

The difficulty of establishing guilt and/or responsibility with regard to crimes of sexual violence

Sub-Commission resolution 2004/29

The Sub-Commission on the Promotion and Protection of Human Rights,

Mindful of articles 1, 2, 8 and 10 of the Universal Declaration of Human Rights and articles 2 and 4 of the International Covenant on Civil and Political Rights,

Mindful also of the need to provide children with appropriate protection, as stipulated in the Convention on the Rights of the Child,

Reaffirming that everyone has the right to life, liberty and security of person and to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law,

Reaffirming also that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his or her rights and obligations and of any criminal charge against him,

Noting with great concern the constantly increasing number of victims of sexual violence,

Concerned by the laws and practices that make it even more difficult to adduce evidence in cases of sexual abuse and violence directed against women and children, and threaten to constitute flagrant violations of the norms guaranteeing the right to a fair trial,

Convinced that the difficulty encountered in establishing evidence of sexual violence constitutes an impediment to the administration of justice and threatens to lead directly to impunity,

Convinced also that the impunity enjoyed by perpetrators of sexual violence is a fundamental obstacle to respect for the rights of the victims,

Convinced further of the need to formulate principles and guidelines for rules of evidence in cases of sexual violence,

Recalling the working paper on the difficulties of establishing guilt and/or responsibilities with regard to crimes of sexual violence prepared by Ms. Lalaina Rakotoarisoa (E/CN.4/Sub.2/2003/WG.1/CRP.1),

1. *Welcomes with satisfaction* the expanded working paper on the difficulties of establishing guilt and/or responsibilities with regard to crimes of sexual violence submitted by Ms. Lalaina Rakotoarisoa (E/CN.4/Sub.2/2004/11);

2. *Decides* to appoint Ms. Rakotoarisoa as Special Rapporteur entrusted with preparing a detailed study on the difficulties of establishing guilt and/or responsibilities with regard to crimes of sexual violence, with a view to identifying best practices and developing principles for rules of evidence in this area;

3. *Requests* the Special Rapporteur to submit to the Sub-Commission a preliminary report at its fifty-seventh session, an interim report at its fifty-eighth session and a final report at its fifty-ninth session;

4. *Requests* the Secretary-General to invite Governments, United Nations bodies, the specialized agencies and non-governmental organizations to provide the Special Rapporteur with the information necessary for the preparation of her reports;

5. *Also requests* the Secretary-General to provide the Special Rapporteur with any assistance she may require to carry out her mandate, including the assistance of a consultant with specialized knowledge in this field;

6. *Recommends* the following draft decision to the Commission on Human Rights for adoption:

“The Commission on Human Rights, taking note of resolution 29 of 12 August 2004 of the Sub-Commission on the Promotion and Protection of Human Rights, decides to approve the decision of the Sub-Commission to appoint Ms. Lalaina Rakotoarisoa as Special Rapporteur entrusted with preparing a detailed study on the difficulties of establishing guilt and/or responsibilities with regard to crimes of sexual violence, and to request the Special Rapporteur to submit to the Sub-Commission a preliminary report at its fifty-seventh session, an interim report at its fifty-eighth session and a final report at its fifty-ninth session. The Commission also approves the request to the Secretary-General to provide the Special Rapporteur with any assistance she may require to carry out her mandate.”

24th meeting

12 August 2004

[Adopted without a vote. See chap. V.]