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COMMISSION ON HUMAN RIGHTS  
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Discrimination and Protection  
of Minorities  
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Agenda item 21

DRAFT REPORT OF THE SUB-COMMISSION ON PREVENTION OF  
DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS  
FORTY-FOURTH SESSION

Geneva, 3-28 August 1992

Rapporteur: Mr. Marc Bossuyt

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\* E/CN.4/Sub.2/1992/L.10 and addenda contain the draft chapters of the report relating to the organization of the session and the various items on the agenda. Resolutions and decisions adopted by the Sub-Commission, as well as draft resolutions and decisions for action by, and other matters of concern to the Commission on Human Rights will be contained in documents E/CN.4/Sub.2/1992/L.11 and addenda.

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1992/21. Right to a fair trial

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling its resolution 1989/27 of 1 September 1989, in which it decided to appoint Mr. Stanislav Chernichenko and Mr. William Treat as rapporteurs to prepare a report on existing international norms and standards pertaining to the right to a fair trial,

Recalling also its resolution 1990/18 of 30 August 1990, in which it decided to entrust Mr. Chernichenko and Mr. Treat with the preparation of a study entitled, "The right to a fair trial: current recognition and measures necessary for its strengthening",

Recalling further its resolution 1991/14 of 28 August 1991, as well as resolutions 1991/43 of 5 March 1991 and 1992/34 of 28 February 1992 of the Commission on Human Rights,

Recalling finally that the right to a fair trial applies both to civil proceedings and to criminal proceedings,

Having examined the brief report on the right to a fair trial (E/CN.4/Sub.2/1990/34), the second report (E/CN.4/Sub.2/1991/29) and the third report (E/CN.4/Sub.2/1992/24 and Add.1-3) prepared by the Special Rapporteurs,

Welcoming the recommendations made by the Special Rapporteurs in section IV of their third report,

1. Expresses its appreciation to Mr. Stanislav Chernichenko and Mr. William Treat for their comprehensive third report which summarizes the Inter-American and European interpretations of the right to a fair trial as well as information on habeas corpus and amparo;

2. Requests the Special Rapporteurs to submit a fourth report analysing national practices in regard to the right to a fair trial, including information received in response to the questionnaires, to the Sub-Commission at its forty-fifth session;

3. Requests the Secretary-General to transmit the report to be prepared by the Special Rapporteurs, as soon as he receives it, to Mr. Fisseha Yimer and invites this expert to examine the report with a view to making comments thereon at the forty-fifth session of the Sub-Commission, without prejudice to the right of all members of the Sub-Commission to make comments and express their opinions on the report;

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4. Looks forward to the preparation by the Special Rapporteurs of a fifth report in 1994 containing recommendations for strengthening the implementation of the right to a fair trial in the light of interpretations of the right by international bodies and contemporary national practices;

5. Urges the Special Rapporteurs to make suggestions on how the right to a fair trial might be further protected, notably by making the right, or certain aspects of the right, non-derogable, and incorporating basic fair trial guarantees into international standards, for consideration by the Sub-Commission at future sessions;

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

The Commission on Human Rights, noting resolution 1992/21 of 27 August 1992 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, expresses its appreciation to the Special Rapporteurs, Mr. Stanislav Chernichenko and Mr. William Treat, for their continued work on the study entitled "The right to a fair trial: current recognition and measures necessary for its strengthening", endorses the request to the Special Rapporteurs to continue their study and recommends the following draft decision to the Economic and Social Council for adoption:

"The Economic and Social Council, recalling its decision 1992/230 of 20 July 1992, approved the endorsement by the Commission on Human Rights of the request of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to Mr. Stanislav Chernichenko and Mr. William Treat to continue their study entitled 'The right to a fair trial: current recognition and measures necessary for its strengthening', as described in Sub-Commission resolution 1992/21, of 27 August 1992, and requests the Secretary-General to provide the Special Rapporteurs with all the assistance necessary for the completion of their task."

