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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

Note by the secretariat

1. In paragraph 13 of resolution 1994/53, adopted on 4 March 1994, the Commission on Human Rights requested the Secretary-General, in close collaboration with the thematic special rapporteurs and working groups, to issue annually their conclusions and recommendations, so as to enable further discussion of their implementation at subsequent sessions of the Commission.

2. Pursuant to this request, the annex to the present document contains the pertinent chapters of the reports submitted to the Commission on Human Rights at its fifty-first session by the thematic special rapporteurs and working groups.

3. During the past year, field missions were undertaken by the Special Rapporteur on extrajudicial, summary or arbitrary executions to Indonesia and East Timor; by the Special Rapporteur on the question of torture to the Russian Federation; jointly, by the Special Rapporteur on the question of torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions, to Colombia; by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to the United States of America; by the Special Rapporteur on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination to Croatia and to the Federal Republic of Yugoslavia (Serbia and Montenegro); by the Special Rapporteur on the right to freedom of opinion and expression to Malawi; and by the Special Rapporteur on

the implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief to China. Field missions were also undertaken by the Representative of the Secretary-General on internally displaced persons to Colombia, to Burundi and to Rwanda; by the Working Group on Arbitrary Detention to Bhutan and to Viet Nam; and by one member of the Working Group on Enforced or Involuntary Disappearances to the former Yugoslavia, regarding the special process on missing persons in the territory of the former Yugoslavia. The conclusions and recommendations made by the special rapporteurs/representatives and the working groups after their visits to the above-mentioned countries, which specifically focused on the situation in the countries concerned, are contained in their respective mission reports, either as part of the main report or issued separately in addenda thereto.

4. Furthermore, in paragraph 15 of resolution 1994/53, the Commission on Human Rights requested the Secretary-General to consider the possibility of convening further periodic meetings of all the thematic special rapporteurs and the chairmen of working groups of the Commission on Human Rights in order to enable them to continue to exchange views, cooperate more closely and make recommendations. In this context, it may be recalled that a meeting of special rapporteurs/representatives/experts and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme was held from 30 May to 1 June 1994, the report on which has been submitted to the Commission at its fifty-first session (E/CN.4/1995/5).

Annex

CONTENTS

I. CONCLUSIONS AND RECOMMENDATIONS BY THE SPECIAL RAPPORTEUR ON THE QUESTION OF THE USE OF MERCENARIES AS A MEANS OF VIOLATING HUMAN RIGHTS AND IMPEDING THE EXERCISE OF THE RIGHT OF PEOPLES TO SELF-DETERMINATION (E/CN.4/1995/29, paras. 91-116)

A. Conclusions

91. The recruitment, use, financing and training of mercenaries to commit acts that adversely affect the self-determination of peoples, the sovereignty of States, the constitutional stability of Governments and human rights have been condemned by various international instruments and resolutions of United Nations bodies, while according to data collected by the Special Rapporteur, many States have included mercenarism as a punishable offence in their national legislation.

92. From the information gathered, classified and analysed by the Special Rapporteur, it is clear that mercenary activity is not limited to the agent who actually commits the criminal act. He is merely the one who executes a wrongful act. In reality, before a mercenary is recruited and before he commits a wrongful act, there has to be an operation which has been conceived, planned, organized, financed and supervised by third parties; the latter may be private groups, political opposition organizations, groups which advocate national, ethnic or religious intolerance, clandestine organizations, paramilitary groups or Governments which, through covert operations, decide on illegal action against a State or against the life, liberty, physical integrity and safety of persons, and involve mercenaries in that action. Responsibility for a mercenary act extends to the agent who executes the criminal act in its final phase, but also to all those who, individually or collectively, participated in the wrongful act of using mercenaries for the commission of a crime. This, therefore, leads to the conclusion that vigilance, control and express prohibition provided for by Member States in their domestic legislation are very important in order to prevent organizations which generate mercenary activities from operating in their territory and, where necessary, to counter any intelligence machinery that, through covert operations, permits the involvement of government agents who recruit mercenaries or do so through third organizations, by prescribing harsh punishment for such unlawful contractual relationships.

93. In addition to the general observations made above, it can be said that mercenaries are most frequently recruited to commit acts of sabotage against a third country, to carry out selective assassinations of eminent persons, and to participate in armed conflicts. It therefore follows that a mercenary is a criminal who, without prejudice to the punishment applicable to those who recruited and paid him, must be severely punished, in keeping with the categorization of the common crime he has committed, where national law does not envisage the crime of mercenarism as such. In any case, the person’s mercenary role should be considered as an aggravating factor.

94. The condemnation of mercenarism is a universally accepted fact, even in those States which have not yet specifically categorized it as a crime. At this point, the debate is focused on the scope and content of this punishable act, but not on its criminal nature. Moreover, without prejudice to the

further development of international legal instruments and of the provisions of national law, Member States should strengthen their capacity to formulate policies on the prevention, prosecution and punishment of mercenary activities. The prevention aspect is fundamental and must include such matters, as, for example, use of the open labour market in recruiting persons for unspecified activities. This topic is extremely sensitive and should be examined by each country in accordance with the nature of its economic system as protected by the Constitution. In any case, it cannot be alleged that there is any contradiction between constitutional and international norms. If mercenary activities are considered a crime, it cannot be argued that it is permissible to use the open market to recruit mercenaries.

95. Mercenaries are generally people who have belonged to the regular armed forces of a country and as such have taken part in military conflicts. In other words, it is their job to make war and it is for this precise reason that their services are sought. From this standpoint, the unemployment they face when they are repatriated and retired from the regular forces and certain personality changes they have undergone as a result of warfare may contribute to their becoming mercenaries. The present supply of mercenaries is influenced by the existence of career military personnel whose personal situation has deteriorated as a result of the reduction in strength or dissolution of the regular armed forces to which they belonged and who have consequently joined the ranks of the unpaid.

96. Despite the already complex nature of the general picture, there are certain situations that cannot be classified as mercenarism under international law as it now stands. There is a tendency to use the term too loosely, and as a means of referring in ordinary conversation to any adversary assumed to indulge in immoral conduct and be partial to ill-gotten gains. An examination of situations involving the right to sovereignty and self-determination, reveals aspects which do not precisely fit the description of mercenarism, although other factors can be observed, namely, criminal conduct, payment, involvement in a conflict on behalf of a third party, etc. In some cases, use is made of legal formulas or, more specifically, normal legal procedures as a cover for the mercenary. He may then appear with the legal identity of a national of the country in whose armed conflict he is involved, or where he will be performing a criminal act, and thus avoid being categorized as a mercenary. Although the use of such a device legally conceals the mercenary's real status, the origin of the contractual relationship, the payment, the type of services agreed, the simultaneous use of other nationalities and passports, etc. serve as leads for establishing the true nationality of persons involved in an armed conflict in respect of whom there are well-founded suspicions that they are mercenaries. However, the use of multiple nationalities, the concealment of the person's alien status, or the free movement of persons who may be presumed to be mercenaries should, at expert and specialist meetings, serve as a basis for determining how the concept should be updated and what preventive measures should be taken against mercenarism.

97. The information gathered confirms that in recent years various African countries suffered from mercenary activities. In this connection, it should be recalled that the concept of a mercenary, as construed today, took as its point of departure the presence of professionals of war, most of them white,

who were active in bloody armed conflicts in various regions of Africa in order to prevent the exercise of the right to self-determination, independence and the formation of sovereign African States, and to form territorial enclaves subordinate to former colonial Powers or to install Governments subordinate to them or to colonialist ventures. In so far as some of these conflicts have been settled, mercenary activities can be said to have subsided. But they have not disappeared completely. Angola, Benin, Botswana, the Comoros, Lesotho, Liberia, Mozambique, Namibia, Zaire, Zambia and Zimbabwe, inter alia, were countries with experience of mercenary activity; and in certain cases, outside the region of southern Africa, mercenary attacks occurred as a result of the policy of apartheid which originated in South Africa but has ramifications and has sparked criminal activities all over Africa and even outside it.

98. The political and military conditions in which the Angola Peace Agreement was signed in Lusaka provide a more realistic basis for confidence in its effective implementation, which should lead to political stability and the national reconciliation of the entire Angolan people. In the context of this process, the Special Rapporteur considers that particular care should be taken in investigating crimes attributable to mercenaries and ensuring that mercenaries are effectively withdrawn from the territory of Angola. The suffering of the Angolan people throughout a war constantly involving gangs of mercenaries who perpetrated terrible crimes, should be invoked by the international community in condemning and eradicating mercenary activities as directly and effectively as possible.

