



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/1987/20
22 January 1987

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Forty-third session
Item 12 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL
AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Summary or arbitrary executions

Report by the Special Rapporteur, Mr. S. Amos Wako, appointed
pursuant to Economic and Social Council resolution 1986/36 of
23 May 1986

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Introduction

1. The present report is submitted pursuant to Economic and Social Council resolution 1986/36 of 23 May 1986 entitled "Summary or arbitrary executions". This is the fifth report of the Special Rapporteur since he was first appointed in 1982 under Economic and Social Council resolution 1982/35.

2. In his four previous reports (E/CN.4/1983/16 and Add.1, E/CN.4/1984/29, E/CN.4/1984/17 and E/CN.4/1986/21) the Special Rapporteur dealt with a wide range of issues concerning the phenomenon of summary or arbitrary executions, as well as reporting on allegations of incidents of summary or arbitrary executions and the activities of the Special Rapporteur, including his urgent appeals to Governments. As the mandate of the Special Rapporteur has been regularly renewed by the Economic and Social Council, the Special Rapporteur has examined the phenomenon from various aspects with a view to presenting a comprehensive picture of the phenomenon of summary or arbitrary executions in the contemporary world.

3. It may be recalled that the Special Rapporteur stated in his latest report (E/CN.4/1986/21) that the international community should continue to monitor the phenomenon of summary or arbitrary executions and in particular to devise ways and means of intervening effectively in situations of imminent or threatened summary or arbitrary execution, (para. 207), and that it was necessary to develop international standards designed to ensure that investigations were conducted on all cases of suspicious death, (para. 209). This statement was endorsed by Economic and Social Council resolution 1986/36 as well as by General Assembly resolution 41/144, of 4 December 1986 entitled "Summary or arbitrary executions". The Special Rapporteur is gratified to note a new momentum now being developed in his mandate by the addition of a prescriptive phase to the on-going diagnostic approach.

4. The Special Rapporteur, aware of this new development of his mandate, has followed the general structure of his last report. The present report describes allegations of actual or imminent executions, which have been duly communicated to the Governments concerned and summarizes replies by those Governments. The Special Rapporteur then analyses, in chapter III, the phenomenon of summary or arbitrary executions on the basis of the information received and replies from the Governments concerned. Particular attention is drawn to two issues, both of which are seen at present as basic factors in incidents or situations of summary or arbitrary execution. They are the absence of investigation, prosecution and/or punishment in cases of death in suspicious circumstances, and death sentences as a result of trials without adequate safeguards to protect the right to life.

5. Furthermore in chapter III the Special Rapporteur analyses situations in a number of countries where summary or arbitrary executions were widely reported in the past and newly established Governments have publicly pledged their commitment to human rights, with a view to identifying achievements, obstacles and needs in those situations.

6. Finally, the Special Rapporteur gives conclusions and recommendations, which are based on his analysis of the information and consideration of feasible steps to be taken in the context of his mandate.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

7. During the past year the Special Rapporteur engaged in activities that fall within the sphere of his mandate as described below.

A. Consultations

8. The Special Rapporteur visited the Centre for Human Rights in July and October 1986 for consultations and again in January 1987 to finalize his report.

B. Communications

1. Request for information

9. On 16 June 1986, a note verbale was sent to Governments seeking information concerning the question of summary or arbitrary executions. A similar request was sent by a letter of the same date to United Nations bodies, specialized agencies, intergovernmental organizations, liberation movements and non-governmental organizations.

10. In the course of his present mandate the Special Rapporteur has received replies from the following Governments: Antigua and Barbuda, Bahrain, Bolivia, Chad, Denmark, Dominica, Germany, Federal Republic of, Iraq, Japan, Kuwait, Madagascar, Mali, Niger, Philippines, Poland, Sweden, Thailand, Venezuela and Yugoslavia.

11. Replies were also received from the Commission of the European Communities, the International Criminal Police Organization (INTERPOL) and the Organization of American States.

12. Replies were also received from the following non-governmental organizations in consultative status with the Economic and Social Council: Amnesty International, Baha'i International Community, Commission of the Churches on International Affairs of the World Council of Churches, International Association of Democratic Lawyers, International Association of Penal Law, International Commission of Jurists, International Committee of the Red Cross, International Confederation of Free Trade Unions, International Federation of Human Rights, Pax Romana, World Federation of Trade Unions and World Federation of United Nations Associations.

2. Allegations of summary or arbitrary executions

13. The Special Rapporteur sent letters to Governments concerning allegations of summary or arbitrary executions in their countries as follows: on 9 June 1986 to 12 Governments, 25 July 1986 to one Government, 29 October 1986 to 10 Governments, 31 October 1986 to one Government, and 11 November 1986 to one Government.

14. On 10 June 1986 letters were sent to 13 Governments which had not replied to the Special Rapporteur's letters sent in 1985 and earlier concerning allegations made with regard to their countries. In those letters the Special Rapporteur again requested information on alleged cases of summary or arbitrary executions, which had previously been transmitted to the Governments.

15. On 28 August 1986 cables were sent to 10 Governments, to which letters had been sent on 10 June 1986 and which had not replied, again inviting them to provide information on the above-mentioned alleged cases of summary or arbitrary executions.

16. On 14 October 1986 cables were sent to 12 Governments concerning alleged cases of summary or arbitrary executions which had been transmitted to those Governments earlier in 1986, inviting them to provide information thereon.

17. In 1986 the Special Rapporteur communicated to a total of 21 Governments allegations of summary or arbitrary executions reported to have taken place in their countries: Bangladesh, Brazil, Chile, Colombia, El Salvador, Ethiopia, Guatemala, India, Indonesia, Iran (Islamic Republic of), Iraq, Liberia, Nicaragua, Pakistan, Panama, Paraguay, Peru, Philippines, South Africa, Venezuela and Zimbabwe.

18. At the time of completion of the present report, replies had been received from 11 Governments, namely Bangladesh, Chile, Colombia, Guatemala, India, Indonesia, Pakistan, Paraguay, Peru, the Philippines and Venezuela.

19. In addition, a reply was received from the Government of Benin to the allegations communicated to the Government in October 1984 and in January 1986. These allegations and the Government's reply are reflected in paragraphs 72 to 75.

20. Furthermore, information was received from the Government of Sri Lanka concerning the situation and recent developments in that country.

21. These letters and the replies thereto are summarized in chapter II below. The full texts are available for consultation in the Secretariat files.

3. Visits by representatives of Governments

22. The Special Rapporteur was visited at the Centre for Human Rights, United Nations Office at Geneva, by representatives of the Governments of Afghanistan, Guatemala, India, Indonesia and Venezuela in October 1986 and/or January 1987 concerning allegations of summary or arbitrary executions which had been transmitted in 1986 or earlier.

23. In addition, on 7 January 1987 the representative of the Government of Sri Lanka visited the Special Rapporteur at the Centre for Human Rights and briefed him on the present situation in Sri Lanka and the attempts being made to resolve the crisis.

C. Urgent appeals to Governments

24. The Special Rapporteur, in the course of his mandate, received information containing allegations of imminent or threatened summary executions which appeared prima facie relevant to his mandate. In this context the Special Rapporteur addressed an urgent message by cable (by letter in the case of Chile) to the Governments concerned requesting information concerning those allegations. The Governments are: Bangladesh, Chile, Congo, Guinea Bissau, Islamic Republic of Iran, Kuwait, Lesotho, Libyan Arab Jamahiriya, Pakistan, Somalia and Suriname. Replies were received from the Governments of Bangladesh, Chile and Pakistan.

25. On 16 October 1986 cables were sent to six Governments which had not replied to the Special Rapporteur's messages sent in 1986, reiterating the request for information on the cases in question.

26. These appeals and the replies received are summarized below. The full texts are available for consultation in the Secretariat files.

Bangladesh

27. A message was sent on 26 February 1986 concerning the case of a person, reportedly under 18 years of age, who was sentenced to death on 23 June 1985 by Special Military Court in Dhaka and whose petition was later rejected. The Special Rapporteur had addressed a similar message on this case to the Government on 10 December 1985 (see E/CN.4/1986/21, paras. 26-27). The Special Rapporteur requested information on the procedures of the Special Martial Law Court against whose sentence, it was alleged, no appeal was permitted.

28. Information was subsequently received that the person was executed on 27 February 1986.

29. A message was sent on 27 June 1986 concerning the case of four persons, originally sentenced to life imprisonment in January 1986 by the Special Martial Law Court, whose sentences were subsequently augmented by the martial law authorities on 31 May 1986 to the death penalty.

30. On 4 November 1986, the Permanent Mission of Bangladesh to the United Nations Office at Geneva informed the Special Rapporteur that the Chief Martial Law Administrator had commuted the death sentences given to the four persons to life imprisonment.

31. A message was sent on 21 July 1986 concerning the case of three persons who were sentenced to death by the Special Martial Law Court and who had had their sentences confirmed by the Chief Martial Law Administrator. The Special Rapporteur inquired into the procedures of the Special Martial Law Court, in particular regarding the right to appeal to a higher tribunal which, it was alleged, was not permitted.

32. At the time of the preparation of this report, no reply to the latest message had been received from the Government of Bangladesh.

Chile

33. A message was sent by letter dated 1 October 1986 concerning the death of four persons who had been abducted by unidentified men immediately after the declaration of a state of siege on 7 September 1986. The Special Rapporteur expressed concern for the life of those persons and in general for the lack of protection of the right to life of individuals reportedly missing, and referred to similar situations in the past when individuals taken into custody in similar circumstances had eventually been found dead. The Special Rapporteur also requested information on the outcome of the investigations and measures taken to protect people's lives.

34. A reply dated 13 November 1986 was received from the Permanent Mission of Chile to the United Nations Office at Geneva. A summary of the reply is found in chapter II, paragraphs 84 to 85.

Congo

35. A message was sent on 21 August 1986 concerning the case of a person who was allegedly sentenced to death by the Cour révolutionnaire de justice de Brazzaville on 17 August 1986. It was reported that the procedures of the court did not provide for the right to appeal to a higher tribunal.

36. At the time of preparation of this report, no reply had been received from the Government of the Congo.

Guinea Bissau

37. A message was sent on 15 July 1986 concerning the case of 12 persons sentenced to death on 12 July 1986 by the Tribunal Superior Militar who were allegedly not given the right to appeal to a higher tribunal.

38. At the time of preparation of this report, no reply had been received from the Government of Guinea Bissau.

39. It was subsequently reported that six of the 12 had been executed and the other six had had their sentences commuted to life imprisonment.

Islamic Republic of Iran

40. A message was sent on 7 July 1986 concerning the alleged imminent execution of five persons at Evin prison in Tehran, without due regard to the safeguards envisaged in the International Covenant on Civil and Political Rights for the protection of the right to life. The Special Rapporteur expressed concern over the alleged execution without trial of three persons on 4 May 1986 in Tehran, another person on 9 May 1986 in Zahidan and another on 10 June 1986 in Tehran and also about the alleged abduction and killing of a person on the outskirts of Tehran. It was reported that all these persons belonged to the Baha'i faith. The Special Rapporteur requested information on these allegations and in particular on the measures taken to ensure a fair trial.

41. It was subsequently reported that a retrial of the five persons referred to above had been ordered.

42. At the time of preparation of this report, no reply had been received from the Government of the Islamic Republic of Iran.

43. A message was sent on 29 August 1986 concerning the case of a person who was allegedly facing imminent execution after having been sentenced to death in 1985 and after the sentence had been approved by the High Judicial Council. The Special Rapporteur requested information on these allegations and on the trial and its procedures which, it was stated, were not public.

