ethiopia, Kenya, Mozambique, Nepal, Nicaragua, Zambia, Tanzania and Vietnam. The donation-based development cooperation is gradually being terminated in respect of Egypt, Namibia and Peru. In addition, Finland has agreed on cooperation for a fixed period of time with Afghanistan, South Africa, East Timor, the West Balkans, Palestinian territories and, most recently, Iraq.

According to the resolution made in 2001, Kenya, Zambia and Nicaragua failed to meet the conditions for continued cooperation. This was due to deficiencies in the implementation of human rights, democracy and good governance. In the past few years, the situation in these countries has improved and the Government is increasing cooperation with them. At the same time, the instability and poor human rights situation in Nepal have led to a conclusion in the resolution made in 2004 that there are no possibilities for increasing cooperation.

Focusing the cooperation on certain countries only makes it possible to have more effective development cooperation than before. At the same time, it serves as a tool to strengthen relations with the partner country and provides better possibilities for using administrative resources for an active dialogue e.g. concerning human rights. Clearer methods and criteria of assessment of the effects of Finland's development policy on the human rights situation of partner countries are, nevertheless, needed.

## Focus on the eradication of poverty

In all Finland's partner countries of cooperation, poverty reduction strategies (PRS's) have been or are being prepared. Since the adoption of the Government resolution of 2001, Finland has been planning to shift the

focus of development cooperation from projects into programmatic aid. This means direct budgetary support for the implementation of the poverty reduction strategy, or sector-specific co-financing programmes. In these forms of cooperation, several donators of aid combine their financing in order to support the strategy of the partner country. So far, Finland has begun the provision of budgetary support in three long-term cooperation countries.

The eradication of poverty does not only mean the increasing of economic resources but also of the possibilities of participation. When the focus is shifted on direct sector-specific support and budgetary support, it is important that the rights of women and the most vulnerable groups are taken into account.

Human rights are a trans-cutting theme in all bilateral cooperation. In addition, human rights are supported by means of specific projects to that effect. The enhancement of the rule of law and good governance and the combat against corruption are closely related to the enhancement of respect for human rights.

Finland has implemented human rights projects for example in Latin America and the West Balkans. In the project implemented in Guatemala, support has been provided for the development of university-level human rights training and for the education and access to information of women belonging to indigenous peoples. The rights of indigenous peoples have been supported, among others, by a project on human rights and enhancement of the use of two languages in Ecuador. In Kosovo, Finland has a project on the provision of support for human rights institutions, also crossing linguistic borders in the region. Finland has also participated in post-conflict reconstruction projects in other countries, by supporting the development of human rights institutions and particularly the strengthening of the rights of women.

The forms of cooperation which are particularly suitable for the enhancement of human rights include the development cooperation of Finnish non-governmental organisations, the provision of support for international non-governmental organisations (INGO) and the provision of support for civil societies in developing countries by means of funds reserved for bilateral cooperation. These forms of cooperation are addressed in more detail in the following.

## Funds reserved for local cooperation

Since 2000, the Finnish representations in developing countries have had specific funds reserved for local cooperation at their disposal. The use of these funds has considerably increased and there were 13.3 million euro available for the year 2003. More than thirty representations take their parts of these funds. A significant part of the funds are used for the enhancement of human rights and democracy and for supporting non-governmental organisations working for the rights of women, persons with disabilities and minorities. Local cooperation projects are mainly implemented by the non-governmental sectors in the countries of cooperation.

For example, in Nepal, a specific programme for the enhancement of respect for human rights has been maintained with funds of local cooperation provided by Finland. In several other countries (including the Philippines, East Timor and Peru), support has been given for the enhancement of the rights of indigenous peoples by means of reports, publications and seminars, for cultural cooperation with indigenous peoples (in Pakistan and Peru). In Sri Lanka, Finland has provided support for the rehabilitation of child soldiers with funds of local cooperation, and in Cambodia, projects against trafficking in women and children have been supported. In several African states, support is given for human rights commissions and organisations working for the rights of women and minorities.

# 5.6.4 Non-governmental organisations as partners of cooperation

Part of the development cooperation projects of Finnish non-governmental organisations are directly meant for the enhancement of respect for human rights. The activities of Finnish NGOs are also given account of in the context of certain thematic sections of the present report.

The Finnish Government provides support for international non-governmental organisations (INGO) working for the enhancement of democracy and human rights. This support amounts to some two million euro per year. Approximately thirty INGOs benefit from the support every year.

The cooperation with INGOs is based on the enhancement of the objectives of the Finnish Government's human rights policy. Support has been provided, in particular, for the strengthening of the rights of women, children,

indigenous peoples and minorities. Significant support is also given for civil society activities strengthening human rights and democratic mechanisms, good governance and public information.

The largest beneficiaries of support from the Finnish Government include Transparency International carrying out anti-corruption work, the International Federation of Human Rights (FIDH), and the International Development Law Organization (IDLO) which works for the implementation of the rule of law and good governance and through which the training of female lawyers has been supported.

Finland has also supported the Minority Rights Group which has, among others, arranged training for different minorities on international standards for the protection of minority rights and possibilities of participation. The support given for a network of NGOs supporting the work of the International Criminal Court and women's, children's and public information organisations working for the strengthening of the human rights policy of the UN, are examples of support for the strengthening of international human rights mechanisms.

The number of INGOs receiving financial support for the enhancement of democracy and human rights has been relatively large. The Government intends to develop more intensive and targeted cooperation with these organisations, and it may be necessary to consider the restriction of the number of beneficiary organisations. Apart from direct financing, it is useful to consider other forms of support and cooperation.

## 5.7 Human rights and trade

- The principles of good governance and the rule of law support the positive effects of balanced liberation of trade at the national level. At the international level, the development of cooperation between the WTO and the ILO plays a crucial role.
- , The creation of corporate social responsibility is an important objective. The Finnish Government aims at constructing the dialogue to that effect and, in cooperation with the companies themselves, instructions on the inclusion of human rights aspects in their operations.

#### 5.7.1 General

The globalisation of economy is part of the complex globalisation process. The governance of globalisation is based on credible national politics and strong economic structures needed for the financing of social security networks. In general, globalisation increases the resources available to societies, and the level of information and capacities of participation of citizens and other social actors.

The role of trade in the enhancement of stability and well-being in society has been noted on many occasions. Balanced liberation of trade increases well-being. It has positive effects on the life of individual citizens if government authorities are able to ensure that each person has sufficiently good possibilities for benefiting from trade, either by working or carrying out business activities. At the national level, good governance and stabile legislation, as well as more broadly the global interdependence created by international economic exchange, are in fact good guarantees of international peace and security.

Companies play an important role in the governance of globalisation. Of them, multinational corporations are in a crucial position. The activity and awareness of consumers, investors and workers have a significant effect on the creation of corporate social responsibility. International rules and standards and compliance with them are also important in this respect. It is clear that companies wish to also benefit financially from activities implementing social responsibility.

In Finland, the idea of corporate social responsibility has been understood as a positive challenge. The rewarding of two Finnish companies at the UN World Summit on Sustainable Development in Johannesburg in 2002 was an indication of this. Several fora have been created for the ethical debate at the national level, in which companies, non-governmental organisations and authorities may exchange their views.

The activities of companies are regulated either by legislation or through international agreements, or the companies may themselves voluntarily apply instructions that are more of a recommendatory nature. Work for the creation or implementation of instructions, operations models and evaluation systems is done by different bodies. The most widely recognised instructions include those created by the OECD for multinational corpora-

tions and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. The United Nations has, under the leadership of Secretary-General Kofi Annan, assumed an active role in the creation of corporate social responsibility (Global Compact). The Commission of the European Communities published a Green Paper in 2001 for promoting a European framework for corporate social responsibility. The Green Paper was followed by a Communication from the Commission on 2 July 2002, "Corporate social responsibility: a business contribution to sustainable development".

The Green Paper and the Communication define corporate social responsibility as meaning the voluntary inclusion of social and ecological aspects in business operations and interaction with interest groups by companies.

At present, there are different kinds of recommendations available for the inclusion of human rights aspects in business activities. The degree of clarity of the recommendations concerning corporate social responsibility varies. A question has also been raised as to whether recommendations based on the voluntary activity of companies are sufficient, considering the undisputed significance of multinational corporations for the implementation of human rights. A body of experts subordinate to the UN Commission on Human Rights suggested the creation of binding rules on the human rights obligations of companies. However, the parties to international agreements have traditionally been states. The Finnish Government underlines the importance of constructing a dialogue at different levels for clarifying the companies' role. The commitments of companies on a voluntary basis, cooperation among the different actors and the responsibility of each state for the implementation of human rights of persons within its own jurisdiction are, in practice, crucial elements in the enhancement of corporate social responsibility.

## 5.7.2 World Trade Organization

The World Trade Organization (WTO) is a forum for negotiations on multilateral trade agreements, and it monitors the implementation of such agreements and serves as a body for the resolution of disputes arising from breaches of agreements. This trade policy system is characterised by the binding nature of the agreements and by the requirement of consensus in decision-making. In practice, the binding nature means a possibility to take countervailing measures in case the measures constituting breaches of the

agreement are not withdrawn. The WTO also works for the enhancement of raised living standards, ensuring of full employment and implementation of the principles of sustainable development. The gradual abolition of trade barriers based on binding trade rules is considered a relevant means for the achievement of the said objectives.

Civil and political rights are not part of the treaty system of the WTO but trade rules do not as such prevent the preparation of human rights instruments. Furthermore, it is stated in the General Agreement on Tariffs and Trade (GATT) that treaty provisions may be derogated from in respect of goods produced by using prison labour and the import of such products may be prohibited. The Agreement also contains s security derogation clause, which ensures that the Agreement is not in conflict with the resolutions of the UN Security Council, for example. The agreements of the WTO further contain certain provisions under which trade restrictions may be imposed for the protection of human beings, animals or plants, or for the protection of public morals. Special treatment afforded to developing countries is meant to enhance economic and social rights. This special treatment by the WTO has recently included operative aspects such as technical assistance, enhancement of the market access of the products from developing countries, and development of coherence of the trade-related practices of international organisations and financial institutions.

The ILO Declaration on Fundamental Principles and Rights at Work was adopted in the summer of 1998. The fundamental rights are considered to include the prohibition of child labour, the prohibition of forced labour, the right to form trade unions, the right to collective bargaining, and the right to non-discriminative treatment in recruitment and at work.

The question of the relationship between the basic rules of trade and work and the rights of workers was discussed in the Ministerial Conference in Singapore in 1996. On that occasion, the developing countries strongly objected to the inclusion of this aspect in the WTO system. Consequently, the Conference reaffirmed the commitment of the member states of the WTO to the international principles on fundamental rights at work. At the same time, the meeting noted the continuance of the dialogue between the WTO and the ILO Secretariats. The standards of working life were also discussed in the context of the preparations f the ministerial meeting of Seattle in the autumn of 1999. The EU proposed that a permanent forum for cooperation be established for the WTO and the ILO. The developing

countries still had a reserved attitude. In their opinion, the aspect of standards of working life was meant to be included in the WTO system for protectionist reasons. They found that restrictions imposed on the basis of possible breaches of agreements, targeted at trade with developing countries, would rather weaken their possibilities to improve the working conditions than compel them to do so. The idea of positive incentives — in compensation for the introduction of standards of working life — has been rejected on the ground that unilateral preferential treatment is already now possible under the WTO agreements.

In the Fourth Ministerial Conference of the WTO in Doha in 2001, an agreement was reached on the initiation of a new negotiation round. Despite the initiatives of the EU and other industrialised countries, the references to cooperation with bodies other than the Bretton Woods institutions had to be left out from the final declaration. Thus, those objecting to the discussion on the standards of working life in the WTO managed to exclude a reference that could have been interpreted as meaning cooperation with the ILO. In any case, the Doha Declaration reaffirms the declaration made at the Singapore Ministerial Conference regarding internationally recognised labour standards. At the same time, the declaration took note of the work underway in the International Labour Organization on the social dimension of globalisation.

Within the framework of the WTO, the standards concerning working life have still been discussed but due to the differing views, it has not been possible to include them as a topic in the negotiation round. The ILO is considered to be an important partner of cooperation, if not the first and foremost forespeaker of the issue.

In July 2003, the General Affairs and External Relations Council of the EU approved a Commission Communication on promoting core labour standards. This way, the EU wanted to express its view before the Cancun Ministerial Conference of the WTO without, however, endangering the progress achieved in the negotiation round by bringing up an issue that has clearly been subject to dispute and on which discussions are still going on among the WTO member states. The issue was not discussed in the Cancun Ministerial Conference. In the Council Conclusions adopted in July, the most relevant aspect is the rejection of a protectionist sanction-based approach to the enhancement of fundamental rights at work. At the same time, the EU reaffirms its strong support to the use of positive incentives.

This approach has already been noted in a few earlier conclusions of the Council.

The Council Conclusions are rather comprehensive. They address the division of competence and cooperation between the EU and the ILO as well as the need of the EU and its Member States to improve their own cooperation in order to achieve consistent approaches in all relevant international organisations, such as the WTO and the ILO. At the same time, the EU should enhance a more effective dialogue between the WTO and the ILO and the possibility of their member states to regularly attend one another's relevant meetings. As a final objective for the future, the Conclusions suggest a reciprocal observer status.

The Conclusions propose that the possibilities for enhancing respect for fundamental rights at work be examined when the WTO assesses the trade policy concerning an individual country. The EU should also enhance the efficiency of monitoring by the ILO and systematically take problems found by the ILO into account in its external relations. At the same time, the EU should enhance and strengthen the existing systems of implementation and incentives to increase respect for fundamental rights at work. The possibility of using the incentive for the protection of labour rights in the Generalised System of Preferences (GSP) should continue during the period of time starting in 2005 and ending in 2014. The EU could also encourage other industrialised countries to adopt similar plans of social incentives.

The GSP applied by the EU has since 1998 taken into account human rights through a special incentive arrangement, offering additional benefits for beneficiary countries who comply with certain resolutions of the ILO. There is also an incentive arrangement for the protection of the environment. So far, there is not much experience of the system and, accordingly, it is difficult to assess its effectiveness. Only one country, Moldova, has been afforded additional benefits. This indicates that the system has not been very successful. However, the requests made by certain other beneficiary countries are currently being examined (including that of Russia). Human rights are also taken into account in the GSP so that general GSP benefits may be temporarily withdrawn for certain reasons or under certain circumstances. Such reasons or circumstances include forced labour and slavery. So far, preferential customs treatment has been withdrawn in respect of Myanmar (Burma) as of 3 April 1997 because of the use of forced labour.

The Council Conclusions note that the EU should extend the approach adopted in the Cotonou Agreement to other agreements and enhance the implementation of fundamental principles and rights at work in its development cooperation and cooperation programmes. It is suggested, for example, that compliance with those principles and rights in specific Export Processing Zones should be assessed. The EU should also help developing countries take advantage of the possibility of incentives, with regard to market access, offered by the system of marking of products as socially friendly ones.

According to the Conclusions, the EU should enhance the positive role of companies in the implementation of fundamental rights at work, through their obligations inherent in the concept of corporate social responsibility, and in the enhancement of sustainable development

Finland finds the enhancement of fundamental rights at work important and supports the view according to which compliance with these rights must rather be enhanced by means of incentives instead of sanctions.

The Government has considered that the first and foremost forum for the discussion on fundamental rights at work is the ILO but has also found it justified to address them in trade-related fora and by means of cooperation between these two. Guidelines concerning this issue were adopted during the Finnish presidency of the EU.

In the WTO, the difficulties of developing countries to ensure the availability of medicines at reasonable prices in situations where the medicines are covered by the protection of patents under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), were subject to long discussions. The first concrete product of these discussions was the Declaration on the TRIPS Agreement and Public Health, adopted in the Doha ministerial meeting in 2001. The Declaration, on the one hand, recognises the significance of intellectual property rights for the development of new medicines but, on the other hand, it notes that the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health. The Declaration recognised the difficult position of developing countries.

In August 2003, an understanding was reached on the relationship between the TRIPS Agreement and public health. The member states agreed on the extension of the possibility of producing/exporting medicines under a compulsory licence (for HIV/AIDS, tuberculosis, malaria and other epidemic diseases) by virtue of the TRIPS Agreement without the permission of the patent owner in countries with insufficient or no medicine manufacturing capacities. The technical implementation of this decision will be agreed on later. The EU was one of the strongest proponents of the decision. The EU has also underlined that the availability of medicines is not alone sufficient to improve national health in developing countries. In addition, the health care systems must be developed.

### 5.8 Exports of defence materiel and human rights

- Human rights are taken into account in decisions on export licences relating to defence materiel. Respect for human rights in the recipient country shall also be taken into account under the EU code of conduct for arms exports. In the next few years, the new Member States of the EU should be integrated into the system of control of arms exports.
- Finland supports the process aiming at the conclusion of an international arms exports treaty or framework convention on the export of arms. The Government underlines the need to discuss and agree on the principles of responsible arms exports policy on a multilateral basis.

#### 5.8.1 General

The availability of arms in the different parts of the world is alarming with regard to the implementation of human rights. Governments exporting arms are partly responsible for the abuses carried out with such arms. The licensing authorities have a duty to verify the end-use of the arms and the likelihood of abuses. Before granting a licence, it is important to carefully ensure that the arms are in fact delivered to an end-user who is known to respect human rights. Although human rights violations are in principle acts of government, even a failure to ensure protection may amount to a human rights violation. Thus, governments also have responsibility for adequate control of private arms brokers.

In order to ensure that the Finnish Government's human rights policy is consistent, it is of utmost importance to assess the general effects of licences for arms exports against the Government's statements and policy guidelines. The Government aims at taking the human rights situation into account in any decisions concerning the country in question, and decisions on arms export licences must not constitute an exception in this respect.

### 5.8.2 Finnish legislation and the EU code of conduct for arms exports

Decisions on arms export licences are made on the basis of the Act and Decree on the Export and Transit of Defence Materiel as well as of the Government decision on guidelines concerning the export of defence materiel. The guidelines contain rules supplementing the provisions of section 3 of the Act, according to which an export licence or brokering licence shall not be granted where the licence would jeopardise Finland's security or be contrary to the foreign policy principles of Finland.

Not only the export and transit but also the brokering of defence materiel between third countries require a license. The purpose of the control of arms brokering is to prevent the circumvention of the international agreements and obligations concerning export control as well as illegal production of and trade in arms. A new law on the brokering of so-called civilian weapons (used only for hunting and sports shooting) are under preparation at the Ministry of the Interior.

According to the guidelines concerning the export of defence materiel, when granting an export licence Finland shall comply with international agreements and obligations, such as the UN Security Council sanctions and prohibitions on arms exports, prohibitions imposed by the European Union, and restrictions decided by the OSCE or other organisations for security or international arms exports control arrangements. When making the overall assessment, attention is also paid, inter alia, to the social situation in the recipient country and particularly the human rights situation, the characteristics of the materiel to be exported, the purported use and military significance of the materiel, as well as the significance of the exports for the Finnish industry.

In the past few years, the EU code of conduct for arms exports, which entered into force in 1998, has become a particularly important instrument when granting export licences. The code of conduct forms part of the laws on export control applied in Finland. The code of conduct places the EU Member States under an obligation to comply with a number of general criteria when granting of export licences and to consult each other in respect

of refusals of licences. According to the code of conduct, respect for human rights in the recipient country, internal tensions or armed conflicts, the maintenance of regional peace, security and stability, the attitude of the recipient country to the international community and international law, in particular concerning terrorism, and the relation between the arms trade and the social and economic development of the recipient country, among others, shall be taken into account by Member States when granting an export licence.

The Government decision on guidelines concerning the export of defence materiel, given in 2002, is partly outdated. The development of practice concerning the granting of licences and particularly the increasing significance of the EU code of conduct, as well as the increasing international cooperation, require that the guidelines be subject to an overall reform. The guidelines are already being updated by the officials.