99. In relation to the mercenary activities generated in South Africa within the context of the policy of apartheid, whose backdrop has been both South Africa, other countries of the region and even countries outside Africa, the report demonstrates that mercenary activities have substantially abated with the progressive dismantling of apartheid. The holding of the first multiracial and democratic elections in April 1994 foreshadow the beginning of a process that will consolidate democracy and ensure full respect for human rights in South Africa. As this process continues it is hoped that the resistance of a few extremist white minority groups, who have even recruited mercenaries in order to be able to organize themselves on a military basis and receive military training, will be brought under control, and that the crimes committed by officials, civil or military Government agents, mercenaries and members of paramilitary units against the population of South Africa and neighbouring countries can be investigated and punished.

100. The Special Rapporteur considers that his visits to the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), pursuant to his mandate in September 1994, were of great importance. However, when he was completing this report, the documentation that was to have been received from the Croatian authorities and part of that promised by the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) had still not been dispatched; as a result, the Special Rapporteur considers that he is not in possession of all the material he needs to draw his final conclusions. He is, however, able to present the following appreciations as working hypotheses.

101. With respect to allegations concerning the presence of mercenaries in Croatia, foreigners who joined the Croatian regular army as regular and permanent members, receiving compensation similar to or less than that promised or paid to combatants of the same ranks and functions of this regular army, should not be classified as mercenaries. They were volunteers and not mercenaries. Mercenaries would be persons motivated to fight essentially by the desire for private gain and, in fact, who were promised material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions. Cases of foreigners forming part of international brigades and the relationship between those brigades and the State defence system should be given particular attention. It should be determined whether they received or were promised compensation, in what amounts, and who promised it or paid it.

102. A study should also be made of the question of the mujahidin or Islamic combatants allegedly involved in the armed conflict taking place in the Republic of Bosnia and Herzegovina. In this case persons sent by States which are not parties to the conflict on official duty as officers or soldiers of their armed forces should be excluded. Foreigners who have joined the armed forces of Bosnia and Herzegovina as regular and permanent members, receiving material compensation similar to or less than that promised or paid to combatants of similar ranks and functions of those armed forces should also be excluded. It must then be decided whether these persons are motivated to take part in the hostilities essentially by the desire for private gain and, in this context, possible religious or cultural motivation analysed. In any case, the nationality factor should always be taken into account.

103. With regard to the current status of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the Special Rapporteur notes that to date only 7 States have completed the process for becoming parties to the Convention (Barbados, Cyprus, Maldives, Seychelles, Suriname, Togo and Ukraine), and that a further 13 States have signed it. This situation has prompted the conclusion that there is a delay in the process by which Member States express consent to be bound by the Convention through ratification or accession, for until 22 States have ratified or acceded to it, the Convention cannot enter into force.

B. Recommendations

104. The Special Rapporteur, in view of the fact that mercenary activities have not subsided - a situation that affects the human rights and self-determination of peoples, and taking into account the United Nations declarations and resolutions condemning such activities as serious crimes which give all States cause for profound concern, recommends to the Commission on Human Rights that it should reaffirm its condemnation of mercenary activities of any type or form and at any level, and of States or third parties involved in them. He further stresses the need to strengthen the principles of the sovereignty, equality and independence of States, the self-determination of peoples, full respect for human rights and the stability of constitutionally established and lawfully functioning Governments.

105. Bearing in mind that mercenary action takes place chiefly, but not exclusively, in the context of armed conflict, as mercenary operations have

also been staged where there was no armed conflict, it is recommended that the Commission on Human Rights should stress that the use of mercenaries in itself and their use for unlawful activities are to be condemned, both in cases where such activities are carried out by one or all parties to an armed conflict and in cases where there is no armed conflict, and mercenaries are resorted to for purposes of impeding the self-determination of a people, damaging a country's installations, destabilizing the constitutional Government of a State or endangering the life and safety of persons.

106. Bearing in mind the nature, forms, contractual relations and specific characteristics which go to make up mercenary activities, the Special Rapporteur suggests that the resolution condemning mercenary activities should also recommend that Member States should include an explicit prohibition in their domestic legislation in order to prevent organizations linked to mercenaries from operating in their territories, or carrying out contractual activities such as propaganda and advertising on behalf of paramilitary personnel and mercenaries. They should also prohibit public authorities from resorting to mercenarism and counter any intelligence machinery which through covert operations uses mercenaries or does so through third organizations.

107. In view of the existence of surplus military personnel who have become unemployed as a result of the reduction of the numbers of the armed forces of many countries, and the possibility that they may become mercenaries, Member States are recommended to set up policies of prevention, exchange of information and care for persons of this type who have developed a tendency towards aggressive behaviour. It is possible to implement a policy of employment and psycho-social care for people with problems resulting from their participation in warfare, and it is also possible for the State to establish a legal framework for the activities of associations of former combatants to prevent them from going to extremes, such as the glorification of war, the fostering of intolerance and the adoption of ideologies that nurture violence and military interventionism. States therefore have an interest in preventing bands of mercenaries from being formed or acting within their territory, in enacting laws that criminalize mercenarism and in taking legal action to suppress mercenary activity. Where mercenaries are former members of the armed forces or the police, this should be an aggravating circumstance and the penalties should be more severe.

108. The prevention aspect is fundamental and must include such matters as, for example, use of the open labour market in recruiting persons for unspecified activities. This topic should be examined by each country in accordance with the nature of its economic system as protected by the Constitution. If mercenary activities are considered a crime, it cannot be argued that it is permissible to use the open market to recruit mercenaries. In the same way, States have the capacity to prevent their territory from being used for the training, massing or transit of mercenaries, and to adopt measures to ensure that their financial and economic systems cannot be used to facilitate operations linked to such illicit activities.

109. There must be no attempt to justify mercenaries in the media nor any misconceptions regarding this type of human behaviour. National legislation must be very harsh on the temptation for State services, such as intelligence services, or authorities with repressive proclivities or private

totalitarian-minded associations, to resort to markets where mercenaries are available, to recruit individuals for the purpose of establishing praetorian guards, death squads or operational groups devoted to political repression or the assassination of political or religious adversaries.

110. Some measures which should be implemented are the cancellation of the licences and operating permits of private entities that have hired or recruited mercenaries to engage in illegal activities, the refusal of passports or visas to mercenaries and prohibiting them from passing through the territory of the State.

111. Africa is still the continent most affected by mercenary activities, which persist in certain conflicts in the region and continue to pose a latent threat to other African countries. It is therefore recommended that the Commission on Human Rights should reaffirm its strong condemnation of the presence of mercenaries and of those States and third parties which promote mercenary activities in Africa, and at the same time reiterate its unqualified support for the self-determination and development of the African peoples, and the full enjoyment of their human rights.

112. Further to the previous recommendation, and bearing in mind that the elimination of the apartheid regime in South Africa and the installation of a democratic and multiracial regime in that country may favour the reduction of mercenary activities, it is recommended that all persons of foreign nationality who have served as mercenaries in armed conflicts or in support of apartheid, whether or not they have served sentences, should be expelled from African countries, while at the same time nationals who have participated in mercenary activities should also be liable to provisions in the respective legal system of each country which establish penalties of the greatest severity for recidivism. It is also recommended that organizations which proclaim recourse to violence should be legally dissolved, disarmed, the mercenaries in their service expelled, and the crimes committed investigated and punished to ensure that the authors of these acts do not enjoy impunity.

113. The Special Rapporteur recommends that, in the context of the peace process in Angola, the crimes and violations of international humanitarian law and human rights attributable to mercenaries should be investigated and measures adopted to ensure that the mercenaries are in fact withdrawn from the territory of Angola.

114. The Special Rapporteur recommends that the authorities of the States which have emerged in the territory of the former Yugoslavia and are affected by armed conflicts should be asked to keep a detailed record of aliens entering their countries, and particularly of those taking part in the hostilities. Indeed, it should be borne in mind that the presence of aliens in an irregular situation is a factor that has contributed to the escalation of the conflict, its complexity and the perpetration of cruel acts which have mainly affected the civilian population.

