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

Rapporteur: Mr. José Bengoa

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* E/CN.4/Sub.2/1995/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.2/1995/L.11 and addenda.

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1995/28. Human rights and extreme poverty

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

Recalling Commission on Human Rights resolutions 1992/11 of 21 February 1992, 1993/13 of 26 February 1993, 1994/12 of 25 February 1994 and 1995/16 of 24 February 1995 and its own resolution 1992/27 of 27 August 1992 concerning the execution by the Sub-Commission of a study on human rights and extreme poverty and the appointment of Mr. Leandro Despouy as Special Rapporteur on that question,

Recalling its resolution 1994/41 of 26 August 1994, in which it took note with appreciation of the first interim report of the Special Rapporteur,

Welcoming the holding at United Nations Headquarters in New York, from 12 to 14 October 1994, of the seminar on the topic "Extreme poverty and the denial of human rights", which for the first time enabled persons living in extreme poverty to publicly express their observations on the matter,

1. Takes note with appreciation of the second interim report on human rights and extreme poverty (E/CN.4/Sub.2/1995/15) prepared by the Special Rapporteur, Mr. Leandro Despouy;

2. Commends the Special Rapporteur for having included in his report testimony and observations by the most destitute persons, since this brings greater awareness of the living conditions of those in extreme poverty and a better understanding of the link between extreme poverty and human rights;

3. Welcomes the approach proposed by the Special Rapporteur in his report;

4. Expresses the wish that the consultation undertaken by the Special Rapporteur should be continued, and invites Governments, intergovernmental organizations, specialized agencies and non-governmental organizations that have not yet done so to answer the questionnaire prepared by him;

5. Requests the Special Rapporteur to submit to it, at its forty-eighth session, a final report focusing on the results of his consultation with persons living in extreme poverty and persons working alongside them, and taking account of the conclusions and relevant data emerging from the World Summit for Social Development in March 1995 and the Fourth World Conference on Women to be held in Beijing in 1995, and of the

activities to be undertaken in 1996, which the General Assembly, in its resolution 48/183 of 21 December 1993, proclaimed International Year for the Eradication of Poverty;

6. Requests the Secretary-General to make available to the Special Rapporteur the human and material resources necessary for the fulfilment of his mandate;

7. Also requests the Secretary-General to arrange for the presentation of the final report on the study on human rights and extreme poverty in 1996, in the context of the International Year for the Eradication of Poverty, to be the occasion for an event involving the participation of representatives of persons and families living in extreme poverty and representatives of non-governmental organizations working alongside them.

35th meeting
24 August 1995

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

1995/29. Forced evictions

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

Recalling its resolutions 1991/12 of 26 August 1991, 1992/14 of 27 August 1992, 1993/41 of 28 August 1993 and 1994/39 of 26 August 1994,

Recalling also Commission on Human Rights resolution 1993/77 of 10 March 1993,

Recalling further the analytical report on forced evictions prepared by the Secretary-General (E/CN.4/1994/20),

Reaffirming that every woman, man and child has the right to a secure place to live in peace and dignity, which includes the right not to be evicted from one's home, land or community,

Recognizing that the often violent practice of forced eviction involves the coerced and involuntary removal of persons, families and groups from their homes, lands and communities, whether or not deemed legal under prevailing systems of law, resulting in greater homelessness and inadequate housing and living conditions,

Disturbed that forced evictions and homelessness intensify social conflict and inequality and almost invariably affect the poorest, most socially, economically, environmentally and politically disadvantaged and vulnerable sectors of society,

Aware that forced evictions can be carried out, sanctioned, demanded, proposed, initiated or tolerated by a range of actors, all of which possess legal obligations to refrain from such practices,

Aware also that discriminatory motivations are the actual basis of a large number of forced evictions,

Emphasizing that ultimate legal and political responsibility for preventing forced evictions rests with Governments,

Recalling that General Comment No. 2 (1990) on international technical assistance measures, adopted by the Committee on Economic, Social and Cultural Rights at its fourth session, states, inter alia, that international agencies should scrupulously avoid involvement in projects which involve, among other things, large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation (E/1990/23, annex III, para. 6),

Mindful of the questions concerning forced eviction included in the guidelines for States parties' reports submitted in conformity with articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights (E/1991/23, annex IV),

Noting with appreciation that the Committee on Economic, Social and Cultural Rights, in its General Comment No. 4 (1991) on the right to adequate housing considered that instances of forced eviction were, *prima facie*, incompatible with the requirements of the International Covenant on Economic, Social and Cultural Rights and could only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law (E/1992/23, annex III, para. 18),

Taking note of the observations of the Committee on Economic, Social and Cultural Rights concerning forced evictions, in which the Committee has clearly equated this practice with violations of the obligations arising under the International Covenant on Economic, Social and Cultural Rights,

Recalling that forced evictions are unacceptable under international human rights law unless accompanied by all necessary legal and other safeguards, including due process, when carried out against any persons, notwithstanding their tenure status,

Taking note of the explicit recommendations concerning the practice of forced evictions contained in the final report of the Special Rapporteur on the right to adequate housing (E/CN.4/Sub.2/1995/12, chap. VIII),