44. At the time of preparation of this report, no reply had been received from the Government of the Islamic Republic of Iran.

Kuwait

45. A message was sent on 11 December 1986 concerning the case of a person allegedly sentenced to death by the State Security Court on 29 November 1986 after a trial held in camera; no appeal against the sentence was allowed. The Special Rapporteur requested information on those allegations and on the legal basis of in camera proceedings and the safeguards of the rights of the accused.

46. At the time of preparation of this report, no reply had been received from the Government of Kuwait.

Lesotho

47. A message was sent on 14 August 1986 concerning reports of activities of so-called "vigilantes" resulting in the death of innocent individuals in Lesotho, in particular the report of the death of three persons on or about 22 July 1986 in Maseru. Concern was expressed for the life of other civilians and information was requested on the precautions taken to protect persons whose lives might be in jeopardy as a result of the activities of the so-called "vigilantes" and the measures taken to control and suppress their activities. The Special Rapporteur also inquired about the circumstances in which the three named persons had died and asked whether investigations had been carried out to establish who was responsible and what action, if any, the Government proposed to take against them. It was alleged that the "vigilantes" included members of the security forces of South Africa and Lesotho.

48. At the time of preparation of this report, no reply had been received from the Government of Lesotho.

Libyan Arab Jamahiriya

49. A message was sent on 24 October 1986 concerning the case of eight persons said to be detained in Benghazi, who were allegedly facing imminent execution, possibly without trial by a tribunal. The Special Rapporteur asked for a stay of execution and inquired about the procedures that had been followed including trial and appeal.

50. At the time of preparation of this report, no reply had been received from the Government of the Libyan Arab Jamahiriya.

Pakistan

51. A message was sent on 5 March 1986 concerning the cases of four persons who were allegedly sentenced to death by the Special Military Court and whose sentences had been confirmed by the President. Two of the four were sentenced to death in February 1986 by Special Military Court No. 62 in Multan; two others were sentenced to death on 3 March 1986 by the Special Military Court in Sukkur. The Special Rapporteur inquired about these cases and in particular the procedures of the Special Military Court which, it was stated, did not provide for the right of appeal to a higher tribunal.

52. A reply was received in July 1986 from the Minister for Foreign Affairs, informing the Special Rapporteur that the four persons had been sentenced to death in accordance with the law, that they had been given a full opportunity to defend themselves, that the right of appeal against the death sentence existed under article 7 of the Martial Law (Pending Proceedings) Order, 1985, */ and that the Constitution of Pakistan also empowered the President to grant pardon, reprieve or respite and to remit, suspend or commute any sentence by any court, tribunal or other authority.

Somalia

53. A message was sent on 26 February 1986 concerning the case of a person who was allegedly sentenced to death by the National Security Court in Hargeisa in October 1984 and whose death sentence was subsequently confirmed. The Special Rapporteur requested information on the trial which, it was alleged, was of a summary nature, following which no appeal to a higher tribunal was possible.

54. At the time of preparation of this report, no reply had been received from the Government of Somalia.

55. It was subsequently reported that the person was executed in Mandera prison on or about 19 March 1986.

56. A message was sent on 4 July 1986 concerning the case of four persons who were allegedly sentenced to death by the regional section of the National Security Court in Hargeisa on 31 May 1986 after a trial which was said to have lasted only a few hours. The Special Rapporteur inquired about the allegedly summary procedures of the National Security Court in which, it was stated, defendants did not have the right to legal representation or to appeal against their sentence to a higher tribunal.

57. At the time of preparation of this report, no reply had been received from the Government of Somalia.

Suriname

58. A message was sent on 17 December 1986 concerning the deaths of a considerable number of persons during the preceding months in circumstances which indicated that they might have occurred in a summary or arbitrary manner

*/ The Special Rapporteur subsequently received information on this article which stipulates:

"1. Any person who deems himself aggrieved by the sentence passed by a military court may submit a petition to the President, if the sentence is one of death or amputation of hand...

2. On such a petition the President ... may annul the proceedings or, with or without any conditions, grant pardon or remit, reduce, commute or suspend any sentence or reject the petition..."

and as a result of action by members of the military, police or People's Militia. Eight such incidents were described. The Special Rapporteur expressed concern over the lack of protection of the right to life of individuals in general and requested information on the incidents and their investigation, including post-mortem findings, as well as on the action taken, if any, by the Government in regard to those responsible. The Special Rapporteur requested information on measures taken by the Government to prevent civilian death resulting from the action of members of the military, police or People's Militia.

59. Furthermore, the Special Rapporteur addressed a letter to the Government of Suriname on 9 January 1987, referring to his message of 17 December 1986 and his report to the Commission on the visit he had undertaken to Suriname in July 1984 at the invitation of the Government. In his letter the Special Rapporteur recalled the efforts described to him at that time, which were planned to bring about a return to democracy, and the special desire then expressed to prevent any future occurrence of summary or arbitrary executions. The Special Rapporteur expressed concern at recent developments and inquired as to the arrangements envisaged to establish a system which would protect and respect the right to life. He requested information relating to such measures and to the subject of his message of 17 December 1986.

60. The Special Rapporteur informed the Government of his availability for contacts and dialogue.

D. Joint hearings on southern Africa

61. The Special Rapporteur, together with members of the Ad Hoc Working Group of Experts on southern Africa, met in Lusaka, Zambia, for joint hearings on southern Africa from 4 to 15 August 1986. The information obtained at the joint hearings is reflected in chapter I, section C (paras. 47-48) and chapter II (paras. 149-150) and an account of the joint hearings is contained in annex I to this report.

E. Visit to Uganda

62. In addition to the foregoing, the Special Rapporteur, in the context of his mandate, visited Uganda from 17 to 20 August 1986 with the agreement of the Government.

63. It may be recalled that the Special Rapporteur had addressed letters to the Government of Uganda on 31 October 1984 and 25 July 1985 transmitting allegations of summary or arbitrary executions. These allegations were reflected in the Special Rapporteur's report to the forty-second session of the Commission on Human Rights (E/CN.4/1986/21, paras. 94-95 and 142-143).

64. Following the establishment of the Interim Government by the National Resistance Movement in January 1986, the statement of the Minister for Foreign Affairs before the Commission on Human Rights on 6 March 1986 and the announcement in May 1986 of the establishment of the Commission of Inquiry into Violation of Human Rights, the Special Rapporteur proposed on

21 July 1986 to visit Uganda with a view to following up on the allegations he had received and informing himself of the functions and the work of the Commission of Inquiry.

65. During his visit to Uganda, the Special Rapporteur met Government officials, members of the Commission of Inquiry and other individuals and visited places relevant to the subject of his mandate. The outcome of this visit is reflected in chapter III, section C (paras. 226-234) and an account of the visit to Uganda is contained in annex II to this report.

II. SITUATIONS

66. The information received by the Special Rapporteur in the course of his present mandate includes allegations of executions or deaths which may have taken place in the absence of the safeguards designed to protect the right to life embodied in various international instruments, such as the International Covenant on Civil and Political Rights (arts. 4, 6, 7, 9, 14 and 15), the Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977), the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169 of 17 December 1979), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 39/46 of 10 December 1984), and the Safeguards guaranteeing protection of the rights of those facing the death penalty adopted by the Economic and Social Council in resolution 1984/50 of 25 May 1984.

67. This information generally related to allegations of the following nature:

(a) Actual or imminent executions:

(i) Without a trial;

(ii) With a trial but without safeguards designed to protect the rights of the defendant as provided for in article 14 of the above-mentioned Covenant;

(b) Deaths which took place:

(i) As a result of torture or cruel, inhuman or degrading treatment during detention;

(ii) As a result of abuse of force by police, military or any other governmental or quasi-governmental forces;

(iii) As a result of assault by paramilitary groups under official control;

(iv) As a result of assault by groups opposing the Government or not under its control.

Bangladesh

68. On 29 October 1986 a letter was addressed to the Government of Bangladesh transmitting information alleging that during the past several years members of the indigenous tribes in the Chittagong Hill Tracts had died as a result of the action of non-tribal people in the area, undertaken at the instigation of, or condoned by, the responsible law enforcement personnel and in some cases with their direct involvement. Three such alleged incidents reported to the Special Rapporteur, during 1986, were described by way of example.

69. The Special Rapporteur referred to article 6, paragraph 1, of the International Covenant on Civil and Political Rights and, to the extent that the alleged deaths occurred as a result of acts attributable to the police and armed forces, to the United Nations Code of Conduct for Law Enforcement

Officials; he inquired about the measures taken to ensure adequate protection of the right to life, and in particular, requested detailed information on the deaths reported, including the circumstances in which they had occurred, the relevant investigations carried out and the action taken against those responsible.

70. On 26 November 1986 a reply was received from the Permanent Mission of Bangladesh to the United Nations Office at Geneva concerning the three incidents described by the Special Rapporteur to the Government of Bangladesh.

71. According to the letter the description given in the allegations of those incidents was not correct, in that they had occurred when an indigenous group attacked local settlers, killing a number of persons. In two of the three incidents, the local settlers had retaliated and violence followed. The situation had eventually been brought under control by the law enforcement authorities. In the Khagrachari-Panchari areas, which are thickly populated by both the indigenous groups and the local settlers, the security forces had not been strong enough to tackle the situation and the violence between these two groups of people had gone on for two days. It was only with great difficulty that the security forces had brought the situation under control.

Benin

72. On 31 October 1984 a letter was addressed to the Government of the People's Republic of Benin transmitting allegations concerning eight cases of death in detention at Cotonou Central Prison between mid-1983 and February 1984 and in May 1984, allegedly due to insanitary conditions in the prison and refusal of medical treatment by the prison authorities.

73 . The Special Rapporteur, referring to article 6, paragraph 1, and article 7 of the International Covenant on Civil and Political Rights and also to the Standard Minimum Rules for the Treatment of Prisoners, requested information on the allegations and in particular on the safeguards envisaged and applied to prevent deaths in detention. On 29 January 1986 the Special Rapporteur, in response to a request by the Government, communicated further information concerning the above-mentioned cases.

74. On 8 December 1986 a reply was received from the Permanent Representative of the People's Republic of Benin to the United Nations Office at Geneva, stating that the Government had conducted investigations on the eight cases, according to which two of the eight had died of vitamin deficiency and a generally bad state of health; three had died of diarrhoea following vomiting; and two had died of unidentified causes. One case could not be successfully traced. It was emphasized that the above-mentioned cases were not to be considered as deliberate violations by the State of the right to life as stipulated in the International Covenant on Civil and Political Rights.

75. It was further stated that, due to the steady increase in the prison population resulting from the sharp increase in crime, on the one hand, and the limited resources available to the prison administration, on the other, there remained much to be done in regard to the health of the detainees in prison. The authorities concerned were said to be conducting a careful study with a view to improving conditions of life and health in prisons, including projects for the construction of prison farms in every province of the country.