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

1992/22. Question of human rights and states of emergency

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling Commission on Human Rights resolution 1983/18 of 22 February 1983, in which the Commission requested the Sub-Commission to give further consideration to the study on the implications for human rights of situations known as states of siege or emergency, submitted by the Special Rapporteur, Mrs. Nicole Questiaux (E/CN.4/Sub.2/1982/15),

Recalling that in the same resolution the Commission requested the Sub-Commission to propose measures designed to ensure the respect throughout the world of human rights and fundamental freedoms in situations where states of siege or emergency existed, especially of the rights referred to in article 4, paragraph 2, of the International Covenant on Civil and Political Rights, which prohibits derogation from certain rights even in time of public emergency,

Recalling Economic and Social Council resolution 1985/37 of 30 May 1985 and Sub-Commission resolution 1983/28 of 6 September 1983 concerning the question of human rights and states of emergency,

Recalling that in its resolution 1985/32 of 30 August 1985 it requested the Special Rapporteur, Mr. Leandro Despouy, to draw up and update a list of countries which proclaimed or terminated a state of emergency each year and to prepare an annual report containing reliably attested information on compliance with the rules, national and international, guaranteeing the legality of the introduction of a state of emergency,

Recalling Commission on Human Rights resolution 1991/34 of 5 March 1991, in which the Commission, inter alia, invited the Sub-Commission to consider the question of the effectiveness of habeas corpus and similar remedies during states of emergency and to formulate suggestions thereon,

Having noted, at its thirty-eighth, thirty-ninth, fortieth, forty-first, forty-second, forty-third and forty-fourth sessions, the importance for the effective enjoyment of human rights of the principles concerning respect for the rules, national and international, guaranteeing the legality of the introduction of a state of emergency,

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Noting the interest expressed by many countries in receiving technical assistance from the Special Rapporteur on states of emergency and the United Nations Secretariat under the programme of advisory services in the field of human rights, and the work already done by the Special Rapporteur in this field,

Noting also the need to strengthen the observance of all non-derogable human rights, as well as the legal guarantees enabling a remedy to be sought from the competent authorities,

Noting further that in some circumstances, such as situations of war, armed conflict or internal unrest, emergency measures are adopted without a state of emergency being officially proclaimed and that such measures have an impact on human rights which warrants thorough study by the Special Rapporteur,

Noting with satisfaction the growing cooperation of Governments with the Special Rapporteur and the need to continue to analyse the information received by the Special Rapporteur with the greatest care,

Stressing the importance for the Special Rapporteur of using all reliable information for updating his annual reports, including the information which is available in relevant databases,

1. Expresses its deep appreciation to the Special Rapporteur, Mr. Leandro Despouy, for his fifth annual report and the list of States which, since 1 January 1985, have proclaimed, extended or terminated a state of emergency (E/CN.4/Sub.2/1992/23);

2. Also expresses its appreciation to Governments, competent United Nations bodies, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council, as well as competent university and academic institutions, that have submitted information and comments on the question of human rights and states of emergency, and invites them to continue to cooperate actively with the Special Rapporteur;

3. Recognizes the fundamental importance of the existence in each country of specific and effective national legislation enabling emergency situations to be dealt with in conformity with international norms and invites Governments that have not yet done so to consider the adoption of internal

legislation consistent with the requirements of international instruments concerning states of emergency, as explained and developed in the Special Rapporteur's various reports;

4. Invites Governments to limit the introduction of states of emergency, particularly in the case of internal unrest, exclusively to situations sufficiently serious and exceptional to justify them, in order to avoid making the use of states of emergency commonplace and thus, possibly, perpetuating them;

5. Endorses the request of the Special Rapporteur (E/CN.4/Sub.2/1992/23, para. 22) to recommend that the Commission on Human Rights should propose the inclusion in the agenda of the forthcoming World Conference on Human Rights of an item entitled "Strengthening of protection of human rights during states of emergency";

6. Requests the Secretary-General, under the United Nations programme of advisory services in the field of human rights, to furnish assistance through the Special Rapporteur to States requesting it;

7. Invites the Special Rapporteur to continue the work with which he has been entrusted and to submit to the Sub-Commission, at its forty-fifth session, the next annual report and list updated on the basis of the information received and to update his present report so that the Commission on Human Rights, at its forty-ninth session, will have before it the most recent and accurate information available;

8. Also invites the Special Rapporteur to continue his work on the draft guidelines for the development of legislation on states of emergency and, in particular, to examine the question of non-derogable rights;

9. Further invites the Special Rapporteur to continue and expand his contacts and to hold consultations with appropriate technical institutions and experts with a view to receiving, storing and retrieving information relating to matters relevant to his mandate;

10. Requests the Secretary-General to provide the Special Rapporteur with all the assistance he may require to carry out his work successfully and, in particular, to process the information submitted to him in an effective way;