### 5.8.3 Assessment of the human rights situation in the recipient country

Both the Act on the Export and Transit of Defence Materiel and the EU code of conduct places Finland under an obligation to carefully assess the human rights situation in the country to which the arms are to be exported. The export licence is granted if it may be concluded that the arms are not, with all likelihood, used for the commission of human rights violations, acts of aggression or other undesirable purpose. In unclear cases, extreme care is exercised.

The human rights situation in the recipient country is actively assessed with the help of various country reports. Both governments and non-governmental organisations prepare human rights reports of which a wide range is available on the Internet. The impartiality of the reports is verified as carefully as possible. In uncertain cases, only reports that are known to be reliable are used. In addition, the Finnish diplomatic representations abroad and the representations of the EU together prepare reports concerning human rights. Representations are also encouraged to report on the human rights situation in the countries to which they are accredited.

In respect of individual export licences, the most recent developments in the human rights situation of the country concerned are verified using several sources. The risk of a potential re-export of the arms to undesirable countries is also assessed. Apart from the human rights situation itself,

attention is also paid to the general security situation in the country concerned, as well as to the government's ability or willingness to address problems. In the assessment of the human rights situation, attention is paid to whether the exported product could be used in connection with human rights violations even if it is not as such an instrument suitable for the commission of violations (such products include, for example, bulletproof jackets and gas masks).

# 5.8.4 Finland as an exporting country

The role of Finland as an exporter of defence materiel is comparatively small. When compared with the other EU Member States, Finland occupied the thirteenth position in 2001, before Portugal and Luxembourg. According to worldwide statistics prepared by *Sipri*, a Swedish research institute, Finland held the thirty-second position among the world's largest exporting countries in the years 1998 to 2002. The exports of defence materiel of Finland amounted to approximately 54 million euro in 2002. Only about 16 % of the exports were directed to countries which require a specific foreign and security policy assessment.

All decisions on export licences made by the Ministry of Defence are public. In addition, the Ministry of Defence gives a detailed report on the exports of defence material on a yearly basis on its Internet pages.

Between 1999 and 2002, Finland informed the other Member States of the EU about a total of 60 refused export licences in accordance with the EU code of conduct. In most cases, the refusals were based on the internal situation of the recipient country due to tensions or armed conflicts (22 cases), on the danger that the products would end up to different users in the recipient country or be re-exported under undesirable circumstances (14 cases), and on non-respect for human rights in the country of end-use (8 cases).

## 5.8.5 International cooperation in arms exports

One of the most important objectives of the EU code of conduct for arms exports is to intensify cooperation within the framework of the common foreign and security policy (CFSP) and to harmonise practices in the field of arms exports. In the past few years, significant progress has been made in this respect. General exchange of information between the Member States has constantly increased and developed. The consultation obligation relat-

ing to export licences has been made more effective and clearer, and the Member States report on their arms exports to one another on a yearly basis. In addition, a common annual report is published on the development of the Code of conduct and on the arms exports by the EU Member States, containing information, among others, on the financial value of export licences granted, on the total value of exports, on the recipient countries of exports and on the refusals of export licences by the Member States. In an international comparison the system of cooperation based on the EU code of conduct is very advanced and serves as a useful example for other countries.

Finland contributes actively to the improvement of the code of conduct and its further development. The most important challenge in the near future is the effective and fluent integration of the new Member States into the EU system of arms exports control. Finland has, together with the other Nordic Countries, focused on supporting the integration of the Baltic States into the EU cooperation. Other important ongoing projects include the creation of a joint database over refusals of export licences and the assessment of the need to strengthen the legally binding nature of the code of conduct.

The Member States of the EU adopted a Common Position aimed at regulating arms brokering in June 2003, establishing a set of provisions to be implemented through the national legislations of Member States. At present, only about half of the EU Member States have specific national legislation concerning the brokering of arms. Under the Common Position, the Member States are under an obligation to take all the necessary measures to control brokering activities on their territory and to consider doing so also when the act of brokering takes place in a third country.

## 5.8.6 Small arms and light weapons and human rights

Uncontrolled proliferation of small arms and light weapons and their widely spread misuse is a worldwide problem from the perspective of human rights and humanitarian law. At present, there are nearly 650 million small arms or light weapons. They kill approximately half a million people every year. The victims are mainly civilians — women and children.

Small arms and light weapons are used for numerous human rights violations and breaches of international humanitarian law in different parts of the world. Small arms or light weapons are easily available in many conflict

areas and they are widely misused. Such arms or weapons are often delivered to untrained and uncontrolled rebels who can't be held accountable for their acts by anyone and who ferquently use weapons against civilians. Small arms and light weapons are easy to carry and use, which furthers the recruitment of child soldiers.

Arms are seldom abandoned after the war. Unlawful conduct and threats to civilians are particularly common in areas where the security situation is bad and former combatants have not given up their arms. Even in countries where there is in principle no armed conflict, the use of small arms and light weapons is the reason for many serious violations of human rights. Occasionally the perpetrators are groups or individuals working under the government's control but sometimes private armed groups operate entirely independently.

### 5.8.7 Towards an international framework convention on arms exports

Currently there exists no international treaty concerning arms exports. The UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects is meant to prevent illegal trade in arms but, in order for it to be successful, a comprehensive approach covering also the arms exports subject to licensing is necessary. The follow-up process to the programme of action has aimed at drawing attention to the minimum standards concerning trade in arms, binding on all states. Finland has actively worked for the inclusion of criteria concerning arms exports in the UN programme of action. At the regional level, the OSCE adopted a Document on Small Arms and Light Weapons in 2000 which for the time being contains the only internationally approved guidelines.

More than 500 international organisations all around the world have introduced a campaign aiming at the achievement of an international framework convention concerning arms exports by the year 2006. An important objective of this campaign is a convention that would prohibit the export of arms to countries where they would most likely be used in connection with serious violations of human rights. Finland supports the process aiming at the conclusion of the aforementioned international convention and finds it important to negotiate and agree on the principles of a responsible arms export policy on a multilateral basis. In this respect, the introduction of a tax on arms exports should also be considered.

#### 6. THEMATIC ISSUES

### **6.1 Development of human rights**

- The Government aims at effective national implementation of the provisions of all the human rights conventions binding on Finland.
- , The Government objects to such reservations to a human rights convention as are contrary to the purpose and objectives of the convention.
- , The enhancement of a constructive dialogue with the monitoring bodies of human rights conventions will be continued.
- , The Government intends to further enhance the transparency of periodic reporting. The role of non-governmental organisations in respect of periodic reporting will be maintained and further extended.
- , The follow-up to the implementation of the recommendations given by the monitoring bodies will be developed.

### 6.1.1 Treaty system

Finland is a party to the most important human rights conventions of the United Nations and the Council of Europe. The protection of human rights afforded by the various conventions is extensive and the treaty system is constantly developed through the adoption of new human rights instruments. Despite the wide range of conventions, however, it is possible that the rights of specific groups, such as persons with disabilities, are implemented less effectively than those of other groups. Although the protection of human rights may be strengthened by more effective implementation and by developing the interpretation of the existing conventions, it is sometimes justified to create new standards for the needs of specific groups.

At present, the member states of the United Nations are negotiating on a Comprehensive and Integral Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, a declaration on the rights of indigenous peoples, an optional protocol to the International Covenant on Economic, Social and Cultural Rights for the creation of a system of individual complaints, and a legally binding instrument concerning involuntary or forced disappearances. Within the framework of the Council of Europe, a draft Convention on action against trafficking in human beings is being negotiated.

Finland actively follows reservations made to international treaties and particularly human rights conventions. The reservations are communicated to the Government by the depositary of the treaty in question, in most cases the Secretary-General of the United Nations or the Council of Europe. Such reservations as are problematic in view of the purpose of the treaty are regularly discussed in the COJUR Working Party of the European Union and, where necessary, a decision is made on the initiation of a dialogue with the country which has made the reservation with a view to convincing the said country to withdraw the reservation.

The Finnish Government objects to such reservations as are contrary to the purpose and objectives of the treaty in question. Finland has, for example, consistently objected to reservations made by Islamic countries, which only contain a general reference to the prevalence of Shari'ah over the treaty provisions. Between 2001 and 2003, Finland has communicated to the UN Secretary-General objections to reservations made to the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

The state party to a human rights convention is under an obligation to cooperate with the treaty monitoring body. Some of the conventions give the states an option to choose between different degrees of monitoring. In most cases, the submission of periodic reports is compulsory for all states parties, whereas the acceptance of a system of individual complaints may be optional. Although the numbers of parties to human rights conventions are increasing, it does not tell the whole truth of compliance with human rights obligations or of the acceptance of monitoring mechanisms. States parties neglect their obligations by submitting their periodic reports too late or failing to submit them. Such omissions make it more difficult for monitoring bodies to develop human rights. The Finnish Government has, for a considerable time already, been concerned about this trend and has aimed at enhancing cooperation between the states parties and the treaty monitoring bodies by showing a good example. A situation where the treaty monitoring bodies need to explain and defend their role with regard to states must be avoided.

Not always is the reason for an omission, however, an intentional failure to comply with treaty obligations. Small or developing states may suffer from a lack of resources and simultaneous reporting obligations under different human rights conventions may constitute an unreasonable burden. In some cases, the lack of resources leads to a poorer quality of reports or to delays in the submission of reports. The Governments may, however, get technical assistance for the preparation of reports up to a certain limit.

The capacities of treaty monitoring bodies have been paid particular attention to. The transmission of information and communication between the specialised agencies and other bodies of the UN require increased capacities and resources. Although improvements have been made, there are still considerable delays in the examination of reports submitted by states parties. The slowness and inefficiency of the reporting system have raised critical comments on the need to reform the treaty monitoring bodies.

However, an extensive reform of the treaty monitoring bodies would require that the treaty provisions be opened and amended. Such a complicated procedure cannot be considered desirable. The Finnish Government has underlined that the treaty monitoring bodies must themselves carry out the reforms, on their own terms. In this respect, it is important to ensure the independence of the treaty monitoring bodies. The changes to their work could in practice be made by reviewing the instructions for the submission of reports, restricting the contents of reports and changing the periods of time covered by the reports.

The monitoring systems under human rights conventions have significantly developed in the past few years. The system of collective complaints under the European Social Charter has already produced the first cases and the system of individual complaints attaching to the Convention on the Elimination of All Forms of Discrimination against Women has been operative for several years already. The most recent development is the adoption of a new Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, creating a Sub-Committee and a national preventive mechanism in order to prevent cases of torture in states parties to the Convention.

The Finnish Government has visibly supported the preparation of a protocol on the creation of a system of individual complaints under the International Covenant on Economic, Social and Cultural Rights. The working group discussing the said protocol is convened to its first session in early 2004. It is also likely that a monitoring body will be created for the convention on the rights of persons with disabilities which is under preparation.

Since the submission of the previous report on the Finnish Government's human rights policy to Parliament, there have been some cases concerning Finland pending before the treaty monitoring bodies of the UN human rights conventions.

In the case of *Äärelä* and *Näkkäläjärvi* v. Finland, the UN Human Rights Committee gave a decision (24 October 2004) on a communication concerning loggings and a road construction project by the National Forestry and Park Service in reindeer herding areas of the Sámi and the related domestic court proceedings. In its decision, the Committee noted that the loggings carried out in the area did not amount to a human rights violation and the Finnish Government had not violated the right of the authors under Article 27 of the International Covenant on Civil and Political Rights to enjoy their own culture. There is another case (*Länsman* v. Finland) pending, concerning loggings which have been planned and carried out in a Sámi reindeer herding area.

A complaint concerning the expulsion of Sri Lankan asylum seeker has been pending before the UN Committee against Torture. In its decision (15 May 2003), the Committee found that no violation of Article 3 of the Convention had taken place. Under Article 3, no State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

## 6.1.2 Periodic reporting

The submission of period reports by Governments is a relevant part of the system of protection of human rights. Nearly all human rights conventions place the states parties under an obligation to submit reports on the legislative, legal, administrative and other measures taken to implement the treaty provisions. The intervals at which the reports must be submitted are determined in general by the convention and in more detail by the instructions or guidelines given by the monitoring body in question.

Finland aims at constantly improving the quality of the Government's reports. The objective in this respect is that the reports not only give the necessary information to the treaty monitoring bodies but also serve as national sources of information on human rights. Every report is meant to be an independent and easily readable entity.

The main principles applied to the Finnish Government's periodic reporting are transparency and provision of accurate information. So far, the Government has been able to include both minor and major measures in the reports, taken to enhance the more effective implementation of human rights in Finland. Apart from the development of implementation, the Finnish Government's reports transparently provide information on existing problems and criticism presented by non-governmental organisations. For example, the extent and seriousness of family violence in Finland have been discussed in the reports on the rights of women and children.

The States parties have a possibility to develop their reports by focusing on certain thematic issues. In the third periodic report of Finland on the implementation of the Convention on the Rights of the Child, the Government aimed at drawing more attention to the rights of children belonging to indigenous peoples, i.e. the Sámi people in Finland, in comparison with the previous reports. For the preparation of the fifth periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights, it is relevant to focus on the rights of persons with disabilities. In international statements, Finland has proposed that the preparation of periodic reports be developed into a more thematic form.

The periodic reports are usually examined within a year or two years from their submission. Due to the long intervals between the submission and examination of reports, the information given in them may be out of date by the time they are examined by the monitoring body. In practice, many monitoring bodies request governments to submit updated or further information through additional questions. The answers given to the additional questions constitute as such updated sources of information supplementing the reports. The Finnish Government aims at further improving the usefulness and publicity of the answers given to additional questions.

The examination of reports takes place either in Geneva or in New York, depending on the treaty monitoring body. The examination is usually an oral and public hearing. The Government sends to the hearings a delegation

consisting of experts. The treaty monitoring bodies of the Council of Europe have an exceptional practice of making country visits. For example the committee of experts monitoring the implementation of the European Charter for Regional or Minority Languages has already twice visited Finland.

There are differences in the attitudes of states towards the examination of periodic reports. Some states feel that the cooperation with the treaty monitoring bodies is a way of developing human rights, whereas some others consider it a court-like procedure of examining matters falling within the scope of state sovereignty. The Finnish Government aims at enhancing a constructive dialogue with all the treaty monitoring bodies.

Several treaty monitoring bodies also hear non-governmental organisations and examine information provided by NGOs before hearing the governments' delegations. After the completion of the hearing, the monitoring bodies adopt their conclusions and recommendations concerning the state in question.

The periodic reports of the Finnish Government are rather thorough. The contents of the reports are also reflected in the recommendations which may be even very detailed. Although the recommendations given by treaty monitoring bodies are not legally binding, the Finnish Government pays attention to them and has taken measures on the basis of the recommendations.

The participation of non-governmental organisations in two different stages of the periodic reporting has become an established practice. Representatives of NGOs are requested to present their views already at the stage of preparation of a report. When the fifth periodic report on the implementation of the International Covenant on Civil and Political Rights was prepared in the spring of 2003, an experiment with a new kind of practice was made: the representatives of NGOs were encouraged to submit online their views for the report.

After the non-governmental organisations have provided materials for the report, they are also provided with an opportunity to comment on the draft report. The draft report is often discussed in a meeting where the representatives of the Government and NGOs may directly communicate. The practice of involving the NGOs in the preparation of reports, followed by

Finland, is rather unique when compared with other states. In most cases, civil society only participates in the periodic reporting process by commenting on the final report.

The Finnish Government aims at further increasing the transparency of periodic reporting. The latest example of the principle of transparency is the publication of the additional questions relating to the European Framework Convention for the Protection of National Minorities on the Government's own initiative in the autumn of 2003. The decision to publish the questions was reasoned with the principle of transparency applied by the Government with regard to periodic reporting. Public access to documents and the availability of information are necessary for the development of the protection of human rights and for the public debate.

Information is provided on the conclusions and recommendations given by treaty monitoring bodies either by holding a press conference or by the issue of a press release. The recommendations are usually translated into both official languages of Finland and, where necessary, into one or more minority languages. For example, the recommendations concerning the Sámi are translated into North Sámi. The recommendations are widely disseminated, including various authorities, Parliament, the judiciary, research institutes and non-governmental organisations. They are also published on the web pages of the Ministry for Foreign Affairs.

The conclusions and recommendations of treaty monitoring bodies have raised interest and discussion among both authorities and non-governmental organisations. However, the period of time between the publication of recommendations and the preparation of the following periodic report is challenging. After the public discussion on the recommendations, they are too often left in abeyance and are not taken up until for the purpose of preparing the following report. The follow-up to the implementation of recommendations based exclusively on reporting is not adequately effective. The recommendations should be an integral part of the development of national legislation and policy on human rights and their implementation should be more actively followed. The Government aims at making the follow-up more effective in the next few years.

As an example of new ways to develop the follow-up to the implementation of recommendations, the Advisory Board for Human Rights operating under the auspices of the Ministry for Foreign Affairs held a seminar on 1

February 2002, for the purpose of discussing the conclusions and recommendations given by the Committee of Ministers of the Council of Europe in relation to the implementation of the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities in Finland The seminar was attended by nearly 80 persons representing the relevant treaty monitoring bodies, Parliament, government authorities, mass media, minority organisations and communities, as well as research institutes. The seminar proved to be a positive experience. It allowed direct dialogue on the status of minorities and increased, at a general level, awareness of the rights of minorities in Finland.

## 6.2 Rights of women

- The rights of women are among the priorities of the Finnish Government's human rights policy. The Government is committed to the Beijing Plan of Action and its objectives and also enhances its effective implementation at the international level.
- , The national strategy for the enhancement of equality in development cooperation provides a good basis for mainstreaming.
- , Violence against women is also in Finland a serious human rights problem to the prevention of which the Government is committed.

## 6.2.1 Rights of women in international fora

The hardening attitudes at the international level are clearly reflected in the debate in international organisation on the rights of women. In many recent UN conferences have there been attempts to undermine the earlier reached understanding on certain relevant questions that also have impact on the rights of women, for example the questions relating to reproductive health. Within the framework of the United Nations, it is usual to meet resistance to the protection of women's rights despite that all the member states are committed to the Beijing Plan of Action. It is important to maintain the consensus relating to the Beijing Plan of Action but in near future, it is necessary to carefully seek for agreement on the best possible ways to enhance the rights of women.

A comprehensive and ambitious draft resolution proposed by the Netherlands in the General Assembly of the UN in the autumn of 2003 is an example of initiatives that have faced objection. Finland found the resolu-

tion important and actively contributed to the discussions. However, as it seemed impossible to reach consensus on a comprehensive text, Finland finally supported the restriction of the Dutch initiative to only encompass family violence.

In 2004, twenty-five years have passed since the adoption of the Convention on the Elimination of All Forms of Discrimination against Women in the United Nations. The Convention is still a relevant instrument in the enhancement of the right of women to equality with men. However, the large number of reservations made to the Convention is an obstacle to its full implementation. Part of the reservations are general references to the prevalence of Shari'ah over treaty provisions, made by Islamic countries, which have been objected to by Finland, among others.

The Optional Protocol strengthening the Convention entered into force immediately after the submission of the previous report on the Government's human rights policy to Parliament in December 2000. The Protocol gives persons and groups of persons the right to file complaints with the Committee on the Elimination of Discrimination against Women. In addition, under a specific investigation system created by the Protocol, the Committee may undertake to investigate on its own initiative information according to which a state party has allegedly violated the provisions of the Convention. There are at present 60 parties to the Protocol. So far, no complaints have been made to the Committee.

Finland has actively worked for the enhancement of the rights of women in the United Nations, its specialised agencies and operational programmes as well as in international conferences. The human rights of women and girls, including sexual and reproductive rights, the elimination of violence against women, the education of women and girls, and the effects of globalisation on women, are particular priorities for the Finnish Government's human rights policy. These issues were also discussed in the International Conference on Population and Development and in the 21st Special Session of the UN General Assembly for the Review and Appraisal of the Implementation of the Programme of Action of the ICPD (Cairo+5) and have been constantly on the agenda of the UN Commission on Population and Development. In the UN Commission on the Status of Women (CSW), the Commission on Human Rights and the General Assembly, Finland has drawn particular attention to multiple discrimination, to the prevention of violence against women and to the bringing of perpetrators of such acts to

justice. In addition, the Finnish Government has drawn attention to the economic rights of women, such as the equal right to land and inheritance.

