

**UN Sub-Commission on the Promotion
and the Protection of Human Rights
56th session, 26 July – 13 August 2004
Agenda item 3: Administration of justice**

As the Special Rapporteur on the independence on judges and lawyers, Mr. Leandro Despouy, noted in his report to the last session of the Commission on Human Rights “the rule of law and separation of powers not only constitute the pillars of the system of democracy but also open the way to an administration of justice that provides guarantees of independence, impartiality and transparency” (E/CN.4/2004/60, p. 12). Regrettably, the following examples show cases where these universal principles are not implemented.

Though FI and the Office for Justice and Peace in Jayapura (SKP, Jayapura) welcome the legal proceedings of the first permanent human rights court held in Makassar, South Sulawesi, which has been hearing the Abepura case of 7 December 2000 – as this dossier has been pending for more than three years -, we urge the judges of this court to convene the trial in line with international human rights courts’ standards. We would also like to draw the attention of the Sub-Commission to the fact that this court has dismissed the victims’ claim for compensation using the class action lawsuit mechanism. The panel of judges argued that Law No. 26/2000 did not recognise such a mechanism and promised that the proceedings would deal with this claim. However, given that the charges do not specifically mention about any compensation for the victims, the right to reparation will be likely neglected.

Furthermore, despite the progress report presented by the Indonesian National Commission on Human Rights (Komnas HAM) during the 60th CHR, this body fails to fulfil its duty to inform the Papuans about its investigation into the Wamena case of 4 April 2003. Based on the Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (E/CN.4/Sub.2/1997/20/Rev.1, annex II), Papuans have the right to know of the process and the result of such an investigation. However, to date Komnas HAM has not informed them regarding this matter.

In Pakistan, while we acknowledge President Musharraf’s announcement last June, of a possible revision of the country’s Blasphemy Laws, we deplore that in early July, the Minister of Religious Affairs stated that the blasphemy law would continue to provide the death penalty as punishment and that modifications would be limited to procedures and the application of the norm.

In addition to the Blasphemy laws, several other laws and regulations, particularly articles and provisions of the Pakistani Constitution, discriminate against religious minorities jeopardizing the functioning of the administration of justice.

In Togo, the principle of the separation of powers is being flouted, within the legal system in contravention of Article 113 of the Constitution, which establishes that the judiciary is independent of the legislative and of the executive authority, that in carrying out their duties judges are to be subject only to the authority of the law and that the judiciary authority stands surety for the individual freedoms and basic rights of the citizens of the country. Despite this, most judges are in fact acting under government control and are given orders and instructions. Some trials are simply a farce.

Those facts largely contribute to the perpetuation of a *de facto* impunity, which is one of the most serious obstacles in promoting a fair administration of justice. When such a phenomenon is widespread in a country owing to the lack of any political will to eradicate it, investigations are partial and trials are unfair. Bringing the guilty to justice is a prerequisite for the respect of the rule of law, without which there can be no respect for human rights.

Franciscans International would like to recommend the Sub-Commission to call upon governments:

1. To conduct human rights trials in line with international standards of human rights courts,
2. To work towards an integral, independent, impartial and competent justice system,
3. To ratify and / or implement all relevant treaties and accept their complaint procedures, particularly the International Covenant on Civil and Political Rights and its First Optional Protocol and the Rome Statute of the International Criminal Court.