Aware of the many similarities between the phenomena of forced evictions, internal displacement, population transfer, mass expulsions, mass exodus, "ethnic cleansing" and other practices involving the coerced and involuntary movement of people from their homes, lands and communities,

1. Reaffirms that the practice of forced eviction constitutes a gross violation of a broad range of human rights, in particular the right to adequate housing, the right to remain, the right to freedom of movement, the right to privacy, the right to security of the home, the right to security of tenure, the right to food and a variety of additional rights;

2. Strongly urges Governments to undertake immediately measures, at all levels, aimed at rapidly eliminating the practice of forced eviction through, inter alia, immediately renouncing existing plans involving forced evictions, repealing legislation allowing forced evictions and ensuring the right to security of tenure to all citizens and other residents;

3. Also strongly urges Governments to confer legal security of tenure on all persons, in particular those currently threatened with forced eviction, and to adopt all necessary measures giving full protection against forced eviction, based upon effective participation, consultation and negotiation with affected persons or groups;

4. Recommends that all Governments provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their wishes, rights and needs, to persons and communities that have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups, and recognizing the obligation to ensure such provision in the event of any forced eviction;

5. Invites all international financial, trade, development and other related institutions and agencies to take fully into account the views contained in the present resolution and other pronouncements under international human rights and humanitarian law on the practice of forced eviction;

6. Requests the High Commissioner for Human Rights to give due attention to the practice of forced eviction in discharging his responsibilities and to undertake measures, whenever possible, to persuade Governments to repeal planned forced evictions from taking place and to ensure the provision of adequate compensation when evictions have already occurred;

7. Requests the United Nations Conference on Human Settlements (Habitat II) to take fully into account the practice of forced eviction as a gross violation of human rights and to include in the final declaration and plan of action explicit references to the non-acceptability of this practice under international human rights law and concrete measures designed to prevent forced evictions;

8. Requests the United Nations Centre for Human Settlements (Habitat) in implementing its housing rights strategy (see HS/C/15/INF.7) to do everything within its power to prevent the practice of forced evictions by, inter alia, using the good offices of the Secretary-General to persuade Governments to refrain from carrying out forced evictions and by compiling annual lists of all eviction cases brought to its attention;

9. Takes note of the report of the Secretary-General on guidelines for international events and forced evictions (E/CN.4/Sub.2/1995/13);

10. Requests the Secretary-General to submit an updated report to the Sub-Commission at its forty-eighth session;

11. Also requests the Secretary-General to convene an expert seminar on the practice of forced eviction and the relationship of this practice to internationally recognized human rights, with a view to developing comprehensive human rights guidelines on development-based displacement;

12. Decides to consider the issue of forced evictions at its forty-eighth session under the agenda item entitled "The realization of economic, social and cultural rights" and to determine how most effectively to continue its consideration of the issue of forced evictions.

35th meeting
24 August 1995

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

1995/30. Human rights and income distribution

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

Reaffirming the indivisibility, interdependence and interrelated nature of economic, social and cultural rights and civil and political rights,

Mindful that the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and a wide range of additional texts provide unequivocally that all persons are entitled to the full realization of economic, social and cultural rights,

Taking note of the Declaration on the Right to Development
(General Assembly resolution 41/128 of 4 December 1986, annex),

Recalling paragraph I.10 of the Vienna Declaration and Programme of Action (A/CONF.157/23), in which the World Conference on Human Rights, inter alia, reaffirmed the right to development as a universal and inalienable right and an integral part of human rights, and urged States and the international community to promote effective international cooperation for the realization of the right to development and the elimination of obstacles to development,

Taking particular account of the results of the World Summit for Social Development, held at Copenhagen from 6 to 12 March 1995 (A/CONF.166/9), especially the recommendations of its Programme of Action concerning the United Nations system, inter alia, that United Nations operational activities for development should be strengthened in order to implement the Summit outcome, and that the United Nations system's capacity for gathering and analysing information and developing indicators of social development should be strengthened, taking into account the work carried out by different countries, in particular by developing countries (para. 99 (e)),

Aware that all States have legally binding obligations to respect, protect and fulfil economic, social and cultural rights,

Convinced that education plays a fundamental role for the exercise of human rights and for providing equality of opportunity for all,

Recalling the reports of the Special Rapporteur on the realization of economic, social and cultural rights, Mr. Danilo Türk, in particular his final report, which addressed a range of issues concerning the relationship between the enjoyment of human rights and income distribution (E/CN.4/Sub.2/1992/16, paras. 76-84),

Taking account of Mr. Asbjørn Eide's preparatory document on the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution (E/CN.4/Sub.2/1994/21), the reports submitted by the Special Rapporteur on human rights and extreme poverty, Mr. Leandro Despouy (E/CN.4/Sub.2/1993/16, E/CN.4/Sub.2/1994/19 and E/CN.4/Sub.2/1995/15), and the report of the New York seminar (E/CN.4/1995/101),

Also taking account of its resolution 1994/40, in which it entrusted the Special Rapporteur, Mr. José Bengoa, with the preparation of a study on the

enjoyment of human rights and income distribution, Commission on Human Rights decision 1995/105 approving the appointment and the Economic and Social Council resolution of July 1995 confirming that decision,