Violence against women in armed conflict is a serious violation of human rights. Women are also used as a means of warfare through sexual violence, for example. Finland has actively worked for the establishment of an expert's office in the Department of Peacekeeping Operations of the UN Secretariat, who would concentrate on the equality between men and women. In addition, Finland has provided financing for an expert on the status of women in armed conflict to work at the office of the Special Adviser to the Secretary-General on Gender Issues and Advancement of Women.

A high-level follow-up conference to the Beijing Conference (Beijing  $\pm$  5) was held in the form of a special session of the UN General Assembly in June 2000. The preparations for the special session were initiated during the Finnish Presidency of the European Union. After difficult negotiations, the EU managed to prevent the reopening of the principles and objectives agreed on in Beijing. Apart from the principle of transparency and women's rights, the follow-up conference underlined the need to strengthen the rights of participation of women.

In 2005, ten years have passed since the Beijing World Conference on Women. An assessment of the implementation of the Plan of Action at the international level will be carried out on the occasion of the 49<sup>th</sup> session of the CSW in 2005. In addition, regional follow-up conferences will be held. The follow-up will be based on national reports on progress achieved in the implementation of the Beijing Plan of Action. The reporting process should be completed by the summer 2004. The Finnish report is compiled in consultation with a large number of bodies, including non-governmental organisations.

In 2002, the Finnish Government defined the organisation of a new world conference on women as one of its objectives. However, the initiative did not gain support from the other Nordic Countries or EU Member States. In the absence of political support and in the light of the plans to intensify the UN follow-up conferences, it is therefore reasonable to focus on the follow-up to the Beijing Plan of Action to be carried out in 2005, in order to ensure its success. The possible need for a fourth world conference on women will be assessed later.

# 6.2.2 Rights of women and development cooperation

The rights of women and girls are to be enhanced in all sectors of development cooperation, in accordance with the Beijing Plan of Action and the Millennium Declaration. Finland supports the enhancement of equality between men and women in accordance with the Beijing Plan of Action:

- 1) by mainstreaming gender equality in all work and processes; and
- 2) by supporting specific projects for the elimination of inequality between men and women.

The protection of women's rights requires the implementation of the existing commitments, programmes and laws by governments. The more effective use of existing laws and agreements for the planning of programmes is also an objective in development cooperation. In nearly all countries of the world are there relatively clear strategies and guidelines on how to proceed, including the partner countries of Finland.

The third objective of the Millennium Declaration is "the promotion of gender equality and empowerment of women". The enhancement of the rights of women and girls is also a requirement for the implementation of the other objectives of the Millennium Declaration. Projects for the improvement of health, environment and countryside may all contribute to the enhancement of the rights of women. However, in the light of experiences gained, it is not automatic. Therefore, it is important to pay more attention to the planning, development and implementation of projects and programmes.

New strategy and programme of action for the enhancement of equality between men and women

The enhancement of equality between men and women is one of the main objectives of the Finnish Government's policy on relations with developing countries. In the Government resolution of 2001, the importance of the enhancement of equality for the eradication of poverty was underlined. According to the programme of action relating to the Government resolution, the Ministry for Foreign Affairs adopted a strategy and a plan of action for the enhancement of equality between men and women in development policy for the years 2003 to 2007. It is worth noting that the strategy

and the plan of action apply to all aspects of the policy on relations with developing countries, and not only to development cooperation.

The mainstreaming of equality is, as a concept, relatively well known to the different actors of development cooperation. However, the integration of concrete objectives into the projects and programmes of different sectors still requires work. To that effect, it is necessary to better identify existing inequality and to set objectives for its elimination.

The implementation of the ambitious programme of action requires the improvement of skills and objective-oriented work of the different units of the Ministry for Foreign Affairs implementing development policy and consultants and organisations cooperating with the Ministry. The implementation of the programme also requires adequate personnel and financial resources. Support has been provided for the further training of nongovernmental organisations through the Service Centre for Development Cooperation since 2003 and training materials have been available on the web pages of the Ministry's Department for Development Policy.

### Projects supported by Finland

Apart from the policy of mainstreaming, Finland supports a bilateral project for the enhancement of the rights of women and equality between men and women in Bosnia and Herzegovina, and a joint project of the International Office for Migration (IOM) and the Cambodian government for the prevention of trafficking in women and children, as well as a project of the United Nations Industrial Development Organization (UNIDO) and Vietnamese women's organisations for the enhancement of small businesses in Vietnam. In Afghanistan, Finland uses funds reserved for bilateral cooperation to support projects for the enhancement of the rights of women through organisations, particularly through the work and a reproductive health project of the Commission on Human Rights. In several developing countries support is provided for projects of local women's organisations from the local cooperation funds of Finnish embassies, for example in Namibia and Nepal. The Government aims at increasing concrete measures for the enhancement of the rights of women and girls as part of the bilateral cooperation with long-term partner countries.

Apart from supporting projects in specific countries, Finland has provided support for Finnish and international non-governmental organisations

focusing on the rights of women as well as for the work of the UN Development Fund for Women (UNIFEM) in the prevention of violence against women. The Finnish support for the United Nations Population Fund (UNFPA), which has more actively enhanced equality between men and women in recent years, may also be seen as a significant contribution to the rights of women.

In addition to the aforementioned projects, Finland indirectly contributes to the enhancement of the rights of women and girls in other sectors, including educational, reproductive health and water projects. The Government has set an objective of making the work within these sectors more systematic.

# Sexual health and rights in development cooperation

The International Conference on Population and Development (ICPD) in Cairo in 1994 underlined the need to improve the status of women. The ICPD discussed the population issues more extensively than earlier, making them part of other development issues. Objectives concerning population figures were no longer set but the focus was shifted onto the well-being and freedom of choice of the individual.

One section of the programme of action of the ICPD addressed reproductive rights and reproductive health. Later on, the concept of sexual health and rights has been introduced, underlining sexual health at all stages of life instead of merely reproductive health. This means, among others, the rights of individual persons and couples to decide on issues relating to sexuality, such as close relationships, marriage, and children. The Cairo Conference adopted an objective, according to which all states should, in all cases by the year 2015, seek to provide universal access to a full range of safe and reliable family-planning methods and to related reproductive health services. These services should be available within the framework of basic health care.

By the beginning of the present millennium, positive developments had taken place in the sexual health and in the implementation of sexual rights in all parts of the world. The concept of sexual health is widely accepted and understood, also as a human rights and equality issue. Sexual health is understood as including the possibility to use modern and reliable means of contraception, prevention and treatment of sexually transmitted diseases,

monitoring of pregnancy and childbirth and, where necessary, the possibility to safe abortion. Sexual health also includes the elimination and reduction of coercion and sexual violence.

#### 6.2.3 Women's rights in Finland

In the present Government's political programme, equality issues are given more attention than earlier. It is stated in the Government programme that the enhancement of equality is a concern for the whole Government, and that the Government shall prepare a national programme of action for the implementation of equality. This programme of action has been prepared since the autumn of 2003 in different ministries, and it is to be completed during the spring of 2004. The programme of action covers a wide range of objectives at both internal and international levels, and non-governmental organisations are heard in its preparation. The themes covered include the mainstreaming of regional development, the assessment of equality from a male perspective, the encouragement of men to use parental leaves, the harmonisation of work and family life, equal pay, the change of temporary employment contracts into permanent ones, the distribution of employers' costs caused by parental leaves, female business initiatives, the prevention of violence and prostitution, a programme for the reduction of violence, the coordination of women's studies, a programme of action against trafficking in human beings, and the enhancement of the rights of women and girls by means of foreign policy, including development cooperation.

Violence against women is still a serious human rights problem in Finland. The Committee monitoring compliance with the Convention on the Elimination of All Forms of Discrimination against Women has expressed its concern over the extent of violence against women in Finland. The greatest part of violence against women takes place within families and in close relationships. According to the most recent studies, every fifth woman has experienced violence in couple relationship, or a threat thereof, but only one out of ten has reported it to the police. There have been no great changes in the numbers of cases of family violence between 1998 and 2003. The Government recognises the seriousness of the problem and aims in all ways to contribute to reduce violence against women.

In its programme of 24 June 2003, the Government has addressed family violence and violence against women as well as the prevention of prostitu-

tion from two perspectives: as both an equality issue and a problem weakening the safety of citizens.

During its term of office, the Government is committed to allocate resources to the increase of services for victims of violence and trafficking in women and prostitutes. In order to increase the safety of citizens and to reduce violence, the Government has introduced cooperation among the different sectors of administration. In this context, more effective means to intervene in family violence are sought. The capacities of helplines for victims and other services for crisis situations shall be ensured in the whole country.

In 2002, the Government completed a five-year campaign for the prevention of violence against women and prostitution. The project covered all forms of violence in both private and public sectors of life. Attention was also paid to sexual harassment at workplaces. The objective of the project was to make all forms of violence against women and girls visible, strengthen anti-violence attitudes, reduce violence and develop and improve services for victims and those behaving violently. The project was implemented in two parts: one for the prevention of violence against women and another one for the prevention of prostitution. The two projects had a joint management group chaired by the Minister Health and Social Services.

The Ministry of Social Affairs and Health is preparing a national programme for the years 2004 to 2007, for the prevention of violence against women and family violence, as well as to improve the services needed by victims, those behaving violently, and family members. The purpose of the programme is to improve the protection of victims of violence, more clearly divide the roles and responsibilities of different actors involved, improve the education in issues relating to violence and support the work of nongovernmental organisations and other instances in the prevention of violence and helping the victims and perpetrators. At the same time, efforts are made to enhance the implementation of the relevant international human rights conventions in Finland.

The supreme police command has set up a steering group for the prevention of family violence, having as its duties the development of police training, training at workplaces, research and quarter police activities being part of crime prevention, as well as the provision of public information. The steering group also coordinates the prevention of family violence. A pro-

gramme of action of the police for the prevention of family violence has been drafted and its implementation has been started.

Increasing attention to the prevention of violence against women and particularly family violence is also paid in legislation. A Government Bill (HE 144/2003) to introduce provisions on a restraining order against family members was submitted to Parliament in November 2003. The person against whom the restraining order is given would be prohibited from entering the family home for a temporary time. The purpose of the new provisions is to prevent family violence by means of legislation and to improve the rights of victims of family violence. At the same time, the Government proposes that the provision according to which the prosecutor may decide on non-prosecution if the victim of violence freely and without pressure requests it, be repealed. The purpose of the repealing of the provision is to reduce the possibilities to press the victim to request non-prosecution.

The positions of women at work still are, on the average, lower than those of men. Of all the persons in managerial positions, only one third is women. In 2001, the average monthly pay of women for regular working hours was 82 per cent of the pay of men. This difference has not changed in the past few years. The wage differentials may also be examined by standardising certain variants, in which the difference is approximately 50 per cent less. The greatest factor explaining wage differentials is the profession and field in question, meaning that the wage differentials are largely related to the division of the labour market into male and female-dominated work. Older women having high education and performing demanding duties are often most behind the wages of their male colleagues performing similar duties. Various projects have been implemented to reduce the aforementioned differences.

In Finland, both women and men have typically performed full-time work, unlike in many other countries. However, part-time work has become more usual in the past few years. Women have part-time work clearly more often than men. The temporary employment contracts have also become more usual for women, increasing particularly strongly since the economic recession of the 1990s. In 2002, there were 20 per cent of women and 13 per cent of men in temporary employment. According to the labour barometer of 2001 and 2002, the temporary or part-time nature of employment has been the most easily identifiable ground of discrimination. However, it seems

that the increase in temporary employment contracts has stopped. According to the most recent studies, most persons in temporary employment would prefer permanent jobs. Temporary employment contracts are most usual in the public sector. The State has already paid attention to the conditions on which temporary employment is acceptable and local authorities have also replaced temporary employment contracts with permanent ones.

# 6.3 Trafficking in human beings

- , The Government intends to prepare a national programme of action to combat trafficking in human beings.
- , Trafficking in human beings is a significant problem worldwide, in the neighbouring regions and in Finland.
- Finland supports the international efforts to prevent trafficking in human beings, including the draft European Convention to that effect.
- Finland implements the relevant international conventions effectively and takes the necessary legislative and administrative measures as soon as possible.

Trafficking in human beings across national borders is part of transnational organised crime and at the same time a serious human rights problem. At the international level, efforts to prevent trafficking in human beings are made through the conclusion of international conventions and various forms of cooperation. International cooperation takes place, among others, within the frameworks of the United Nations, the Council of Europe, the European Union and the Organization for Security and Cooperation in Europe as well as between the Nordic Countries.

The Finnish Government is committed to the prevention of trafficking in human beings. Trafficking in human beings is an increasing human rights problem worldwide, in the neighbouring regions and in Finland. The problem concerns many sectors of administration and a large number of international initiatives have been made to tackle it. Therefore, the Finnish Government also intends to prepare a national programme of action against trafficking in human beings. The purpose is to complete the preparation by the end of 2004.

In Finland, the problem of trafficking in human beings takes, above all, the form of trafficking in women and prostitution. It is stated in the Government's Political Programme that resources will be provided for the prevention of prostitution and violence against women throughout the Government's term of office. It is also stated that resources for the support services for victims of violence and prostitution be increased and the protection of victims of trafficking in women be strengthened.

Finland has participated in cooperation among the Nordic Countries, the Baltic States and Russia for the prevention of trafficking in human beings. The Ministry of Social Affairs and Health has financed, coordinated and implemented an information campaign concerning trafficking in women in Finland in the autumn of 2003, as a contribution to a campaign implemented by the Nordic Council of Ministers and the Governments of the three Baltic States. The most recent example of cooperation is a working group set up by the Nordic Countries and the Baltic States in 2003, the purpose of which is to increase coordination and awareness at the political level. The Ministry of Social Affairs and Health has also introduced a new information campaign and a cooperation project in Northern Finland, together with the Provincial State Office of Lapland. The project is a Finnish contribution to a wider project of the Nordic Countries with the authorities and non-governmental organisations of the Murmansk region. The project is started at the end of 2003 and lasts two to three years (see also section 4.4 on the measure taken by the Council of Baltic Sea States to prevent trafficking in human being).

In a report published by the State Department of the United States on 11 June 2003, concerning trafficking in human beings, Finland was criticised for the existence of systematic and professional trafficking in women. Finland was placed in the category of states where no adequate measures had been taken to prevent its existence. The report contains, in some parts, misleading information on the Finnish legislation, and the Finnish Government has discussed the issue with the representatives of the United States. The work of the Finnish authorities to prevent trafficking in human beings is made difficult by the fact that it is often related to organised crime, whereas the criminals are not found in the Finnish territory.

The so-called Palermo Convention, i.e. the UN Convention against Transnational Organized Crime, and the Protocol to Prevent, Suppress and

Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention, were adopted in 2000. The purpose of the Palermo Protocol is to prevent trafficking in human beings, paying particular attention to women and children, and to protect and help victims of trafficking with full respect for their human rights and to enhance cooperation among the states parties in order to achieve the said objectives.

Finland has signed the Convention and the Protocol. As wide as possible a ratification of the Palermo Convention is an important objective at the international level and is worth working for. The Government Bill (HE 32/2003) to implement the Convention itself was passed by Parliament in December 2003. A working group preparing the implementation of its additional protocols submitted its final report in January 2004. The President of the Republic approved the Palermo Convention and the related national legislation in January 2004.

In addition, an Optional Protocol to the Convention on the Rights of the Child, on the sale of children, child prostitution and child pornography, was adopted by the UN in 2000. Finland has signed the Protocol.

In the context of preparing the implementation of the Optional Protocol, the Ministry of Social Affairs and Health designated an official, assisted by a cross-administrative support group, to assess what kind of measures were needed by the Ministry in order to implement the provisions relating to its sector of administration. In the report given by the official on 16 October 2003, it is proposed that Finland designate a person to protect the interests of or provide support for victims of trafficking in human beings. It is further proposed that the government assume the main responsibility for the allocation of financial resources. On the basis of the proposals made by the official, the Ministry draws the conclusions on the necessary measures, prepares a plan for their implementation and takes the decided measures.

The Ministry of Social Affairs and Health is preparing a national programme of action for the years 2004 to 2007, for the prevention of violence against women and family violence as well as for the combat against prostitution and trafficking in human beings. The programme of action covers violence relating to prostitution and trafficking in human beings to the extent these problems need to be taken into account for the purpose of developing services and support systems.

The implementation of the Optional Protocol will further strengthen the already existing possibility to issue a temporary residence permit to victims of trafficking in women. In 2002, the Council of the European Union adopted a Framework Decision on combating trafficking in human beings (2002/629/JHA). According to the framework decision, trafficking in human beings involves serious violations of the fundamental rights and human dignity. Trafficking entails cruel acts, such as the abuse of the vulnerability of a person, use of deceit or fraud, use of coercion, force or threats, and exercise of pressure. Each Member State shall take the necessary measures to establish the said acts as criminal offences.

In November 2003, the EU Council of justice and home affairs reached a political understanding on a Council directive concerning the issue of residence permits to such third country nationals as are victims of trafficking in human beings or have been subject to assistance in illegal migration and are willing to cooperate with authorities. The purpose of the directive is to intensify the combat against illegal migration and trafficking in human beings by introducing a possibility to issue temporary residence permits which encourage victims to cooperate with the authorities in the investigation of crime.

The Council of Europe has set up an Ad hoc Committee on action against trafficking in human beings, to prepare a Draft European Convention on action against trafficking in human beings. The Ad hoc Committee consists of experts of different sectors, including expertise in both human rights and criminal and procedural law. The mandate of the working group expires on 31 December 2004. The underlying idea is that the European Convention is a legally binding instrument that goes beyond the minimum standards agreed in Palermo, improving the status of victims and creating an effective and independent monitoring mechanism. The Finnish Government has a positive attitude towards the European Convention provided, however, that the Convention supplements the Palermo Protocol.

The OSCE Ministerial Conference adopted on 1 and 2 December 2003 an OSCE Action Plan to Combat Trafficking in Human Beings and a particular mechanism for mainstreaming the prevention of trafficking in human beings in the various sectors of activities of the organisation. A person having political influence should be found to coordinate the work. The Action Plan reiterates the need for national strategies/anti-trafficking programmes with the support of the Office for Democratic Institutions and Human Rights (ODIHR).

In cooperation with ODIHR, the Finnish Government will organise a seminar concerning trafficking in human beings focusing, in particular, on the perspectives of human rights and countries of destination. The seminar will be held in Helsinki in September 2004.

# 6.4 Rights of the child

- , The Government continues its work to promote the rights of the child both in Finland and at the international level.
- , The Government particularly aims at promoting the rights of children subjected to multiple discrimination.
- , In development cooperation projects and programmes, particular attention is paid to the situation of girls and disabled children.
- , Trafficking in children is a serious problem worldwide. The Government contributes actively to projects for the prevention of such trafficking.
- , The Government is committed to the final act of the UN General Assembly Special Session on Children and to its objectives. The Government continues the preparation of the national programme of action.

# 6.4.1 Rights of the child in international fora

The promotion of the rights of the child is still among the priorities of the Finnish Government's human rights policy. The UN Convention on the Rights of the Child, as the first human rights convention, has been ratified by nearly all states. However, it is worth noting that the accession to the Convention does not suffice alone. It is of utmost importance that the States parties to the Convention also fully comply with their obligations under the Convention, including reporting, in order to ensure de facto implementation of the rights instead of merely setting them out as moral principles. The Finnish Government submitted its report to the UN Committee on the Rights of the Child, on the most recent developments in Finland, at the end of the year 2003. The report will be available in both English and Finnish, e.g. on the web pages of the Ministry for Foreign Affairs.