115. It is recommended that the record should make a distinction between the following: (a) Aliens who have been sent on official duty as members of their armed forces by States which are not parties to the conflict; (b) Aliens of national origin who have joined the armed forces and who have been promised or

paid material compensation similar to or less than that promised or paid to combatants of similar ranks and functions in those armed forces; (c) Aliens who are motivated to take part in the hostilities essentially by the desire for private gain, who have been specially recruited to fight and, in fact, have been promised material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions. In this last case, it is recommended that the competent authorities should conduct more detailed investigations of the entities or persons who recruit, train and pay these persons or who may have done so in the past, and immediately arrest those falling into category (c) above, and either expel them from the country or prosecute them if they have committed acts which are offences under the law.

116. Lastly, with regard to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the Special Rapporteur recommends that the Commission on Human Rights should suggest to those States which have not yet ratified it or signalled their intention to accede to it that they consider the advisability of speeding up this process, which will contribute to more effective action by the international community for the prevention, prosecution and punishment of mercenary activities, and contribute to the observance of the purposes and principles contained in the Charter of the United Nations.

II. CONCLUSIONS AND RECOMMENDATIONS BY THE WORKING GROUP ON ARBITRARY DETENTION (E/CN.4/1995/31, paras. 38-62)

A. General conclusions

38. In its resolution 1994/32, the Commission noted with concern that the practice of arbitrary detention is facilitated and aggravated by several factors such as abuse of states of emergency, exercise of the powers specific to states of emergency without a formal declaration, non-observance of the principle of proportionality between the gravity of the measures taken and the situation concerned, too vague a definition of offences against State security, and the existence of special or emergency jurisdictions (para. 14).

39. Such concerns had already been expressed by the Group in its previous reports (E/CN.4/1993/24 and E/CN.4/1994/27). On the basis of the experience gained during its four years of existence, the Group can affirm that the main causes of arbitrary deprivation of liberty are those mentioned in the previous paragraph.

40. The Group notes that cases of arbitrary detention are not exclusive to repressive regimes - although there they are certainly more numerous and unjust, entail harsher conditions, afford fewer possibilities of obtaining release and carry a higher risk of being subjected to torture or enforced disappearance - but also occur under democratic regimes, especially in connection with the procedures for the admission or expulsion of aliens.

41. The Working Group therefore accords the greatest importance to all initiatives aimed at strengthening the rule of law, re-enforcing the independence of the judiciary and professionalizing the police, particularly in their knowledge of covenants, declarations and conventions, the Standard

Minimum Rules for the Treatment of Prisoners, the Code of Conduct for Law Enforcement Officials and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

42. The advisory services of the Centre for Human Rights should attach special importance to these matters. Pursuant to the Commission's decision in paragraph 2 of its resolution 1994/69, the Working Group offers the cooperation of its members in elaborating, devising and preparing materials and implementing programmes of this kind.

43. Eighteen of the cases dealt with resulted from the existence of a state of emergency that had been officially declared, or at any rate invoked by the Government to vindicate its powers to detain individuals. According to the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, a state of emergency was in force in 32 countries in December 1994 (as against 29 countries in 1993), to which should be added - as indicated in the 1993 report - that some countries exercise powers specific to states of emergency without a formal declaration.

44. The Working Group once again expresses its concern over the existence in many countries of special, ideologically inspired courts, operating under various designations. During 1994 the Group continued to receive communications reporting arrests justified in terms of decisions taken by courts of this kind, such as "people's courts", "revolutionary courts", "Council of War", "Supreme Court of the Armed Forces", "Supreme Court of State Security", as well as, more generally, detentions ordered by military courts which, while they do not appear to be formally prohibited by the Universal Declaration of Human Rights or by the International Covenant on Civil and Political Rights, often fail to meet the "independent and impartial" requirement laid down in article 14 of the Covenant.

45. The Universal Declaration of Human Rights states that "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law" (art. 8), while the International Covenant on Civil and Political Rights provides that "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful" (art. 9 (4)). This is the remedy or action of habeas corpus. Unfortunately it does not exist in all countries, thereby depriving citizens of a powerful means of defence against arbitrary detention, or at least a way of promptly remedying injury caused by unlawful or unjust imprisonment. The remedy of habeas corpus, characterized by its non-official character, urgency and ex officio action by the judge, is the best remedy against this kind of human rights violation. The Group reiterates its interest in the preparation of a declaration on the subject by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, particularly regarding the non-derogable nature of habeas corpus as an inherent human right.

46. In 1994, the Group received complaints concerning 293 persons who, according to the sources, were arbitrarily detained (in 1993, 181 persons). During 1994, the Group adopted 48 decisions regarding the situation of 112 detained persons.

47. The Group is concerned by the failure of Governments to respond to its requests for information. Out of the 293 individual cases transmitted, it received information from Governments regarding 90 persons, or approximately 31 per cent of the total. The Group also regrets that, in many cases, Governments limit their replies to providing general information or merely affirming the non-existence of arbitrary detention in the country or referring to the constitutional measures preventing it from occurring, without making any direct reference to the case transmitted.

48. The sources that provided the Group with the most information were the international non-governmental organizations (74 per cent). National non-governmental organizations made submissions to the Group in only 23 per cent of cases, while families did so in 3 per cent of cases. While such intercession means that the Group is informed of the detention with quite some delay, which prevents it from taking more expeditious action, it may be noted that the quality of the information provided has improved.

49. In any event, and with a view to making the Group, its mandate and its working methods more familiar and helping families and national non-governmental organizations, the Group, under the Human Rights Fact Sheet publications service of the Centre for Human Rights, is preparing a Fact Sheet on arbitrary detention, which is due to appear next year.

50. The Working Group wishes to remind the Commission of the cases of individuals who have been declared to be unlawfully detained and who have been arbitrarily deprived of their freedom for many years (E/CN.4/1994/27, para. 62). The Group has received no information regarding their release.

51. The Working Group wishes to reiterate its concern at the imprecision with which legislation in many countries describes the conduct charged. The examples given in earlier reports were again noted in the year covered by this report (acts described by the Governments concerned as "treason", "acts hostile to a foreign State", "enemy propaganda", "terrorism", etc.). During 1994, the Group observed that there are criminal classifications under which it is not even clear whether the perpetrator of an "attack on State security" used violence or merely manifested an opinion. In this connection, the Group believes that consideration should be given to the possibility of suggesting that the competent body (the forthcoming Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders) should make recommendations to ensure that criminal classifications established by national law are in conformity with the general principles guaranteeing that the right to the principle of restrictiveness or lawfulness is not arbitrarily disregarded as described.

52. In 1994, the Group conducted its first two in situ missions. Their results reinforced the Group's opinion concerning the usefulness of such missions for the performance of its mandate. The Working Group is the only universal international mechanism which can make visits to places of detention

in order to concern itself not only with conditions of detention (a matter related to the mandate of the International Committee of the Red Cross), but also the legal status of prisoners (date and circumstances of arrest, officials involved, prisoner's appearance in court, notification of charges, remedies available to challenge detention, etc.). This interest even surprised prison officers and public servants in general in the countries visited, who apparently expected or were prepared to show the Group sanitary facilities, food, etc.

53. By reason of its mandate of "investigating cases of detention imposed arbitrarily", it was not possible for the Group to have an overall view of the situation regarding deprivation of liberty in a particular country and to make recommendations which it deemed relevant. The visits it conducted enabled it to verify the lawfulness of detentions not only on a case-by-case basis but also from a general standpoint, in relation both to normative aspects and to practical implementation. For this purpose, interviews with prisoners, on the one hand, and judges and police officers, on the other, were enormously important. Had time permitted - and, for future missions, consideration will be given to this possibility - it would also have been interesting to consult case files or attend hearings.

54. The visits afford the Governments concerned a splendid opportunity to demonstrate both respect for the rights of prisoners and progress made in this area.

55. The Group notes that, in some countries, the law provides for the possibility of individuals being tried by anonymous, or so-called "faceless", judges. This situation is especially disturbing and may serve to reduce the population's confidence in judges. The Working Group, conscious of the fact that the existence of such courts may seriously affect, inter alia, the right to personal freedom which is the object of its mandate, but at the same time understanding the need to ensure the life and physical integrity of judges and their families, hopes that this issue can be discussed with the Special Rapporteur on the Independence of the Judiciary at the next meeting of special rapporteurs and chairmen of working groups.