Concerned that the implementation of economic, social and cultural rights in general and the right to education in particular have not yet received sufficient attention within the United Nations human rights framework,

Aware that the relationship between income distribution and growing levels of poverty, as well as the violation of human rights, requires further in-depth research and analysis by the human rights community,

Reiterating the fundamental principles of equality of opportunity, human dignity, equity and justice,

Affirming the inherent linkages between the enjoyment of all human rights, in particular economic, social and cultural rights, and the striving towards a more equitable distribution of economic resources both within and between nations,

Acknowledging that income disparity causes inequalities, especially among children, women and other vulnerable groups of society, who are discriminated against and denied the right to the same opportunities as the rest of the population,

Bearing in mind that it is necessary to analyse and overcome the obstacles that prevent societies from achieving greater equality of opportunity and better income distribution,

Considering that better income distribution would lead to more integrated and mutually supportive societies and, at the international level, to better conditions for maintaining world peace,

1. Welcomes the preliminary report on the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution, prepared by the Special Rapporteur, Mr. José Bengoa (E/CN.4/Sub.2/1995/14);

2. Endorses the conclusion initially established in the preparatory document prepared by Mr. Eide and repeated in Mr. Bengoa's preliminary report, to the effect that the concentration of wealth constitutes a serious obstacle to the realization of human rights, be they economic, social, cultural, political or civil, and that equality of opportunity is an essential element for participating effectively in the process of development and for obtaining a just share of the benefits from it;

3. Expresses its agreement with the work plan presented in the preliminary report, especially the suggestion that the outcome of the Copenhagen Summit for Social Development should be taken into account and followed up and encouragement given to the discussions needed for the complete and rapid achievement of its objectives;

4. Requests the Special Rapporteur to pay particular attention to the impact of the enjoyment of human rights, and that of the right to education in particular, on income distribution;

5. Also requests the Special Rapporteur to take special care to analyse the indicators needed for the gradual full satisfaction of economic, social and cultural rights;

6. Requests the Secretary-General to invite Governments, United Nations bodies, the specialized agencies and intergovernmental and non-governmental organizations to provide the Special Rapporteur with information relevant to the preparation of his report and urges them to participate actively in the work of the Sub-Commission;

7. Also requests the Secretary-General to provide the Special Rapporteur with all the assistance he may require for the preparation of his study;

8. Requests the Special Rapporteur to submit a second progress report to the Sub-Commission at its forty-eighth session and a final report at its forty-ninth session.

35th meeting

24 August 1995

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

1995/31. The relationship between the enjoyment of human rights and the working methods and activities of transnational corporations

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

Recalling the provisions of the Charter which establish that one of the Purposes of the United Nations is to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights for all,

Reaffirming the commitment of States Members of the United Nations, contained in Article 56 of the Charter, to take joint and separate action in cooperation with the Organization for the achievement of the Purposes set forth in Article 55 of the Charter,

Conscious that the Universal Declaration of Human Rights provides that everyone is entitled to realization of the economic, social and cultural rights indispensable for his dignity and the free development of his personality,

Considering that under the provisions of the Universal Declaration of Human Rights everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized,

Reaffirming the Declaration on Social Progress and Development proclaimed by the General Assembly in its resolution 2542 (XXIV) of 11 December 1969 and the Declaration on the Right to Development adopted by the General Assembly in its resolution 41/128 of 4 December 1986,

Underlining that the right to development as a universal and inalienable right and an integral part of fundamental human rights was reaffirmed by the World Conference on Human Rights in the Vienna Declaration and Programme of Action (A/CONF.157/23) and that the human person is the central subject of development,

Recognizing that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom,

Reiterating that all human rights are universal, indivisible, interdependent and interrelated and that the international community must treat human rights globally in a fair and equal manner and on the same footing,

Recalling the four reports of the Special Rapporteur on the realization of economic, social and cultural rights, Mr. Danilo Türk (E/CN.4/Sub.2/1989/19, E/CN.4/Sub.2/1990/19, E/CN.4/Sub.2/1991/17, E/CN.4/Sub.2/1992/16),

Mindful of the Vienna Declaration and Programme of Action (A/CONF.157/23) adopted by the World Conference on Human Rights, in which the need is

underlined for a concerted effort to ensure recognition of economic, social and cultural rights at the national, regional and international levels,

Recognizing that the activities of the various organizations of the United Nations system should be closely interrelated and that it is necessary to draw on all the efforts made in the various disciplines relating to the human person in order to promote all human rights effectively,

Taking into account the background document prepared by the Secretary-General as requested in its resolution 1994/37 of 26 August 1994 (E/CN.4/Sub.2/1995/11),

1. Endorses the background document prepared by the Secretary-General as requested in its resolution 1994/37 of 26 August 1994 (E/CN.4/Sub.2/1995/11);

2. Requests the Secretary-General to prepare for its consideration at its forty-eighth session a report on the impact of the activities and working methods of transnational corporations on the full enjoyment of all human rights, in particular economic, social and cultural rights and the right to development, bearing in mind existing international guidelines, rules and standards relating to the subject matter;

3. Also requests the Secretary-General to invite Governments and intergovernmental organizations and non-governmental organizations to submit information on the impact of the working methods and activities of transnational corporations on the enjoyment of human rights, in particular economic, social and cultural rights and the right to development, for consideration in the preparation of his report;

4. Decides to consider the report of the Secretary-General at its forty-eighth session under the agenda item entitled "The realization of economic, social and cultural rights".