The Government considers that the UN Committee on the Rights of the Child performs very demanding and valuable work for the protection of the

rights of children. An amendment to the Convention reviewing the number of experts in the Committee entered into force in November 2002. Along with the amendment, the number of members was increased from ten to eighteen. The amendment strengthens the influence of the Committee and makes the monitoring of the implementation of the Convention and its optional protocols more effective. From 1999 to 2003, a Finnish expert has been a member of the Committee. The Government has supported the Committee's work for example in 2003 by providing all its members with a study on the implementation of the Convention, 'Monitoring the Convention on the Rights of the Child'<sup>19</sup>, prepared by Jutta Gras.

In international fora, such as the United Nations, the Council of Europe and the Organization for Security and Co-operation in Europe, Finland actively contributes to the debate on the rights of the child both in its own capacity and through the EU. The rights of the child and the implementation of the Convention have also been given increasing attention in the cooperation among the Nordic Countries in the past few years. In the sessions of the Third Committee of the UN General Assembly and of the Commission on Human Rights, the EU and the group of Latin American States have in several subsequent years already proposed a comprehensive resolution on the rights of the child. The EU has also addressed the rights of the child in statements given in the human rights fora of the UN. Finland has aimed at including in its statements elements relating to the rights of girls and children subjected to multiple discrimination.

In 1999, the ILO adopted Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, supplementing Convention No. 138 concerning Minimum Age for Admission to Employment. Convention No. 182 aims at the prohibition and immediate elimination of the worst forms of child labour. By the end of 2003, a total of 147 States out of the 176 ILO members had ratified the Convention. Finland has actively worked for the universal ratification of the Convention. In Finland, the Convention was implemented by a decree given on 25 February 2000. The provision of support for the International Programme for the Elimination of Child Labour (IPEC) is part of Finland's development aid.

Publication No. 8/2001 of the Erik Castrén Institute.

#### 6.4.2 Special Session of the UN General Assembly

The child's own views must be supported and heard. As provided in Article 12 of the Convention on the Rights of the Child, the child must be assured the right to express his or her views in all matters affecting the child. Section 6, subsection 3, of the Constitution of Finland contains a nearly similar provision.

The UN General Assembly on Special Session on Children, held in New York on 8 to 10 May 2002, was also concerned with the need to increasingly hear the child. The session was a follow-up conference to the World Summit on Children held in 1990. In the context of the special session, a children's forum was arranged for the first time, in which nearly 300 child delegates participated, including Finnish children. The Finnish delegation to the children's forum was lead by President of the Republic Tarja Halonen.

The aim of the Finnish Government in the Special Session was to have rights based approach as a basis of the final act ('A World Fit for Children'). In addition, Finland made efforts to have multiple discrimination, the elimination of gender-based inequality and the sexual rights of young persons clearly included in the final act.

The negotiations on the final act of the Special Session were difficult but the Finnish Government finds the outcome satisfactory. Human rights are addressed in the final act and it is based on respect for the children's rights.

The final act consists of a Declaration and a Plan of Action. The Declaration provides for ten principles or objectives: put children first; eradicate poverty — invest in children; leave no child behind; educate every child; protect children from harm and exploitation; protect children from war; combat HIV/AIDS; listen to children and ensure their participation; protect the Earth for children. The programme of action contains four strategic aims: promoting healthy lives; providing quality education; protecting against abuse, exploitation and violence; combating HIV/AIDS.

In accordance with the programme of action, the Finnish Government has set up a commission to prepare a national programme of action (fore more information, see the section 'Rights of the child in Finland').

#### 6.4.3 Rights of the child and development cooperation

Both the Convention on the Rights of the Child and the final act of the UN Special Session on Children impose a challenge for the Finnish Government's development cooperation, to assess the programmes supported by Finland and the Government's development cooperation budget from the perspective of the enhancement of the rights of the child. The Government finds that rights based approach should be the aim with all development cooperation projects. This sets new demands for both bilateral cooperation and cooperation among non-governmental organisations. The development work should be increasingly based on respect for the rights of the child instead of focusing on child welfare or basic needs of children alone. Increased participation of children and young persons in matters affecting them is a relevant part of this development work.

The United Nations Children's Fund (UNICEF) is one of the four largest UN agencies supported by Finland. UNICEF is the most important channel for the provision of support for children by Finland. For example in Cuba, the Finnish Government has supported a project of UNICEF since 2000. Finland has also continued its support for the International Programme on the Elimination of Child Labour (IPEC) of the ILO. Finland supports the development of education, basic health care and water and sanitation in several long-term partner countries. The share of this support of the Government's overall budget has increased. In this respect, it may also be considered that the support for the enhancement of the rights of the child has indirectly increased. Furthermore, support is provided for various projects of Finnish and international non-governmental organisations and those of local NGOs in developing countries, aiming e.g. at the rehabilitation of disabled children and young persons, improvement of the status of children used as labour, or reduction of the sexual abuse of and trafficking in children.

# 6.4.4 Rights of the girl child

The Finnish Government has continued its efforts to improve the situation of girl children. In many countries, the legal status of girls is inferior to that of boys and they often face discrimination in everyday life even if their status is equal under the law. Girls belonging to minorities and disabled girls are in a particularly difficult situation, as they often face multiple discrimination.

The Government pays attention to the respect for the rights of girls, among others, in the development cooperation projects of Finland. Especially the right of girls to education should be supported by every possible means. In the educational programmes supported by Finland, the Government actively aims at enhancing the access of girls to education. Finland also enhances gender equality and the elimination of discrimination against women and girls on a wider scale in the field of education.

The female genital mutilation still is — unfortunately — usual in many countries, particularly in Africa. The Finnish Government condemns mutilation under any circumstances and continues its efforts to eliminate this harmful tradition. With the funds reserved for development cooperation, Finland supports the cooperation projects of international and local NGOs in Kenya and Somalia, for example. These projects are also of wider importance with regard to the integration of rights based approach in project cooperation.

# 6.4.5 Suppression of trafficking in children

Trafficking in human beings, particularly the sale of children, is a serious and increasing problem even in Europe. According to some estimates, there are as many as 1.2 million children subjected to trafficking every year. The Government finds it necessary for the international community to intensify its efforts to suppress trafficking in children. Legislative reforms are necessary but not adequate for the prevention of this activity constituting a gross violation of human rights. It is concrete measures that are decisive. Poverty is only one reason for the increasing trafficking in children. Changes must take place in the attitudes towards children and the rights of the child, in order to achieve real improvements. One way to affect attitudes is to launch information campaigns in the countries of destination of trafficking.

In September 2000, Finland signed the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. The Government is currently preparing the ratification of the Protocol. In December 2000, Finland signed the UN Convention against Transnational Organized Crime (the so-called Palermo Convention) and the supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The President of the Republic approved the Palermo Convention and its implementing

legislation in January 2004. The preparations continue for the implementation of the supplementing protocol.

In June 2003, a number of ministries arranged, in cooperation with the Embassies of the United States, Canada and Sweden in Helsinki and with the Council of the Baltic Sea States, a conference of experts ("Stop Child Trafficking — Modern Day Slavery") in Helsinki. The conference was attended by some 150 experts from different European countries and the United States. The participants discussed the best practices in the field of legislation, reduction of demand, police cooperation and helping of victims. President Tarja Halonen, Prime Minister Anneli Jäätteenmäki, President of Latvia Vaira Vike-Freiberga and Vice Prime Minister of Sweden Margareta Winberg, among others, addressed the conference that gained a lot of attention in the mass media.

#### 6.4.6 Children in armed conflict

Children involved in international and internal armed conflicts are in need of particular protection. In the past few years, increasing concern has indeed been expressed over such children. This concern is justified. According to different estimates, two million children have lost their lives in armed conflicts in the past ten years and more than five million have been injured. As many as ten million children continuously suffer from mental and physical violence in the context of conflicts and twenty million children have been displaced from their home regions. Children — even those under the age of ten years — are constantly recruited as soldiers and for other military duties in different parts of the world. According to some estimates, some 300,000 children are involved in armed conflicts as soldiers. Child soldiers are victims in the same way as other children in armed conflict.

The Government has set an objective of mainstreaming the issue in all UN operations. Finland gives full support for those UN mechanisms and agencies whose aim is to help all children in armed conflict and to enhance their rehabilitation after the end of the conflict. Finland supports a comprehensive approach to the helping of children in armed conflict. This means that children should be subject to particular attention already before the conflict is born, as well as during the conflict and after the military action has ceased. The provision of rehabilitation and education for children who have faced the fears of war is vital with regard to their mental recovery.

Since the submission of the previous report on the Government's human rights policy to Parliament, Finland has ratified the Optional Protocol to the Convention on the Rights of the Child on children in armed conflict. The Protocol entered into force for Finland on 10 May 2002. Finland has deposited a declaration under Article 3, paragraph 2, upon ratification of the Protocol, according to which the minimum age at which it will permit voluntary recruitment to its national armed forces is 18 and that this minimum age requirement applies to both the military service of men and the voluntary military service of women. Finland will submit the first periodic report on the implementation of the provisions of the Optional Protocol in May 2004.

The Working Party on Human Rights (COHOM) of the Council of the European Union prepared a report on the enhancement of the existing policy of the EU on human rights and democracy in the autumn of 2002. It was proposed in the report, among others, that the possibilities for the creation of a strategy or code of conduct relating to children in armed conflict be examined. Finland welcomed the initiative and gave strong support for its implementation. The proposal was rapidly brought to a concrete level. In 2003, the EU arranged workshops with UNICEF and other organisations enhancing the protection of children's rights, to discuss the objectives and focus of the strategy. The workshops proved to be productive and on 8 December 2003, the General Affairs and External Relations Council adopted the EU Guidelines on Children and Armed Conflict.

The Guidelines should be fully implemented without delay in order to avoid repeating the failure in the implementation of the torture guidelines (see section 3). In Finland's view, the idea of designating a special representative of the EU to coordinate the implementation of the EU Guidelines on Children and Armed Conflict is worth examination. Without a coordinating body offering expertise, the significance of the Guidelines may remain modest. The possibilities of COHOM to work as an implementing body are restricted. The implementation of the Guidelines requires the provision of training for national entities, EU personnel and persons working in peace-keeping and crisis management operations. The position of heads of representations is also important in the monitoring of and reporting on the rights of the child. The improvement of the situation of children further requires close cooperation with non-governmental organisations. Organisations working in conflict regions play a crucial role in this respect. They may, for

example, actively transmit information to COHOM members on situations involving children, where urgent measures by the EU would be needed.

# 6.4.7 Rights of the child in Finland

The Finnish legislation is in accordance with the principles set forth in the UN Convention on the Rights of the Child and the principle of the best interests of the child has for a long time been a primary concern in the national legislation. In the Constitution of Finland, the status of children as equal persons before the law is clearly provided for. The EU membership has also brought about new obligations concerning the rights of the child and the special status of children is recognised in the EU Charter of Fundamental Rights.

Finland has been a party to the Convention on the Rights of the Child since 1991. After accession to the Convention, Finland has submitted three periodic reports to the UN Committee on the Rights of the Child, of which the latest one at the end of 2003. It usually takes one year for the Committee to examine the report, the examination being completed within two years from its submission. The previous report of the Government of Finland was examined and recommendations were given on the basis of the report in 2000.

In its recommendations, the Committee on the Rights of the Child was concerned at the absence of a focal point for children within the Government and recommended that the Government consider taking steps to establish coordinating mechanisms between the various ministries. The Committee also recommended that Finland consider the establishment of an independent national ombudsperson. At present, the implementation of the rights of the child is mainly monitored by the Parliamentary Ombudsman or a Deputy Parliamentary Ombudsman. There is one official in the office of the Parliamentary Ombudsman focusing on the rights of the child. In 2003, the discussions on the establishment of an office of child ombudsman were significantly furthered as the plan was entered in the present Government's political programme.

The Committee on the Rights of the Child further recommended that Finland develop more creative methods to promote the Convention. This recommendation was responded to by the joint production of playing cards ("Take a Right") by the Mannerheim League for Child Welfare, Plan Finland and the Finnish Children and Youth Foundation in 2003. The

playing cards were also partly financed by the Ministry for Foreign Affairs and the newspaper Helsingin Sanomat. In addition, the Department for Development Policy of the Ministry for Foreign Affairs published a brochure titled 'Future in children — Rights of the child in development cooperation' (*Lapsissa on tulevaisuus — Lapsen oikeudet kehitysyhteistyössä*). Non-governmental organisations have also produced materials on the rights of the child, to be used in school education.

It is required in the final act of the UN Special Session on Children that the UN member States prepare their national programmes of action on the basis of it by the end of 2003. In March 2003, the Finnish Ministry of Social Affairs and Health set up a Committee on the Rights of the Child, as the national body enhancing children's rights as required by the final act. The members of the Committee consist of representatives of various ministries, provincial state offices and other child welfare authorities, non-governmental organisations and the Church. The duties of the Committee include the provision of information on the rights of the child under the UN Convention, the preparation of the national programme of action, and the submission of a proposal for a more permanent national coordinating mechanism or structure for matters relating to children and families.

The Government finds the provision of human rights education for school children important. The national guidelines for comprehensive school curricula are currently being reformed. In the draft guidelines, the National Board of Education recommends that the rights of the child be also strengthened in the preparation of local curricula. At present, human rights education is given at both comprehensive school and upper secondary school, in the context of history, social studies, religion and ethics lessons.

In February 2003, a strategy for family policy was completed by the Ministry of Social Affairs and Health, which was prepared to implement the Government's political programme. The strategy sets out objectives for the Government's policy on children and families, to be achieved by 2010. On the basis of the Government programme and the strategy, a programme of implementation is being prepared by the Ministry. The implementing programme contributes to a national programme for the development of social policy which is also under preparation. The enhancement of the well-being of children and families is also a relevant part of the preparation of the new strategy and programme of action concerning social welfare and health care for the years 2004 to 2007.

Violence against children is unfortunately common in Finland. Many studies carried out at the national level indicate that the mental well-being of children has weakened in the past few years. The Government has taken measures to improve the well-being of children. A five-year project for the prevention of family violence that ended in 2002 will be continued with a new project. The National Research and Development Centre for Welfare and Health (STAKES) has published a 'Handbook for the investigation of the sexual abuse of children and violence against children — Recommendations of the group of experts for social welfare and health care personnel' (STAKES, Oppaita 55, 2003). After the publication of the handbook, a training project for different professional groups was carried out in cooperation with Save the Children Finland.

A national programme of action on measures against the commercial sexual abuse of children was completed in 2000. The programme of action contributed to the enactment of a new Act on the verification of the criminal records of persons working with children, which entered into force in January 2003. In August 2003, STAKES has introduced a project for improving the capabilities of persons working with children to identify abuse, to develop the care of abused children and the treatment of young abusers. The project is implemented between 2003 and 2005.

Service coordination is a new way to help the families of disabled and ill children to cope in everyday life. Service coordinators get familiar with the needs of families more profoundly than social welfare officials usually do, and act as contact persons for the families to coordinate the provision of services in accordance with their needs. The experiment with service coordination in certain municipalities is about to be completed and information on the experiences gained will be transmitted to other municipalities in order to give the new form of services a more permanent status. The Ministry of Social Affairs and Health coordinates a project called 'Early intervention', the purpose of which is to improve the possibilities of service-providers to intervene in problems of children, young persons and families at an early stage and to support them in overcoming the problems. The project is implemented between 2001 and 2004.

Refugee and immigrant children, as well as children belonging to different minorities, are in a particularly vulnerable position while seeking to find their place between home and outside world. Their risk of being socially excluded is greater than for other children. The Government finds that the integration of immigrant children into Finnish society must be supported in every way without forgetting, however, their own value and cultural heritage. The strengthening of the cultural identity of a child is important for his or her balanced development. According to the new national guidelines for comprehensive school curricula, the value basis of basic education consists of human rights, equality, democracy and acceptance of cultural diversity. The objective of basic education is to enhance social belonging, responsibility and respect for the rights and freedoms of the individual.

#### 6.5 Prevention of discrimination and the rights of minorities

- The prohibition of racism and discrimination is an essential element of human rights law. Discriminatory attitudes require active measures from the states, both at the national and regional levels and at the international level.
- Finland aims, in particular, at enhancing the protection of the rights of persons facing multiple discrimination
- , The Government underlines the importance of the rights of participation of minorities and is committed to a dialogue with minorities.
- , Finland aims at a more visible and effective handling of minority issues in the United Nations. Finland also supports the work of regional mechanisms, such as ECRI at the Council of Europe.
- Human rights education and enhancement of tolerance, as well as the training of authorities, are ways to combat against racism and discrimination. Racist attitudes and discrimination are also problems in Finland. The Government is seeking ways to more effectively eliminate such attitudes.

#### 6.5.1 General

The Rights of minorities are among the priorities of the Finnish Government's human rights policy. The enhancement of the rights of minorities and work against discrimination are in practice linked with one another, in many respects, and are therefore discussed in the same section of the present report.

Tolerance and equality are basic elements of the principle of the rule of law. The prohibition of discrimination is an essential part of the protection of human rights and strongly rooted in the democratic legal system. The prohibition of discrimination is also strongly present in the Constitution of Finland. According to section 6 of the Constitution, no one shall be placed without an acceptable reason in a different position on account of sex, age, origin, religion, conviction, opinion, health, disability or other comparable ground.

The improvement of the situation of minorities requires necessarily that the minorities participate in decision-making affecting them. The Finnish Government's view, according to which the rights of minorities are both rights of individuals and collective rights, has still not gained significant support in international fora. However, the Government has continued its efforts to enhance the protection of the rights of minorities through national statements. In its own statements relating to human rights policy, Finland has underlined the rights of persons in the most vulnerable position and those facing multiple discrimination. For example women belonging to minorities or persons with disabilities may be discriminated against on several grounds.

Persons representing the minority sex or sexual orientation are often in weaker position than others. In 2002, the Third Committee of the UN General Assembly adopted a resolution concerning extrajudicial, summary or arbitrary executions by a clear majority of votes, upon Finland's proposal, and the concept of sexual orientation was for the first time included in a resolution of the General Assembly. Finland also actively supports the Brazilian initiative for the adoption of a resolution in the UN Commission on Human Rights, concerning sexual orientation, and will also otherwise maintain the rights of persons representing the minority sex or sexual orientation on the agenda, as an essential human rights issue which has not been given sufficiently attention so far.

#### 6.5.2 Prevention of racism

The events of September 11, 2001, led to increasing aggression against Muslims both in Europe and in other parts of the world. In many countries has also anti-Semitism increased to a worrying extent. Thus, Europe has been reminded of the fact that the combat against discrimination must not cease. Sufficiently clear reactions against new threats are needed, in order to prevent the spreading of anti-Semitism and xenophobia in society.

In Europe, the OSCE and the Council of Europe are, in addition to the EU, important regional fora for the prevention of discrimination and enhancement of tolerance. The European Commission against Racism and Intolerance (ECRI), operating under the auspices of the Council of Europe, carries out valuable work to increase equality, by preparing reports and giving recommendations to the member States of the Council of Europe. In the OSCE, the work against racism, xenophobia and anti-Semitism became more active in 2003, when special meetings were held on racism and anti-Semitism. Finland attended both meetings, both in national capacity and as a Member State of the European Union.

ECRI gave its second report on Finland in the summer of 2002. ECRI expressed its concern, among others, over the so-called accelerated procedure for processing asylum applications, the wide existence of racist attitudes, and the situation of the Sámi and the Roma in Finland. Interministerial cooperation has been carried out to see what measures have already been taken and what measures should be taken to implement the recommendations of ECRI.