11. Decides to examine the updated report and list transmitted by the Special Rapporteur as a matter of priority under agenda item 10 (b), entitled "Question of human rights and states of emergency";

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12. Recommends the following draft resolution to the Commission on Human Rights for adoption:

The Commission on Human Rights,

Noting resolution 1992/22 of 27 August 1992 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,

1. Recommends the inclusion in the agenda of the forthcoming World Conference on Human Rights of an item entitled "Strengthening of protection of human rights during states of emergency";

2. Recommends the following draft decision to the Economic and Social Council for adoption:

The Economic and Social Council, taking note of Commission on Human Rights decision 1993/... of ... February 1993 and of resolution 1992/22 of 27 August 1992 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, endorses the request by the Sub-Commission:

(a) to Mr. Leandro Despouy, Special Rapporteur on human rights and states of emergency, to continue to update the list of states of emergency and to include in his annual report to the Sub-Commission and the Commission recommendations on inalienable or non-derogable rights, and

(b) to the Secretary-General to provide the Special Rapporteur with all the assistance he may require to carry out his work, to maintain cooperation with the different sources of information and databases, and to process the information submitted to him in an effective way.

35th meeting  
27 August 1992

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

1992/23. Question of the impunity of perpetrators of violations of human rights

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Guided by the principles enshrined in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, other relevant human rights instruments and the Geneva Conventions of 12 August 1949,

Convinced that the increasingly widespread practice of impunity for perpetrators of violations of human rights in various regions of the world is a fundamental obstacle to the observance of human rights,

Recalling its decision 1991/110 of 29 August 1991, entitled "Question of the impunity of perpetrators of violations of human rights", whereby it requested Mr. El Hadji Guissé and Mr. Louis Joinet to draft a working paper on this subject,

Having considered the guidelines proposed in the working paper (E/CN.4/Sub.2/1992/18) prepared by Mr. Guissé and Mr. Joinet,

Aware of the comments that have been made for a number of years on this subject within the framework of the special procedures of the Commission on Human Rights and by the Special Rapporteurs of the Sub-Commission,

Taking note of the contributions submitted and comments made at the forty-fourth session of the Sub-Commission,

1. Takes note with satisfaction of working paper E/CN.4/Sub.2/1992/18;
2. Decides to request Mr. Guissé and Mr. Joinet to draft a study on the impunity of perpetrators of violations of human rights in order, in particular, to determine the scale of the phenomenon of impunity and to propose measures to combat that practice;
3. Requests the Secretary-General to provide the Special Rapporteurs with any assistance required for them to be able to discharge their task;
4. Invites Governments, competent organs of the United Nations, the specialized agencies, regional inter-governmental organizations and non-governmental organizations to provide information on the question;
5. Decides to consider the preliminary report to be prepared by the Special Rapporteurs at its forty-fifth session under a sub-item, entitled "Question of the impunity of perpetrators of violations of human rights", of the item entitled "The administration of justice and the human rights of detainees";
6. Recommends that the Commission on Human Rights adopt the following draft resolution:

The Commission on Human Rights,

Guided by the principles enshrined in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on

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Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, other relevant human rights instruments and the Geneva Conventions of 12 August 1949,

Convinced that the increasingly widespread practice of impunity for perpetrators of violations of human rights in various regions of the world is a fundamental obstacle to the observance of human rights,

Recalling the comments that have been made for a number of years on this subject by, in particular, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on summary or arbitrary executions and the Special Rapporteur on the question of torture, and by the Special Rapporteurs of the Sub-Commission,

1. Takes note with satisfaction of the working paper (E/CN.4/Sub.2/1992/18) prepared by Mr. Guissé and Mr. Joinet pursuant to the Sub-Commission's decision 1991/110 of 29 August 1991;

2. Endorses the Sub-Commission's decision to request Mr. Guissé and Mr. Joinet to draft a study on the impunity of perpetrators of violations of human rights in order, in particular, to determine the scope of the phenomenon of impunity and to propose measures to combat that practice;

3. Requests the Secretary-General to provide the Special Rapporteurs with any assistance required for them to be able to discharge their task;

4. Recommends the following draft decision to the Economic and Social Council for adoption:

The Economic and Social Council, taking note of resolution 1993/... adopted by the Commission on Human Rights on ... February 1993, approves the decision of the Commission to endorse the Sub-Commission's decision to request Mr. Guissé and Mr. Joinet to draft a study on the impunity of perpetrators of violations of human rights in accordance with the Sub-Commission's resolution 1992/23 of 27 August 1992, and also approves the Commission's request to the Secretary-General to provide the Special Rapporteurs with any assistance required for them to be able to discharge their task.