B. Recommendations

56. The Working Group reiterates the recommendations made in its previous reports, which remain fully applicable. Without prejudice to this fact, the Group addresses the following recommendations to the Commission on Human Rights:

(a) The Commission should consider the possibility of converting the mandate of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the question of states of emergency and respect for human rights into a mandate of the Commission;

(b) The Commission should urge the continuation of the annual meetings of special rapporteurs and chairmen of working groups, whose usefulness was demonstrated both at the World Conference on Human Rights held in Vienna in 1993 and at the first meeting held in May 1994, as provided for by the Commission in paragraph 13 of its resolution 1994/53;

(c) The Commission, when adopting the resolution on the question of arbitrary detention, should approve the procedure for following up decisions declaring a case of detention to be arbitrary. As already explained, the Group, in compliance with the request made in paragraph 19 of resolution 1994/32, drew up a proposal for follow-up on which Governments were consulted. Bearing in mind the Government replies, the Group acknowledged the point made by the Governments of Bahrain and the Netherlands that the proposed deadline for replying to the Group might be regarded as short by some Governments, and therefore modified its original proposal. Consequently, the procedure for following up the Group's decisions which is proposed to the Commission is as follows:

> "The Working Group suggests that a Government which has been the subject of a Working Group decision deeming a detention to be arbitrary should be requested to inform the Working Group, within four months from the date of transmittal of the decision, of the measures adopted in compliance with the Group's recommendations. For the time being, it is suggested that this procedure should be applied only in cases in which the prisoner has not been released. Should the Government fail to abide by the Group's recommendations, the Group might proceed to recommend to the Commission on Human Rights that it should request that Government to report to the Commission on the matter, in accordance with the modalities deemed most appropriate by the Commission."

57. The Group also asks the Commission to make the following requests to Governments:

(a) Long-standing detainees (see para. 50) whose detention has been deemed arbitrary by the Group should be released, not only in compliance with the recommendation made by the Group in its decisions but also for humanitarian reasons;

(b) Governments which have been maintaining states of emergency in force for many years should lift them, limit their effects or review the custodial measures that affect many persons, and in particular should apply the principle of proportionality rigorously.

58. The Group recommends that the Commission should request the Sub-Commission on Prevention of Discrimination and Protection of Minorities to consider the possibility of initiating a study on the preparation of a declaration or protocol concerning the subject of habeas corpus as a human right and guarantee of the right to personal freedom, as well as respect for its non-derogability.

59. In the Working Group's opinion, the Commission might request the next meeting of special rapporteurs and chairmen of working groups to study the most appropriate coordination mechanisms for increasing the efficiency of its work and reports and programming in situ visits.

60. In the Group's view, the Commission might suggest that the competent organ (Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders) should study declarations or recommendations designed

to ensure that internal national legislation, in describing conduct warranting penal sanctions, should be of a rigour consistent with the requirements of contemporary criminal science regarding the categorization of offences.

61. The Group suggests that the Commission should request the Special Rapporteur on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers to study the possible impact of the existence of anonymous judges on the independence of the judiciary.

62. In the Group's view the Commission might ask the Centre for Human Rights to study the possibility of including the matters referred to in paragraphs 41 and 42 in advisory services programmes.

III. CONCLUSIONS AND RECOMMENDATIONS BY THE SPECIAL RAPPORTEUR ON THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION (E/CN.4/1995/32, paras. 129-146)

129. The Special Rapporteur is compelled to conclude that violations of the right to freedom of opinion and expression have not ceased to occur. In many instances, these violations concur with violations of other human rights, including those related to enforced or involuntary disappearances, extrajudicial, arbitrary or summary executions, torture, religious intolerance, arbitrary detention and the problem of terrorism.

130. Most constitutions no doubt guarantee the fundamental right of free speech. Free expression and freedom of the press have been regarded as freedoms implicit in this larger freedom and are part of it. The press performs a vital service in a democracy by providing a political arena for debate and the exchange of information and ideas. Its institutional needs therefore have to be safeguarded. The free flow of news and information both within and across national boundaries deserves the fullest support.

131. The free press needs help. Journalists must be secure in their pursuits and be given full protection of the law. No doubt such laws exist, but they have to be implemented creatively and imaginatively with a view to advancing the constitutional values and spelling out and strengthening the basic human rights enshrined in them. Advancing the constitutional values and enhancing the protection of people's rights require limiting and structuring the executive and legislative powers.

132. The Special Rapporteur is concerned about the continued intimidation and harassment of writers and journalists in several countries across the world. Often, such harassment is disguised, covert and subtle; occasionally it is blatant and institutionalized. A free media is essential not merely as an instrument of democracy but as a precondition for social stability and equality. Whatever the excesses of an unprofessional media, on balance, freedom tends to smooth out rough edges.

133. Independent press commissions can perform vital functions in guiding and balancing institutions that check the power of both the executive and the media. While freedom is not a privilege but a right, its exercise by the

media calls for responsibility. A declared code of conduct for the media is essential for all journalists. Such a code will only work effectively, however, if it is voluntarily adopted by the profession itself.

134. Apart from its function to ensure freedom and protect democracy, a free press functions also as a social and an economic asset. Social scientists have demonstrated how freedom of information can contribute to higher degrees of productivity and motivation for work and to ensuring the quick and fair delivery of public services, especially in times of natural disaster.

135. The Special Rapporteur recognizes that the right to information is vitally important other than as a guarantee of a free press. Governments and private businesses tend to be excessively secretive. While recognizing the importance of a legally protected right to intellectual property, the Special Rapporteur notes that the denial of the right to information is not in the public interest.

136. The media could consider exposing itself to public criticism through the formal institution of an ombudsman to whom both individuals and organizations could appeal in cases of perceived misuse of the right to freedom of expression. Such an ombudsman could have a purely advisory role, chastising or commending the media in specific cases referred to him.

137. The exercise of freedom carries with it responsibilities and duties. It demands wisdom, sagacity and a sense of responsibility. The exercise of freedom is therefore subject to reasonable conditions and limitations prescribed by law and necessary in a democratic society, but it should always be kept in mind that freedom of expression is the primary freedom and the first condition of liberty. It occupies a preferred position in the hierarchy of liberties, giving succour and protection to other liberties. For these reasons, freedom of the press is indispensable in a democracy.

138. A freedom of such amplitude involves risks of abuse. The point must be made, however, that even in the interests of specific segments of society, any restrictions imposed should be proportionate to the need giving rise to them, proportionate to the harm they seek to prevent. Two competing interests have to be balanced, and that task is to be carried out with statesmanship by the judiciary and executive. The basic rights of free speech and expression should not lightly be allowed to be smothered and curtailed, because they are at the core of all human rights.

139. With respect to all the activities undertaken by the Special Rapporteur in the fulfilment of his mandate, it is of vital importance that he receive public support. Freedom of expression and opinion is a fundamental attribute of a good civil society in which all fundamental commitments require a base of public support if they are to be sustained. Human rights do not prevail unless there is a public function for them. People should be made aware of their value. Their commitment can only be obtained through open public debate and discussion. The logic of the political process of democracy needs the creation of an atmosphere in which attempts to undermine human rights are countered and in which support for human rights is clearly articulated. An enlightened public opinion created through the organization and publicizing of

seminars, conferences, brainstorming sessions and other meetings touching on the issue of freedom of expression would strengthen the basis sustaining the work of the Special Rapporteur.

140. The Special Rapporteur recognizes the primordial role that can be played, and that should be played, by non-governmental organizations active in the defence of human rights. Their task is burdensome. No one organization can hope to address these problems alone. The sharing of information and of responsibilities, therefore, becomes necessary. The approach of the Special Rapporteur has been to build a close relationship with NGOs that are active in the area of his concern. He strongly encourages common initiatives among them and with them, not only on pragmatic, but also on moral grounds. There are NGOs that share our fundamental values and which act as watchdogs. The Special Rapporteur is most eager to synchronize his efforts with those NGOs effectively. Such attempts at synchronization should not be at cross purposes with Governments, but should rather serve the purpose of furthering the cause of freedom of expression on a global scale.

141. The Special Rapporteur cannot be indifferent to the incidents referred to him. Without completing his inquiries with the Governments concerned he cannot form a well-informed opinion. Some of the allegations of violations of the right to freedom of opinion and expression have been pending for months or even years. The Special Rapporteur would risk mortgaging his future if he turned a blind eye to delays in the responses of Governments. Delays win no awards.

142. The Special Rapporteur recognizes that the attitudes of Governments to such cases must, of necessity, remain nuanced. Yet he also notes that despite all these difficulties, Governments have it in their power to respond swiftly and have the capacity to put down those practices from which human rights crusaders derive their raison d'être, strength and appeal. The Special Rapporteur encourages all those seeking to protect the right to freedom of opinion and expression to avoid oversimplifications of complex issues which entail difficult but necessary choices.