35th meeting
24 August 1995

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

1995/32. Effects on the full enjoyment of human rights
of structural adjustment programmes

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

Recalling the provisions of the Charter which establish that one of the Purposes of the United Nations is to achieve international cooperation in

solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights for all,

Reaffirming the commitment of States Members of the United Nations, contained in Article 56 of the Charter, to take joint and separate action in cooperation with the Organization for the achievement of the Purposes set forth in Article 55 of the Charter,

Conscious that the Universal Declaration of Human Rights provides that everyone is entitled to realization of the economic, social and cultural rights indispensable for his dignity and the free development of his personality,

Reaffirming the Declaration on Social Progress and Development proclaimed by the General Assembly in its resolution 2542 (XXIV) of 11 December 1969 and the Declaration on the Right to Development adopted by the General Assembly in its resolution 41/128 of 4 December 1986,

Mindful of the Vienna Declaration and Programme of Action (A/CONF.157/23) adopted by the World Conference on Human Rights, in which the need is underlined for a concerted effort to ensure recognition of economic, social and cultural rights at the national, regional and international levels,

Reaffirming the interdependence and indivisibility of civil, cultural, economic, political and social rights and that the promotion and protection of any of these rights should never exempt or excuse States from the promotion and protection of other rights,

Recognizing that the activities of the various organizations in the United Nations system should be closely interrelated and that it is necessary to draw on all the efforts made in the various disciplines relating to the human person in order to promote all human rights effectively,

Recalling the four reports of the Special Rapporteur on the realization of economic, social and cultural rights, Mr. Danilo Türk (E/CN.4/Sub.2/1989/19, E/CN.4/Sub.2/1990/19, E/CN.4/Sub.2/1991/17, E/CN.4/Sub.2/1992/16),

Recalling its resolutions 1989/20, 1989/21, 1990/16, 1991/27, 1992/29, 1993/36, 1993/40, 1994/37 and 1994/40, 1994/41 and 1994/48,

Recalling Commission on Human Rights resolutions 1989/15, 1990/17, 1990/18, 1991/13, 1992/9, 1993/12, 1994/11 and 1995/13,

Recalling also Commission on Human Rights resolution 1993/14, in which the Commission requested the Secretary-General 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,

Taking into account the report submitted by the Secretary-General in pursuance of its resolution 1994/37 of 26 August 1994 (E/CN.4/Sub.2/1995/10),

1. Endorses the report of the Secretary-General submitted in pursuance of its resolution 1994/37 of 26 August 1994 (E/CN.4/Sub.2/1995/10);

2. Requests the Commission on Human Rights to authorize an open-ended working group of the Commission to meet for a period of one week prior to its fifty-third session to elaborate, on the basis of the preliminary set of basic policy guidelines on structural adjustment programmes and economic, social and cultural rights contained in the report of the Secretary-General (E/CN.4/Sub.2/1995/10, chap. II) and in close cooperation with the Committee on Economic, Social and Cultural Rights, policy guidelines on the subject-matter;

3. Invites the Commission on Human Rights to request the Secretary-General to invite Governments and intergovernmental and non-governmental organizations, as well as the Committee on Economic, Social and Cultural Rights, to contribute to the elaboration of draft policy guidelines by sending their comments on the preliminary set of basic policy guidelines, for consideration by the working group;

4. Recommends that the Commission on Human Rights consider this question at its fifty-second session under the agenda item entitled "Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights, including: (a) problems related to the right to enjoy an adequate standard of living; foreign debt, economic adjustment policies and their effects on the full enjoyment of human rights and, in particular, on the implementation of the Declaration on the Right to Development";

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

"The Commission on Human Rights, noting resolution 1995/32 of 24 August 1995 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, decides to establish an open-ended working group of the Commission to meet for a period of one week prior to its fifty-third session to elaborate, on the basis of the preliminary set of basic policy guidelines on structural adjustment programmes and economic, social and cultural rights contained in document E/CN.4/Sub.2/1995/10 and in close cooperation with the Committee on Economic, Social and Cultural Rights, policy guidelines on the subject-matter. The Commission also decides to invite Government and intergovernmental organizations and non-governmental organizations, as well as the Committee on Economic, Social and Cultural Rights, to contribute to the elaboration of draft policy guidelines by sending their comments on the preliminary set of basic policy guidelines, for consideration by the Working Group, and 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 1996/... of ... 1996, approves the decision of the Commission on Human Rights to establish an open-ended working group of the Commission to meet for a period of one week prior to its fifty-third session to elaborate, on the basis of the preliminary set of basic policy guidelines on structural adjustment programmes and economic, social and cultural rights contained in document E/CN.4/Sub.2/1995/10 and in close cooperation with the Committee on Economic, Social and Cultural Rights, policy guidelines on the subject-matter, and requests the Secretary-General to provide all assistance necessary to enable the working group to carry out its work.'