35th meeting  
27 August 1992

[Adopted without a vote. See chap. XI]

1992/24. Violation of the human rights of staff members of the United Nations system and other persons acting under the authority of the United Nations

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Gravely concerned by the fact that a significant number of staff members of the United Nations system and other persons, including experts, special rapporteurs and consultants, acting under the authority of the United Nations system have been, over the years, detained, unaccounted for or subjected to other violations of their fundamental rights contrary to the Charter of the United Nations and other international instruments,

Recalling the relevant resolutions on this subject, in particular General Assembly resolutions 42/219 of 21 December 1987, 43/225 of 21 December 1988, 44/186 of 19 December 1989 and 45/240 of 21 December 1990, Commission on Human Rights resolutions 1989/28 of 6 March 1989, 1990/31 of 2 March 1990 and 1991/37 of 5 March 1991 and Sub-Commission resolutions 1987/21 of 3 September 1987, 1988/9 of 31 August 1988, 1989/30 of 1 September 1989 and 1990/20 of 30 August 1990,

Recalling further the recommendations of the Administrative Committee on Coordination adopted in 1987,

Deploring the persistence of violations of the fundamental rights of staff members and the above-mentioned other persons of the United Nations system and other persons acting under the authority of the United Nations and the continuous threats against their security and independence, in spite of these resolutions,

Aware that human rights violations can only have a negative effect on the implementation of the mandates of the organizations of the United Nations, especially at a time when these organizations are being called upon to undertake greater responsibilities in various parts of the world,

Having noted that the health of detained officials has in some cases seriously deteriorated during their detention,

Preoccupied by the inordinate delays in the communication of essential information on the detention of staff members which continues to be imposed with regard to the different organizations of the United Nations system which have the right fully to protect their staff members in the exercise of their functions,

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Greatly appreciating the efforts of the Secretary-General to promote a satisfactory resolution of all cases of this kind, and noting with interest Security Council resolution 767 (199..) in which the Council demands that all parties respect the safety and the security of the personnel of the United Nations and of other humanitarian organizations,

1. Urges again Governments and other entities holding de facto territorial power to respect and to ensure respect for the rights of staff members and other persons acting under the authority of the United Nations, as well as of their families, and appeals to the Governments of countries in which United Nations staff members and comparable officials are detained to release them immediately;

2. Requests the Secretary-General to continue his efforts and to take every measure to ensure that the human rights and privileges and immunities of the personnel of the United Nations system, including experts, and their families are fully respected, to demand compensation and to monitor the indemnization for the harm caused to personnel and to their organizations, as well as the full reinsertion and re-education of the staff members concerned;

3. Strongly urges Governments and other entities holding de facto territorial power to allow physicians to examine the state of health of the staff members and experts of the United Nations system and of the members of their families who are under detention and to allow these persons to receive the necessary treatment through a physician agreed upon by the competent organizations of the United Nations system, inasmuch as possible of their own choosing;

4. Also urges Governments and other entities holding de facto territorial power, in accordance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly in its resolution 43/173 of 9 December 1988, to provide adequate and prompt information concerning the arrest or detention of United Nations staff members and their families, and to grant the representative of the competent international organization access to them without delay;

5. Calls upon Governments and other entities detaining personnel of the United Nations system or the above-mentioned other persons and their families to allow the representative of the competent international organization to attend any hearing concerning them and members of their families;

6. Expresses its appreciation to the Special Rapporteur, Mrs. Mary Concepción Bautista, for the work she has carried out aimed at improving on a long-term basis the protection of personnel of the United Nations system and their families, as well as of experts and consultants;

7. Expresses its satisfaction at the recommendations contained in the final report of the Special Rapporteur (E/CN.4/Sub.2/1992/19);

8. Recommends to the Commission on Human Rights to request the existing human rights machinery, including the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the question of torture and the Special Rapporteur on summary or arbitrary executions, to examine the cases involving the human rights of the staff members of the United Nations system and their families, as well as of experts and consultants, and to transmit the relevant part of their respective reports to the Secretary-General for inclusion in his report to the Commission on Human Rights under item 10 of its agenda;