143. The judiciary of all countries should be aware that the violation of the right to freedom of opinion and expression leaves no room for impartiality. It is within their competence to order the release of detainees who are held merely for expressing their non-violent opinions.

144. The Special Rapporteur urges all Governments to scrutinize their national legal systems with a view to bringing them into line with international standards governing the right to freedom of opinion and expression.

145. The Special Rapporteur recommends to the Commission on Human Rights to consider the question of financial and human resources in the light of his remarks in chapter III of this report.

146. The Special Rapporteur stands committed to offering his full cooperation in the efforts of Governments and non-governmental organizations to solve the problems in the area of his mandate. Through unity and cooperation in defending and protecting them, the frontiers of human rights, which are the most basic moral values of our present-day civilization, can be extended.

IV. CONCLUSIONS AND RECOMMENDATIONS BY THE SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (E/CN.4/1995/34, paras. 922-926)

922. Torture continues to be practised in a substantial number of Member States, despite its absolute prohibition under international law and its repeated condemnation by the General Assembly and the Commission on Human Rights. Since the establishment of the Special Rapporteur's mandate, the annual reports to the Commission have made various recommendations aimed at preventing the practice. Most of these merely reflect norms contained in instruments already adopted by the United Nations.

923. The Special Rapporteur is convinced that, if States were to comply with these recommendations, the incidence of torture in the world would be dramatically reduced. Accordingly, this chapter concludes with a statement, in summarized and condensed form, of the recommendations that have been made over the past decade.

924. As the first decade of the mandate and the current portion of it made the responsibility of the present Special Rapporteur draw to a close, the Special Rapporteur would have welcomed the opportunity to recommend that there was no need for the Commission to continue the function. The contents of the report preclude him from making that recommendation. Lamentably, the need for the renewal of the mandate is all too evident and the Special Rapporteur therefore recommends its renewal.

925. Like other special rapporteurs, representatives, experts and members of working groups of the Commission on Human Rights, the Special Rapporteur on the question of torture reminds the Commission that he has a full-time function outside the United Nations, in his case, as a university teacher. While he is grateful for the support of the University of Essex, which is understanding of the tendency of the demands of his role as Special Rapporteur to obtrude into his university function (as Professor and Dean of the School of Law), the work for the United Nations must remain additional to the full-time demands of academic life. This means that he is heavily dependent on the professional assistance that the Centre for Human Rights can provide. At present, this consists of between one half and two thirds of the time of one human rights officer. This is grossly inadequate and the inadequacy, while mitigated, is not compensated for by his having been able to secure the temporary additional assistance of an intern. The Special Rapporteur appeals to the Commission and the Secretariat to take urgent steps to redress this problem.

926. The compilation of recommendations which may all be resolved into one global recommendation - an end to de facto or de jure impunity (see E/CN.4/1994/31, paras. 666-670) - follows:

(a) Countries that are not party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment should sign and ratify or accede to that Convention. Torture should be designated and defined as a specific crime in national legislation. In countries where legislative provisions do not exist which give authorities jurisdiction to prosecute and punish torture, the enactment of such legislation should be made a priority.

In this regard, provisions should also stipulate that evidence obtained through the use of torture, including confessions, should be excluded from judicial proceedings;

(b) Interrogation should take place only at official centres and the maintenance of secret places of detention should be abolished under law. It should be a punishable offence for any official to hold a person in a secret and/or unofficial place of detention. Any evidence obtained from a detainee in an unofficial place of detention and not confirmed by the detainee during interrogation at official locations should not be admitted as evidence in court;

(c) Regular inspection of places of detention, especially when carried out as part of a system of periodic visits, constitutes one of the most effective preventive measures against torture. Inspections of all places of detention, including police lock-ups, pre-trial detention centres, security service premises, administrative detention areas and prisons, should be conducted by teams of <u>independent</u> experts. When inspection occurs, members of the inspection team should be afforded an opportunity to speak privately with detainees. The team should also report publicly on its findings. When official, rather then independent teams carry out inspections, such teams should be composed of members of the judiciary, law enforcement officials, defence lawyers and physicians, as well as independent experts. Where such inspection teams have yet to be established, International Committee of the Red Cross (ICRC) teams should be granted access to places of detention;

(d) Torture is most frequently practised during incommunicado detention. Incommunicado detention should be made illegal and persons held incommunicado should be released without delay. Legal provisions should ensure that detainees be given access to legal counsel within 24 hours of detention. Security personnel who do not honour such provisions should be punished. In exceptional circumstances, under which it is contended that prompt contact with a detainee's lawyer might raise genuine security concerns, and where restriction of such contact is judicially approved, it should at least be possible to allow a meeting with an independent lawyer, such as one recommended by a bar association. In all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours. At the time of arrest, a person should undergo a medical inspection, and medical inspections should be repeated regularly and should be compulsory upon transfer to another place of detention. Each interrogation should be initiated with the identification of all persons present. All interrogation sessions should be recorded and the identity of all persons present should be included in the records. Evidence from non-recorded interrogations should be excluded from court proceedings. The practice of blindfolding and hooding often makes the prosecution of torture virtually impossible, as victims are rendered incapable of identifying their torturers. Thus, blindfolding or hooding should be forbidden;

(e) Administrative detention often puts detainees beyond judicial control. Persons under administrative detention should be entitled to the same degree of protection as persons under criminal detention;

(f) Provisions should give all detained persons the ability to challenge the lawfulness of detention, e.g. through habeas corpus or amparo. Such procedures should function expeditiously;

(g) When a detainee or relative or lawyer lodges a torture complaint, an inquiry should always take place. A complaint that is determined to be well founded should result in compensation to the victim or relatives. In all cases of death occurring in custody or shortly after release, an inquiry should be held by judicial or other impartial authorities. A person found to be responsible for torture or severe maltreatment should be tried and, if found guilty, punished. Legal provisions granting exemption from criminal responsibility for torturers, such as amnesties, indemnity laws, etc., should be abrogated. If torture has occurred in an official place of detention, the official in charge of that place should be disciplined or punished. Military tribunals should not be used to try persons accused of torture. Independent national authorities, such as a national commission or ombudsman with investigatory and/or prosecutorial powers, should be established to receive and to investigate complaints. Complaints about torture should be dealt with immediately and should be investigated by an independent authority with no relation to that which is investigating or prosecuting the case against the alleged victim;

(h) Training courses and training manuals should be provided for police and security personnel and assistance when requested should be provided by the United Nations programme of advisory services and technical assistance. Security and law enforcement personnel should be instructed on the Code of Conduct for Law Enforcement Officials, the Standard Minimum Rules for the Treatment of Prisoners, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and these instruments should be translated into the relevant national languages. In the course of training, particular stress should be placed upon the principle that the prohibition of torture is absolute and non-derogable and that there exists a duty to disobey orders from a superior to commit torture. Governments should scrupulously translate into national guarantees the international standards they have approved and should familiarize law enforcement personnel with the rules they are expected to apply;

(i) Health sector personnel should be instructed on the Principles of Medical Ethics for protection of detainees and prisoners. Governments and professional medical associations should take strict measures against medical personnel that play a role, direct or indirect, in torture. Such prohibition should extend to such practices as examining a detainee to determine his "fitness for interrogation", procedures involving ill-treatment or torture, as well as providing medical treatment to ill-treated detainees so as to enable them to withstand further abuse;

(j) National legislation and practice should reflect the principle enunciated in article 3 of the Torture Convention, namely the prohibition on the return, expulsion or extradition of a person to another State "where there are substantial grounds for believing that he would be in danger of being subjected to torture".

V. CONCLUSIONS AND PRELIMINARY RECOMMENDATIONS BY THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN, ITS CAUSES AND CONSEQUENCES (E/CN.4/1995/42, paras. 314-317)

314. The Special Rapporteur has intended in this first report to provide a general overview of the issues relating to violence against women, including its causes and consequences. Subsequent reports will deal more specifically with the areas of violence in the family, violence in the community and violence by the State. These reports will contain detailed recommendations with regard to eliminating violence against women in these spheres.