35th meeting
24 August 1995

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

1995/33. 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 propose measures designed to ensure respect throughout the world of human rights and fundamental freedoms in situations where states of siege or emergency exist, especially of those rights referred to in article 4, paragraph 2, of the International Covenant on Civil and Political Rights, prohibiting derogation from certain rights, even in time of public emergency,

Recalling also the following resolutions it has adopted on this question: 10 (XXX) of 31 August 1977, 1983/28 and 1983/30 of 6 September 1983, 1985/32 of 30 August 1985, 1987/25 of 3 September 1987, 1988/24 of 1 September 1988, 1989/28 of 1 September 1989, 1990/19 of 30 August 1990, 1991/18 of 28 August 1991, 1992/22 of 27 August 1992, 1993/28 of 25 August 1993 and 1994/36 of 26 August 1994,

Having taken note of the eighth revised annual report and list of States which, since 1 January 1985, have proclaimed, extended or terminated a state of emergency, submitted by the Special Rapporteur, Mr. Leandro Despouy (E/CN.4/Sub.2/1995/20 and Corr.1),

Bearing in mind that, in its resolution 1991/34 of 5 March 1991, the Commission on Human Rights invited the Sub-Commission to consider the question of the effectiveness of habeas corpus and similar remedies during states of emergency, and that the working group on the administration of justice and the question of compensation postponed consideration of this question until next year in order to take into account the suggestions made by the Special Rapporteur in his ninth report,

Recalling that it requested the Special Rapporteur to consider in depth the question of non-derogable rights in states or situations of emergency, and noting with satisfaction that he organized for that purpose two international expert meetings whose findings he submitted to the Sub-Commission in his eighth report,

1. Takes note with interest of the eighth revised annual report and list of States which, since 1 January 1985, have proclaimed, extended or terminated a state of emergency, submitted by the Special Rapporteur (E/CN.4/Sub.2/1995/20), and notes with satisfaction that the Special

Rapporteur is increasingly enjoying active cooperation from States, as well as competent bodies of the United Nations, the specialized agencies, non-governmental organizations and competent university institutes;

2. Notes with concern that, as is apparent from the eighth report, since 1 January 1985 a state of emergency has been proclaimed, extended or maintained in various forms on 200 occasions in States and territories, whereas in that same period, it has been terminated only some 60 times;

3. Takes note with concern of the Special Rapporteur's observations regarding the frequent adverse repercussions of the state of emergency on constitutional institutions, particularly parliament, whose legislative power and power to monitor the executive are not only limited but may even be reduced to naught and which may, by virtue of a state of emergency, be unconstitutionally dissolved and its members prosecuted or arrested arbitrarily, and considers that these grave consequences merit study in order to guard against them;

4. Invites all States whose legislation does not contain any explicit provision guaranteeing the legality of the introduction of a state of emergency to adopt provisions in conformity with international rules and principles, as developed in the successive reports of the Special Rapporteur and endorsed by the Commission on Human Rights, and similarly invites States whose legislation explicitly provides for states of emergency to ensure that such legislation is in conformity with international rules on the matter;

5. Notes the increasing interest shown by States in receiving technical assistance concerning states of emergency and the rights which cannot be derogated from in such circumstances, and expresses the hope that the Secretary-General will be able to respond promptly and effectively to requests from States in the context of advisory services in the field of human rights and through the Special Rapporteur;

6. Urges Governments, particularly those facing situations of internal unrest, to limit resort to a state of emergency exclusively to circumstances whose seriousness and exceptional character are such that they justify the introduction of such an emergency and to combine such introduction with guarantees, notably with regard to proportionality, duration and the inalienability of non-derogable rights, intended to maintain respect for human rights, so as to prevent a state of emergency from becoming commonplace and from being unjustifiably perpetuated;

7. Notes with deep concern that, to deal with certain situations, including internal unrest or the threat of such unrest, some States do not hesitate to take emergency measures without officially proclaiming a state of emergency and that such measures have serious repercussions on the enjoyment of human rights, and invites all States to ensure that no emergency measure, including suspension or limitation of certain basic rights, is taken without the corresponding state of emergency being officially proclaimed, in accordance with national law and international rules and principles;

8. Takes note with interest of the principles to be followed for drafting legal provisions on states of emergency contained in the Special Rapporteur's fourth annual report (E/CN.4/Sub.2/1991/28/Rev.1) and the report of the expert meeting on non-derogable rights in states or situations of emergency submitted by the Special Rapporteur in his eighth report, and encourages the Special Rapporteur to submit his conclusions and recommendations on this subject in his ninth report;

9. Takes note of the consultations with institutions and experts already held by the Special Rapporteur pursuant to Sub-Commission resolution 1993/28 of 25 August 1993 on the subject of receiving, storing and retrieving information, through a data bank, on states of emergency and related human rights questions, and invites him to pursue and broaden such consultations so as to report to it on the results at its forty-eighth session;