Brazil

76. On 29 October 1986 a letter was addressed to the Government of Brazil stating that a number of rural workers, peasants and pastoral workers had allegedly been killed by persons hired for the purpose, as occurred in preceding years (see E/CN.4/1986/21, paras. 66-67). In a number of cases of deaths, the involvement of local police was alleged. These incidents occurred in the context of land disputes in several regions of the country. According to an official report entitled "Conflitos da Terra" ("Land Conflicts") issued by the Ministry of Agrarian Reform and Development in February 1986, 261 persons were reportedly killed in 1985 in connection with land disputes. These allegedly included 188 peasants or rural workers, 14 trade-unionists, 8 Indians, 4 lawyers, 1 priest, 2 church workers and 28 others described as "landowners or those claiming to be landowners and pistoleiros (gunmen)". It was alleged that the actual number of deaths would be higher. The Ministry of Agrarian Reform and Development (MIRAD) announced on 13 June 1986, that between January and mid-June 1986 it had received reports of 125 killings in connection with disputes over landownership.

77. The Special Rapporteur therefore requested information on the measures taken by the Government to ensure adequate protection of the right to life of the individual, particularly following publication of the report of the Ministry of Agrarian Reform and Development.

78. At the time of preparation of this report, no reply had been received from the Government of Brazil.

Chile

79. On 1 October 1986, the Special Rapporteur addressed a letter to the Permanent Representative of Chile to the United Nations Office at Geneva concerning four cases of deaths which had occurred immediately after the declaration of the stage of siege on 7 September 1986.

80. On 29 October 1986 the Special Rapporteur addressed a letter to the Permanent Representative of Chile to the United Nations Office at Geneva, referring to the reports prepared by the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Chile, in particular, A/40/647 submitted to the fortieth session of the General Assembly and E/CN.4/1986/2 submitted to the forty-second session of the Commission on Human Rights. These two reports mentioned cases which allegedly concerned the right to life (A/40/647, appendix III, addendum I, pp. 28-30; E/CN.4/1986/2, chap. III. sect. A., pp. 28-46).

81. The Special Rapporteur took note that the Special Rapporteur on the situation of human rights in Chile subsequently received detailed information from the Government of Chile concerning the above-mentioned cases (A/41/523).

82. In the same letter the Special Rapporteur further referred to the report, submitted by the Special Rapporteur on the situation of human rights in Chile to the General Assembly at its forty-first session (A/41/719), which mentioned a number of other cases that allegedly affected the right to life, and to the cases mentioned in his letter of 1 October 1986.

83. The Special Rapporteur requested information on the measures taken to ensure adequate protection of the right to life and, in particular, detailed information on the deaths reported, the surrounding circumstances, the relevant investigations to establish responsibility, and the action taken against those responsible.

84. On 13 November 1986, a letter was received from the Permanent Mission of Chile to the United Nations Office at Geneva transmitting a reply and referring to information on the human rights situation in Chile, including the cases referred to above received by the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Chile, and conveying the Government's view that it was inappropriate for more than one special rapporteur of the same Commission to deal with the same situation.

85. Regarding the four persons who were abducted and later killed, referred to in the letter dated 1 October 1986, the Government of Chile reported that it had strongly condemned the practice of political crimes and had taken the necessary measures to prevent the recurrence of such cases. The Government, in keeping with the recommendation by the Interior Ministry's Advisory Committee on Human Rights, had decided to set up a special team of the civil police, acting under the direct instructions of the tribunals dealing with the respective judicial proceedings, to investigate such crimes. The investigation of the four cases was in an advanced stage and, due to the fact that they were related, it was possible that at least three of them would be dealt with in one trial. The inquiries had currently reached the pre-trial stage.

Colombia

86. On 9 June 1986 a letter was addressed to the Government of Colombia transmitting allegations concerning five cases of deaths which occurred between November 1985 and April 1986. The victims were three persons allegedly associated with the M-19 Movement, a vice-president of a peasants' association and a member of an organization of relatives of disappeared persons. The involvement of security forces was alleged in those deaths. Among the five cases, one concerned a member of the M-19 Movement, who was allegedly killed at the time of the Movement's occupation of the Supreme Court building in November 1985, after having been taken out of the Court building alive.

87. The Special Rapporteur, referring to article 6, paragraph 1, of the International Covenant on Civil and Political Rights and the United Nations Code of Conduct for Law Enforcement Officials, requested information on regulations and practices regarding the conduct of law enforcement agents and troops to ensure adequate protection of the right to life of individuals.

88. On 13 August 1986 a reply was received from the Permanent Representative of Colombia to the United Nations Office at Geneva, transmitting the report by a special investigating tribunal on the events which had taken place at the Supreme Court building in Bogota on 6 and 7 November 1985. According to the conclusions reached by the special tribunal, the group known as the "Movimiento Diecinueve de Abril" (M-19) was solely responsible for the attack and occupation of the Supreme Court building, which resulted in 88 deaths and many injuries. The special tribunal concluded that the intervention by the security forces, ordered by the President of the Republic

in order to end the occupation and rescue the hostages, was necessary and appropriate. Nevertheless, there were several isolated cases of irregularities committed by certain members of the security forces in contravention of orders given by their superiors. These cases concerned in particular the unexplained death or disappearance of six of the attackers, who had allegedly been taken from the Supreme Court building alive at the end of the military rescue operation. The special tribunal recommended that those cases be further investigated with a view to identifying those responsible.

89. With regard to the remaining four cases referred to in paragraph 86, on 13 December 1986 the Permanent Representative of Colombia transmitted information from the Office of the Prosecutor to the effect that those cases were still under investigation and a report by the Military Prosecutor concerning one of the four cases which stated that, after a preliminary inquiry by the Military Prosecutor, formal investigations with a view to disciplinary measures being taken against the military personnel allegedly involved in the death of a person had been discontinued.

90. On 29 October 1986 the Special Rapporteur addressed a letter to the Government of Colombia in which, in the light of the report of the investigation of the incident of 6 and 7 November 1985 at the Supreme Court, he requested information on what action, if any, the Government had taken against those responsible.

91. In the same letter the Special Rapporteur referred to allegations of the killing of several hundred Colombians (including over 350 in Cali) in the period January-June 1986, the perpetrators of which were alleged to be members of the regular armed forces, police and unidentified armed men. In addition, 13 cases of alleged summary or arbitrary executions, which occurred between March and April 1986, were transmitted. The involvement of security forces or of persons under the control of security forces was implied in those deaths. The victims were said to be from various political and social groups.

92. The Special Rapporteur requested detailed information on the deaths reported, including the circumstances in which they had occurred, whether any investigations had been carried out to establish responsibility and what action, if any, the Government had taken against those responsible.

93. At the time of preparation of this report, no reply had been received from the Government of Colombia to the letter of 29 October 1986.

El Salvador

94. On 9 June 1986 a letter was addressed to the Government of El Salvador transmitting the following allegations: during 1985 and the early months of 1986 alleged forced disappearances and summary or arbitrary executions of civilians continued to be reported in El Salvador; the alleged victims were mainly trade-union activists, but cases of students and workers were also reported; the abductions and killings were mostly carried out by men wearing plainclothes, suspected of belonging to "death squads", believed to consist of security personnel acting under the orders of military officers.

95. The Special Rapporteur, referring to article 6, paragraph 1, of the International Covenant on Civil and Political Rights, requested information on the safeguards, either legal or administrative, envisaged to protect the right

to life, in particular the measures taken under the law to determine the identity of the perpetrators and the procedure for bringing such persons to trial.

96. On 29 October 1986 a letter was addressed to the Government of El Salvador transmitting several new cases of alleged killings during 1986 carried out by members of the armed forces, as well as killings by paramilitary groups who were said to have been armed and assisted by members of the armed forces.

97. The Special Rapporteur, referring to article 6, paragraph 1, of the International Covenant on Civil and Political Rights and the United Nations Code of Conduct for Law Enforcement Officials, requested information on the measures taken by the Government and, in particular, detailed information on the deaths reported, including the circumstances in which they had occurred, on the relevant investigations and on the action, if any, taken by the Government against those responsible.

98. At the time of preparation of this report, no reply had been received from the Government of El Salvador.

Ethiopia

99. On 29 October 1986 a letter was addressed to the Government of Ethiopia transmitting allegations concerning executions of prisoners without a trial, including those of 15 alleged members of the Eritrean People's Liberation Front (EPLF) in January 1985 and several others in October 1985. Similarly, some 40 prisoners held for alleged links with the Oromo Liberation Front (OLF) were executed without trial on 10 and 16 February 1985.

100. The Special Rapporteur, referring to article 6, paragraph 1, and article 14 of the International Covenant on Civil and Political Rights, requested information on the legal basis upon which such executions were carried out.

101. At the time of preparation of this report, no reply had been received from the Government of Ethiopia.

Guatemala

102. On 9 June 1986 a letter was addressed to the Government of Guatemala transmitting the allegation that during the second half of 1985 reports continued to be received on cases of alleged summary or arbitrary executions in Guatemala. Most of the victims had been shot dead by unidentified men alleged to be linked to the security forces or abducted without trace. In addition, after the election of the civilian Government, in December 1985, several other cases of alleged summary or arbitrary executions had reportedly occurred.

103. The Special Rapporteur, referring to article 6, paragraph 1, of the International Covenant on Civil and Political Rights, requested information on the legal or administrative safeguards envisaged to protect the right to life, in particular the measures taken under the law to determine the identity of the perpetrators and the procedure for bringing such persons to trial.

104. On 28 October 1986 the Permanent Representative of Guatemala to the United Nations Office at Geneva handed the Special Rapporteur a copy of the Supreme Court decision of 30 May 1986 designating an investigating judge to investigate cases of missing persons and habeas corpus petitions filed by non-governmental groups on behalf of the missing persons, as well as a number of decisions and actions taken by the judiciary and a report of the judicial investigation. The Special Rapporteur was also provided with the text of the Law of the Congressional Commission on Human Rights.

105. The Permanent Representative also explained the difficulties encountered by his Government, for example:

(a) Lack of co-operation from families of missing persons or persons allegedly killed, for fear of reprisals if they give any information to the authorities, including the investigating judges. The judge therefore lacks the information to enable him to take the necessary action;

(b) When the new Government took over, the police force had only 20 patrol cars in running order throughout the country. Over 200 patrol cars were not in running order. The police force therefore lacked the capacity, the means and the organization to investigate all cases of killings.

(c) Former members of the armed forces, belonging to either the extreme right or the extreme left, are at large and want to destabilize the Government.

106. During the same meeting the Special Rapporteur transmitted to the Permanent Representative a list of 47 additional cases of alleged killing, which reportedly occurred between March and April 1986 and requested information on those cases. The Permanent Representative was to communicate that information to his Government for further investigation.

India

107. On 9 June 1986 a letter was addressed to the Government of India stating that during 1985 several persons were reported to have died while in police custody in various states. It was further alleged that the authorities had not conducted an inquest on some of those cases. In addition, in nearly all cases, there had been insufficient evidence to prosecute and convict the police officials responsible. It was further reported that the Supreme Court of India had drawn attention to the lack of effective prosecution of police officers responsible in cases of death in custody, which had led to a proposal made on 14 June 1985 by the Law Commission of India to amend the Evidence Act.

108. The Special Rapporteur, referring to article 7 of the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the United Nations Code of Conduct for Law Enforcement Officials, requested information on the safeguards envisaged and applied to prevent deaths in detention, in particular, on the measures taken under the law to determine the identity of the perpetrators and the procedure for bringing such persons to trial.

109. On 30 October 1986 a representative of the Government of India visited the Special Rapporteur and handed him a note concerning the alleged deaths in custody. According to the note, a police officer is authorized, under law, to

use only the minimum force required to deal with a particular situation. The law does not grant power to cause the death of a person in the course of arrest by a police officer, even if he is resisting or evading arrest, except in the case of a person accused of an offence punishable by death or life-imprisonment. Any illegal use of force is subject to inquiry and severe punishment if the police officer is found responsible. It was further stated that, in the case of death in police custody, an independent inquiry by a magistrate into the cause of death was required (sect. 176 of the Indian Code of Criminal Procedure). In that regard the National Police Commission was said to have recommended, that a mandatory judicial inquiry be carried out in respect of certain categories of complaints, including (i) death or grievous injury caused while in police custody and (ii) deaths of two or more persons arising from police action in the dispersal of an unlawful assembly.