315. As a preliminary measure at the national level, however, States could be called upon to meet their responsibilities contained in the Declaration on the Elimination of Violence against Women. More specifically, States should be called upon:

(a) To condemn violence against women and not invoke custom, tradition or religion to avoid their obligations to eliminate such violence;

(b) To ratify the Convention on the Elimination of All Forms of Discrimination against Women without reservation;

(c) To formulate national plans of action to combat violence against women;

(d) To initiate strategies to develop legal and administrative mechanisms to ensure effective justice for women victims of violence;

(e) To ensure the provision of specialized assistance for the support and rehabilitation of women victims of violence;

(f) To train and sensitize judicial and police officials with regard to issues concerning violence against women;

(g) To reform educational curricula so as to instil values which will prevent violence against women;

(h) To promote research with regard to the issues concerning violence against women;

(i) To ensure proper reporting of the problem of violence against women to international human rights mechanisms.

316. At the international level, the Special Rapporteur reiterates the call contained in the Vienna Declaration and Programme of Action to incorporate human rights and the equal status of women into the mainstream of United Nations action in the field of human rights and requests the Commission on Human Rights to make available the present report to the Fourth World Conference on Women, to be held in Beijing in 1995.

317. Finally, the Special Rapporteur encourages the formulation of an optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women allowing for an individual right of petition once local remedies

are exhausted. This will ensure that women victims of violence will have a final recourse under an international human rights instrument to have their rights established and vindicated.

VI. CONCLUSIONS AND RECOMMENDATIONS BY THE REPRESENTATIVE OF THE SECRETARY-GENERAL ON INTERNALLY DISPLACED PERSONS (E/CN.4/1995/50, paras. 270-287)

270. As a general observation, it should be noted at the outset that both within and outside the United Nations system, intergovernmental, regional, and non-governmental bodies are actively exploring and developing new approaches to increasing assistance and protection for the internally displaced. The UNHCR in particular and other humanitarian agencies in general have enlarged the scope of their activities to include many internally displaced populations. Efforts also have been made in the legal domain to see the extent to which the needs of internally displaced persons are being met by existing legal standards. The challenge, however, far exceeds the international community's response, which still remains largely ad hoc and grossly inadequate. The crises of internal displacement, the pressing needs they create for affected populations, and the lack of normative principles and institutional mechanisms for providing protection and assistance for this population warrant special and urgent attention from the international community and a more coherent organizational and legal response.

271. Serious consideration should be given to the development of a legal framework for the internally displaced. Although existing international law provides extensive coverage to those internally displaced, there is no one instrument that details those provisions and there are gaps in the law that need to be addressed. It is therefore essential to restate and clarify existing law in one document, address omissions in the law, and develop a body of principles specifically tailored to the needs of the internally displaced. This would assist all those involved in this field, including intergovernmental and non-governmental organizations, in their dialogue with the relevant authorities and also raise the level of international awareness of the problem and the need for solutions.

272. In principle, the creation of a new agency for the internally displaced or mandating an existing one, or a collection of organizations, to cater for their protection and assistance needs remain options worthy of consideration, but for which the political will appears to be lacking at present. Even if it were decided to designate an existing agency, the question as to which one would be appropriate for the task may still raise controversial questions. Expanding the mandate of the Office of the High Commissioner for Refugees may seem to be the most obvious direction to follow, given its operational experience with both protection and assistance, but even this raises questions. In any case, since it is unlikely in the near future that a new organization will be established or that responsibility will be assigned to an existing one for the protection and assistance of the internally displaced, the development of collaborative arrangements among agencies whose mandates and activities relate to the internally displaced appears to be the most practical alternative.

273. Despite greater willingness on the part of the United Nations agencies to develop more coherent collaborative arrangements, a vacuum of responsibility often exists in cases of internal displacement. Too many situations persist where there are substantial numbers of internally displaced persons without protection or assistance. This necessitates the establishment of a central point or mechanism to review serious situations of internal displacement and assign rapid institutional responsibility in complex emergency situations. The Inter-Agency Standing Committee has approved a recommendation of its Task Force on Internally Displaced Persons that the Emergency Relief Coordinator serve as the reference point in the United Nations system to receive requests for assistance and protection on actual or developing situations of internal displacement that require a coordinated international response. The effective implementation of this recommendation would be a first step toward the development of a more coherent system for dealing with internally displaced persons. At the same time, greater attention must be paid to strengthening collaboration and coordination in the field among humanitarian agencies directly involved and whose role is essential to addressing the problems of internally displaced persons.

274. Greater inter-agency collaboration also requires that in agencies whose mandates and activities relate to the internally displaced, staff should be designated as the focal point for the work relating to the internally displaced. There is particular a need to strengthen capacity within the Department of Humanitarian Affairs to deal with the internally displaced. Working closely with the Inter-Agency Standing Committee, the Representative of the Secretary-General and the resident coordinators in the field, the office of the Emergency Relief Coordinator could play an effective role as a reference point within the United Nations system for the internally displaced. It should seek to integrate assistance and protection concerns by coordinating the different parts of the United Nations system that are capable of addressing these dual functions in a more practical operational manner.

275. Within the stipulated collaborative framework, the role of the Representative is and should be an essentially catalytic one. Even with the establishment of a reference point within the United Nations system to coordinate a response to situations of internal displacement, a mechanism is still needed to focus attention on the area of protection, which does not come within the mandate of the Emergency Relief Coordinator as now defined. One option of course would be to redefine the mandate of the Emergency Relief Coordinator to include protection. The argument currently voiced against that idea is that it might undermine the humanitarian basis of his present mandate. Therefore, the mandate of the Representative can be viewed as complementary to that of the Emergency Relief Coordinator with respect to the internally displaced. Indeed, even if the mandate of DHA were broadened to include protection there is much to recommend the existence of a separate mechanism within the system that is exclusively focused on the protection needs of the large populations of internally displaced persons worldwide, with the authority of the Secretary-General behind it. The mandate of the Representative of the Secretary-General meets that need.

276. For the Representative to play this catalytic role effectively, his capacity should be considerably enhanced. Subject to further study of the matter, the possibility of a full-time Representative instead of the present

part-time voluntary position should be considered. In either case, the means to implement the mandate must be strengthened with adequate human and financial resources, at present severely limited, for carrying out the multiple tasks stipulated in his mandate: monitor serious situations of internal displacement on a worldwide basis, undertake fact-finding missions, enter into dialogues with Governments, coordinate activities with humanitarian agencies, mobilize international opinion and action, prepare general and specific reports on countries, develop preventive strategies, prepare a critical compilation of legal norms, review institutional arrangements, encourage the development of national and regional capacities, participate in the early warning system, promote better treatment for women and children, bring specific cases to the attention of the Secretary-General, the General Assembly and the Commission on Human Rights, and develop strategies on a longer-term basis for addressing the needs of the internally displaced more effectively.

277. Additional field visits are essential to countries stricken by the problem of internal displacement to gain a better understanding of the assistance and protection needs of the internally displaced. Only first-hand information, based on direct contacts with the Governments concerned, de facto authorities, United Nations and NGO field workers and, above all, the displaced populations themselves, can enable the Representative to achieve the objective of bringing back to United Nations Headquarters suggestions regarding United Nations actions in the political, human rights and humanitarian fields as they pertain to the internally displaced.

278. The establishment of an information centre on internal displacement along the lines of the documentation centre of UNHCR is needed to collect data on internally displaced populations on a worldwide basis. The absence of a central point within the United Nations system to bring together information on internally displaced persons is a serious gap. Adequate staff and resources are needed to enable the Representative to create an information centre on internal displacement. This would be an important step toward ensuring that situations of internal displacement are not overlooked or forgotten and that all serious situations are detected and well documented. Non-governmental groups and research institutes could assist in the establishment of the information centre and in particular help develop methodologies for the collection of accurate statistics.

279. A more comprehensive working relationship will need to be developed with NGOs which often play an effective role on the ground in working with the internally displaced and have the knowledge of local conditions critical to mobilizing an early response. NGOs in particular can assist the Representative and United Nations agencies with early warning and information collection and the Representative and these agencies in turn can lend support to these groups in the field. NGOs can also be called upon to create local mechanisms to carry out the ideas and recommendations that emerge from country missions to improve the conditions of the internally displaced. Moreover, through a collaborative approach, the mandate could benefit from field missions undertaken by NGOs and other expert bodies. NGOs can also be encouraged to play a role in conflict resolution and in easing tensions between communities which in turn can help create safer conditions for the

return of the displaced to their homes. The development of a partnership with NGOs is crucial to the development of a worldwide strategy for improved protection and assistance for the internally displaced.