10. Requests the Special Rapporteur to submit to the Commission on Human Rights at its fifty-second session an updated list of States which have proclaimed, extended or terminated a state of emergency since 1 January 1985, so that the Commission will have the latest and most comprehensive information possible on the past 10 years;

11. Requests the Secretary-General to place at the disposal of the Special Rapporteur all the human and material resources needed to carry out his mandate in accordance with the foregoing;

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

"The Commission on Human Rights,

Endorsing resolution 1995/33 of 24 August 1995 of the
Sub-Commission on Prevention of Discrimination and Protection of
Minorities,

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

'The Economic and Social Council,

Recalling Commission on Human Rights resolution 1996/... of ... 1996 and Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1995/... of ... August 1995, entitled "Question of human rights and states of emergency",

1. Approves the Sub-Commission's requests to the Special Rapporteur on human rights and states of emergency, Mr. Leandro Despouy, to fulfil his mandate, notably relating to (i) the updating of the lists of States which have proclaimed, extended or terminated a state of emergency; (ii) the submission of conclusions and recommendations concerning non-derogable rights in states or situations of emergency; and (iii) the continuation of his consultations through the establishment of a database on states of emergency and related human rights questions;

2. Requests the Secretary-General to place at the disposal of the Special Rapporteur the human and material resources to fulfil his mandate in accordance with the foregoing.'"

35th meeting
24 August 1995

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

1995/34. Question of the impunity of perpetrators of violations of human rights (economic, social and cultural 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,

Recalling the interdependence and indivisibility of civil and political rights and economic, social and cultural rights,

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

Recalling its resolution 1992/23 of 27 August 1992, in which it decided to request Mr. El Hadji Guissé and Mr. Louis Joinet to draft a study on the impunity of perpetrators of violations of human rights, and Commission on Human Rights resolution 1993/43 of 5 March 1993, in which the Commission endorsed the decision of the Sub-Commission,

Recalling also its resolution 1993/37 of 26 August 1993 and, in particular, its resolution 1994/34 of 26 August 1994, in which it decided, in order to facilitate the treatment of the question, to entrust Mr. Joinet with the completion of the first aspect, concerning civil and political rights, and Mr. Guissé with the second aspect, concerning economic, social and cultural rights,

Bearing in mind paragraph II.91 of the Vienna Declaration and Programme of Action (A/CONF.157/23), in which the World Conference on Human Rights supported the efforts of the Commission and the Sub-Commission to intensify opposition to the impunity of perpetrators of serious violations of human rights,

1. Welcomes with satisfaction the interim report (E/CN.4/Sub.2/1995/19) on action to combat the impunity of perpetrators of violations of human rights (economic, social and cultural rights);
2. Requests the Special Rapporteur to submit his final report to the Sub-Commission at its forty-eighth session;
3. Requests the Secretary-General to provide the Special Rapporteur with any assistance required to enable him to discharge his task;
4. Invites Governments, competent bodies of the United Nations, the specialized agencies, regional intergovernmental organizations and non-governmental organizations to provide or continue to provide information on the question;
5. Decides to consider the question of the impunity of perpetrators of violations of human rights (economic, social and cultural rights) at its forty-eighth session under the agenda item entitled "The realization of economic, social and cultural rights".

35th meeting
24 August 1995

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

1995/35. Question of the impunity of perpetrators of violations of human rights (civil and political 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 worldwide of impunity for perpetrators of violations of human rights is a fundamental obstacle to the observance of human rights,

Recalling its resolution 1992/23 of 27 August 1992, in which it decided to request Mr. El Hadji Guissé and Mr. Louis Joinet to draft a study on the impunity of perpetrators of violations of human rights, and Commission on Human Rights resolution 1993/43 of 5 March 1993, in which the Commission endorsed the decision of the Sub-Commission,

Recalling also its resolutions 1993/37 of 26 August 1993 and 1994/34 of 26 August 1994, concerning efforts to combat impunity,

Bearing in mind paragraph II.91 of the Vienna Declaration and Programme of Action (A/CONF.157/23), in which the World Conference on Human Rights supported the efforts of the Commission and the Sub-Commission to intensify opposition to the impunity of perpetrators of serious violations of human rights,

1. Welcomes with satisfaction the progress report prepared by Mr. Louis Joinet (E/CN.4/Sub.2/1995/18) on efforts to combat the impunity of perpetrators of violations of human rights (civil and political rights);
2. Requests the Special Rapporteur to submit his final report to it at its forty-eighth session;
3. Requests the Secretary-General to provide the Special Rapporteur with any assistance required to enable him to discharge his task;
4. Invites Governments, competent bodies of the United Nations, the specialized agencies, regional intergovernmental organizations and non-governmental organizations to provide or continue to provide information on the question;

5. Decides to consider the question of the impunity of perpetrators of violations of human rights (civil and political rights) at its forty-eighth session under the agenda item entitled "The administration of justice and the human rights of detainees".