110. The note also provided information on one of the cases transmitted by the Special Rapporteur, according to which inquest proceedings on the death in police custody had concluded that there was no indication of involvement of the investigation agency. An independent inquiry by a magistrate was said to have supported that conclusion.

111. On 8 January 1987 representatives of the Government of India again visited the Special Rapporteur and handed him a note concerning another of the cases transmitted by the Special Rapporteur, concerning a person who was shot by the police while offering armed resistance to arrest and after having injured three police officers, two of whom died later. The person died six days later in hospital after an operation.

Indonesia

112. On 9 June 1986 a letter was addressed to the Government of Indonesia about several persons who were alleged to have been killed while in the custody of the police in 1985, after being arrested in connection with criminal offences.

113. The Special Rapporteur, referring to article 7 of the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the United Nations Code of Conduct for Law Enforcement Officials, requested information on the safeguards envisaged and applied to prevent deaths in detention, in particular, on the measures taken under the law to determine the identity of the perpetrators and the procedure for bringing them to trial.

114. On 30 October 1986 the Permanent Representative of Indonesia to the United Nations Office at Geneva visited the Special Rapporteur and handed him a note stating that, in one case, three persons had been killed while offering armed resistance to arrest and after a warning shot had been fired; with regard to the second incident, the person had died as a result of the serious injury inflicted upon him by an angry mob.

Iran (Islamic Republic of)

115. On 9 June 1986 a letter was addressed to the Government of the Islamic Republic of Iran stating that several hundred persons had been executed in various areas of the country during the second half of 1985 and early 1986; many of the executions were said to have been carried out in secret, and the

perpetrators included prison personnel and "Pasdaran" (revolutionary guards). Over 300 cases of alleged summary or arbitrary executions, as reported to the Special Rapporteur, were described as well as other instances of summary killings.

116. The Special Rapporteur, referring to articles 6, paragraph 1, and 14 of the International Covenant on Civil and Political Rights, requested information on the legal basis upon which executions were carried out.

117. At the time of preparation of this report, no reply had been received from the Government of the Islamic Republic of Iran.

Iraq

118. On 29 October 1986 a letter was addressed to the Government of Iraq stating that, in September and October 1985, in northern Iraq approximately 200 persons said to be Kurds had been killed; some were said to have been executed without trial, others killed during demonstrations and others to have died as a result of torture by security forces. Furthermore, during 1986, two executions allegedly took place, also in northern Iraq.

119. The Special Rapporteur, referring to articles 6, paragraphs 1, 7 and 14 of the International Covenant on Civil and Political Rights and the United Nations Code of Conduct for Law Enforcement Officials, requested detailed information on the deaths reported, including the circumstances in which they had occurred, whether any investigations had been carried out to establish responsibility and what action, if any, the Government had taken against those responsible.

120. At the time of preparation of this report, no reply had been received from the Government of Iraq.

Liberia

121. On 9 June 1986, a letter was addressed to the Government of Liberia referring to the death of some 600 persons killed by Government forces without legal proceedings following an attempted coup d'état. The victims were mostly innocent civilians but included some military. It was alleged that the killings had in some cases been accompanied by acts of savage brutality, including castration, mutilation and dismemberment. Among the civilian victims, it was alleged that Charles Gbenyan, Chief Editor of the State Television Station, had been killed at the Presidential Palace in Monrovia.

122. The Special Rapporteur, referring to article 6, paragraph 1, of the International Covenant on Civil and Political Rights and the United Nations Code of Conduct for Law Enforcement Officials, requested information on regulations and practices regarding the conduct of law enforcement agents and troops including conduct during times of emergency, to ensure adequate protection of the right to life of individuals.

123. At the time of preparation of this report, no reply had been received from the Government of Liberia.

Nicaragua

124. On 9 June 1986 a letter was addressed to the Government of Nicaragua referring to the case of a farmer, who had been arrested at his home by the police together with a relative in November 1985, and who had been found dead shortly thereafter in the vicinity.

125. The Special Rapporteur, referring to article 6, paragraph 1, of the International Covenant on Civil and Political Rights and the United Nations Code of Conduct for Law Enforcement Officials, requested information on regulations and practices regarding the conduct of law enforcement agents and troops to ensure adequate protection of the right to life of individuals.

126. At the time of preparation of this report, no reply had been received from the Government of Nicaragua.

Pakistan

127. On 9 June 1986 a letter was addressed to the Government of Pakistan transmitting allegations that, since December 1985, a number of persons had been sentenced to death by special military courts in various parts of the country. It was alleged that the procedures of the court had not provided certain legal safeguards to protect the defendants, such as the right to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing and, in particular, the right to appeal to a higher court. Furthermore, pre-trial investigations by the police and the prosecuting authorities were said to have been biased. Thirty cases of death sentences by the Special Military Court were given by way of illustration.

128. The Special Rapporteur, referring to article 14, paragraphs 1, 3 (b) and (g) and 5, of the International Covenant on Civil and Political Rights, requested information on these allegations.

129. On 16 October 1986 a reply was received from the Permanent Mission of Pakistan to the United Nations Office at Geneva denying that, in some cases tried by the Military Courts, the safeguards in question had not functioned adequately or had not been provided by the procedures of the court. In particular it was pointed out that the decisions of the Military Courts at different levels were subject to review by qualified legal officers, and that sentences handed down by the Military Court were subject to petition to the Provincial Governor or to the Head of State. It was further stated that the Military Court consisted of three members, including a civilian magistrate and that a death sentence could be given only with the unanimous agreement of the three members of the Court. Martial Law had been lifted on 30 December 1985, and the Military Courts had been abolished at that time; cases pending before those Courts had been transferred to the ordinary criminal courts. The reply gave details in regard to the cases transmitted by the Special Rapporteur, most of which were the subject of petitions for clemency.

Panama

130. On 9 June 1986 a letter was addressed to the Government of Panama referring to the case of a former Vice-Minister of Health, who had been detained on 13 September 1985 in front of numerous witnesses by members of the

Panamanian security forces, as he crossed the border from Costa Rica to Panama, and whose decapitated body, bearing marks of torture, was found in Costa Rica, just over the border from Panama, a few days later.

131. The Special Rapporteur, referring to article 6, paragraph 1, of the International Covenant on Civil and Political Rights and the United Nations Code of Conduct for Law Enforcement Officials, requested information on regulations and practices regarding the conduct of law enforcement agents and troops to ensure adequate protection of the right to life of individuals.

132. At the time of preparation of this report, no reply had been received from the Government of Panama.

Paraguay

133. On 29 October 1986 a letter was addressed to the Government of Paraguay referring to the case, which occurred in April 1986, of a student, who died after having been beaten by men in plain clothes outside the Estado Mayor (Army High Command) and the Regimiento Escolta Presidencial (Presidential Guard Regiment) in Asuncion. Police reports have attributed the death to injuries sustained in a road accident; however, a preliminary autopsy revealed evidence of torture and a 22-calibre bullet wound in the head.

134. The Special Rapporteur, referring to article 6, paragraph 1, of the International Covenant on Civil and Political Rights, requested detailed information on the case, including the circumstances in which this death occurred, whether any investigation had been carried out to establish responsibility and what action, if any, the Government had taken against those responsible.

135. On 5 December 1986 a reply was received from the Permanent Representative of Paraguay to the United Nations Office at Geneva explaining that the case was under judicial investigation and that further information would be communicated as it became available.

Peru

136. On 9 June 1986 a letter was addressed to the Government of Peru stating that a military unit had killed 63 persons, including 35 children, in the towns of Umaru and Bellavista, on 27 August 1985, after forcibly removing them from their homes. They were buried in mass graves, which had been traced by a parliamentary fact-finding Commission whose report had been made available to the Special Rapporteur.

137. The Special Rapporteur, referring to article 6, paragraph 1, of the International Covenant on Civil and Political Rights and the United Nations Code of Conduct for Law Enforcement Officials, requested information on regulations and practices regarding the conduct of law enforcement agents and troops to ensure adequate protection of the right to life of individuals.

138. On 5 September 1986 a reply was received from the Permanent Representative of Peru stating that charges had been filed with the Examining Magistrate of Cangallo against the Military and Political Chief of the

Emergency Sub-Zone, stationed in Cangallo, for offences against the life, person and health (homicide) of settlers in Umaru, Bellavista and neighbouring areas and that a full inquiry was being undertaken.

139. On 10 December 1986 a further reply was received from the Permanent Representative of Peru, transmitting information, as requested, on existing rules governing the conduct of members of the forces and law enforcement agencies.

140. The Permanent Mission of Peru to the United Nations Office at Geneva also sent several letters to the Special Rapporteur transmitting communiqués and statements containing information on developments concerning the events that took place in the prisons of Frontón, Lurigancho and Santa Bárbara, in Lima on 18 and 19 June 1986, as a result of a prison mutiny and subsequent intervention of the armed forces, resulting in the death of some 200 persons. In view of the allegation that excessive force might have been used in quelling the mutiny, the Government had ordered the Armed Forces Joint Command to instruct the military courts to conduct an investigation. The Legislature and the Government Attorney were also requested to investigate the events. The President of the Republic said, in a statement on 24 June 1986, that he had given instructions for commanders, officers and troops of the Republican Guard who had killed prisoners after their surrender to be imprisoned and brought to trial. It was subsequently reported that 15 officers and 80 soldiers of the Republican Guard had been detained pending trial.

141. The Permanent Mission of Peru to the United Nations Office at Geneva also informed the Special Rapporteur of two decisions by the Government, dated 6 September 1986, abolishing the Commission of Peace and establishing the National Council of Human Rights.

142. On 22 December 1986, the Permanent Representative of Peru transmitted Ministerial Decision No. 320.1-86JUS, issued by the Minister of Justice on 5 December 1986, establishing the Regulations of Organization and Functions of the National Council of Human Rights.

143. Furthermore, on 11 November 1986 a letter was addressed to the Government of Peru referring to the killing on 17 September 1986 of 11 campesinos and two unidentified persons, presumably militants from Sendero Luminoso who were alleged to have been killed by "sinchis" (members of the anti-terrorist unit of the Guardia Civil).

144. The Special Rapporteur, referring to article 6, paragraph 1, of the International Covenant on Civil and Political Rights and the United Nations Code of Conduct for Law Enforcement Officials, requested detailed information on the deaths reported, including the circumstances in which they had occurred, whether any investigations had been carried out to establish responsibility and what action, if any, the Government had taken against those responsible.

145. At the time of preparation of this report, no reply had been received from the Government of Peru.

Philippines

146. On 9 June 1986 a letter was addressed to the Government of the Philippines stating that in 1985 over 700 persons were reported to have

been killed by military and paramilitary groups under the command of the regular army in various parts of the Philippines, and, in particular, on the island of Mindanao. The victims were said to come from to a wide range of backgrounds and were either summarily shot dead or found dead after having been arrested or abducted.

147. The Special Rapporteur, referring to article 6, paragraph 1, of the International Covenant on Civil and Political Rights and the United Nations Code of Conduct for Law Enforcement Officials, requested information on regulations and practices regarding the conduct of law enforcement agents and troops to ensure adequate protection of the right to life of individuals.