The prevention of discrimination and racism is an important part of the human rights policy of the European Union. In the Charter of Fundamental Rights of the EU, which will be part of the new Constitution for Europe, the prohibition of discrimination has been defined in detail (Article 21). According to Article 13 of the Treaty establishing the European Community provides for the competence of the Council of the European Union to take action to combat discrimination. Under this Article, the EU has adopted two directives prohibiting discrimination. The directives are implemented in Finland by the new Equality Act, for the enactment of which a Government Bill was submitted to Parliament in September 2003. The EU has also adopted a Community Action Programme for the years 2001—2006 to combat discrimination.

The European Monitoring Centre on Racism and Xenophobia (EUMC) monitors the existence of racism, xenophobia, anti-Semitism and Islamophobia within the territory of the Community. The activities of the EUMC have, however, been subject to hard criticism in the past few years. It has been accused, among others, of inefficiency and bureaucracy. Finland has supported the efforts to reform and intensify the work of the EUMC and has actively contributed to discussions to that effect. Finland finds it to be of utmost importance that the EUMC does not operate in isolation. Its

observations and recommendations must clearly affect the political decisions and guidelines of the Member States. During the Italian Presidency of the EU, an agreement was reached on the extension of the mandate of the EUMC into a human rights agency.

The international discussions on the prevention of racism have been particularly difficult in the past few years. The division of states into Northern and Southern ones, on the one hand, and into industrialised and developing countries, on the other, has been clear in the discussions and historical questions (including slavery and colonialism) have dominated them to the extent that the essential substance has been forgotten. Finland underlines the importance of discussions with other groups of states in the international fora, for the achievement of progress in the essential questions. In this respect, Finland has assumed a role of an active bridge builder e.g. in the UN Commission on Human Rights.

#### 6.5.3 Follow-up to the Durban World Conference against Racism

The third UN World Conference against Racism was held in Durban in South Africa on 31 August to 8 September 2001. Durban will remain in history as the first world conference against racism that was able to agree on concrete recommendations. The outcome of the conference — after long and difficult negotiations — included a unanimous declaration and programme of action. However, the United States and Israel withdrew from the conference before its closure.

Finland participated in the Durban Conference with a large delegation, consisting of representatives of both government authorities and non-governmental organisations and national minorities. The delegation was lead by Minister of Labour Tarja Filatov. The objective of the Finnish Government in Durban was to have the rights of women, children, indigenous peoples and minorities adequately taken into account in the final acts of the conference. Finland also actively worked for the inclusion of the rights of the Roma and persons with disabilities. These objectives were reached at least to a satisfactory extent. The provisions on the Roma, equality and multiple discrimination in the declaration and/or the programme of action must be considered good achievements.

The preparations for the Durban conference were exceptionally difficult and nor was the conference itself without problems. The disagreement on the situation in the Middle East and former colonies, among others, made the atmosphere tense. The follow-up to the conference has also proved to be very difficult. In the session of the Commission on Human Rights in the spring of 2002, the then coordinator of the group of African States — Nigeria — unexpectedly included the establishment of two new working groups and a fund in a resolution. In addition, the group of five eminent persons was given a new mandate differing from the one set forth in the Durban final acts. The negotiations did not lead to a desired result, which is why the EU Member States being members of the Commission on Human Rights voted against the resolution. In the UN General Assembly in the autumn of 2002, a resolution concerning mainly procedural questions was adopted, being also voted for by all the EU Member States.

The new coordinator of the group of African States in the Commission on Human Rights in the spring of 2003, South-Africa, led the negotiations on the prevention of racism in a more cooperative manner than its predecessor. The mandates of the working groups were slightly adjusted in accordance with the wishes of the EU Member States. Understanding with the EU was nearly reached but all the EU Member States finally abstained from voting. In the General Assembly in 2003, a rather good understanding was reached on the follow-up to the Durban Conference.

The EU has had some difficulties to agree on the participation in the new working groups on the Africa-based rights and the follow-up to the Durban Conference. At present, some of the EU Member States participate in the working groups in their national capacities, whereas others have remained outside. Finland has participated in its own capacity in both working groups.

An anti-discrimination unit set up in the office of the UN High Commissioner for Human Rights acts as a follow-up mechanism to the Durban Conference, assisting the aforementioned working groups, reporting on resolutions and holding seminars.

6.5.4 UN Working Group on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

The Working Group on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities set up by a resolution in 1995 is the only body of the United Nations focusing particularly on minority

issues. The Working Group consists of five experts who are all members of the Subcommission and represent five different geographical regions. Any members of the UN and representatives of minorities may contribute to the Working Group.

The activities of the Working Group are based on the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted in the UN in 1992. The Working Group has as its duty to assess the enhancement and appropriate implementation of the Declaration, examine the possible solutions for problems concerning minorities, including the enhancement of mutual understanding between minorities and governments, and recommend appropriate additional measures for the enhancement and protection of the rights of persons belonging to the said minorities. In practice, the Working Group has proved to be an active forum for the discussion of minority issues. The Working Group handles each year several thematic issues and related working papers, prepared by both expert members and academic researchers and NGOs.

Finland has participated in the session of the Working Group on Minorities every year and aimed at contributing to its work e.g. by commissioning a study on the Finnish models of autonomy and self-determination in 2001, to be used by the Working Group. The Government aims at a more visible and effective handling of minority issues in the UN, and thereby at the strengthening of the status and activities of the Working Group, leading eventually to the development of the rights of minorities.

In 2004, the Finnish Government intends to develop its dialogue with minorities by new means. In response to Finland's initiative and invitation, the Working Group on Minorities made a country visit to Finland in January 2004, meeting particularly representatives of Finnish minority groups. Country visits are not as such part of the mandate of the Working Group but it has expressed a wish to be able to make country visits in order to get more familiar with the situations in different countries. The visit of the Working Group offered a possibility to a direct and open dialogue between the UN human rights mechanism and national minorities. The visit also gave visibility to the rights of minorities and an opportunity to provide the different parties involved information on the only mechanism of the UN focusing particularly on the protection of minority rights. In addition, the visit was an indication of the Government's support and respect for the activities of the Working Group. The Working Group will give a report on

the visit during the spring, providing a further opportunity for the Government to pursue its dialogue with the Working Group. The earlier experiences of Finland of country visits made e.g. by the treaty monitoring bodies of the Council of Europe in relation to the protection of minorities or the examination of periodic reports, have been very positive.

#### 6.5.5 Prevention of racism and discrimination in Finland

There is reason to intensify the action against discrimination even in Finland. Studies that have been regularly carried out on the attitudes of Finns towards national minorities and immigrants have shown that there is deep-rooted prejudice. Certain studies made on the attitudes of school children indicate that the attitudes have become harder in recent times. This is an issue that has also been paid attention to by international treaty monitoring bodies. For example, the UN Committee on the Elimination of Racial Discrimination expressed its concern over the racist attitudes of young persons in its conclusions concerning Finland, given in August 2003. The Committee recommended that Finland follow the development of the situation and combat against negative development. The Government follows the development of attitudes towards immigrants e.g. by repeating the aforementioned studies at regular intervals. The following study will be published in 2004.

The enhancement of tolerance requires active measures by authorities. In this respect, education plays a significant role. The existing structures of authorities should also be examined with a view to determining whether they may in fact contribute to discrimination and thereby to social exclusion. In doing so, the views of the different minority groups should be heard and take advantage of their experiences concerning the access to and use of services in Finland.

The Minority Ombudsman assumed his office, as a new authority, in September 2001. The Minority Ombudsman shall enhance good ethnic relations and the status and rights of ethnic minorities and foreigners in Finnish society. The minorities concerned include both the traditional minorities and newer ethnic minority groups. The Minority Ombudsman, as an independent and impartial authority, shall monitor the implementation of equality, compliance with the prohibition of discrimination on account of ethnic origin and submits initiatives, provides information and

reports and performs the duties designated to the Minority Ombudsman in the Aliens Act.

The observations made by the Minority Ombudsman are important indicators of the existence of discrimination. In addition, the Advisory Board for Ethnic Relations operating under the auspices of the Ministry of Labour, the Advisory Board for Human Rights working as a consultative body for the Ministry for Foreign Affairs and the Advisory Board for Roma Affairs are important fora for discussions among the authorities and civil society.

### Equality Act

The new Equality Act entered into force on 1 February 2004. The purpose of the Act is to protect and enhance equality in the different sectors of society. The Act implements the EU directives prohibiting discrimination (2000/43/EC) and (2000/78/EC), without prejudice to the prohibitions of discrimination already existing in the national legislation.

The Equality Act prohibits discrimination based on age, ethnic or national origin, nationality, language, religion, conviction, opinion, health, disability and sexual orientation. The Act is applied to the criteria for the recruitment of employees, working conditions, conditions of work, career advancement, access to training and possibilities and support for business activities. The Act also prohibits the placing of a person in a different position because of ethnic origin in respect of access to social welfare and health care services, social security benefits or other allowances or benefits granted on social grounds.

The Act requires the authorities to enhance equality in all their activities. Government and local authorities are under an obligation to prepare plans for the improvement of ethnic equality. The enhancement of equality is also the objective of a provision on the improvement of the employment and education of persons with disabilities. Furthermore, the Act prohibits both direct and indirect discrimination, including harassment and instructions or orders on discrimination. The Act also defines measures that are not considered discrimination within the meaning of its provisions. For example, such differing treatment as is based on real and decisive requirements concerning the quality and performance of duties. The Act provides for the distribution of the burden of proof in the examination of cases of discrimination and for a prohibition of counter-measures, which means that it is

prohibited to subject a person taking or participating in measures to protect equality, to unfavourable treatment or consequences.

A person who, in offering work, movable or immovable property, services, training or benefits, violates he prohibition of discrimination or countermeasures on account of age, ethnic or national origin, nationality, religion, conviction, opinion, health, disability or sexual orientation, may be order to pay fines in compensation for the person who is the victim of such discrimination or counter-measures. The maximum amount of the compensation is 15,000 euro.

Compliance with the provisions of the Equality Act in employment is monitored by the labour protection authorities. In other sectors, the monitoring of compliance with the prohibition of discrimination is at the responsibility of the Minority Ombudsman and the new Discrimination Commission to be established. The competence of the Minority Ombudsman is also extended. Apart from providing instructions, guidance and recommendations, the Minority Ombudsman may be requested to take measures, e.g. for the arrangement of meetings between the parties to the dispute in order to resolve it. The aim is that the parties reach a reasonable agreement for the compensation of the damage incurred upon the victim of discrimination. The Minority Ombudsman may also submit the case to the Discrimination Commission. As a new remedial body, the Discrimination Commission enhances de facto access to legal remedies. The Commission may, on the initiative of a party or the Minority Ombudsman, confirm the agreement reached or issue an order prohibiting the continuance or repeating of discrimination or counter-measures. The Discrimination Commission does not replace the existing appellate procedures and bodies, and nor does its competence include the power to repeal or amend decisions of authorities.

# Government measures against discrimination

The Finnish Government has aimed at enhancing equality, cultural diversity and non-discrimination by implementing the Community Action Programme to combat discrimination and the Government Action Plan to Combat Ethnic Discrimination and Racism adopted in 2001, as well as by supporting the work of institutions and organisations combating discrimination and enhancing equality. In the planning and implementation of measures for the identification and prevention of discrimination, and for

intervention in cases of discrimination, attention has been paid to the requirement of extensive cooperation between different sectors of administration due to the accumulation of discrimination and exclusion (multiple discrimination) and the horizontal nature of discrimination.

The Advisory Board for Ethnic Relations, which is a cross-administrative body set up by the Government to operate under the auspices of the Ministry of Labour, assists and provides expertise for the Government and the different ministries concerning refugees and immigration, in the development, planning and monitoring of the Government's policy on refugees and immigration. The Advisory Board also enhances the interaction between authorities, relevant NGOs, and immigrants and ethnic minorities.

Financing has been received from the European Commission for the implementation of the national programme against racism and ethnic discrimination. In addition, projects have been implemented with the support of the European Social Fund (EQUAL projects) focusing particularly on the enhancement of equality between men and women and cultural diversity in the labour market. National measures have included, among others, the provision of financial support for research, the work of bodies and institutions enhancing equality and organisations of groups subject to discrimination, and the development of activities aiming at non-discriminatory practices within the administration.

The Ministry of Labour has coordinated a project called 'Joint Promotion of Anti-discrimination at Local Level' (JOIN) aiming at the development of non-discriminatory practices within local administrations and at finding common practices for the different sectors of administration and groups subject to discrimination<sup>20</sup>. Another EU project of relevance is SEIS (*Suomi Eteenpäin Ilman Syrjintää* — Finland Forward Without Discrimination). The project is implemented jointly by the Ministry of Education, the Ministry of Social Affairs and Health and the Ministry of the Interior, in close cooperation with the regional authorities and organisations representing groups subject to discrimination (Advisory Board for Roma Affairs, Advisory Board for Ethnic Relations, SETA — Sexual Equality in Finland, Disability Forum, Central Union for the Welfare of the Aged, Islamic Congregation in Finland). The project aims at increasing awareness and

<sup>&</sup>lt;sup>20</sup> For more information, see www.join.fi.

training the relevant authorities and bodies to identify discrimination, to intervene in it and to develop structures for its prevention. Another objective of the project is to provide resources for the groups subject to discrimination to participate in the work against discrimination<sup>21</sup>.

In addition to the aforementioned development projects, Finland has actively contributed to EU action against discrimination and racism, e.g. by submitting proposals for the development of such action (including EU indicator work and EUMC cooperation), and by taking advantage of EU channels for the dissemination of information. Finland coordinates a European project for the development and harmonisation of the monitoring of discrimination in the EU Member States, financed from the EU programme of action against discrimination. The project analyses the practices applied in the different Member States for the compiling of indicators of discrimination and other information, with a view to submitting proposals for the harmonisation of practices in order to make them comparable.

Research funds of the ministries have been used to finance research on immigration, attitudes of the population towards immigrants, and racism and experiences of victims of racism, as well as reports on the integration and employment of immigrants. In addition, the Advisory Board for Ethnic Relations has studied non-discriminatory practices at schools and monitored ethnic relations in different sectors of life. Statistics have also been created to monitor the situation.

The Ministry of Labour has coordinated and trained a network of experts in discrimination issues (ETNA/NovaEtna). The members of the network represent a number of authorities, training institutions, organisations and associations and communities of immigrants and minorities. Training has been provided for the members of the network in racism and discrimination issues, as well as in presentation techniques, in order to create a network of persons able to provide training for others.

The negative attitudes towards immigrants and minorities are still a problem. For example, the position of immigrants is still rather difficult in the labour market. Measures for the prevention of discrimination and enhancing good ethnic relations still need to be prepared e.g. within the framework

<sup>&</sup>lt;sup>21</sup> For more information, see www.join.fi/seis.

of the working group on immigration policy that has recently been set up by the Government.

# Enhancement of respect for the rights of the Roma

The Government has continued its work for the improvement of the position of the Roma at both the national and the international level. At the international level, the most important measure has been the initiative of President of the Republic Tarja Halonen for the setting up of a European Roma forum. Finland has actively contributed to the continuing work at the Council of Europe for the implementation of the initiative (for more detailed information, see section 4.2).

The Roma in Finland also face discrimination. There have been problems, among others, in the access to service, housing and employment. The most usual forms of discrimination identified by the Advisory Board for Roma Affairs have been related to the denial of access to different places and services, as well as to the situation of Roma prisoners.

Roma women often face multiple discrimination, both as women and as representatives of their ethnic group. It is particularly the national costume of Roma women that creates discriminatory reactions in respect of access to services and employment and traineeships. It is important to recognise the needs of Roma women as individual women and to support their access to education and employment, instead of merely seeing them as members of the ethnic group of Roma.

Roma women often become victims of trafficking in human beings and prostitution in the neighbouring regions of Finland and Europe. Poverty and a poor social position increase the risk of Roma women of becoming such victims. The Finnish Government is deeply concerned over the increasingly difficult situation of Roma women in Europe and has drawn attention to it in international fora. The attention given to women also determines the future of their ethnic group as women have an important role in the education of children and transmission of cultural traditions to future generations.

Efforts have been made to reduce the discrimination against Roma in Finland through cooperation among the different sectors of administration. The Advisory Board for Roma Affairs has aimed at increasing the

knowledge of authorities of the Roma by arranging training e.g. for housing and educational authorities and for the police. In addition to the national Advisory Board for Roma Affairs operating in Helsinki, there are four regional advisory boards the status of which was made permanent by a Government decree on 1 January 2004. The regional advisory boards act as cross-administrative cooperative bodies for the Roma population and authorities, in close cooperation with the local authorities and the national Advisory Board for Roma Affairs. The permanent status of the regional advisory boards and increased resources offer better possibilities for the development of services in accordance with the needs of the Roma and thereby for improving the living conditions and economic position of the Roma. At the same time, these improvements support the right of the Roma to maintain and develop their own language and culture under the Constitution (section 17, subsection 3).

The Ministry of Labour has, on the initiative of the Minority Ombudsman, assessed the need for measures to improve the employment of the Roma. The work was started at the Ministry in the spring of 2003 and the Ministry has been in constant contact with the Advisory Board for Roma Affairs. The Ministry of the Environment, as the authority responsible for housing issues at the government level, has paid particular attention to equality in its guidebook for the selection of tenants for rental apartments. However, the guidance and information are targeted at the selection of tenants for apartments owned by municipalities. The private housing market is still characterised by high prices and prejudices.

As part of the JOIN project, a development project has been introduced by the City of Helsinki and the Romano Mission, to support the school attendance of Roma children and the involvement of their parents in it through field work and to increase the knowledge of the Roma and the preparedness to identify and intervene in discrimination at schools. The project workers are of a Roma origin. The project also aims at widely identifying discrimination against Roma and to intervene in it. The Roma organisations have been involved in the SEIS project since the beginning. The SEIS I project included training for the purpose of strengthening, among others, the cultural identity and command of the language of young Roma. The Roma themselves are represented in the managerial group of the present SEIS project. The project has produced Roma language materials e.g. in its publication 'On the road to equality' (*Tiellä tasavertaisuuteen*). Both SEIS projects have been partly financed by the European Commission.

According to the Basic Education Act, the Roma language may be used as the language of education at schools. Of the Roma living in Finland, approximately 1,700 are children at comprehensive school age. There is no official information on the number of Roma pupils for the reason that Finnish nationals are not registered on the basis of their ethnic origin. According to the new national guidelines for the teaching of the Roma language, the position of the Roma as a cultural and ethnic minority must be taken into account in the education of the Roma. The teaching of the Roma language must enhance the development of a double identity and to improve the quality of the school education. The teaching of the Roma language must also provide the pupils a natural framework for expressing their minority identity at school. In 2000, a three-year project (Drom-Edu) was introduced within the framework of the Sokrates programme of the EU, the purpose of which is to integrate Roma children in school by developing the training of contact persons.

The Roma training unit of the National Board for Education carried out a study on the school attendance of Roma children in 2002. Of the about 1,700 Roma children, some 250 have access to the teaching of the Roma language in ten municipalities in different parts of Finland. In most cases, the difficulties in the provision of teaching in the Roma language are due to the fact that the Roma are dispersed all around the country, which makes the establishment of Roma language groups difficult. Furthermore, the provision of teaching is made particularly difficult by the lack of qualified teachers. Those who have command of the language often have poor basic education and poor language skills in general.

The Government has paid attention to the training of teachers commanding the Roma language. The Roma training unit of the National Board of Education has arranged further training in cooperation with various instances. A training programme for teachers of the languages of linguistic and cultural minorities has been implemented. In addition, short and long-term further training has been targeted at Roma, focusing on language and culture studies.

The teaching of the Roma language at schools since 1989 has revived the use of the language and has increased, among others, the publication of articles in Rom in newspapers/magazines of the Roma minority. Furthermore, news in Roma in the national radio network once a week have been a positive contribution to the maintenance of the language and to the mod-

ernisation of the vocabulary, as well as to the interest in the language in general.