9. Recommends the following draft resolution to the Commission on Human Rights for adoption:

The Commission on Human Rights,  
Taking into account resolution 1992/24 of 27 August 1992 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,  
Having examined the final report of the Special Rapporteur, Mrs. Mary Concepción Bautista, on the protection of the human rights of United Nations staff members, experts and their families (E/CN.4/Sub.2/1992/19),

1. Expresses its appreciation to the Special Rapporteur for her final report on the protection of the human rights of United Nations staff members, experts and their families;

2. Requests the Secretary-General to take steps aimed at ensuring the application without delay of all the recommendations contained in the report;

3. Requests the existing human rights machinery, including the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the question of torture and the Special Rapporteur on summary or arbitrary executions, to examine the cases involving the human rights of staff members of the United Nations system and their families, as well as experts, special rapporteurs and consultants, and

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to transmit the relevant part of their respective reports to the Secretary-General for inclusion in his report to the Commission on Human Rights under item 10 of its agenda;

4. Requests the Secretary-General to present a report annually to the Third Committee of the General Assembly on the implementation of the protection measures and on redress for the possible harm caused.

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[Adopted without a vote. See chap. XI]

1992/25. Application of international standards concerning  
the human rights of detained juveniles

The Sub-Commission on Prevention of Discrimination and Protection of  
Minorities,

Noting with satisfaction the final report submitted by the Special Rapporteur pursuant to its resolution 1991/16 of 28 August 1991 (E/CN.4/Sub.2/1992/20) and the addendum to that report containing the note by the Secretary-General, on the question of detained juveniles,

Concerned that, because of the great vulnerability of juveniles to various forms of abuse, neglect and injustice and the profound and indelible impact of such traumatic experiences on their developing personalities, violations of the human rights of detained juveniles have serious and far-reaching consequences for the juveniles concerned and for society,

1. Congratulates the Special Rapporteur, Mrs. Mary Concepción Bautista, on the contents of her final report;

2. Welcomes the proposal by the Secretary-General, contained in his note (E/CN.4/Sub.2/1992/20/Add.1), to organize, in March 1993, a meeting of experts under the auspices of the Centre for Human Rights, the United Nations Children's Fund and the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs on the application of international standards concerning the human rights of detained juveniles;

3. Expresses the wish that the Committee on the Rights of the Child and the Working Group on Contemporary Forms of Slavery be represented at the work of the meeting of experts;

4. Requests the Secretary-General to provide all necessary assistance for the organization and success of the meeting of experts;

5. Also requests the Secretary-General to report to the Commission on Human Rights and the Sub-Commission on the results of the meeting.

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

1992/26. Promoting the realization of the right to adequate housing  
The Sub-Commission on Prevention of Discrimination and Protection of  
Minorities,

Recalling its resolution 1991/26 of 29 August 1991 in which it entrusted Mr. Rajindar Sachar with the task of producing a working paper, for submission at its forty-fourth session, on the right to adequate housing with a view to determining how best to further both the recognition and the enforcement of this right,

Taking note of the preliminary conclusions contained in the working paper (E/CN.4/Sub.2/1992/15),

Taking note also of the view expressed by the Special Rapporteur on the realization of economic, social and cultural rights in his first progress report (E/CN.4/Sub.2/1990/19) that virtually no analytical work had been carried out within the human rights organs of the United Nations directly concerning housing rights,

Encouraged by the adoption on 12 December 1991 of General Comment No. 4 (1991) on the right to adequate housing by the Committee on Economic, Social and Cultural Rights at its sixth session (E/1992/23, annex III),

Aware that General Comment No. 4 constitutes the first such comment adopted by the Committee on Economic, Social and Cultural Rights to examine a specific right contained in the International Covenant on Economic, Social and Cultural Rights,

Mindful of Commission on Human Rights resolution 1992/10 of 21 February 1992 in which the Commission, inter alia, took note with particular interest of General Comment No. 4 (1991) and Sub-Commission resolution 1991/26,

Welcoming the recommendation contained in the final report submitted by the Special Rapporteur on the realization of economic, social and cultural

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rights, Mr. Danilo Türk, encouraging the Sub-Commission to continue its practice of appointing special rapporteurs to study specific aspects of this category of rights (E/CN.4/Sub.2/1992/16, para. 206),

Deeply concerned that in excess of one billion persons do not enjoy the right to adequate housing and that in many States it is the already disadvantaged groups of society that are homeless or inadequately housed,