35th meeting
24 August 1995

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

1995/36. United Nations Voluntary Fund for Indigenous Populations
The Sub-Commission on Prevention of Discrimination and Protection of
Minorities,

Bearing in mind Article 71 of the Charter of the United Nations and resolution 1296 (XLIV) of 23 May 1968 of the Economic and Social Council,

Recalling General Assembly resolution 40/131 of 13 December 1985 establishing the United Nations Voluntary Fund for Indigenous Populations,

Recalling also paragraph 5 of General Assembly resolution 49/214 of 23 December 1994 in which the Assembly encouraged the Commission on Human Rights to consider the draft United Nations declaration on the rights of indigenous people with the participation of representatives of indigenous people, on the basis of and in accordance with appropriate procedures to be determined by the Commission, with a view to achieving the adoption of a draft declaration by the General Assembly within the International Decade of the World's Indigenous People,

Noting Commission on Human Rights resolution 1995/32 of 3 March 1995, in which the Commission decided to establish an open-ended inter-sessional working group with the sole purpose of elaborating a draft declaration,

Convinced that the participation of indigenous people in the meetings and discussions relating to the text of the draft declaration will constitute an important development for the future promotion and protection of the human rights of indigenous people,

1. Recommends that the Commission on Human Rights recommend, through the Economic and Social Council to the General Assembly, that the Assembly amend its resolution 40/131 of 13 December 1985 by adding in subparagraph (b) the words "as well as the working group established by the Commission on Human Rights in its resolution 1995/32 of 3 March 1995" after the words "Working Group on Indigenous Populations";

2. Decides to recommend the following draft decision to the Commission on Human Rights for adoption:

"The Commission on Human Rights, noting resolution 1995/36 of 24 August 1995 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, recommends to the Economic and Social Council that it recommend that the General Assembly amend its resolution 40/131 of 13 December 1985 on the United Nations Voluntary Fund for Indigenous Populations by adding in paragraph (b) the words 'as well as the working group established by the Commission on Human Rights in its resolution 1995/32 of 3 March 1995' after the words 'Working Group on Indigenous Populations'."

35th meeting
24 August 1995
[Adopted without a vote. See chap. XIV.]

1995/37. International Decade of the World's Indigenous People
The Sub-Commission on Prevention of Discrimination and Protection of
Minorities,

Bearing in mind that one of the purposes of the United Nations, as set forth in the Charter, is the achievement of international cooperation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recalling General Assembly resolution 48/163 of 21 December 1993, in which the Assembly proclaimed the International Decade of the World's Indigenous People, and Commission on Human Rights resolution 1995/28 of 3 March 1995,

Recognizing the importance of consulting and cooperating with indigenous peoples and the need for financial support from within the United Nations, and aware of the need to build on the results and lessons of the International Year of the World's Indigenous People and the first year of the International Decade of the World's Indigenous People,

Having considered the report of the Working Group on Indigenous Populations on its thirteenth session (E/CN.4/Sub.2/1995/24),

Emphasizing the importance of the workshops and technical meetings for the world's indigenous people,

1. Welcomes the report of the second technical meeting on the International Decade of the World's Indigenous People (E/CN.4/Sub.2/AC.4/1995/5);
2. Expresses its appreciation and thanks to the Chairperson-Rapporteur of the second technical meeting, Mr. Antonio Garcia;
3. Welcomes the observance of the International Day of Indigenous People on 9 August every year;
4. Stresses the importance of strengthening of international cooperation for the solution of problems faced by indigenous people in areas such as human rights, the environment, development, education and health;
5. Recommends that a board of trustees for the United Nations Voluntary Trust Fund for the International Decade be established as soon as possible to consider projects submitted by indigenous and other organizations during the Decade, in accordance with United Nations rules and regulations, and that the members of this board include representatives of indigenous people;
6. Requests that the Secretary-General include in his report to the General Assembly the suggestions made in the course of the debate on the International Decade at the thirteenth session of the Working Group on Indigenous Populations.

35th meeting
24 August 1995

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

1995/38. Discrimination against indigenous peoples
The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Bearing in mind that one of the purposes of the United Nations, as set forth in the Charter, is the achievement of international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all without discrimination as to race, sex, language or religion,

Reaffirming the urgent need to recognize, promote and protect more effectively the human rights and fundamental freedoms of indigenous peoples,

Recalling Economic and Social Council resolution 1982/34 of 7 May 1982, in which the Council authorized the Sub-Commission to establish annually a working group on indigenous populations,

Taking note with appreciation of the report of the Working Group on its thirteenth session (E/CN.4/Sub.2/1995/24) and, in particular, of its conclusions and recommendations,

Taking note also of Commission on Human Rights resolution 1993/30 of 5 March 1993, in which the Commission recommended to all thematic rapporteurs, special representatives, independent experts and working groups to pay special attention, within the framework of their mandates, to the situation of indigenous people,

Mindful of the relevant recommendations adopted by the World Conference on Human Rights, in particular those contained in Part I, paragraph 20 and Part II, paragraphs 28 to 32 of the Vienna Declaration and Programme of Action (A/CONF.157/23),

1. Expresses its deep appreciation to the Working Group on Indigenous Populations and in particular to its Chairperson-Rapporteur, Ms. Erica-Irene A. Daes, for the work accomplished during its thirteenth session;