280. Consideration should also be given to the placement of United Nations human rights field officers in areas with serious problems of internal displacement to help meet the protection needs of those displaced and thereby lend operational support to the work of the mandate and organizations active in the field. Field officers can prove useful in creating the confidence needed to make returns possible and in assisting internally displaced persons to return home. Field officers deployed by the Centre for Human Rights in the former Yugoslavia and Rwanda are already actively involved in monitoring conditions of the internally displaced. This also should be part of the mandate of other human rights monitors who are, or will be, stationed in locations where there are large numbers of internally displaced persons. Monitors deployed in consequence of United Nations peace-keeping operations should also be tasked with providing information on internally displaced populations. The presence of monitors, in addition to serving protection needs, can also help in the prevention of violations and draw the attention of the international community to any assistance needs that may be unmet in the specific areas they monitor. In short, the mandate must be given more operational capacity if it is to be a meaningful protection and prevention mechanism.

281. Coordination between the mandate and humanitarian organizations should be strengthened. The General Assembly has asked the Representative to coordinate with United Nations agencies, and these agencies have been requested to provide him with all possible assistance. The concrete nature of the cooperation should be more fully defined. The Inter-Agency Standing Committee recently approved a proposal that the Representative be invited to participate in its meetings when issues relating to internal displacement are discussed. In particular, he could bring to the attention of the IASC situations of internal displacement that need greater international involvement, especially in the area of protection, and report on the problems in the countries he has visited. It is important that serious cases of internal displacement be included in the agenda of the IASC so that these situations can be fully discussed and strategies developed to address assistance and protection concerns. The participation of the High Commissioner for Human Rights in the Standing Committee should also prove valuable in ensuring that the human rights dimension of emergency situations is adequately addressed.

282. It would significantly facilitate the work of the Representative if all humanitarian organizations with involvement with the internally displaced were to inform their field staff of his mandate and request them to share with him, on a regular basis, information about internally displaced populations in their areas of activity. The required information should focus on situations in which internally displaced persons are experiencing serious assistance and protection problems. Being apprised of these situations will assist the Representative to decide where it would be most useful to schedule missions and also the kinds of programmes that would be useful to recommend. The dialogues that the Representative undertakes with Governments in turn could be useful to United Nations agencies on the ground. Humanitarian organizations may find it beneficial to have an outside figure with the moral authority of

the international community undertake dialogues on protection issues, especially when they feel constrained from doing so by their assistance roles.

283. There needs to be a more adequate mechanism for follow-up to the visits of the Representative of the Secretary-General to ensure that the recommendations made are implemented in the field. The Representative has been able to rely upon the staff of humanitarian organizations in the field for logistical and support arrangements for his visits. It also would be valuable if their assistance were extended to follow-up activities. Resident representatives, resident coordinators and other United Nations staff could provide information on the extent to which proposals made are carried out or taken into account in the country concerned. Where circumstances preclude the resident coordinator from fulfilling this function, other options might include UNHCR protection or field officers, human rights monitors, or NGOs. The Inter-Agency Task Force on Internally Displaced Persons could also play a role in organizing the monitoring of conditions in particular countries. Such collaborative monitoring should prove beneficial both to those on the ground and to the Representative in carrying out their common objective of seeking to ensure that the essential needs of the internally displaced persons are met.

284. Although it is now generally recognized that an effective inter-agency response must address both the assistance and protection needs of the internally displaced, more needs to be done to integrate protection and assistance activities and strengthen coordination between humanitarian and human rights bodies. Considerable caution continues to characterize the relationship between humanitarian bodies providing assistance and those agencies expected to address protection. Discussions are needed on an inter-agency basis on each serious case of internal displacement so that strategies can be developed on how best to address both protection and assistance. It is generally agreed that lack of protection for internally displaced persons, especially women and children, is one of the most pressing gaps in the international system.

285. Strategies are also needed to introduce development-oriented approaches to situations of internal displacement. Resolving internal conflicts by removing their root causes implies promoting democratic structures, respect for human rights, and sustainable development. In particular, it means empowering the disenfranchised and marginalized communities to resume control of their local affairs and their own development from within. This can best be complemented by the injection of well-targeted resources to economic and social projects that build on the existing social structures, organizations, and established patterns of living. Where internally displaced populations are intermingled with refugees, returnees and local residents equally in need, projects should be designed to benefit entire communities. Support for development projects at the local level must be seen as more than aiding the poor or the marginalized. It must be viewed as an investment in the social order at its foundation. Special attention will be needed to develop projects that can be undertaken in conditions that do not meet traditional development requirements and to ensure that the economic needs of women, especially female heads-of-household, receive adequate focus and resources. The transference of development skills, income-generating opportunities and the restoration of

basic infrastructure could help transform neglected communities and stimulate their recovery and reconstruction. The greater involvement of UNDP, UNIFEM and international financial institutions will prove essential.

286. It is important to restate the importance of addressing the root causes of displacement. Only by efforts to promote the peaceful resolution of internal conflicts can there be effective and durable answers to problems of internal displacement that will permit people to return to their homes and resume their normal lives. Greater coordination among the political, humanitarian, and human rights bodies of the United Nations is required to promote mutually reinforcing solutions to crises of internal displacement. In addition to promoting humanitarian assistance and human rights objectives, the mandate of the Representative could also help encourage peaceful solutions to conflicts. A collaborative approach is the only effective means of resolving the serious situations involved in the crisis of internal displacement.

287. By way of final summation, it should be reiterated that over the last several years, significant progress has been made in generating international response to the mounting crisis of internal displacement. Nevertheless, the problem still confronts the international community with legal and institutional challenges that must be met with a compelling sense of urgency. On the issue of normative standards, the Commission resolutions on internally displaced persons have already called for the compilation and evaluation of existing legal norms, the determination of whether there are gaps in the law, and the development of guiding principles for bridging those gaps. The issue of institutional responsibility must also be resolved if there is to be a more effective international response when internally displaced persons are in need of the rapid provision of assistance and protection. With the legal and institutional issues resolved, the tasks of those charged with immediate responsibility would then be to develop strategies of international response to the crisis of internal displacement and, in cooperation with appropriate organs, help address the underlying problems of national and regional security, stability and development which generate and are in turn aggravated by dislocations, producing both refugees and internally displaced persons.

VII. CONCLUSIONS AND RECOMMENDATIONS BY THE SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS (E/CN.4/1995/61, paras. 352-438)

352. For the third time in three years of activities, the Special Rapporteur is compelled to conclude, at the end of his cycle of activities and reporting, that extrajudicial, summary or arbitrary executions have not ceased and that there are no indications to the effect that the number of violations of the right to life has decreased. The Special Rapporteur continued to receive numerous allegations comprising all the different manifestations of violations of the right to life that fall within his mandate. In some countries or situations, changes in legislation or practice concerning capital punishment, the signing of peace agreements, or increased awareness of human rights issues and the willingness to improve respect for human rights, are encouraging and give rise to hope. In others, laws extending the scope of capital punishment

or reinforcing impunity, armed conflicts flaring up in areas hitherto calm as well as old ones that resume, continue or take new turns, entail new, or renewed, violations of the right to life.

353. Against this backdrop, the Special Rapporteur has continued his efforts to exercise his mandate as effectively as possible by responding to the information that has come before him, following up on allegations transmitted to Governments, enhancing contacts with Governments and sources of such allegations as well as cooperation with other United Nations mechanisms dealing with human rights issues, carrying out on-site visits and following up on them. In doing so, he also took into consideration the requests to pay special attention to a number of issues made to him in various resolutions of the Commission on Human Rights.

354. The present report is the third presented by the Special Rapporteur since he assumed his functions in June 1992, following Mr. S. Amos Wako who had served as Special Rapporteur during the first 10 years of the existence of a mandate examining questions related to the right to life. It also marks the end of the three-year mandate extended to him by the Commission on Human Rights in resolution 1992/72 of 5 March 1992. During this period, the Special Rapporteur continued to develop and refine the procedures to implement the mandate and the methods of work applied, as described in detail in his report to the Commission on Human Rights at its fiftieth session (E/CN.4/1994/7, paras. 17-67). In the following sections, the Special Rapporteur presents an overview of his activities together with an analysis of their effectiveness and tendencies observed since 1992, followed by conclusions and recommendations concerning the different aspects of his mandate.