1. Expresses its appreciation to Mr. Rajindar Sachar for his working paper on the right to adequate housing, which outlines a range of issues requiring further analytical work by the United Nations human rights bodies;

2. Encourages all States to pursue effective policies and legislation aimed at creating conditions aimed at ensuring the full realization of the right to adequate housing of the entire population, concentrating on those vulnerable groups that are homeless or inadequately housed;

3. Decides to appoint Mr. Rajindar Sachar as Special Rapporteur on promoting the realization of the right to adequate housing, and to request the Special Rapporteur to carry out a two-year study on this issue;

4. Requests the Special Rapporteur to submit to the Sub-Commission, at its forty-fifth session, a progress report on the promotion of the realization of the right to adequate housing, taking into account the comments made in the discussion of his working paper at its forty-fourth session;

5. Encourages the Special Rapporteur to consult the widest possible variety of sources in the preparation of the progress report;

6. Requests the Secretary-General to invite Governments, United Nations bodies, the specialized agencies, intergovernmental and non-governmental organizations and community-based organizations to provide the Special Rapporteur with information relevant to the preparation of his report;

7. Also requests the Secretary-General to provide the Special Rapporteur with all the assistance that he may require to prepare his study and to compile and analyse the information and documents collected;

8. Decides to consider the first report at its forty-fifth session under the agenda item entitled "The realization of economic, social and cultural rights".

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

1992/27. Human rights and extreme poverty

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Bearing in mind Commission on Human Rights resolution 1992/11 of 21 February 1992, in which the Sub-Commission was requested to accord priority to this question in its work and to report to the Commission at its forty-ninth session,

Recalling the report by Mr. Eduardo Suesún Monroy entitled "Method and plan of work for the study on human rights and extreme poverty" (E/CN.4/Sub.2/1991/18),

1. Decides to appoint Mr. Leandro Despouy as Special Rapporteur on the question of human rights and extreme poverty with responsibility for preparing the study concerned on the basis of the aspects set out by the Commission on Human Rights in its resolutions 1989/10 of 2 March 1989, 1990/15 of 23 February 1990 and 1991/14 of 22 February 1991, bearing particularly in mind the approach defined in Commission resolution 1992/11, and requests him to submit a preliminary report on the question to the Sub-Commission at its forty-fifth session;

2. Requests the Secretary-General to continue his consultations on the topic of human rights and extreme poverty with Governments, specialized agencies, intergovernmental organizations and non-governmental organizations and to inform the Rapporteur of the conclusions of those consultations;

3. Also requests the Secretary-General to provide the Special Rapporteur with all necessary assistance for the fulfilment of his mandate including, as appropriate, assistance from consultants with specialized knowledge of the subject;

4. Requests the Special Rapporteur to contribute, as appropriate, to the transmittal of any useful information on the question of human rights and extreme poverty to the World Conference on Human Rights;

5. Recommends the following draft resolution to the Commission on Human Rights for adoption:

The Commission on Human Rights,

Recalling its resolution 1992/11 of 21 February 1992,

Endorsing resolution 1992/27 of 27 August 1992 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,

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Recommends the following draft resolution to the Economic and Social Council for adoption:

The Economic and Social Council,

Recalling Commission on Human Rights resolution 1993/... of ... 1993 and resolution 1992/27 of 27 August 1992 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, entitled "Human rights and extreme poverty",

1. Approves the appointment of Mr. Leandro Despouy as Special Rapporteur on the question of human rights and extreme poverty with responsibility for preparing a study on this subject on the basis of the aspects set out by the Commission on Human Rights in its resolutions 1989/10 of 2 March 1989, 1990/15 of 23 February 1990 and 1991/14 of 22 February 1991, bearing particularly in mind the approach defined in Commission resolution 1992/11 of 21 February 1992;

2. Requests the Secretary-General to continue his consultations on the topic of human rights and extreme poverty with Governments, specialized agencies, intergovernmental organizations and non-governmental organizations and to inform the Rapporteur of the conclusions of those consultations;

3. Also requests the Secretary-General to provide the Special Rapporteur with all necessary assistance for the fulfilment of his mandate, including, as appropriate, assistance from consultants with specialized knowledge of the subject.