The Government has taken measures to improve the possibilities of Roma children for school attendance. As a long term objective, the Government intends to have educational materials in Roma produced so as to cover the whole comprehensive school and upper secondary school, for such Roma children who speak the language either as their first or second language. Since 1999, three new projects for the production of teaching materials have been introduced, constituting the basis for the series of new materials. On the initiative of Finland, the Council of Europe is also starting cooperation for the coordination of educational materials at the international level.

Professional education addressed exclusively at the Roma has been mainly organised in fields where there is a particular aim at transmitting knowledge and cultural traditions to future generations (costume-sewing and horse-keeping), in which cases the Roma themselves have participated in the planning of the training. Roma are mainly encouraged to seek training open for all fulfilling the conditions for it, in accordance with the principle of normal treatment.

## 6.6 Rights of indigenous peoples

- Persons belonging to indigenous peoples often face discrimination more easily than others. In the action against discrimination, particular attention is paid to the situation of women and girls belonging to indigenous peoples.
- Finland supports the work of the UN Permanent Forum on Indigenous Issues and contributes to the development of its activities.
- Finland continues to actively contribute to the adoption of the UN declaration on the rights of indigenous peoples.
- At the national level, the Government continues its efforts to find ways to remove the obstacles to the ratification of the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

# 6.6.1 Status and rights of indigenous peoples

The protection and enhancement of respect for the rights of indigenous

peoples continues to be among the priorities of the Finnish Government's human rights policy. Indigenous peoples are the original people of a given region, being characterised by their special ties with the land and its resources. Indigenous peoples have their own cultures, ways of life and identities as well as often their own original language. In respect of indigenous peoples, which are often assimilated with minorities, it is important to remember that in certain countries the indigenous peoples constitute the majority of the population.

The only indigenous people in Finland is the Sámi people, having their own cultural autonomy within the Sámi Homeland. The Sámi in Finland speak three different Sámi languages: North Sámi, Inari Sámi and Skolt Sámi. The different Sámi living in the territories of Finland, Sweden, Norway and Russia are united by their common history, traditions, customs and communities. The material basis of the Sámi culture has, since the beginning, consisted of their traditional means of livelihood such as reindeer herding, fishing and hunting. The Sámi Parliament is responsible for performing duties relating to the Sámi language and culture and the status of the Sámi as an indigenous people, which are part of the cultural autonomy. In addition, the Sámi Parliament represents the Sámi both in national and international contexts.

Finland has contributed in many ways to the enhancement of the status and rights of indigenous peoples both within the framework of the United Nations and in other international fora, including the Nordic Council and the Arctic Council. At the UN, Finland has participated, among others, in the Open-ended inter-sessional Working Group on the draft declaration on the rights of indigenous peoples, the Permanent Forum on Indigenous Issues, the Durban World Conference against Racism, and the Commission on Human Rights which established the mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, and has yearly participated in the Working Group on Indigenous Populations.

The Finnish Government aims at contributing to improved living conditions of indigenous peoples so that the communities and cultures may be maintained and developed on the terms of the indigenous peoples themselves. The right of indigenous peoples to development is often threatened, however, as they face direct or indirect discrimination. Especially women and girls belonging to indigenous peoples are vulnerable to multiple dis-

crimination due to their sex and origin. The Government finds it important that the special status of indigenous peoples also be taken into account in future work against discrimination. In the development of the rights of indigenous peoples, the equal implementation of civil and political as well as economic, social and cultural rights, and the participation of indigenous peoples in all decision-making concerning them on their own terms are relevant tools. The enhancement of the rights of indigenous peoples is also continued in the development cooperation projects of the Finnish Government.

The Government has in many statements given in international fora underlined the importance of implementing the language rights of indigenous peoples. The right to a language of one's own is a fundamental right of every person. It is at the same time both an individual and a collective right. The right to one's own language is a right to an identity of one's own. For certain population groups such as indigenous peoples, the right to one's own language is of relevance for the right to existence. At the same time, it is a possibility and a way to maintain the special characteristics of the people among other peoples. The language is an integral part of culture and is closely related to the traditional ways of life, means of livelihood, religions and beliefs of indigenous peoples.

As for the protection and development of the language rights of the Sámi, the Committee of Ministers of the Council of Europe gave recommendations in September 2001 on the implementation of the European Charter for Regional or Minority Languages. The Committee of Ministers recommended that the Government take immediate measures to strengthen the status of the Sámi language in the field of education. Particular attention shall be paid to pre-school and comprehensive school education, and to the availability of the necessary teacher training and teaching materials in Skolt Sámi and Inari Sámi that are in danger of extinction. The status of the Sámi in the mass media must be strengthened, in particular, by concretely supporting the establishment of newspapers and regular television programmes. In addition, the Committee of Ministers recommended that the Government create favourable conditions for the enhancement of the use of the Sámi language before judicial and administrative authorities within the Sámi Homeland, taking, in particular, measures aiming at the improvement of the Sámi language skills of the personnel of the said authorities. The Government must also ensure the availability of social welfare and health care services in Sámi for those who wish to have them.

After the Committee of Ministers gave its recommendations, a new Sámi Language Act has been adopted in Finland, enhancing the implementation of the recommendations. There is so far no experience of the application of the Act, which entered into force in January 2004, but its effects will be reported on to the treaty monitoring bodies in future periodic reports. The Government aims at continuing the constructive dialogue with the committee of experts monitoring the implementation of the European Charter for Regional or Minority Languages and at more effectively implementing the language rights of the Sámi.

Under the Basic Education Act, children speaking Sámi have the right to get most of their education in Sámi within the Sámi Homeland. The new national guidelines for comprehensive school education contain separate sections on the teaching in and of the Sámi language. Education may also be given in Sámi at upper secondary school and at vocational colleges. In practice, it is most usual to get education in Sámi during the six first years at comprehensive school. The Government examines the possibilities to increase the teaching in and of the Sámi language in municipalities other than those located within the Sámi Homeland. The National Board of Education provides financing, among others, for a project aiming at the development and enhancement of Sámi studies outside the Sámi Homeland by means of virtual learning.

One way of enhancing the implementation of the rights of indigenous peoples is to more extensively include them in periodic reports submitted to the treaty monitoring bodies under the UN human rights conventions. On the basis of the reports, the treaty monitoring bodies may draw attention to defects in the implementation of these rights and give recommendations as to more effective ways to implement the conventions in this respect. The Government aims at better taking the rights of indigenous peoples into account in future periodic reports. As part of the development of periodic reports, the most recent recommendations given by the treaty monitoring bodies concerning the Sámi have also been translated into North Sámi.

The rights of indigenous peoples are also an important element in development cooperation projects of the Finnish Government. For example in Latin America, the support given by Finland for education has focused on the improvement of the education of indigenous people. In Nicaragua and Bolivia, Finland supports projects enhancing bilingualism and cultural diversity, which aim at guaranteeing the indigenous peoples educational

services in their own language and in accordance with their own culture. The Finnish support is targeted at the development of school curricula, teacher training and production of basic-level educational materials. The projects on bilingualism are, in both countries, closely related to a wider school reform.

### 6.6.2 Permanent Forum on Indigenous Issues

In the previous report to Parliament, the Government set an objective to get the work of the Permanent Forum for Indigenous Peoples off the ground. This objective was reached as the Forum was convened to its first session in New York in May 2002. The Forum consisting of sixteen expert members appointed by indigenous peoples and governments serves as a consultative body for ECOSOC and as a coordinative body for issues relating to indigenous peoples. There is a large number of issues falling within the competence of the Forum, covering human rights, health, education, culture, economic and social development and environment.

The initial experiences of the Forum have been rather positive. The Forum has rapidly obtained an established status in the handling of issues relating to indigenous peoples and has actively handled thematic issues that are also important for Finland, such as the status and rights of women and children belonging to indigenous peoples. A recommendation given to the Committee on the Rights of the Child, concerning the organisation of a thematic session on the Convention on the Rights of the Child and the rights of children belonging to indigenous peoples, is an example of the concrete measures taken by the Forum. The thematic session was held in September 2003, contributing to the increase of awareness of the rights of children belonging to indigenous peoples.

The Government intends to continue its support for the Permanent Forum for Indigenous Peoples and contribute to the development of its activities. In order to ensure the concrete possibilities of the Forum to work, it is important to strengthen its secretariat and to provide it with adequate financial resources. The Finnish Government aims at contributing to the handling of thematic issues falling within the competence of the Forum and at enhancing the dialogue among the relevant bodies. In view of the wide mandate of the Forum, it is particularly important to develop interaction with the specialised agencies of the UN.

The start of the work of the Forum is followed by an overall review of all the UN activities relating to indigenous peoples, with a view to making the handling of related issues more effective and to eliminate overlapping activities. In this respect, the future of the UN Working Group on Indigenous Populations, which has been working since 1982, is one of the most important questions to resolve. The purpose of the review of activities is to see, among others, whether the two bodies have overlapping activities. The Finnish Government recognises the role of the Working Group in the enhancement of the rights of indigenous peoples and is willing to consider different options for its future, in cooperation with the indigenous peoples themselves.

### 6.6.3 UN Declaration on the Rights of Indigenous Peoples

Since 1995, the member States of the United Nations have negotiated on a draft Declaration on the Rights of Indigenous Peoples. The aim is to submit the Declaration to the General Assembly for adoption by the end of the International Decade of the World's Indigenous People (1995—2004). However, the draft Declaration proposed by the Working Group on Indigenous Populations has proved to be very challenging from the perspective of international law, containing many problematic issues of importance. The negotiations, which have lasted nearly a decade, have developed the dialogue between indigenous peoples and governments but the achievement of concrete results has been slow so far.

The Finnish Government is committed to the work of the Working Group on the draft declaration and has an objective to work for the adoption of the Declaration as soon as possible. The Finnish Government respects the text of the draft Declaration to the extent possible and only intends to propose amendments that are considered absolutely necessary. In the past few years, the Nordic Countries have also cooperated with one another for the enhancement of the negotiations on the draft Declaration.

In the latest session of the working group in 2003, the EU Member States in a way made history as they formed their first common positions on certain articles of the draft Declaration. The Finnish Government welcomes the EU cooperation and aims at contributing to the development of the rights of indigenous peoples through EU statements.

#### 6.6.4 Nordic Sámi convention

The Nordic Sámi Council proposed the drafting of a Nordic Sámi convention already in the 1980s. The Ministries of the Nordic Countries responsible for Sámi issues and the presidents of the Sámi parliaments in the said countries set up a group of experts on 13 November 2002 to prepare a Sámi convention. The group of experts has six members, of whom three represent the governments and three others represent the Sámi parliaments of their respective countries.

In accordance with its mandate, the group of experts shall assess the need for the drafting of a Nordic Sámi convention. The group of experts has implemented its mandate by entering into an open dialogue on the most relevant issues relating to the Sámi as an indigenous people. The outcome of the dialogue, the purpose of which is to establish the views, will be entered into an initial draft convention.

As for the contents of the draft convention, it is stated that the group of experts shall pay attention to the obligations of each party under the relevant international instruments and under customary law, when drafting the convention. The group of experts shall also take a position on the question of the monitoring of compliance with the convention and on the possible need to set up a monitoring body.

The group of experts is expected to submit its proposal by the end of 2005. The group has not any mandate over treaty negotiations as such. The Government finds the planned Nordic convention an important tool for the development of the status and rights of the Sámi. The Government also intends to continue its contribution to the work of the group of experts and to the furtherance of the planned convention.

### 6.6.5 Indigenous peoples and Arctic cooperation

Finland participates actively in the Arctic cooperation for the enhancement of human rights. The Arctic Council, which was established in 1996, works for the ensuring of sustainable development and for the protection of the environment in the Arctic regions of the world. This inter-governmental forum aims at enhancing the state of the environment and the economic, social and cultural well-being of the populations of the regions. The mem-

bers of the Arctic Council are the Nordic Countries, Russia, Canada and the United States. The indigenous peoples of the Arctic regions, which are represented in the Council through six organisations, have an equal right with governments to participate in decision-making. Finland has actively contributed to the work of the Council and when the Council was chaired by Finland (2000—2002), it aimed at enhancing the role of the Council not only as an international actor but also as a forum for cooperation with indigenous peoples.

The Arctic Council has several projects concerning indigenous peoples. When the Council decides on such projects, the views and wishes of the indigenous peoples themselves are heard and have a decisive role. The decisions of the Council must indeed be based on consensus and, apart from scientific research, also on the traditions of indigenous peoples.

The funds of the Ministry for Foreign Affairs reserved for cooperation with the neighbouring regions have been used, among others, to enhance a project on Food Security in the Russian Federation. Particular attention has also been given to a project on the establishment and protection of holy places of indigenous peoples, which has directly affected e.g. legislation in Russia. Projects for the maintenance of the traditional means of livelihood of the indigenous peoples have also been found important at the Arctic Council.

The sustainable use of natural resources entails many kinds of conflicts of interests that should, nevertheless, be equally taken into account. The role of indigenous peoples in the use of arctic resources is in fact, one of the most important themes in the Arctic Council in near future. The report of the Arctic Monitoring and Assessment Programme), 'Arctic Pollution 2002', which was submitted to the Inari ministerial meeting in 2002, clearly indicates that the Artic regions are an indicator of the state of the environment in the whole world, and that global measures are relevant for the enhancement of the environment and health of the populations in the Arctic Area of the Nordic Countries. The report addresses, in particular, the health risks of pollutants and heavy metals for the populations and especially the indigenous peoples of the area, who are dependent on the use of renewable natural resources. Finland has actively contributed to the work of AMAP and finds it important to address the defects pointed out in the report, not only at the regional but also at the global level.

Gender equality was not on the agenda of the Arctic Council before Finland's chairmanship. In August 2002, the first Arctic conference on women and equality was held under the leadership of the Finnish Ministry of Social Affairs and Health. The conference was attended by influential women from all the member States of the Arctic Council and from the relevant indigenous peoples. The conference focused on the access of women to employment, equality and the autonomy of indigenous peoples as well as violence against women in the Arctic regions. Finland finds the input of the conference important and continues to support cooperation in equality issues in the Arctic regions.

The Arctic Council is currently preparing an Arctic Human Development Report focusing on the assessment of the living conditions and future of women and indigenous peoples. The aim is to compile information and recommendations concerning sustainable development in the Arctic regions, particularly in respect of its social and economic dimensions.

The Indigenous Peoples Secretariat (IPS) based in Copenhagen supports the work of indigenous peoples and, in particular, the Russian Raipon organisation in the Arctic Council. The Danish government is the most important financer of the IPS, whereas Finland has mainly financed individual projects of the IPS, such as the production of a brochure concerning Arctic indigenous peoples for the World Conference on Sustainable Development in Johannesburg. The Finnish Ministry for Foreign Affairs has also financially contributed to the participation of the Sámi Council in Arctic cooperation, including in relation to the Johannesburg Conference. During its chairmanship of the Arctic Council in 2000 to 2002, Finland actively aimed at intensifying the cooperation and dialogue between the governments and indigenous peoples of the Arctic States.

### 6.6.6 Sámi and land rights

Indigenous peoples are characterised by there special ties with land, water and natural resources. These special ties together with the diverse use of natural resources constitute the basis for the cultures and ways of life of indigenous peoples. The maintenance of the traditional ways of life of indigenous peoples is often directly dependent on the recognition and development of land rights.

The treaty monitoring bodies have drawn the Government's attention to the question of the land ownership in the Sámi Homeland, which has remained unsolved. The Government has been urged to find a solution for the problem and to ratify the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989).

The Government has actively aimed at finding a solution to the question of land ownership in the Sámi Homeland. The Ministry of Justice has commissioned different reports on the relevant issues. The most concrete measure was taken in 2002 when a proposal for the establishment of a specific advisory board in the Sámi Homeland, prepared in the form of a Government bill, was made by the Ministry. The advisory board would have had as its duty to given an opinion on the most important principles concerning the use of land in the area, as provided by law. The National Forestry and Park Service could have only derogated from the opinion on special grounds. The advisory board would have been significant in that it would have made it possible to better coordinate the management, use and protection of natural resources while, at the same time, taking into account the possibilities of the Sámi to maintain and develop their own culture and means of livelihood as well as the local conditions and the need for their development. The aim was to find an ecologically, socially, culturally and economically sustainable solution by coordinating activities. The Sami Parliament and local populations would have been represented in the advisory board. However, it proved impossible to submit the Government bill to Parliament because of the conflicting views on the effects of the question of land ownership on the organisation of the use of land by law.

An independent research, based on archives, has been launched on the history of populations and settlements and the use of land in the Kemi and Tornio regions in Lapland from the mid-18<sup>th</sup> century until the beginning of the 20<sup>th</sup> century. The research is scheduled to be completed by the end of 2004. The Government aims at finding such a solution for the question of land ownership as would remove the obstacles to the ratification of the ILO Convention No. 169. The different stages of this work will be given account of in future periodic reports to the treaty monitoring bodies.

### 6.7 Rights of persons with disabilities

- , Finland underlines the importance of a multiple approach to the protection of the rights of persons with disabilities.
- , Finland participates actively in the negotiations for the preparation of a draft convention on the protection of the rights and dignity of persons with disabilities. The Finnish Government's objective is to achieve a strong instrument that supplements the existing human rights conventions.
- , The rights of persons with disabilities are among the priorities of the Finnish Government's development cooperation.

### 6.7.1 Disability as a human rights issue

According to estimates given by the United Nations, approximately 10 per cent of the world's population i.e. half a milliard people has a physical or mental disability. In the past few years, disability as a human rights issue has indeed been given increasing attention in international fora. Finland welcomes the development and participates actively in the international negotiations for the enhancement of the rights of persons with disabilities.

Although persons with disabilities enjoy the same rights as others, their de facto possibilities to exercise the rights are not equal. Physical or social hindrances may obstruct the full participation of persons with disabilities in society. The international community has reacted to the problem and is seeking ways to eliminate it and improve the de facto position of persons with disabilities. The most important effort to this effect is the ongoing preparation for a new human rights convention, concerning the rights of persons with disabilities. The Finnish Government's objective is that, once adopted, the new convention strengthens the protection afforded by other conventions to persons with disabilities.

Finland underlines the need to enhance the protection of the rights of persons with disabilities. A multiple approach should be taken to the protection and development of their rights, by mainstreaming their rights in the different sectors of life and in all national and international programmes and guidelines.

In the present report, however, the rights of person with disabilities are discussed in a separate thematic section for the reason that the topic is now

for the first time discussed as a human rights policy priority for the next few years. The Government aims at drawing attention to the present-day importance of the issue.

### 6.7.2 Enhancement of the rights of persons with disabilities in the European Union

There are some 37 million persons with disabilities within the area of the European Union. The year 2003 was proclaimed by the EU as the European Year of Persons with Disabilities, which reflects the increasing importance given to the issue in the EU. The purpose of the theme was to increase knowledge of the rights of persons with disabilities, to draw attention to their protection against discrimination and to their right to full enjoyment of all human rights. Finland chose to focus particularly on the human rights of persons with disabilities, the principle of non-discrimination and the right to participation. The National Disability Council held several training sessions and other events and published a handbook on the rights of persons with disabilities ('Know your rights — defend yourself').

The Council Directive (2000/78/EC) establishing a general framework for equal treatment in employment and occupation entered into force on 2 December 2000. The purpose of the directive is to prevent direct and indirect discrimination at work. A difference of treatment shall not constitute discrimination where it is based on a characteristic that constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate. The Directive also provides for the concept of reasonable accommodation for persons with disabilities. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.

The Equality Act enacted in Finland to implement the Directive entered into force on 1 February 2004. The Act provides, among others, that in order to enhance equality, the employer or organiser of training must take the necessary and reasonable measures to ensure the access of persons with disabilities to employment or training and a possibility for them to manage at work and advance in their careers. In the assessment of what is reasonable, attention is paid to the costs of the measures, the financial situation of

the provider of work or training and the possibility to get support for the measures from public funds or from other sources. (For more detailed information on the Equality Act, see section 6.5.)