148. On 14 November 1986 a reply was received from the Permanent Mission of the Philippines to the United Nations Office at Geneva stating that a Presidential Committee on Human Rights (PCHR), established in May 1986, had examined the cases transmitted by the Special Rapporteur, a number of which were before the Committee. An additional 96 cases were provided by the Committee, which had created fact-finding teams to investigate allegations of summary or arbitrary executions and the President had issued an order regulating the training and education of law enforcement personnel on the subject of human rights. The Special Rapporteur was informed that the results of the investigations as well as further measures for upholding human rights would be furnished to him as soon as they were available.

South Africa

149. On 25 July 1986 a letter was addressed to the Government of South Africa referring to the large number of deaths that were reported in 1985 and in the first half of 1986, mainly in the black townships. The letter stressed the apparent escalation in the number of deaths, in particular after the declaration of the state of emergency on 12 June 1986 when numerous deaths were attributed to "unrest-related incidents". Moreover a considerable proportion of these deaths had occurred during the state of emergency between 20 July 1985 and 7 March 1986. The deaths were due to a number of causes, but were mainly the result of action by security forces, clashes between rival groups of the black population, shooting during demonstrations and arbitrary attacks, such as beating, petrol-bomb attacks on houses and "necklacing" by armed groups of so-called "vigilantes" and by unorganized mobs. The letter stated that 41 per cent of the deaths in May 1986 were allegedly by the result of violence between black groups and 22 per cent were allegedly due to the use of force by security forces. Reference was made to "unrest" in black townships, such as Alexandra in February 1986 and Crossroads at the end of May/beginning of June 1986; 22 persons were reported to have died in Alexandra and 44 deaths were reported at Crossroads. In this context, reference was made to activities of so-called "vigilantes" who allegedly enjoyed the support or acquiescence of the security forces, involving attacks on houses belonging to anti-apartheid activists and "necklacing".

150. On 31 October 1986 another letter was addressed to the Government of South Africa in which the Special Rapporteur, referring to his letter of 25 July 1986, stated that information had continued to reach him of further instances resulting in the death of several persons. By the same letter, the Special Rapporteur transmitted a number of allegations and reiterated his request for information on the measures taken by the Government to ensure adequate protection of the right to life of the individual. The letter stated

that, from the declaration of the state of emergency on 12 June until the end of October 1986, over 300 persons had died in numerous incidents of unrest in black townships as a result of clashes between tribal factions and intervention by security forces, such as the one in Soweto on 26/27 August 1986 where 21 persons had died when the authorities had tried to evict tenants who had organized a rent boycott.

151. The Special Rapporteur requested detailed information on the deaths reported, including the circumstances in which they had occurred, whether any investigations had been carried out to establish responsibility and what action, if any, the Government had taken against those responsible.

152. In his letters, the Special Rapporteur referred to regulation 16 of the Regulations in terms of the Public Safety Act, 1953, which grants immunity to officials for "any act in good faith ... ordered ... or performed by any person in the carrying out of his duties or the exercise of his powers or the performance of his functions"; regulation 3 which empowers a member of a Force to make arrests without a warrant and to detain persons incommunicado for prolonged periods; regulation 10 which prohibits "any subversive statement"; as well as subsequent orders to prohibit free reporting of the media on incidents of unrest. Special attention was drawn to two bills which were awaiting enactment, namely the Public Safety Amendment Act and the Internal Security Amendment Act.

153. The Special Rapporteur requested detailed information on the deaths reported, including the circumstances in which they had occurred, whether any investigations had been carried out to establish responsibility and what action, if any, the Government had taken against those responsible.

154. At the time of preparation of this report, no reply had been received from the Government of South Africa.

Sri Lanka

155. On 7 January 1987 the representative of Sri Lanka visited the Special Rapporteur and handed him an aide-mémoire on the continuing situation of civil strife, in which several civilians were killed by either the security forces or armed opposition groups, and on the recent developments in Sri Lanka.

156. According to the aide-mémoire, although negotiations for a political solution had been held between the Government and Tamil groups through the good offices of the Government of India, no agreement had been reached. It was also stated that a Commission for the Elimination of Discrimination and Monitoring of Fundamental Rights had been established to complement existing institutions, such as the Supreme Court and the ombudsman, in ensuring redress for violations of fundamental rights in a less formal manner. To carry out its functions of investigation of alleged discriminatory acts and of complaint handling and conciliation in relation to discriminatory acts, the Commission had been vested with the power to issue summonses and receive evidence. The Commission was also entrusted with taking such action as might be directed by the Supreme Court on any matter relating to a petition filed before the Supreme Court, and tracing the whereabouts of missing persons. Furthermore the aide-mémoire described "terrorist violence", which was stated to have claimed the lives of 221 members of the security forces and 638 civilians during the period from 1 January to 27 November 1986. It also stated that, under such

circumstances, inaccurate or false allegations of killings and disappearances were made against the Government. Finally it stressed that, in Sri Lanka the domestic judicial process was available to seek legal redress, including habeas corpus proceedings.

157. In addition, the following documents were attached to the aide-mémoire: the statement of the President of Sri Lanka to the Political Parties' Conference on 25 June 1986, announcing proposals for the devolution of power to Provincial Councils; an explanatory note on the Commission for the Elimination of Discrimination and Monitoring of Fundamental Rights; and the inquest report of 22 January 1986 concerning the death of nine persons on 5 January 1985 at Vankalai Church premises in Mannar.

158. During the visit the Special Rapporteur inquired about incidents of killing by security forces which allegedly took place in 1986, in particular an incident in which 12 passengers at the Kilinochchi railway station were killed on 25 January 1986 and another incident in which some 60 persons were killed at Udumankulam, Amparai District, on 19 February 1986.

159. On 9 January 1987 the Special Rapporteur received a reply providing details of what happened regarding the two incidents. The Special Rapporteur was informed that the findings of the High Court and the Attorney General regarding the two incidents would be conveyed to him as soon as possible.

Venezuela

160. On 29 October 1986 a letter was addressed to the Government of Venezuela stating that the Special Rapporteur had received information according to which, on 8 May 1986, members of the security forces had killed nine civilians near the village of Yumare, state of Yaracuy; whereas it was originally reported that these persons had died during a confrontation with the security forces, it was subsequently alleged, on the basis of certain indications, that the victims had been shot dead without showing any resistance to the security personnel. The matter was being handled by the military courts.

161. The Special Rapporteur, referring to article 6, paragraph 1, of the International Covenant on Civil and Political Rights and the United Nations Code of Conduct for Law Enforcement Officials, requested detailed information on the deaths reported, including the circumstances in which they had occurred, whether any investigations had been carried out to establish responsibility and what action, if any, the Government had taken against those responsible, as well as any further developments since the case had been transferred to military jurisdiction.

162. On 22 December 1986, the Permanent Representative a.i. of Venezuela to the United Nations Office at Geneva transmitted his Government's reply, reaffirming its absolute respect for the right to life and recalling the constitutional protection of that right. The reply explained that the allegations transmitted by the Special Rapporteur reflected incidents that had occurred as a result of the activities of armed groups, resulting in the deaths reported by the Special Rapporteur and serious injury to the commander of the security forces involved. Subsequent discoveries of weapons, military material and other evidence had confirmed political ties between the group concerned and similar groups in Colombia. The matter had been given wide publicity as had the investigation subsequently conducted by the appropriate

executive authorities. The Government was convinced that the appropriate constitutional principles and legal safeguards had been observed in the matter.

163. On 9 January 1987 the Permanent Representative of Venezuela to the United Nations Office at Geneva visited the Special Rapporteur concerning the alleged incident described in paragraph 160. The Special Rapporteur, expressing his appreciation for the Government's reply, further requested information on the current status of the investigation by the judicial authorities of the above-mentioned incident and also on the machinery and rules of procedure for such an investigation.

Zimbabwe

164. On 29 October 1986 a letter was addressed to the Government of Zimbabwe concerning a number of alleged cases of death in detention as a result of torture and giving details of three such cases.

165. The Special Rapporteur, referring to article 7 of the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the United Nations Code of Conduct for Law Enforcement Officials, requested information on measures taken by the Government to ensure adequate protection of the right to life of the individual, in particular detailed information on the deaths reported, including the circumstances in which they had occurred, whether any investigations had been carried out to establish responsibility and what action, if any, the Government had taken against those responsible.

166. At the time of preparation of this report, no reply had been received from the Government of Zimbabwe.

III. ANALYSIS OF PHENOMENA

167. In his last report (E/CN.4/1986/21, chap. III), the Special Rapporteur described three particular types of situation in which summary or arbitrary executions were reported to have taken place most frequently, and called for particular attention to these "acute phenomena".

168. These three types of situation were: (a) killings in situations of internal armed conflict; (b) killings by excessive or illegal use of force by law enforcement agents; and (c) deaths in custody.

169. The information received by the Special Rapporteur during the period covered by his present mandate indicates that these three types of situation continue to exist to an alarming extent, and he therefore wishes to reiterate what he said earlier on that subject.

170. In the present report, he further analyses two issues which form an essential part of the phenomenon of summary or arbitrary executions and which have emerged upon examination of the allegations received by the Special Rapporteur. They are: (a) the absence of investigation, prosecution and/or punishment in cases of death in suspicious circumstances; and (b) death sentences passed after a trial without adequate safeguards to protect the right to life. Furthermore, he also analyses the situation in a number of countries where newly established Governments have publicly pledged their commitment to human rights.

A. Absence of investigation, prosecution and/or punishment in cases of death in suspicious circumstances

171. In his last report (E/CN.4/1986/21, para. 209), the Special Rapporteur stated that "one of the ways in which Governments can show that they want this abhorrent phenomenon of arbitrary or summary executions eliminated is by investigating, holding inquests, prosecuting and punishing those found guilty." In carrying out his current mandate, therefore, he has made a point of linking the allegations received to the relevant provisions of the international instruments concerned and specifically requesting information on the measures taken to investigate and establish responsibility for the alleged death. Where national legislation was the subject of the allegations received, information has been requested on its consistency with the fundamental national law and/or international instruments.

172. Most countries have legal, judicial and administrative systems for investigating the cause of death in unnatural, unusual or suspicious circumstances. In some countries whenever an unnatural death occurs, the law requires that a report be made to the nearest coroner. In other countries an autopsy is ordered by the examining magistrate for the purpose of determining the cause of death and prosecuting the culprits. In some countries, after the initial investigation by the police, the magistrate may hold an inquest and, if he is of the opinion that there is prima facie evidence to hold a person responsible for the death, may recommend that such a person be prosecuted. In all countries murder is a penal offence and anyone who has committed murder may be charged and convicted.

173. In cases where an ordinary civilian was responsible for such deaths, the foregoing legal and judicial procedures have been used, the circumstances have

been investigated, an autopsy carried out and those found responsible for the death have been tried, convicted and punished in accordance with the law.

174. However, where death was caused by the police, the army or other law enforcement agencies or persons acting under their protection, such investigations have been the exception rather than the rule. Governments have been noticeably reluctant to carry out investigations in such circumstances, despite the availability of witnesses, and to punish the offenders, as the examples given in the following paragraphs will show (see also E/CN.4/1983/16, paras. 224 and 230 (4)). This has been due either to lack of the political will or the capacity to investigate such deaths, or to the fact that such deaths have been carried out pursuant to the policy of the Government or with its express or implied permission or approval.