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

1992/28. Human rights dimensions of population transfer, including the implantation of settlers and settlements

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling its resolutions 1990/17 of 30 August 1990 and 1991/28 of 29 August 1991, in which it decided to include the question of the human rights dimensions of population transfer, including the implantation of settlers and settlements, in its future work programme with a view to considering further effective action on this matter,

Noting that the implantation of settlers and the removal of people received explicit attention in various country-specific resolutions adopted by

the Sub-Commission in 1991, 1990, and previously, as well as in the second progress report on possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities (E/CN.4/Sub.2/1992/37),

Concerned that population transfer policies have affected and continue to affect numerous countries and peoples, as well as minorities, throughout the world,

Considering that the policy and practice of population transfer, including the removal of people and the implantation of settlers, particularly where induced or conducted by Governments and occupying authorities, invariably have serious consequences for the enjoyment or constitute a serious violation of the human rights of the people removed, the original inhabitants of the countries and territories concerned, as well as the settlers,

Recalling the rights enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples, in particular the right to freedom of movement, to choose one's residence and to leave any country and to return to one's country, the right to be free from arbitrary interference with one's privacy, family or home, the right to an adequate standard of living, the inherent right to life, the right to liberty and security of person, the right of all peoples freely to determine their political status and freely to pursue their economic, social and cultural development and freely to dispose of their natural wealth and resources,

Recalling also the International Covenant on the Elimination of All Forms of Racial Discrimination and the Convention on the Prevention and Punishment of the Crime of Genocide, which defines the act of genocide to include deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part,

Aware that the practice of population transfer inherently leads to widespread and systematic discrimination,

Conscious that population transfer may constitute part of a general policy directed against distinct ethnic, racial or religious groups and may be motivated by strategic, demographic, military and political aims of imposing effective control over and assimilation of nations and peoples,

Disturbed by reports concerning the implantation of settlers and settlements in certain countries, including occupied territories, with the aim

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of changing the demographic structure and the political, cultural, religious and other characteristics of those countries or with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group as such,

Epecially disturbed by reports of deliberate policies towards distinct ethnic, racial or religious groups, of so-called ethnic cleansing and demographic manipulation in certain countries,

Recalling that article 49 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, states that the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies,

Noting with deep concern that this practice is a significant factor in the origin and deepening of ethnic unrest and conflict, which contribute towards increasing social, economic, political and cultural instability, thereby threatening world peace and security,

Having in mind that the draft Code of Crimes against the Peace and Security of Mankind currently being elaborated by the International Law Commission states, in article 21, that compulsory population transfer constitutes an international crime,

1. Recognizes that practices of population transfer constitute a violation of fundamental human rights;

2. Entrusts Mr. Al-Khasawneh and Mr. Hatano, as Special Rapporteurs, with preparing a preliminary study on the human rights dimensions of population transfer, including the implantation of settlers and settlements;

3. Requests the Special Rapporteurs to examine, in the preliminary study, the policy and practice of population transfer, in the broadest sense, with a view to outlining the issues to be analysed in further reports, in particular the legal and human rights implications of population transfer and the application of existing human rights principles and instruments;

4. Requests the Secretary-General to give the Special Rapporteurs all the assistance necessary for their study;

5. Encourages the Special Rapporteurs, in preparing the preliminary study, to examine the widest possible variety of sources, including information received from non-governmental and other relevant organizations;

6. Requests the Special Rapporteurs to submit the preliminary study to the Sub-Commission at its forty-fifth session, for consideration of, inter alia, how most effectively to proceed and take effective further action on the issue of population transfer;

7. Requests Mr. Asbjorn Eide, in his study on possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities to address, in his next report, the impact of population transfer on the rights of minorities;

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

"The Commission on Human Rights, noting Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1992/28 of 27 August 1992, endorses the decision of the Sub-Commission to entrust Mr. Awn Shawkat Al-Khasawneh and Mr. Ribot Hatano, as Special Rapporteurs, with preparing a preliminary study on the human rights dimensions of population transfer, including the implantation of settlers and settlements, and requests the Secretary-General to give the Special Rapporteurs all the assistance for their task."