With the support of the European Commission, a study was carried out in 2001 and 2002 on 'Disability and Social Exclusion n the European Union — Time for change, tools to change' (Final study report, under the auspices of the European Disability Forum and with the support of the European Commission, 2002).

6.7.3 UN draft Comprehensive and Integral Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities

The idea of concluding a convention on the human rights of persons with disabilities is not new. Already in 1987 were the first discussions held among experts. However, on that occasion, the idea did not gain adequate support.

In December 2001, the UN General Assembly gave a resolution (58/168) on the establishment of an ad hoc committee to consider the proposals for the drafting of a Comprehensive and Integral Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities. According to the mandate of the committee, its work must be based on a comprehensive approach, covering social development, human rights and non-discrimination as well as progress achieved. In addition, the committee must take the recommendations of the Commission on Human Rights and the Commission for Social Development into account.

The ad hoc committee has been convened in session twice. The first session resulted in a decision on the involvement of persons with disabilities in the committee's work. In the second session held in June 2003, a separate working group was set up to prepare a draft convention to constitute the basis for negotiations. The members of the working group include representatives of governments, organisations for persons with disabilities and human rights institutes. The working group met in its first session in January 2004. Finland finds it to be of utmost importance to hear the views of persons with disabilities at all stages of the negotiations and, in particular, in the drafting of the convention.

The European Union has submitted a proposal for the draft convention to the working group. The proposal is essentially based on the principle of non-discrimination of persons with disabilities and it provides for the concepts direct and indirect discrimination and reasonable accommodation. Many other countries or groups of countries as well as organisations for persons with disabilities have also submitted their proposals for the draft convention. A study financed by the Ministry for Foreign Affairs was completed by the Human Rights Institute at the Åbo Akademi University in November 2003, analysing the proposals published by that time and assessing their suitability as a convention protecting the rights of persons with disabilities<sup>22</sup>. The relevant issues to be addressed in the negotiations include, among others, the need for a definition of a disability or a person with disabilities, the scope of application of the provisions concerning discrimination, and the development of the existing mechanisms for the protection of the rights of persons with disabilities.

Although there is political unanimity on the need of the convention, it is expected that the negotiations will be difficult and it is likely that it will take years to finally adopt the convention. Nor should the negotiations be urged as it is more important to ensure the conclusion of a strong legal instrument with a wide scope of application. Therefore, it is important to also continue the efforts to develop the existing mechanisms protecting the rights of persons with disabilities.

It is clear that the existing human rights conventions also apply to persons with disabilities despite that they do not — with the exception of the Convention on the Rights of the Child — specifically mention persons with disabilities. The new or newly formulated rights in the draft convention must indeed meet at least the standards of the existing human rights instruments. Finland underlines that the convention must be based on the protection of human rights. During the negotiations, it is important to seek ways to enhance the protection of the existing rights. The convention must also supplement the ongoing UN process of protecting and developing the status and rights of persons with disabilities. In this respect, reference is made to the UN Standard Rules and the development of the monitoring of compliance with them.

Jukka Kumpuvuori: Observations on the Process of Elaborating a New Human Rights Instrument on the Rights of Persons with Disabilities. Åbo Akademi Human Rights Institute, 2003.

Finland further finds that the implementation and monitoring of the existing UN human rights conventions must be developed to the effect of more effectively protecting and enhancing the rights of persons with disabilities. In this respect, the monitoring mechanisms under the conventions play a crucial role. In practice, the said development would mean the inclusion of the rights of persons with disabilities in more detail in the periodic reports submitted to the treaty monitoring bodies. The Finnish Government aims at including the rights of persons with disabilities in its reports. The organisations for persons with disabilities shall also have an opportunity to be heard for the purpose of preparing the periodic reports.

The presence of persons with disabilities in treaty monitoring bodies should also be supported. Through membership, the rights of persons with disabilities would undoubtedly be better reflected in the conclusions and recommendations issued by the treaty monitoring bodies and thereby in the work of the parties for the implementation of their treaty obligations.

# 6.7.4 Rights of persons with disabilities in the Finnish Government's development cooperation

Finland supports the strengthening of the rights of persons with disabilities both through the creation of rules at the UN and through concretely financing bilateral and multilateral cooperation as well as cooperation of non-governmental organisations. Finland is committed, through a declaration given with the other Nordic Countries in 2000, to ensuring that the enhancement of the human rights and equal participation of persons with disabilities be taken into account in the efforts to eradicate poverty in developing countries.

An evaluation of the disability dimension of Finland's development cooperation was completed in 2003. According to the evaluation report, the share of projects concerning persons with disabilities of the total budget of development cooperation has been relatively high, approximately 5 per cent<sup>23</sup>. However, these projects have been nearly exclusively projects implemented by non-governmental organisations.

<sup>&</sup>lt;sup>23</sup> Label Us Able, http://global.finland.fi/evaluations/labelable.pdf.

Finland has provided decisive support for a project on 'The Right to Education for Persons with Disabilities' that focuses, in particular, on the equal access of persons with disabilities to educational services. According to the evaluation report, Finland has achieved good results in educational projects in respect of persons with disabilities, particularly in Zambia, Bosnia, Kosovo, Palestinian territories and Ethiopia. For example in the special education project in Zambia, the teachers of ordinary schools were trained to take persons with disabilities into account and in the construction of school buildings, the special needs of persons with disabilities were paid attention to. Finland is able to provide high-level knowledge in the enhancement of integrated special education (practical and cost-effective). Thus, in future, Finland may increase its influence by exporting this know-how to the benefit of governments and financers of development in those countries where Finland supports educational projects financially and through the provision of expertise.

According to the evaluation report, Finland may use its experience of successful projects to also bring up issues relating to the rights of persons with disabilities and their possibilities of participation through the channels of multilateral cooperation. Finland has indeed for a long time already successfully maintained the rights of persons with disabilities on the agenda in its dialogues with inter-governmental organisations such as the WHO, the ILO, UNESCO, the World Bank and the Asian Development Bank. Finland has also offered financing and expertise for the said specialised agencies of the UN and the financial institutions.

On the basis of the recommendations given in the evaluation report, the Ministry for Foreign Affairs prepared guidelines in 2003 for the enhancement of the rights and equal participation of persons with disabilities. According to a commitment included in the guidelines, such enhancement is an integral part of the Finnish Government's human rights policy and a particular are of priority and expertise in Finland's development cooperation.

At present, it is important for the administration of Finland's development cooperation to find concrete means to enhance the rights and participation of persons with disabilities in bilateral and multilateral cooperation. The enhancement of the rights of persons with disabilities, among the other priorities in the relations with developing countries, also requires continuing training and provision of information affecting the knowledge, attitudes

and working methods of personnel. Experts with disabilities have equal possibilities with others to be recruited to duties of foreign service, and the expertise in issues concerning persons with disabilities may also be used in the recruitment of experts for international duties of development cooperation.

The European Commission has recently published a Guidance Note on Disability and Development for EU Delegations and Services. Finland applies the guidelines, where appropriate, to the development cooperation of the Government and aims at contributing to compliance with the guidelines and to their further development as an instrument for the European Commission's development cooperation. Under the guidelines, an approach based on respect for human rights shall be enhanced and supported in the policy and work on persons with disabilities, rather than an approach underlining charity or medical aspects<sup>24</sup>.

### 6.7.5 Rights of persons with disabilities in Finland

Under section 6 of the Constitution of Finland, disability is one of the prohibited grounds of different treatment. Disability was added to the list already in the context of the overall reform of the provisions on fundamental rights in 1995, marking clear progress in the protection of the rights of persons with disabilities.

In Finland, the position of persons with disabilities has traditionally been considered good. However, the experiences of the persons with disabilities themselves do not always support the presumption of good position. Persons with disabilities face discrimination in their everyday lives even in Finland. The discrimination may be either direct or indirect. For example, women with disabilities often feel that their rights to an equal relationship, maternity and family life is questioned or undervalued. Studies made have indicated that there is institutional discrimination against persons with disabilities in Finland, meaning that the different functions of society are conducive to excluding persons with disabilities from full participation in

 $<sup>^{24}\,</sup>$  The new guidelines are available on the Internet at http://global.finland.fi/julkaisut/taustat/disability\_guidance\_EU.pdf.

society<sup>25</sup>. Legislative solutions are not alone sufficient but concrete supporting measures are needed to reduce de facto discrimination.

The Finnish Government's policy on persons with disabilities pursues an objective of enhancing the independent life, equal opportunities and social participation of persons with disabilities. This objective is aimed at by increasing the independent activities and decision-making of such persons and by eliminating obstacles relating to physical abilities, attitudes and communication.

The revised European Social Charter entered into force for Finland on 1 August 2002. The rights of persons with disabilities are specifically provided for in Article 15 which guarantees persons with disabilities the right to independence, social integration and participation in the life of the community. The European Social Charter contributes significantly to the development of national legislation. The ILO Code of Practise (Managing Disability in the Workplace) has been published in Finnish. In this respect, the guidelines clearly designate responsibility to trade unions. According to the guidelines, the principle of non-discrimination shall be applied to recruitment in the open labour market, and the changes needed by persons with disabilities at the workplace and in working conditions must be ensured.

The Finnish legislation on social welfare and health care provides persons with disabilities with social rights, as both services and support measures. The Act on the Status and Rights of Social Welfare Clients, which was adopted in 2000, also strengthens the rights of persons with disabilities as service-users.

The right of participation of persons with disabilities and their possibility to independent life require freedom of movement. An environment and means of transportation with obstacles restrict the movement of persons with disabilities. Furthermore, the freedom of movement of persons with disabilities may be restricted by their de facto possibility to choose their place of residence. The municipality of residence depends, under the Home Municipality Act, on the need for care of the person concerned and consequently

See e.g. Jukka Kumpuvuori: Vammaisten henkilöiden ihmisoikeudet Suomessa (Human rights of persons with disabilities in Finland), Åbo Akademi Human Rights Institute, 2003.

on the municipality providing the services and support measures. Thus, a person with a disability does not necessarily have a de facto possibility to choose his or her place of residence. The Government intends to have the conformity of the Act with the Constitution examined. The Government's objective is that all citizens, including persons with disabilities, have a de facto possibility to choose their place of residence.

Institutional discrimination means that the social welfare institutions are not able to provide persons with disabilities with adequate services and support measures or that persons with disabilities are subject to social control by the authorities. Even if the different institutions were not discriminative as such, they may indirectly or passively be conducive to discrimination. For example the restriction of the freedom of movement by failing to taken the different needs of persons with disabilities into account in the development of public transportation is institutional discrimination. Finland has paid attention to such problems and the Ministry of Transport and Communications published a strategy of ensuring movement without obstacles, for the Ministry's own sector of administration, in August 2003. A transportation system allowing free movement serves to eliminate and prevent obstacles to equal freedom of movement and to enhance equality.

One of the fundamental rights of individuals is the right to work. As a human right, the right to work is guaranteed by the Universal Declaration of Human Rights and by the European Social Charter. In addition, the Member States of the European Union are bound by the Community legislation regulating the internal market. Everyone has the right to earn one's living through work, profession or gainful occupation freely entered upon. According to studies made, most persons with disabilities at working age are unemployed in Europe, and also in Finland they are unemployed more often than others and the duration of their unemployment is longer than the average. Attitudes and prejudices as well as poorly equipped locations constitute often obstacles to the employment of persons with disabilities. In Finland, the Social Welfare Act and the legislation on social insurance as well as the Employment Act were amended in 2002, so as to enhance the employment of persons with disabilities. The Social Undertakings Act entered into force in January 2004. The new Act gives social undertakings a more permanent status as employers of job seekers with disabilities and long-term unemployed persons, and enhances the creation of such undertakings. The right to work and the prohibition of different treatment on the ground of disability are rights guaranteed by the Constitution. One defect from the perspective of persons with disabilities is that disability is not mentioned in the list of prohibited grounds of different treatment in the Employment Contracts Act. Furthermore, women with disabilities have a double risk of being subjected to discrimination in access to training and employment, both on the ground of their disability and because of their sex.

The new Occupational Safety and Health Act pays particular attention to the safety of workers with disabilities. Under section 12, subsection 2, of the new Act, in the same way as the already repealed Act, requires that persons with disabilities and other workers whose health and safety at work requires special measures, shall be taken into account in the planning of the working environment and in the work arrangements.

Persons with disabilities have the same cultural rights as others. The availability of cultural services and the possibilities of persons with disabilities for creative activities have been taken into account in certain relevant political instruments prepared by the Ministry of Education, such as the Government resolution concerning the policy on arts and artists and the Ministry's political programme on children's culture.

### 6.8 Economic, social and cultural rights

- , The Finnish Government has an objective of strengthening economic, social and cultural rights. Globalisation has contributed to the increasing need to jointly implement civil and political rights and economic, social and cultural rights.
- In respect of economic, social and cultural rights, Finland also underlines the principle of non-discrimination and the gender aspect.
- , In the next few years, Finland will work to enhance the drafting of an optional protocol to the International Covenant on Economic, Social and Cultural Rights concerning a mechanism for individual complaints.

#### 6.8.1 General

Finland has traditionally underlined the view according to which all human rights are equal, indivisible and interdependent. It is not always even possible to draw the line between civil and political rights and economic, social and cultural rights. For example, the rights relating to trade unions belong in principle to both categories of rights. The different rights are also closely related to one another. It is often noted that the freedom of expression has no real meaning if the education does not provide possibilities for persons representing different social groups and both sexes to participate in the discussions. The principle of non-discrimination is an integral element of all human rights an Article 2 on the prohibition of discrimination is common for the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Despite the indivisibility of rights, Finland intends to underline the importance of economic, social and cultural rights also in the future. Finland has assumed an active role in the promotion of these rights for the reason that they still do not have an entirely established status among other human rights and their justiciability is not always recognised by governments. The opinions on the meaning of economic, social and cultural rights differ even among the EU Member States. Therefore, despite that the EU is an important channel for the pursuance of the Finnish Government's human rights policy, the role of the EU is restricted in the field of economic, social and cultural rights. Globalisation has also increased the meaning of these rights: the liberalisation of economy, the increasing competition and the more significant role of large enterprises impose challenges for the equal implementation of rights. Economic, social and cultural rights are often important for the implementation of the rights of women and children, in particular, and the increasing number of women suffering from poverty underlines the importance of paying attention to the gender aspect.

In the EU, Finland had an active role in ensuring that economic, social and cultural rights were included in the Charter of Fundamental Rights. Although the formulation of the rights did not in all respects meet the objectives Finland had, the Charter is a significant instrument in that the two categories of rights are included in one and the same document. When the draft Treaty establishing a Constitution for Europe has been prepared, the question of dividing the said rights into groups with different degrees of binding nature. Such a division might be problematic for Finland and, upon the adoption of the draft Treaty, Finland must actively aim at ensuring that the differences are not significant<sup>26</sup>.

<sup>&</sup>lt;sup>26</sup> For further information, see section 3 on 'EU and human rights'.

Within the framework of the Council of Europe, the European Social Charter has been revised by adding new rights and amending the provisions on the minimum level of commitment. The revised Charter entered into force for Finland on 1 August 2002.

The Additional Protocol to the European Social Charter concerning collective complaints made it possible for organisations to file complaints against States parties, including employers' and workers' unions. Finland accepted the Additional Protocol in 1998. One complaint has been filed against the Government of Finland under the Additional Protocol. The communication made by STTK ry and Tehy ry in September 2000 concerned the repealing of the provisions of law affording hospital personnel special leaves due to their exposure to radiation.

The European Committee on Social Rights found in its decision that the situation in respect of the annual leaves of the aforementioned personnel was not in conformity with the European Social Charter. However, the Committee of Ministers of the Council of Europe did not require in its final resolution given in February 2002 that Finland restore the repealed provisions on radiation-related additional leaves. The Committee of Ministers took note that the primary concern of the Finnish Government was to eliminate risks created by working with ionising radiation, and that the Finnish Government undertook to continue taking measures to eliminate risks, especially in the health sector. In Finland, workers in the health sector were exposed to doses of radiation well below the maximum limits stipulated by national legislation and required by international standards.

The European Committee on Social Rights monitoring the implementation of the European Social Charter works on a part-time basis. It develops case law on such issues as the right to work, the right to income and the social rights of children. Finland aims at strengthening the status of the Committee and improving its capacity to operate.

The European Court of Human Rights may also address alleged violations of certain social rights, including social security benefits relating to work. In the same way, decisions of the Court of Justice of the European Communities may have relevance for the protection of economic, social and cultural rights. Accordingly, it would be important to develop the exchange of information and cooperation among these three institutions, i.e. the Euro-

pean Court of Justice, the European Court of Human Rights and the European Committee on Social Rights.

The International Covenant on Economic, Social and Cultural Rights is of universal importance. So far, it has been ratified by 148 states. This number is still relatively far from the objective of universal ratification, considering that the most widely ratified human rights convention, the Convention on the Rights of the Child, has been ratified by 192 states. The Finnish Government pursues an objective of strengthening the status of the Covenant and increasing the number of ratifications. To this effect, the Government may for example address commitments to human rights conventions, including the International Covenant on Economic, Social and Cultural Rights, in the context of dialogues with partner countries of development or other cooperation.

It is often felt that the International Covenant on Economic, Social and Cultural Rights does not provide adequately detailed guidance as to the contents of the rights and the obligations of states in different situations. One reason for why the economic, social and cultural rights have not as concrete contents as civil and political rights is that there are fewer mechanism and international case law in respect of the first-mentioned category of rights. The Human Rights Committee examining communications concerning violations of the International Covenant on Civil and Political Rights may receive communications from individuals<sup>27</sup>, whereas the Committee on Economic, Social and Cultural Rights has not had a corresponding competence. Therefore, it would be particularly important to strengthen the mechanisms in respect of economic, social and cultural rights.

In the Report by the Minister for Foreign Affairs on Human Rights and Finland's Foreign Policy, given to Parliament in 2000, the Finnish Government committed itself to actively enhancing the preparation of an additional protocol to the International Covenant on Economic, Social and Cultural Rights, concerning a system of individual complaints. Finland has also done so by various means available and is one of the rare countries that are actively committed to the process. The relevant human rights organisations

<sup>27</sup> Such communications may be made against states that have ratified the first Optionl Protocol to the Covenant.

find the attachment of a mechanism of individual complaints to economic, social and cultural rights important. In the autumn of 2003, Finland financed a seminar held in Croatia together with the International Commission of Jurists, the purpose of which was to disseminate information on the process in the Central and East European Countries. Such cooperation with interested governments and organisations will be continued. Finland will actively, through initiatives, contribute to the session of the working group preparing the optional protocol in 2004.

The Committee on Economic, Social and Cultural Rights has an important role in the monitoring of compliance with the Covenant. Finland has financed an expert to assist the Committee, and intends to continue its financial support. The Government will also see whether it would be possible to have a Finnish expert as a member of the Committee.

Economic, social and cultural rights are also getting increasing attention by the Commission on Human Rights. Special Rapporteurs have been appointed, among others, on adequate housing and on the right to food. The reports prepared by them will contribute to the contents of economic, social and cultural rights in different situations. These rights are important for developing countries and constructive work in these issues should offer a possibility for good cooperation across the boundaries of geographical groups of states. This is also an opportunity for Finland to pursue the Government's objectives to diminish the contradiction between the South and the North in the Commission on Human Rights.

In the session of the Commission on Human Rights in the spring of 2004, Finland coordinates a Resolution on the Status of the International Covenants on Human Rights. The Government's objective is to include in the resolution a statement concerning the legal nature of economic, social and cultural rights and to enhance in general the equal status of the two Covenants.

Economic, social and cultural rights also play an important role in the development cooperation projects of Finland. The enhancement of education is one of the largest sectors of cooperation. In the assessment of the right to education as a human right, the availability of good-quality education free of charge is of relevance. The Education for All programme focuses, in particular, on these factors. The provision and maintenance of basic education is considered to be at the responsibility of the state or other

public authorities. The Finnish Government is committed to the Education for All programme and its objectives. In the field of development cooperation, most of Finland's bilateral educational projects and programmes focus on basic education.