2. Requests the Secretary-General to transmit the report of the Working Group on its thirteenth session to indigenous organizations, Governments and intergovernmental and non-governmental organizations concerned, as well as to all thematic rapporteurs, special representatives, independent experts and working groups;

3. Recommends that the Chairperson-Rapporteur of the Working Group be entrusted with the preparation of a working paper on the concept of "indigenous people" and that the working paper be transmitted to Governments, intergovernmental organizations and indigenous peoples' organizations for their comments for submission to the Working Group at its fourteenth session;

4. Also recommends that the Working Group cooperate as a body of experts in any conceptual clarifications or analysis, which might also assist the working group established by the Commission on Human Rights in its resolution 1995/32 of 3 March 1995 to elaborate further the draft United Nations declaration on the rights of indigenous peoples;

5. Endorses the recommendation of the Working Group to highlight specific topics at its future sessions and to focus on indigenous health at its fourteenth session;

6. Requests the Secretary-General to invite Governments, intergovernmental organizations and indigenous and non-governmental organizations to provide information, in particular on matters relating to indigenous health, to be made available as a background paper at the fourteenth session of the Working Group;

7. Requests the Chairperson-Rapporteur of the Working Group to inform the Board of Trustees of the United Nations Voluntary Fund for Indigenous Populations that the Working Group at its fourteenth session will highlight health questions so that the Board can bear this in mind when it meets for its ninth session in April 1996;

8. Requests the Secretary-General to prepare an annotated agenda for the fourteenth session of the Working Group containing, inter alia, the following items: standard-setting activities, review of developments, the study of treaties and agreements and other constructive arrangements between States and indigenous peoples, the International Decade of the World's Indigenous People, including a sub-item on United Nations operational activities and indigenous peoples, the permanent forum for indigenous people, the future of the Working Group and the United Nations Voluntary Fund for Indigenous Populations;

9. Recommends that the Commission on Human Rights request the Economic and Social Council to authorize the Working Group to meet for eight working days prior to the forty-eight session of the Sub-Commission;

10. Decides to recommend to the Commission on Human Rights the following draft decision for adoption:

"The Commission on Human Rights, noting resolution 1995/38 of 24 August 1995 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, decides to authorize the Working Group to meet for eight working days prior to the forty-eight session of the Sub-Commission."

35th meeting
24 August 1995

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

1995/39. Permanent forum in the United Nations
for indigenous people

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

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

Bearing in mind the recommendation contained in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights that the establishment of a permanent forum for indigenous people in the United Nations system should be considered (A/CONF.157/23, para. II.32),

Recalling General Assembly resolution 48/163 of 21 December 1993 and Commission on Human Rights resolution 1995/30 of 3 March 1995,

Noting the report of the workshop held in accordance with Commission resolution 1995/30 (E/CN.4/Sub.2/AC.4/1995/7) and the views expressed by Governments (E/CN.4/Sub.2/AC.4/1995/7/Add.1) and indigenous organizations (E/CN.4/Sub.2/AC.4/1995/7/Add.3) and the note of the Chairperson-Rapporteur of the Working Group on Indigenous Populations, Ms. Erica-Irene Daes (see E/CN.4/Sub.2/AC.4/1995/7/Add.2),

Taking into account the comments and suggestions of participants at the thirteenth session of the Working Group on Indigenous Populations,

1. Welcomes the request to the Commission on Human Rights by the General Assembly in its resolution 48/163 of 21 December 1993 to give priority consideration to the establishment of a permanent forum for indigenous people in the United Nations system;

2. Requests the Secretary-General to transmit the report of the workshop on the permanent forum for indigenous people (E/CN.4/Sub.2/AC.4/1995/7) to Governments and intergovernmental and indigenous organizations inviting them to express their views concerning the establishment of a permanent forum for indigenous people and to report on the comments and suggestions received to the Working Group on Indigenous Populations at its fourteenth session;

3. Also requests the Secretary-General to review existing mechanisms, procedures and programmes within the United Nations for promotion and coordination of the rights of indigenous people;

4. Recommends that the future permanent forum be established in the early part of the International Decade for the World's Indigenous People and

that its mandate should include questions relating to human rights, development, the environment, health, education and culture;

5. Also recommends that the membership of the future permanent forum consist of independent experts as well as representatives of Governments and indigenous organizations and, subject to its being open to non-members, that it also be open to representatives of indigenous organizations without regard to consultative status;

6. Further recommends that the Centre for Human Rights organize a second workshop on a possible permanent forum for indigenous people with the participation of independent experts as well as representatives of Governments, indigenous organizations and United Nations bodies and specialized agencies;

7. Decides to recommend to the Commission on Human Rights the following draft decision:

"The Commission on Human Rights, noting resolution 1995/39 of 24 August 1995 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, endorses the recommendation that the Centre for Human Rights organize a second workshop on a possible permanent forum for indigenous people with the participation of independent experts and representatives of Governments, indigenous organizations and United Nations bodies and specialized agencies, and requests the Secretary-General to prepare a review of existing mechanisms, procedures and programmes for coordination and promotion of the rights of indigenous people within the United Nations to be submitted as a background document for the proposed second workshop."

35th meeting

24 August 1995

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

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