35th meeting  
27 August 1992

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

1992/29. Realization of economic, social and cultural rights  
The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Mindful that the Universal Declaration of Human Rights provides that all persons are entitled to the realization of the economic, social and cultural rights which are indispensable to their dignity and the free development of their personality,

Convinced that, in accordance with the Universal Declaration of Human Rights, the Proclamation of Tehran and General Assembly resolution 32/130 of 16 December 1977, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights,

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Concerned that the implementation and promotion of economic, social and cultural rights and the obstacles to their realization have not yet received sufficient attention within the framework of the United Nations system,

Concerned at the negative effects of structural adjustment programmes upon the realization of economic, social and cultural rights,

Recalling Commission on Human Rights resolution 1992/10 of 21 February 1992,

Welcoming the contacts established by the Special Rapporteur with international financial institutions, including the World Bank and the International Monetary Fund, and the dialogue which has started between these institutions and the human rights bodies,

Taking note of the Human Development Report 1992 of the United Nations Development Programme and the World Development Report 1992 of the World Bank,

1. Expresses its deep appreciation to the Special Rapporteur, Mr. Danilo Türk, for his final report on the realization of economic, social and cultural rights (E/CN.4/Sub.2/1992/16) and endorses the recommendations contained in paragraphs 202 to 246;

2. Urges the international and financial institutions, in particular the World Bank and the International Monetary Fund, to take greater account of the adverse impacts of their policies and programmes of structural adjustment on the realization of economic, social and cultural rights;

3. Also urges the international financial institutions to continue, on an ongoing basis, their full participation in the work and debates of the human rights bodies of the United Nations and to take into account the recommendations contained in paragraphs 231 to 243 of the final report of the Special Rapporteur;

4. Urges all States to take serious note of and act upon the recommendations contained in paragraphs 218 to 230 of the final report of the Special Rapporteur;

5. Encourages the United Nations Development Programme, the World Bank and other international programmes and agencies to cooperate with the Centre for Human Rights in devising a consistent approach to the selection and use of indicators in the field of human rights with a view to developing a methodology for assessing the impact of development programmes on the enjoyment of human rights;

6. Notes with appreciation the approval by the Commission on Human Rights in its resolution 1991/18 of 1 March 1991 and the Economic and Social Council in its decision 1991/235 of 31 May 1991 of the convening of a United Nations expert seminar on the use of social and economic indicators in monitoring the realization of economic, social and cultural rights, and recommends that the study on the realization of economic, social and cultural rights, as prepared by the Special Rapporteur, be included in the documentation for the seminar;

7. Encourages expert members of the Sub-Commission and the Committee on Economic, Social and Cultural Rights, as well as technical experts from the Department of Economic and Social Development, the United Nations Children's Fund, the United Nations Development Programme, the United Nations Research Institute for Social Development, the specialized agencies and the World Bank to participate in the seminar;

8. Invites the United Nations Statistical Office to collaborate with the Centre for Human Rights in preparing, for the use of the seminar and of the Sub-Commission, a list of statistical indicators currently available in the United Nations system, organized in accordance with the provisions of the International Covenant on Economic, Social and Cultural Rights, and of recommendations for additional relevant indicators which may be collected through existing mechanisms;

9. Decides to consider, at its forty-fifth session, the possibility of examining in a future study the subject of income distribution and the realization of economic, social and cultural rights and the issue of the justiciability of economic, social and cultural rights;

10. Requests the Commission on Human Rights:

(a) To forward its views to the Committee on Economic, Social and Cultural Rights as to the practical feasibility of drafting an optional protocol to the International Covenant on Economic, Social and Cultural Rights granting individuals and groups the right to submit communications alleging non-compliance by States parties, whether by act or omission, with the provisions of the Covenant;

(b) To consider the desirability of appointing thematic rapporteurs entrusted with investigating economic, social and cultural rights and reporting thereon;

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11. Requests the Secretary-General:

(a) To ensure the widest possible distribution of the progress reports of the Special Rapporteur throughout the United Nations system, especially among programmes and agencies with mandates in the economic, social and cultural fields, including the Administrative Committee on Coordination, the United Nations Children's Fund, the United Nations Development Programme, the International Labour Organisation, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the World Bank and the International Monetary Fund;

(b) To prepare basic policy guidelines on structural adjustment and economic, social and cultural rights, which could serve as a basis for a continued dialogue between human rights bodies and the international financial institutions;

(c) To invite the international financial institutions to consider the possibility of organizing an expert seminar on the role of these institutions in the realization of economic, social and cultural rights, examining in particular the creation of a United Nations system-wide approach to internationally recognized human rights;

(d) To inform the Sub-Commission, at its forty-fifth session, of the progress achieved in the implementation of the recommendation contained in paragraph 217 of the final report of the Special Rapporteur.

35th meeting  
27 August 1992

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

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