175. Where the military or law enforcement authorities reported that persons were killed in confrontation between government forces and armed opposition groups, such reports were, in some cases, accepted without further question or investigation.

176. In cases of death caused by excessive or illegal use of force by law enforcement officials or by the military authorities during arrest or detention, the explanation often given by the authorities concerned was that the criminal suspects were shot while trying to escape or when resisting arrest, or in armed clashes in which law enforcement officials acted in self-defence, or that persons in the custody of the police or military authorities committed suicide or died of a sudden illness. Such explanations were often accepted without further investigation even when they were not supported by evidence, including autopsy reports. In cases where there was an investigation, it was often carried out by the authorities to whom those alleged to be responsible for such deaths were answerable.

177. It was not uncommon that autopsy or inquest proceedings were not held. In cases where an autopsy was performed, the medical personnel in charge of the autopsy were sometimes not protected against threat or pressure, which made it all the more difficult for them to submit an objective and comprehensive report. In fact there are several cases in which there was independent evidence that the deceased had been severely tortured prior to his death, but the autopsy or post-mortem report made no reference to the marks of torture on the body.

178. In a number of countries, the investigating body, which was given an independent or quasi-independent status from the other governmental authorities, including the military or law enforcement authorities, did not, in reality, secure its independence, or was prevented from carrying out a thorough, independent investigation and prosecution.

179. In several other countries the Judiciary, whether civil or military, in charge of directing the investigation, was not free from political pressure or influence. The decisions of investigating judges who conducted inquiries into cases of death were not sustained by higher courts, allegedly because of political pressure.

180. In this context reference is made to the Special Rapporteur's last report, in which he stated that there was a need to develop international standards designed to ensure that investigations were conducted into all cases

of suspicious death and in particular those at the hands of the law enforcement agencies in all situations (E/CN.4/1986/21, para. 209). Reference is also made to Economic and Social Council resolution 1986/36 on summary or arbitrary executions, in paragraph 7 of which the Council took note of "the need to develop international standards designed to ensure effective legislation and other domestic measures so that proper investigations are conducted by appropriate authorities into all cases of suspicious death, including provisions for adequate autopsy" and to paragraph 8 of that resolution in which the Special Rapporteur was invited to receive information from appropriate United Nations agencies and other international organizations and to examine the elements to be included in such standards.

181. The Special Rapporteur is pleased to note that he has already received suggestions concerning the elements to be included in such standards, and although they are still under study and examination and it is too early to elaborate on them, it is already clear that investigations to determine the cause and manner of death should be:

- (a) Carried out immediately following the discovery of such a death;
- (b) Carried out by an independent person(s) or authority whose independence is guaranteed and protected from intimidation and pressure;
- (c) Thorough; hence the person(s) or authority investigating should be given the necessary powers and assistance to ensure that this is so;
- (d) Impartial and effective;

Furthermore, the results of the investigation and autopsy should be public documents accessible to members of the family of the deceased and the public.

B. Death sentences passed after a trial without adequate safeguards to protect the right to life

182. One of the persistent patterns of summary or arbitrary executions has been the execution of those sentenced to death after a trial which did not provide adequate safeguards to protect the right to life of the individual. As in previous years, the Special Rapporteur received information on cases of such executions, both actual and imminent.

183. Those safeguards designed to protect the rights of individuals on trial are set out in article 14 of the International Covenant on Civil and Political Rights; they include the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, the right to be presumed innocent until proved guilty, the right to be informed of the charge against oneself, the right to have adequate time and facilities for the preparation of one's defence and to communicate with counsel of one's own choosing, the right to have legal assistance, the right to examine, or have examined, the witnesses against one, the right not to be compelled to testify against oneself or to confess guilt, the right to one's conviction and sentence being reviewed by a higher tribunal according to law and the right not to be tried or punished again for an offence for which one has been finally convicted or acquitted.

184. In this regard, reference is made to the safeguards guaranteeing protection of the rights of those facing the death penalty, contained in the annex to Economic and Social Council resolution 1984/50, paragraph 5 of which reads as follows:

"Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings."

185. In view of the fact that the standards set forth in article 14 of the International Covenant on Civil and Political Rights are reflected in the overwhelming majority of national legislations, are referred to and accepted in numerous resolutions and declarations of international bodies, and have been specifically accepted by a substantial majority of the international community through ratification of the Covenant, they have acquired the character of customary international law binding on all States whether or not they have ratified the Covenant.

186. According to information received, it was often special tribunals, established outside the normal judiciary system, that were alleged to have sentenced persons to death in a trial whose procedures did not guarantee the rights of the accused as described above. The special tribunals included State security courts, revolutionary courts, (special) martial law courts and (special) military tribunals.

187. The subject of special tribunals in general has already been dealt with in the Special Rapporteur's previous reports (for example, E/CN.4/1984/29, para. 130; E/CN.4/1985/17, paras. 41-45).

188. In the present report, the Special Rapporteur wishes to refer, in particular, to the question of the right to appeal and the right to seek pardon or clemency. In a number of countries, there has been a remarkable confusion of these two rights, more so in cases which are heard outside the normal judicial systems and come before special tribunals or revolutionary courts. In a number of countries, the right to seek clemency from the Head of State or Council of State after being sentenced to death by a trial court or tribunal has been taken as an appeal against the death sentence or its equivalent.

189. In yet another situation, the Head of State has to confirm the death sentence passed by a tribunal before it is carried out. The same Head of State also has the right to grant pardon, remit, suspend or commute sentence after he has exercised his right to confirm the death sentence. It has therefore been argued that, when the Head of State is exercising his right to confirm a death sentence, he is acting as an appellate tribunal and that articles 14, paragraph 5, and 6, paragraph 4, of the Covenant have thus been complied with. In the view of the Special Rapporteur, this is wrong.

190. Article 14, paragraph 5 of the International Covenant on Civil and Political Rights provides that "everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law".

191. The safeguards approved by the Economic and Social Council in resolution 1984/50 state in paragraph 6 that "anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory".

192. In the great majority of countries the right to appeal to a higher tribunal is recognized in criminal court procedures. The purpose of the appellate system is to avoid and correct any error, whether substantial or procedural, either on points of fact or law, which might occur in the process of reaching a final judgement by the trial court in order to ensure fairness and impartiality of the judgement and the administration of justice. In this system the higher tribunal may confirm, reverse or modify the judgement of the lower court, or may even order a new trial. In cases involving the death penalty the appellate system is of vital importance because of the nature of the penalty.

193. In accordance with article 14, paragraph 5, of the Covenant, a sentence must be reviewed by a higher tribunal. This means that such a review cannot be done by the same court as handed down the original sentence. It also means that the review is not to be done by the executive branch of the Government, including martial law authorities. The higher tribunal must be one established under the judicial arm of the Government, enjoying an independent status from the executive branch and manned by competent and impartial persons. The experience of nations has proved that this system of judicial review, when properly maintained and combined with the independence of the judiciary, is the best way to ensure a fair and impartial application of the law and to keep to a minimum any interference and pressure from the political and/or security side.

194. Such judicial review is not to be confused with the system of pardon or commutation of sentence, including executive review.

195. Article 6, paragraph 4, of the Covenant provides that "anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases."

196. Once the death sentence is confirmed by the highest court, it may be submitted, upon a petition for pardon or commutation, for review by the executive authority vested with the power of pardon or commutation of sentence. A pardon is an absolution of guilt, excusing a convicted person from the penalty which has been imposed on him. Commutation of sentence is a reduction of such penalty. Both are acts of clemency by the executive, which often reflect considerations of mercy or even political expediency.

197. The right to appeal to a higher tribunal and the right to seek pardon are two separate and distinct rights. As the Human Rights Committee established under the International Covenant on Civil and Political Rights has stated in paragraph 7 of its general comment 6 (16) on article 6 of the Covenant 1/ concerning the death penalty,:

"The procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the

right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the sentence."

C. Situations of restored or new democracies

198. During the past several years a number of countries where summary or arbitrary executions had been widely alleged have gone through significant political changes. Newly-established Governments in several countries have publicly acknowledged the existence of serious human rights problems under the previous governments and pledged their commitment to human rights. In some countries the new Government has initiated investigations of human rights violations committed under the previous Government. In other countries a commission has been established by either the Legislature or the Executive to serve as a consultative body to review, recommend, advise and co-ordinate human rights policies in general or propose legislation on human rights with a view to preventing a recurrence of serious violations of human rights.

199. In the following paragraphs different types of arrangements in four countries, namely Guatemala, Peru, the Philippines and Uganda, are described. In this connection, a special reference must be made to Argentina, which set up a commission to investigate the large number of disappearances in that country and thus set the trend for the new developments that later materialized in other countries.

200. In December 1983 in Argentina the newly-elected President ordered the trial by the Supreme Council of the Armed Forces of the nine members of the three military juntas that had ruled the country between 1976 and 1983, during which period 6,000 to 9,000 people disappeared, as well as of other members of the military who were charged with involvement in the anti-subversive operations.

201. The Government also established, by Decree No. 187/83 of 15 December 1983, the National Commission on the Disappearance of Persons. The mandate of the Commission was to receive complaints and evidence of disappearances and transmit them to the courts if they related to the commission of an offence. The Commission was empowered to investigate the fate or whereabouts of missing persons. The investigating powers included that of requesting information from official institutions, which were obliged to provide it under penalty of law, and also that of entering official and military premises to make inquiries concerning disappeared persons.

202. The Commission had 11 members appointed by the Government from all walks of life and was assisted by five secretariats in Buenos Aires and four delegations in other places in the country.

203. The mandate of the Commission was originally for six months but was extended to nine months. It presented a final report to the President of the Republic on 20 September 1984.

204. Despite the almost complete absence of collaboration by the military authorities, the Commission collected 8,961 cases of missing persons during its mandate, it gathered evidence from coroners and from the files in morgues, mortuaries and crematoria and finally filed 80 cases before the courts concerning 1,091 individuals.

205. By Decree No. 3090 of September 1984, the Sub-Secretariat for Human Rights was created within the Ministry of the Interior, which was to be in charge of human rights matters, including disappearances.

206. In October 1984 the National Court of Appeals for Federal Criminal and Correctional Cases decided to take over the proceedings from the Supreme Council of the Armed Forces concerning the cases of the nine military leaders. In December 1985 the Court delivered its verdict. Two of the nine were found guilty of homicide, illegal detention and other human rights violations and were sentenced to life imprisonment; three were sentenced to imprisonment ranging from 4 1/2 to 17 years and the remaining four were acquitted.

207. Trials of others who were indicted for their involvement in the disappearances continued during 1986.

208. During the process of investigation, prosecution and trials, the Government used existing rules of law and procedures rather than laws of exception or ex post facto legislation.

Guatemala

209. In Guatemala, the Congressional Commission on Human Rights and the Office of the Attorney for Human Rights were created by the Constitution (arts. 273, 274 and 275) in 1985. The terms of reference and powers of the Commission and the Office of the Attorney for Human Rights were defined by law.

210. The mandate of the Commission is to promote, study, and propose legislation on human rights. It is also to make recommendations to the executive body, to liaise with international bodies, and to monitor the implementation of the laws concerned. The Commission is to prepare a list of candidates for nomination to the post of Attorney for Human Rights and to transmit to the Congress the annual report of the Attorney for Human Rights.

211. The Commission consists of one deputy from each political party represented in the Congress.

212. The Attorney for Human Rights is elected by the Congress for a five-year term and has supreme authority regarding human rights matters within the country. His mandate is to promote and co-ordinate efficient functioning of administrative and judicial procedures, to recommend changes in administrative practice, to condemn publicly acts or behaviour which violate constitutional rights, and to receive complaints from any person and investigate cases of human rights violations.