In the present report, the implementation of the right to health has been chosen as a thematic issue of current interest.

### 6.8.2 Right to health

The International Covenant on Economic, Social and Cultural Rights recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. A General Comment (on the right to the highest attainable standard of health) given in 2000 by the Committee monitoring the implementation of the Covenant defines in more detail the right to health, as entailing the right of the individual to control one's own body and health and the obligation of the state to guarantee the citizens certain services such as health care services. The availability of information on health and health care services of high medical standards, both physically and financially, are necessary for the enjoyment of this right. In this respect, it is also important to take the minority cultures and the gender aspect into account. The enjoyment of the right to health also requires, among others, clean drinking water, an adequate supply of food, nourishment and housing, a healthy living and working environment and the possibility to health education and information on reproductive health.

The right to health is also provided for in other human rights conventions (the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Elimination of All Forms of Racial Discrimination). International conferences, which have led e.g. to the Vienna, Cairo and Beijing Declarations and Plans of Action, have extensively addressed the right to health.

The concept of the right to health has also been addressed in many other international fora in the past few years. The resolutions on the right to health have been widely supported both in the Commission on Human Rights- particularly in the spring of 2002 when the mandate of a special rapporteur examining the right to health was established — and in the

General Assembly in the autumn of 2003. Finland supported both resolutions. Finland also co-sponsored the adoption of resolutions on the right to medication against contagious diseases, particularly HIV/AIDS, tuberculosis and malaria, in the Commission Human Rights in 2002 and 2003.

The right to health has also been discussed by the World Trade Organization, in relation to the availability of medicines in developing countries. The (aforementioned) decision made in August 2003 allows the production for and exportation of cheap medicines to developing countries under forced patent, e.g. for HIV/AIDS patients, and thereby helps the developing countries with the availability of medicines. The WTO has also in other respects an important role with regard to the right to health. The enjoyment of the right is dependent on the acceptance, quality and concrete and financial availability of health products and services. Important medicines, food (including drinking water) and health services are often capable of being transported across frontiers, and the trade rules concerning these products and services may have a direct link to the protection and implementation of the right to health.

The European Union has actively worked to enhance the right to health. For example the European Commission launched a health programme in January 2003, aiming at increasing knowledge of health and improving the capacity to react to health threats. The EU activities encompass a wide range of cooperation with third countries and international organisations in health issues.

The Finnish Government focuses, in particular, on the health of women, children and young persons, old persons and persons with disabilities, and indigenous peoples. The Government actively contributes to the work of international organisations and supports non-governmental organisations which aim at enhancing the implementation of the right to health. (It was proposed in the regional meeting of the World Health Organization in Vienna in September 2003, for example, that a European Conference on mental health be organised in Helsinki in January 2005.)

Health is also an important theme in the development cooperation projects of the Finnish Government. In this context, Finland underlines the importance of basic health care and preventive care. The projects aim at the implementation of equality, meaning particularly the ensuring of the equal access of women and the most vulnerable groups to health.

Finland supports the combat against HIV/AIDS by drawing attention to the allocation of resources for the social welfare and health care sector, education, to the effectiveness of educational, social welfare and health services, to the prevention of HIV and to the support services relating to the social consequences of the disease. It is particularly important to provide support for women and children, and there is need to increase the support in respect of HIV/AIDS. Finland allocates part of its support through the multilateral UNAIDS programme.

HIV/AIDS is not merely a health issue but also relates essentially to security, society and development, and there are problems relating to poor educational level, poverty, social inequality, gender inequality, commercial sex and conflicts in the background. Human rights violations increase the risk of the transmission of the disease. HIV/AIDS is increasingly also a problem of poor women and girls. The social consequences of the epidemic increase the risk of human rights violations (including unequal treatment of orphans, poverty of families, weakening status of women and denial of education for girls).

### 6.8.3 Implementation of economic, social and cultural rights in Finland

The modern list of fundamental rights in the Constitution of Finland, including a wide range of economic, social and cultural rights, increase the international credibility of Finland as a promoter of these rights. For example, the right to basic education free of charge is guaranteed for everyone, and those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care. These subjective rights are a significant example of the protection of economic, social and cultural rights even at the international level.

The Committee on Economic, Social and Cultural Rights has, in its recommendations concerning Finland, drawn attention to the need to ensure equal access to social welfare and health care services. It has been disappointed with the weakening of the public health care system, as a result of the cutting of government spending on health care. The Committee has recommended that the Government ensure that sufficient funds are allocated for public health care services and that the fees charged for these services remain at a reasonable level for all members of society.

The Committee has been particularly concerned over the fact that the local authorities follow different policies in respect of public spending on health care services. This has led to inequality with regard to the availability of the quality of services, depending on the place of residence. The Committee has reminded that the local authorities must offer adequate health care services, particularly for the most vulnerable groups such as children, old persons and persons with physical or mental disabilities.

As for labour legislation, the Committee has expressed concern over the employment security of part-time, temporary and foreign workers. It has, in more general terms, inquired the Government's views as to why there is no case law on economic, social and cultural rights despite that the provisions of the Covenant may be directly invoked in courts of law. In this respect, the Committee has expressed its concern over the possibility that lawyers and judges are perhaps not sufficiently aware of the rights included in the Covenant.

However, in comparison with other countries, the results of education have been good in Finland. Finnish pupils occupied a high position in the most extensive comparative study of education in the OECD member states (PISA). According to the study, the literacy of Finnish pupils was at the highest level of all the OECD states, although the differences between the two sexes were considerable in Finland.

#### **ABBREVIATIONS**

ACP Asian, Caribbean and Pacific Group of States AMAP Arctic Monitoring and Assessment Programme

CBSS Council of the Baltic Sea States
CFSP Common foreign and security policy
CHR Commission on Human Rights

CoE Council of Europe

COHOM Council Working Party on Human Rights

COJUR Council Working Party on Public International Law
COSCE Working Party on OSCE and the Council of Europe
CPT European Committee for the Prevention of Torture and

Inhuman or Degrading Treatment or Punishment

CSW UN Commission on the Status of Women

CRC Committee on the Rights of the Child; Convention on the

Rights of the Child

EAPC Euro-Atlantic Partnership Council

EC European Community

ECOSOC Economic and Social Council

ECRI European Commission against Racism and Intolerance

EEC European Economic Community
EQUAL Community Initiative EQUAL
ETNA Etninen tasa-arvo (Ethnic Equality)

EU European Union

EUMC European Monitoring Centre on Racism and Xenophobia

EUMM European Union Monitoring Mission

FAO Food and Agriculture Organization of the United Nations

FIDH International Federation of Human Rights GATT General Agreement on Tariffs and Trade

GSP Generalised System of Preferences

HDIM Human Dimension Implementation Meeting

HE Hallituksen esitys (Government Bill)

ICC International Criminal Court

ICPD International Conference on Population and Development

ICRC International Committee of the Red Cross IDLO International Development Law Organization

IGC Inter-governmental Conference ILO International Labour Organization

INGO International non-governmental organisation

IOM International Office for Migration

IPEC International Programme on the Elimination of Child

Labour

IPS Indigenous Peoples Secretariat

JHA Justice and home affairs

JOIN Joint Promotion of Anti-Discrimination NATO North Atlantic Treaty Organisation NGO Non-governmental organisation

ODIHR Office for Democratic Institutions and Human Rights

OECD Organisation for Economic Cooperation and

Development

OECD-DAC OECD Development Assistance Committee

OSCE Organisation for Security and Cooperation in Europe
PACE Parliamentary Assembly of the Council of Europe
DISA
OFCD Programme for International Student Assessment

PISA OECD Programme for International Student Assessment

PRS Poverty Reduction Strategy RRM Rapid Reaction Mechanism

SEIS Suomi eteenpäin ilman syrjintää (STOP — Finland

Forward Without Discrimination)

SETA Sexual Equality in Finland

STAKES National Research and Development Centre for Welfare

and Health

STTK Finnish Confederation of Salaried Employees

Tehy Union for health care professionals

TRIPS Agreement on Trade-Related Aspects of Intellectual

**Property Rights** 

UN United Nations

UNA United Nations Association

UNDP United Nations Development Programme

UNFPA United Nations Population Fund

UNHCR United Nations High Commissioner for Human Rights

UNICEF United Nations Children's Fund

UNIDO United Nations Industrial Development Organization

UNIFEM United Nations Development Fund for Women

UNMIK United Nations Mission in Kosovo

WHO World Health Organization

WSIS World Summit on the Information Society

WTO World Trade Organization

#### APPENDIX 1

## RELEVANT HUMAN RIGHTS CONVENTIONS OF THE UNITED NATIONS AND THE COUNCIL OF EUROPE

#### I UNITED NATIONS

# 1. International Covenant on Civil and Political Rights and its Optional Protocol (1966)

The Covenant provides for the traditional civil and political rights, such as the freedoms of expression, association and religion and fair trial rights. It also contains a general prohibition of discrimination, the minimum criteria for the imposition of a death sentence and a provision on the rights of persons belonging to minorities.

The Covenant entered into force for Finland on 23 March 1976 (Finnish Treaty Series 7—8/1976).

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of Death Penalty (1989), entered into force for Finland on 11 July 1991 (Finnish Treaty Series 48—49/1991).

### 2. International Covenant on Economic, Social and Cultural Rights (1966)

The Covenant provides, among others, for the rights to work and the enjoyment of just and favourable conditions of work, to form and join trade unions, to housing and adequate food, and to education. The Covenant also contains a specific provision according to which the States Parties undertake to ensure the equal right of men and women to the enjoyment of the rights set forth in the Covenant.

The Covenant entered into force for Finland on 3 January 1976 (Finnish Treaty Series 6/1976)

# 3. International Convention on the Elimination of All Forms of Racial Discrimination (1965)

The objective of the Convention is to prevent all forms of discrimination based on race, colour, descent or national or ethnic origin. Thus, the concept of racial discrimination is given a wide meaning. The States Parties are under an obligation to take legislative and other measures to prevent racism in general and, in particular, to declare punishable by law racial discrimination and incitement to discrimination against any race or group of persons of another colour or ethnic origin.

The Convention entered into force for Finland on 13 August 1970 (Finnish Treaty Series 37/1970).

# 4. Convention on the Elimination of All Forms of Discrimination against Women (1979)

The objective of the Convention is to enhance the enjoyment of the rights of women on the basis of equality with men. The Convention places the States Parties under an obligation to take all appropriate measures, including legislation, to actively pursue this objective. The Convention provides, among others, for the right to nationality, education, work, health care facilities and economic opportunities.

The Convention entered into force for Finland on 4 October 1986 (Finnish Treaty Series 67—68/1986).

The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, providing for the submission of individual complaints and a procedure for considering such complaints (1999), entered into force for Finland on 29 March 2001 (Finnish Treaty Series 20-21/2001).

# 5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

The Convention gives the concept of 'torture' a wide meaning. The States Parties are under an obligation to take effective measures to prevent acts

of torture in territories under their jurisdictions. Each State Party shall ensure that all acts of torture are offences under its criminal law. The Convention contains extensive provisions on the right of prosecution in cases of torture.

The Convention entered into force for Finland on 29 September 1989 (Finnish Treaty Series 59—60/1989).

On 23 September 2003, Finland signed the Optional Protocol to the Convention. The Protocol establishes a Sub-Committee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and a system of regular visits by the Sub-Committee to places where people are deprived of their liberty under the jurisdiction of a State Party. In addition, the States Parties are under an obligation to establish or designate one or more national preventive mechanisms for the eradication of torture in their territories. The Government will start the preparations for the ratification of the Optional Protocol in the spring of 2004.

### 6. Convention on the Rights of the Child (1989)

The Convention has been ratified by nearly all States. It covers a wide range of rights of children, including the rights to nationality and education and the right of the child to express his or her views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. The Convention places the States Parties under an obligation to protect the child against sexual abuse and other exploitation and to protect the child's special status in judicial proceedings. For the purposes of the Convention, a child means every human being below the age of 18 years, with the exception of military service to which the age limit of 15 years applies.

The Convention entered into force for Finland on 20 July 1991 (Finnish Treaty Series 59—60/1991).

The Optional Protocol on children in armed conflict (2000) entered into force for Finland on 10 May 2002 (Finnish Treaty Series 30—31/2002).

The Optional Protocol on the sale of children, child prostitution and child pornography (2000) was signed by Finland on 7 September 2000. The

ratification of the Protocol is dependent on the schedule of amendments to national legislation.

### 7. Convention Relating to the Status of Refugees (1951)

The purpose of the Convention is to ensure the protection of refugees. It defines the concept of 'refugee' and places the Contracting States under an obligation not to expel or return a refugee to the frontiers of a territory where his life or freedom would be threatened. The Convention also contains provisions for the prevention of discrimination against refugees.

The Convention entered into force for Finland on 8 January 1969 (Finnish Treaty Series 77/1968).

#### II COUNCIL OF EUROPE

# 1. European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (as amended by Protocols 3, 5, 8, 11, 12 and 13)

The Convention focuses on civil and political rights including, among others, the freedoms of conscience, expression and association, the right to respect for private life and detailed fair trial rights. The Convention provides for an effective monitoring mechanism based on individual applications.

The Convention entered into force for Finland on 10 May 1990 (Finnish Treaty Series 18—19/1990).

Protocol No. 6 concerning the abolition of death penalty (1983) entered into force for Finland on 1 June 1990 (Finnish Treaty Series 18—19/1990).

Protocol No. 12 containing a general prohibition of discrimination (2000) was signed by Finland on 4 November 2000. The Government Bill for its implementation will be submitted to Parliament in the spring of 2004.

Protocol No. 13 on the prohibition of the death penalty under all circumstances (2002) was signed by Finland on 3 May 2002. The Government Bill for its implementation will be submitted to Parliament in the spring of 2004.

# 2. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987)

The Convention establishes a European Committee for the Prevention of Torture. The Committee shall examine the treatment of persons deprived of their liberty, by means of visits made e.g. to prisons. The Committee may give recommendations to States Parties on the basis of the visits.

The Convention entered into force for Finland on 1 April 1991 (Finnish Treaty Series 16—17/1991).

### 3. Revised European Social Charter (1961)

Finland signed the revised European Social Charter on 3 May 1996. It replaces the European Social Charter of 1961 (Finnish Treaty Series 43—44/1991) and its Additional Protocol of 1988 (Finnish Treaty Series 84/1992), as well as the Protocol amending the Charter. The revised Charter entered into force for Finland on 1 August 2002 (Finnish Treaty Series 78/2002). The purpose of the revised European Social Charter is to protect and promote social rights in Europe. These rights shall be guaranteed for all without discrimination. The objective of the revision was to bring the provisions into conformity with the requirements brought about by social change that had taken place since the adoption of the original Charter. In the revision, certain new rights have been added to the Charter and the contents of certain provisions have been amended. At the same time, the provisions on the minimum level of commitments by the States Parties have been amended.

The Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (1995) remained in force as such. The Additional Protocol makes it possible for employers' and workers' unions which fulfil certain criteria to submit complaints to the Council of Europe of non-compliance with the provisions of the European Social Charter. The Additional Protocol entered into force for Finland on 1 September 1998 (Finnish Treaty Series 75—76/1998).

### 4. Framework Convention for the Protection of National Minorities (1995)

The Framework Convention defines, mainly in programmatic terms, those principles that place the States Parties under an obligation to protect

national minorities in their territories. The States Parties commit themselves, among others, to comply with the prohibition of discrimination and the principle of equality and, by various means, to support the maintenance and development of minority cultures.

The Framework Convention entered into force for Finland on 1 February 1998 (Finnish Treaty Series 1—2/1998).

### 5. European Charter for Regional or Minority Languages (1992)

The objective of the Charter is to strengthen, in particular, the status of minority languages. Minority languages are recognised as being part of the European cultural heritage and the Charter aims at promoting their statuses among the majority languages in Europe. The objective is to protect small minority languages in danger of extinction, which have traditionally been used in the States Parties. Thus, the Charter does not apply to the languages of immigrants.

The Charter entered into force for Finland on 1 March 1998 (Finnish Treaty Series 23/1998).

# 6. European Convention for the Protection of Human Rights and Dignity of Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (so-called 'Bioethics Convention')

The Bioethics Convention is the first legally binding international instrument for the protection of the human rights of the individual against possible abuse of biotechnology. Its underlying idea is respect for the dignity, the right of self-determination and the privacy of human being.

Finland signed the Convention on 4 April 1997.

The Additional Protocol on the Prohibition of Cloning Human Beings (1998) supplements the Bioethics Convention by provisions prohibiting the cloning of human being. Finland signed the Protocol on 12 January 1998. The preparations for the ratification of the Convention and the Additional Protocol depend on the schedule of amendments to national legislation.

#### **APPENDIX 2**

#### DEATH PENALTY IN THE WORLD<sup>28</sup>

#### Death penalty has been entirely abolished

Andorra, Angola, Australia, Austria, Azerbaijan, Belgium, Bhutan, Bosnia-Herzegovina, Bulgaria, Cambodia, Canada, Cape Verde, Colombia, Costa Rica, Cote d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Dominican Republic, East Timor, Ecuador, Estonia, Finland, France, Georgia, Germany, Guinea-Bissau, Haiti, Honduras, Hungary, Iceland, Ireland, Italy, Kiribati, Liechtenstein, Lithuania, Luxembourg, Macedonia (former Yugoslav Republic), Malta, Marshall Islands, Mauritius, Micronesia (Federated States), Moldova, Monaco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niue, Norway, Palau, Panama, Paraguay, Poland, Portugal, Romania, Samoa, San Marino, Sao Tome and Principe, Serbia and Montenegro, Seychelles, Slovak Republic, Slovenia, Solomon Islands, South Africa, Spain, Sweden, Switzerland, Turkmenistan, Tuvalu, Ukraine, United Kingdom, Uruguay, Vanuatu, Vatican City State, Venezuela

### Death penalty is only applied at times of war or under exceptional circumstances

Albania, Argentina, Armenia, Bolivia, Brazil, Chile, Cook Islands, El Salvador, Fiji, Greece, Israel, Latvia, Mexico, Peru, Turkey

### Death penalty has in practice been abolished

(No executions have been carried out in the past ten years and the absence of executions is believed to be an indication of a policy or decision on non-execution.)

Algeria, Benin, Brunei Darussalam, Burkina Faso, Central African Republic, Congo (Republic), Gambia, Grenada, Kenya, Madagascar, Maldives,

The information is based on the web pages of Amnesty International at <a href="https://www.amnesty.org">www.amnesty.org</a> (as updated on 26 February 2004).

Mali, Mauritania, Nauru, Niger, Papua New Guinea, Russian Federation, Senegal, Sri Lanka, Suriname, Togo, Tonga, Tunisia

### Death penalty has been retained and executions are carried out

Afghanistan, Antigua and Barbua, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Botswana, Burundi, Cameroon, Chad, China, Comoros, Congo (Democratic Republic), Cuba, Dominica, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Ghana, Guatemala, Guinea, Guyana, India, Indonesia, Iran, Iraq, Jamaica, Japan, Jordan, Kazakhstan, Korea (North), Korea (South), Kuwait, Kyrgyzstan, Laos, Lebanon, Lesotho, Liberia, Libya, Malawi, Malaysia, Mongolia, Morocco, Myanmar, Nigeria, Oman, Pakistan, Palestinian Authority, Philippines, Qatar, Rwanda, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and Grenadines, Saudi Arabia, Sierra Leone, Singapore, Somalia, Sudan, Swaziland, Syria, Taiwan, Tajikistan, Tanzania, Thailand, Trinidad and Tobago, Uganda, United Arab Emirates, United States of America, Uzbekistan, Vietnam, Yemen, Zambia, Zimbabwe

According to Amnesty International, there were at least 1526 people executed in 31 countries in 2002. A death penalty was imposed on at least 3248 persons in 67 countries. These figures only cover known cases. It is likely that the actual figures are significantly higher.