213. The Attorney for Human Rights is empowered in his investigations to have access to official documents in the possession of officials, authorities and institutions and to obtain their collaboration, to summon any person or public official to appear before him personally, to demand that the authorities dismiss or suspend any public official and to initiate legal proceedings against any person, official or institution.

Peru

214. In Peru in September 1985 a Peace Commission was set up as announced by the newly-elected President. The Commission was an advisory and consultative body of the Office of the President and was composed of six personalities representing various sectors of society. Details of the functions of the Commission were given in the Special Rapporteur's last report (E/CN.4/1986/21, para. 129 (b)). One of its functions was to channel and bring before the authorities complaints submitted regarding human rights violations involving killings, extrajudicial executions, disappearances of persons, torture and abuse of power by the authorities. It was also to advise the President regarding the enforcement of human rights.

215. The Commission of Peace was dissolved by the Government by Supreme Resolution 265-86-JUS of 5 September 1986, and, by Supreme Decree 012-86-JUS of the same date, the National Council on Human Rights was established.

216. The Council was set up within the Ministry of Justice to promote, co-ordinate and consult with the executive body on protection of human rights. It is composed of nine persons, namely, the Minister of Justice as Chairman, representatives of the Ministries of Foreign Affairs, the Interior and Education, representatives of the Catholic Church of Peru, the Peruvian Universities, the National Federation of Bar Associations and a representative of private human rights bodies.

217. The Council has an Executive Secretariat which implements the policies and actions it decides upon. The Executive Secretary is nominated by a supreme resolution, upon the recommendation of the Minister of Justice.

218. In order to fulfil its mandate, the Council is empowered to establish commissions and working groups, to which administrative bodies are to give the required support. The rules of procedure of the Council are to be approved by the Minister of Justice.

219. By Ministerial resolution No. 320.1-86-JUS of 5 December 1986, the Minister of Justice issued the Regulations governing the Organization and Functions of the National Council of Human Rights. According to the regulations, the functions of the Council are: to disseminate legal instruments concerning human rights; to elaborate a human rights education programme; to conduct research and study of the protection of human rights in Peru; to make proposals concerning legislation on human rights and the revision of existing laws; to deal with international organizations concerning human rights and to disseminate information on action taken by Peru in regard to the guarantee of the fundamental rights.

Philippines

220. In the Philippines a Presidential Committee on Human Rights was created by Executive Order No. 8 of 18 March 1986. The Committee, a purely advisory and consultative body, is attached to the Office of the President and its primary task is to assist the President in matters concerning human rights.

221. The Committee is composed of seven persons representing various sectors of society, including the Judge Advocate General of the Armed Forces.

222. The functions of the Committee include:

(a) Investigating cases of violation of human rights, past or present, upon receipt of complaints or on its own initiative, or by assignment of the President, committed by officers or agents of the Government or persons acting under their control;

(b) Reporting its findings to the President and making them public with suggestions for action by the Government;

(c) Proposing procedures and safeguards for the protection of human rights.

223. The Committee is empowered to take testimonies and evidence under oath in its investigations, to summon any person to appear, testify and to bring with him or produce any documents before the Committee, including classified official documents, to grant immunity from prosecution to any person in regard to his testimony, to hold any person in contempt and to impose penalties, and to call upon any executive body for assistance or reform.

224. By Memorandum Order No.20, the Ministry of National Defence, the New Armed Forces of the Philippines, the Constabulary and the Integrated National Police were directed to include the study of human rights as an integral and indispensable part of the education and training of all police, military and other personnel involved in carrying out arrests and investigations, especially those in charge of detained and convicted prisoners.

225. The members of the Committee and its staff are granted Presidential immunity when acting within their duties, functions, powers and authority.

Uganda

226. In Uganda a Commission of Inquiry was established on 16 May 1986 by the Minister of Justice under the Commission of Inquiry Act, in order to inquire into all aspects of violation of human rights, breaches of the rule of law and excessive abuses of power, committed against persons in Uganda by the régimes in power, their servants, agents or agencies during the period 9 October 1962 to 25 January 1986, and possible ways of preventing the recurrence of the aforesaid acts, including, among others, inquiring into the causes and circumstances surrounding the mass murders and all acts or omissions resulting in the arbitrary deprivation of human life committed in various parts of Uganda.

227. The Commission is composed of six persons nominated by the Minister of Justice from all walks of life, including a Justice as Chairman.

228. The Commission is empowered to call such witnesses or ask for the production of such evidence as it may deem necessary and to receive such assistance from any person as it may think fit. The law of evidence is applied in so far as is practicable.

229. The Commission is to report to the Ministry of Justice and make recommendations.

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230. The arrangements described in the foregoing paragraphs differ from one another with regard to their composition, mandate and powers.

231. While all the mechanisms described above have advisory or consultative functions, three of them have powers to investigate cases of violation of human rights, including powers to summon witnesses and call for evidence under penalty of law.

232. In addition to the establishment of a human rights body, some of the Governments have undertaken a review of the security and police forces, their reorganization, education and training with emphasis on respect for human rights. In this regard, in a number of cases, technical or professional advice as well as material assistance from outside is sought.

233. The outcome of the arrangements in those four countries has yet to be seen. Although some of the newly-established bodies were reported to have begun their work, no official report has so far been made available. In some cases, they seem to have been confronted with certain difficulties. Moreover, although an improvement is often noticeable, the general situation of human rights in some countries remains precarious.

234. A number of Governments have indeed confirmed that they face difficulties in their efforts to enhance their capacity to restore or raise the level of respect for human rights, and in particular the right to life, such as:

(a) In establishing administrative structures or infrastructure which have been destroyed or did not exist;

(b) In finding experienced and trained personnel, logistical support and materials, the absence of which further prevents efficient functioning of the investigatory bodies;

(c) In securing the co-operation of the security or police forces in the investigation of cases of human rights violations allegedly involving their personnel;

(d) In the continuing operation of the military outside the control of the Government. In some countries human rights abuses by military personnel continue to be reported even after the installation of the new Government;

(e) In the existence of situations of internal conflict, in which armed opposition groups refuse to cease their guerrilla activities.

IV. CONCLUSIONS AND RECOMMENDATIONS

235. As may be ascertained from the foregoing, implementation of the mandate of the Special Rapporteur during the period covered by this report generated increased activity compared with previous years. In addition to information from numerous sources relevant to his mandate, the Special Rapporteur received several allegations of impending executions that, it was alleged, might constitute summary or arbitrary executions and required his urgent attention and humanitarian intervention. The approach he has followed has been that of past years; information relating to situations in which the right to life may have been put in jeopardy, was transmitted to the Governments concerned for their comments with a request for information on action taken, if any, and cases considered prima facie to be urgent were communicated by cable to the governments concerned.

236. As may be seen from chapter I above, these activities covered a wide range and in several instances brought about reactions from the authorities concerned in the form of a reply or consultation, or both. Therefore the first conclusion to be drawn is that the interest of Governments and other parties in the mandate has continued to spread and this had led to a marked corresponding increase in understanding the causes of the phenomenon of summary or arbitrary executions. It is the hope of the Special Rapporteur that this trend will continue towards an increasingly constructive approach to solving the problems that lie at the root of this phenomenon. In other instances however, particularly in matters of urgent appeals, reactions were not as many or as prompt as the Special Rapporteur would have liked, although in several cases he was able to ascertain from other sources that his appeal had indeed been acted upon.

237. In two instances the Special Rapporteur was able to undertake specific steps with a view to informing himself in greater detail of developments relating to his mandate, namely the hearings held in Lusaka from 4 to 16 August 1987 jointly with the Ad Hoc Working Group of Experts on southern Africa and the visit to Uganda from 17 to 20 August 1987 in connection with the activities of the Commission of Inquiry into Violations of Human Rights which has been established by the Government pursuant to its intention stated by the Foreign Minister to the Commission on Human Rights in 1986.

238. This report illustrates the basic finding that the phenomenon of summary or arbitrary executions persists in all regions; although the causes identified in this and earlier reports have been several, the situation of armed conflict in a number of countries has caused the largest loss of life of persons not directly involved in such conflicts. In spite of existing international norms designed to control the conduct of armed conflicts and the repeated calls by international and regional bodies to parties to conflicts to respect the right to life of innocent civilians, the loss of human life continues to be considerable. In the opinion of the Special Rapporteur this is due to a fundamental absence of understanding and respect for the right to life among those responsible for the direction of military operations in such conflicts.

239. A second principal cause of loss of life is attributable to indiscriminate violence, such as that characterized by so-called "terrorism", the victims of which are very often innocent civilians. The period covered by the present report has been marked by several such problems which again find their source in a fundamental absence of respect for the right to life. It is worth noting in this context that the phenomenon known as "terrorism" has led in some cases to instances of reprisals or repression by organs of the State which are responsible for order and security; in the opinion of the Special Rapporteur an act of terrorism is one which has the effect of sowing terror in the victim whoever the perpetrator may be. The commission of such acts by organs of State and Government should be prevented and suppressed by those responsible for law and order with the same vigour as is applied when such acts are committed by others. The Special Rapporteur has noted numerous situations in which the right to life has suffered as a result of the illegal and excessive use of force by law enforcement agents including, in certain instances, officials responsible for the custody of detainees. Moreover, he has noted with regret that a high percentage of such instances which were drawn to his attention have simply not been investigated or inadequately investigated.

240. A third principal cause of non-respect for the right to life is that resulting from executions without trial or after a trial which does not afford adequate safeguards to protect the accused. The Special Rapporteur has noted that most of the cases which were the subject of urgent appeals come under this category.

241. The Special Rapporteur has noted yet another principal cause which may perhaps require more attention by the international community. In several instances it is clear that the right to life is being violated on an ongoing basis as a result of the inability of the authorities to control the group concerned and to enforce order and respect for the right to life. Countries which were emerging from periods of non-democratic or authoritarian forms of government were particularly exposed to this phenomenon.

242. The Special Rapporteur offers the following reflections and suggestions concerning the foregoing.

243. With regard to the situation of internal armed conflict, the Special Rapporteur referred in his last report (E/CN.4/1986/21, paras. 167 and 169) to the phenomenon of the polarization of the various groups of society in situations of internal conflict, and the need to remove the causes which led those groups to armed conflict, and stated that one of the ways of removing the polarization was for the Government to embark on a genuine and deliberate policy of national reconciliation. The Special Rapporteur is aware of various efforts having been made by the Governments and opposition groups in a number of countries and is following the outcome of such efforts with great interest.

244. Regarding deaths caused by illegal or excessive use of force by security, law enforcement or other Government officials, the Special Rapporteur has elaborated in this report (chap. III, Sect. A), on the absence of adequate investigation of such deaths and confirmed the urgent need to develop standards designed to ensure proper investigations into all cases of death in suspicious circumstances. During the course of his present mandate, the Special Rapporteur has received some proposals on the procedures to be followed in such investigations by the appropriate authorities, including

provisions for autopsy, and related preventive measures to be taken by the Government. He would like to invite further suggestions and proposals in this regard from Governments and organizations. The experience of Governments is valuable and should be shared with the Special Rapporteur.

245. With regard to the death penalty pronounced after a trial in which the guarantees for the rights of the accused were not fully observed, the Special Rapporteur wishes to refer again to articles 6 and 14 of the International Covenant on Civil and Political Rights and Economic and Social Council resolution 1984/50 entitled "Safeguards guaranteeing protection of the rights of those facing the death penalty". As is made clear in chapter III, section B, of this report, the procedural guarantees elaborated in the annex of the above mentioned resolution must be observed.

246. In view of these conclusions, the Special Rapporteur would like to present to the Commission the following recommendations:

(a) That Governments:

- (i) Ratify international human rights instruments, such as the International Covenant on Civil and Political Rights, including the Optional Protocol thereto, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- (ii) Review national laws and regulations with a view to strengthening the preventive measures against deaths caused by illegal or excessive use of force by security, law enforcement or other government officials;
- (iii) Review the machinery for investigation of deaths under suspicious circumstances in order to secure an impartial, independent investigation on such deaths, including an adequate autopsy;
- (iv) Review the trial procedures of tribunals, including those of special tribunals, in order to ensure that they embody adequate safeguards to protect the rights of the accused in the trial proceedings, as stipulated in the relevant international instruments;
- (v) Emphasize the importance of the right to life in the training of all law enforcement personnel and inculcate in them respect for life;

(b) That international organizations:

- (i) Strengthen their co-ordination in dealing with the immediate problems and the root causes of summary or arbitrary executions, in particular by sharing information, publications, studies, expertise, etc.;
- (ii) make a concerted effort to draft international standards designed to ensure proper investigation by appropriate authorities into all cases of suspicious death, including provisions for adequate autopsy.

247. In addition, Governments, individually and through the international community, should support and encourage peace initiatives and political solutions to situations of armed conflict. Also Governments should be encouraged to take appropriate and effective measures, on national, regional and international levels, to combat terrorism and/or terrorist acts.

248. Furthermore Governments should be encouraged to enter into bilateral or regional agreements with a view to extending mutual assistance and co-operation to enhance the capacity of their authorities to safeguard the individual's right to life. At the international level, organs within the United Nations system should undertake action with a view to assisting Governments to reconstruct the infrastructure that will enable the authorities concerned effectively to carry out their basic obligation to protect the right to life of individuals in their societies.

249. In the view of the Special Rapporteur, this is the key to the solution of the problem if the international community wishes to apply effective measures to combat the kind of violations of the right to life described in this report.

Note

1/ Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V.

Annex I

JOINT HEARINGS ON SOUTHERN AFRICA
(4 TO 15 AUGUST 1986)

1. It may be recalled that the Special Rapporteur, and the Chairman of the Ad Hoc Working Group of Experts on southern Africa met in Lusaka, Zambia, for joint hearings on southern Africa in November 1985, as described in the Special Rapporteur's report to the Commission on Human Rights at its forty-second session (E/CN.4/1986/21, para. 56).
2. In the light of the continuous reports of deaths in South Africa and Namibia and the serious nature of the allegations of non-respect for the right to life received by the Special Rapporteur since the above-mentioned joint hearings, it was decided by the Special Rapporteur and the Ad Hoc Working Group of Experts that joint hearings should be held again in August 1986.
3. The joint hearings were conducted in Lusaka, Zambia, from 4 to 15 August 1986. Prior to the hearings invitations were sent to a number of persons within and outside South Africa and Namibia who were believed to have firsthand knowledge or experience concerning the situation of human rights in South Africa and Namibia.
4. In spite of considerable difficulty resulting from the state of emergency imposed on 9 June 1986 in South Africa, the Special Rapporteur and the Working Group gathered information in the form of oral presentations and written submissions.
5. The Special Rapporteur took note of the information, especially regarding deaths attributed to "unrest-related incidents", action by police and security forces and activities by armed groups of so-called "vigilantes". In this context reference is made to the report of the Ad Hoc Working Group of Experts on southern Africa (E/CN.4/1987/..). In view of the continuing gravity of the situation in South Africa in regard to the right to life, the Special Rapporteur is of the opinion that further joint hearings or some similar exercise should be organized in order to observe closely the situation in South Africa and Namibia and to report to the Commission on Human Rights on any developments on the basis of up-to-date firsthand information.

Annex II

VISIT TO UGANDA
(17 TO 20 AUGUST 1986)

1. It may be recalled that the Special Rapporteur addressed letters to the Government of Uganda on 31 October 1984 and 25 July 1985 transmitting a summary of allegations of violations of the right to life. No response having been received, a reminder was sent on 19 June 1986. These allegations were duly reflected in the report of the Special Rapporteur to the Commission on Human Rights at its forty-second session (1986/21, paras. 94-95 and 142-143).
2. On 6 March 1986, His Excellency Mr. I. Mukiibi, Minister for Foreign Affairs of Uganda, made a statement before the Commission on Human Rights in which he announced the intention of his Government to establish a commission of inquiry to look into violations of human rights in Uganda.
3. Accordingly, on 21 July 1986, the Special Rapporteur addressed a message to the Minister for Foreign Affairs recalling his earlier correspondence with the Government of Uganda and the Minister's statement as well as the announcement of the establishment of this Commission of Inquiry in May 1986, and proposing that he visit Uganda with a view to following up on the allegations he had received and informing himself of the functions and work of the Commission of Inquiry. The Special Rapporteur proposed "to meet Government officials, members of the Commission, other individuals and groups and to visit any areas relevant to the subject of his mandate".
4. On 30 July 1986, the Government indicated its agreement with the visit of the Special Rapporteur and proposed a programme of work on the lines suggested by the Special Rapporteur.
5. The Special Rapporteur visited Uganda from 17 to 20 August 1986.
6. During his visit he met, among others, (a) Mr. I. Mukiibi, Minister for Foreign Affairs, who outlined the background of the human rights situation in Uganda before the current Government and explained the Government's policy of respect for the rule of law and human rights and the reasons for the establishment of the Commission of Inquiry into Violation of Human Rights; (b) Justice W. Wombuzi, Chief Justice of Uganda, who observed that the current Government was committed to promoting and maintaining the rule of law; (c) Mr. P. Ssmogerere, Minister for Internal Affairs, who described the efforts made by the Ministry of Internal Affairs in the process of rehabilitation of the country, in particular, concerning the review, recruitment and training of a virtually new police force; (d) Mr. J. Mulenga, Minister of Justice/Attorney General, who briefed the Special Rapporteur about steps and measures planned by the authorities to deal with the allegations relating to non-respect of the right to life and other human rights, the restoration of the rule of law, and the reasons for establishing the Commission of Inquiry; (e) Justice A. Oder, Chairman of the Commission of Inquiry, who explained about the Commission, in particular its mandate, composition, procedure, staff, the problems it faced and assistance required from the international community; (f) Mr. Kayondo, President of the Ugandan Law Society, who explained the difficulties experienced by lawyers in previous years and the changes under the present Government. The Special Rapporteur also attended the inaugural session of the Commission on Inquiry.

7. The Special Rapporteur also undertook a tour of the so-called Lowero Triangle, an area stretching some 60 miles north and west of Kampala. The purpose of the visit was to observe some of the sites to which reference had been made in the allegations that he had transmitted to the Government of Uganda in 1984 and 1985. Several conflicts were reported to have taken place in this area during the preceding 15 to 20 years resulting in allegations of serious violations of human rights. The Special Rapporteur met several persons who said that they had witnessed incidents in which innocent civilians had been killed, mostly in reprisals; he viewed numerous places where human remains had been collected from surrounding areas, in evidence of massacres. There is no doubt that there was systematic and massive destruction of human life, all life, property, plants, etc., in this area, which some may describe as being of genocidal proportions. This was indeed a sobering experience.

8. The Special Rapporteur conducted further consultations with the Secretary of the Commission of Inquiry, Mr. B. Oluka, who set out the priority requirements of the Commission as follows:

(a) Reading materials, in particular bibliographies and texts of publications dealing with human rights violations and the prosecution of actions constituting such offences;

(b) Logistical support, in the form of:

(i) two Land Rovers to be used by its investigators, and

(ii) transport for the Chairman and the Commissioners to ensure their mobility and security and make them less dependent; (it was explained that, given the nature of the work of the Commission, a certain degree of security risk was to be expected, although the authorities assumed full responsibility therefore.)

(c) Stationery of which there was widespread shortage in Uganda which could prove a serious threat to the work of the Commission and its investigators;

(d) Office machinery, in particular a photocopying machine, as well as photographic equipment, including two cameras, film and printing paper.

9. The Special Rapporteur observed that years of internal conflict had brought the country to a virtual halt in all sectors. Respect for the right to life and other basic rights was non-existent. The judicial system was paralysed. The police force was present only in name. The military had become a law unto themselves and an instrument for repression whose objective was the very opposite of protecting and defending the population. There had been a complete breakdown of law and order. The material situation in the country was obviously very serious and efforts were urgently required in all areas of administration.

10. The Special Rapporteur noted that there was general agreement that the current Government was fully committed to restoring peace in the country under which the rule of law could prevail and human rights would be respected and guaranteed. The National Resistance Army (NRA) had demonstrated its adherence to those values when it was waging a guerrilla war against the then existing governments. The NRA 10-point programme puts priority on the re-establishment of respect for human rights. The population therefore appeared to be

confident that the Government would ensure that human dignity was restored and that the law which had been dormant for so long would again be applied.

11. The Government is having to start from scratch to build a new police force. Thousands of members of the existing police force had either retired, been dismissed or otherwise terminated. At the time of the mission, it was intended to recruit 2,000 persons into the police force in September 1986 and a further 2,000 persons in January 1987. The Police Department plays a very important role in the process of restoring and respecting the rule of law. Education and training of the police in aspects of human rights is crucial. The Minister of the Interior specifically asked for international assistance in this area. As the Special Rapporteur has had occasion to recommend in the past (E/CN.4/1985/17, para. 79 (c)), Governments should set up training programmes for law enforcement officials with emphasis on the provisions of instruments such as the Code of Conduct for Law Enforcement Officials, the Standard Minimum Rules for the Treatment of Prisoners and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Special Rapporteur therefore hopes that the Commission will find a way of assisting the Government of Uganda in this area.

12. The Commission of Inquiry needed expert advice on several aspects of its work, particularly in regard to the definition of offences against human rights and the legal problems that may be encountered in ensuring that justice is done within the framework of the legal institutions and in accordance with established principles of law.

13. In the course of his mission, the Special Rapporteur observed that no progress whatsoever could be achieved unless certain clearly essential requirements were met. For example, the investigative functions of the Commission of Inquiry were paralysed without transport and office supplies, including photographic equipment.

14. The Special Rapporteur has had occasion to note that the situation in Uganda has been the subject of examination in the context of the programme of advisory services and that efforts have been made in recent years to establish a programme of technical assistance in human rights. It would seem that these efforts have so far not been successful and it is not clear at what stage such plans may have been abandoned.

15. The Special Rapporteur expresses the hope that a programme of assistance to Uganda can be incorporated in the context of the UNDP programme and for that purpose he will make himself available to advise on the priorities in regard to programmes envisaged to improve respect for human rights.

16. It is desirable and essential to maintain and strengthen links with the Commission of Inquiry to ensure continuity in its work and to provide it with the support that would minimize its logistical problems and enhance its efficiency.

17. In the prevailing situation, where there are clear signs of a will to give priority to re-establishing the rule of law, and given the immensity of this task in a country which has been conditioned to absence of law and order, the preparation of such a programme would appear to demand the most urgent attention. It is for these reasons that the Special Rapporteur urges the Commission on Human Rights to give its most serious attention to this matter and to encourage rapid and effective implementation of a programme along the lines described in this report.