A. Activities - procedural matters

Communications sent

355. In 1994, the Special Rapporteur transmitted allegations concerning violations of the right to life of more than 3,000 persons to 65 Governments. On 203 occasions, the Special Rapporteur sent urgent appeals on behalf of more than 2,300 persons. Allegations concerning more than 700 persons were transmitted to the Governments concerned by letter. Table 1 gives an overview of the communications sent by the Special Rapporteur since he assumed his functions in June 1992.

Table 1

Communications sent by the Special Rapporteur since 1992

Year	1.	2.	3.	4.	5.	6.	7.	8.
1992	143	+1,500	42	+1,900	40	+3,400	54	--
1993	217	+1,300	52	+2,300	51	+3,600	69	30
1994	203	+2,300	53	+700	45	+3,000	65	35

1. Urgent appeals sent by the Special Rapporteur.

2. Number of persons on whose behalf urgent appeals were sent.

3. Number of Governments to which urgent appeals were sent.

4. Number of persons whose cases were transmitted by letter.

5. Number of Governments to which letters were sent.

6. Total number of persons on whose behalf the Special Rapporteur acted (total cases).

7. Total number of Governments to which the Special Rapporteur addressed allegations.

8. Number of Governments to which the Special Rapporteur sent follow-up communications.

356. As can be seen from table 1, the number of urgent appeals has decreased slightly from 1993 to 1994, while the number of persons on whose behalf such appeals were sent has risen dramatically. This is, in part, due to the fact that some of the urgent appeals transmitted referred to large groups of people not identified by name. Seven urgent appeals were sent on behalf of groups composed of more than 100 persons whose lives were said to be at risk or who had allegedly died in particularly grave incidents of excessive or arbitrary use of force. A total of 171 urgent appeals expressed concern for alleged violations of the right to life of identified individuals. A considerable number of these appeals were sent for groups: 18 urgent appeals concerned more than 10 identified persons, a further 27 were sent on behalf of groups between 5 and 10 identified persons. In 66 cases, the subject of urgent appeals was only one person.

357. At the same time, a sharp decrease in allegations transmitted by letter can be observed when comparing the figures for 1994 and 1993. This may find an explanation partly in the fact that, during 1994, the Special Rapporteur transmitted only those allegations concerning groups of unidentified persons transmitted by credible sources where the particular gravity of the case warranted such urgent action and where sufficient details were provided so as to allow for meaningful follow-up. However, another, preoccupying reason is that due to severe limitations on the availability of staff assisting the Special Rapporteur in the discharge of his mandate during the past year, some of the documents received which contained allegations of violations of the right to life simply could not be processed (see also below paras. 369-370).

358. The experience of the past years has clearly shown that the allegations received by the Special Rapporteur are only approximately indicative of the occurrence of violations of the right to life in different parts of the world. Much depends on the availability of information and the degree to which human rights activists may carry out their activities, as well as their level of organization. As a consequence, the Special Rapporteur continues to find himself in a situation where for some countries the information brought to his attention is very complete, and long-standing contacts with the sources permit the Special Rapporteur to obtain the details needed to transmit allegations to the Governments, while other countries simply do not figure in his report because no information at all has been received, or the communications are not sufficiently specific to allow them to be processed within the framework of

his mandate. Again, the shortage of staff to assist the Special Rapporteur is detrimental as it hampers such information being actively sought and possible sources of information contacted in cases where, for example, violations of the right to life are reported in the media but no allegations are submitted to the Special Rapporteur.

359. Nevertheless, it is interesting to observe that, for the first time since 1992, more cases have been transmitted in urgent appeals with the aim of preventing violations of the right to life which were feared to be imminent, than by letter, that is, when the alleged extrajudicial, summary or arbitrary execution had already occurred. While, for the reasons referred to in the preceding paragraph, the figures contained in table 1 should be taken with caution, they do suggest an overall tendency towards preventive action. This is most welcome, and the Special Rapporteur hopes that it may be accompanied by an increase in the protection of those whose lives are under threat.

Replies received from Governments and follow-up

360. Tables 2 and 3 contain information regarding the responsiveness of Governments to allegations transmitted to them by the Special Rapporteur:

Table 2

Replies received from Governments to allegations transmitted since 1992

Year	1.	2.	3.	4.	5.	6.	7.	8.	9.
1992	54	26	26	--	--	--	28	--	28
1993	69	38	18	36	--	30	22	33	25
1994	65	33	8	27	33	35	20	24	29

1. Total number of Governments to which the Special Rapporteur transmitted allegations.

2. Total number of Governments that provided replies.

3. Number of Governments that provided replies to allegations transmitted in 1992.

4. Number of Governments that provided replies to allegations transmitted in 1993.

5. Number of Governments that provided replies to allegations transmitted in 1994.

6. Number of Governments to which the Special Rapporteur sent follow-up communications.

7. Number of Governments that had not provided replies to allegations transmitted in 1992.

8. Number of Governments that had not provided replies to allegations transmitted in 1993.

9. Number of Governments that have not provided any replies to allegations transmitted to them.

Table 3

Responsiveness of Governments

Year	1.	2.	3.	4.	5.	6.	7.
1992	54	48.1%	62.9%	+3,400	+1,500	44.1%	--
1993	69	52.2%	65.2%	+3,600	+1,000	27.8%	30
1994	65	50.8%	50.8%	+3,000	+800	26.7%	35

1. Total number of Governments to which the Special Rapporteur transmitted allegations.

2. Percentage of Governments that provided replies during the year in which the allegations were transmitted to them.

3. Percentage of Governments that, by 25 November 1994, had provided replies to the allegations transmitted to them during the year indicated.

4. Total number of persons on whose behalf the Special Rapporteur transmitted allegations (total cases).

5. Number of cases to which replies were received from Governments by 25 November 1994.

6. Percentage of cases to which replies were received from Governments by 25 November 1994.

7. Number of Governments to which the Special Rapporteur addressed follow-up communications.

361. A comparison of replies received from the Governments concerned to the Special Rapporteur's urgent appeals and letters shows that the ratio of the number of Governments which received allegations from the Special Rapporteur to those which provided replies during the same year has not changed substantially since 1992. The overall level of responsiveness rose from 48.1 per cent in 1992 to 52.2 per cent in 1993. By 25 November 1994, 62.9 per cent of all Governments that received allegations in 1992 had provided replies concerning 1,500 persons, 44.1 per cent of the total of 3,400 persons on whose behalf the Special Rapporteur had acted in 1992. With regard to the allegations transmitted by the Special Rapporteur in 1993, 65.2 per cent of all Governments had provided replies by 25 November 1994.

Their replies concerned 1,000 persons, which represents only 27.8 per cent of the total of 3,600 persons who were said to have suffered violations of their right to life during 1993.

362. For 1994, the percentage of Governments that have replied during the year in which the allegations were received is slightly lower than in 1993 (50.8 per cent). At the time the present report was finalized, replies had been provided concerning the cases of 800 persons, that is, 26.7 per cent of the total of 3,000. However, some of these Governments received the allegations as recently as in October or November 1994.

363. While one has to account for the fact that replies to cases transmitted in 1992 have now been received over a period of more than two years, the figures for 1993 and 1994 suggest a tendency rather towards a reduction of the responsiveness of Governments than an increase. This appears to be so despite the efforts made by the Special Rapporteur to follow up on allegations sent during previous years, and to give Governments better guidance as to the information needed by providing them with a reply form. The Special Rapporteur is concerned that the Governments of the following countries, as of 25 November 1994, had not replied to specific allegations transmitted to them during:

(a) 1992: Afghanistan, Azerbaijan, Burundi*, Cambodia, Chile*, Dominican Republic, Equatorial Guinea, Honduras, Indonesia*, Iran (Islamic Republic of)*, Malaysia, Mali, Paraguay, Rwanda, Saudi Arabia*, Togo*, Ukraine*, Yemen*, Zaire*;

(b) 1993: Azerbaijan, Burundi*, Cambodia, Central African Republic, Comoros, Djibouti, Equatorial Guinea, Honduras, Jamaica, Kyrgyzstan, Lebanon, Malawi*, Myanmar*, Papua New Guinea, Paraguay, Rwanda, Sierra Leone, Tajikistan, the former Yugoslav Republic of Macedonia, Turkmenistan, Uzbekistan*, Yugoslavia, Zaire* and Zimbabwe*;

(c) 1994: Afghanistan, Bolivia, Bosnia and Herzegovina, Cambodia, Central African Republic, Djibouti, Honduras, Kazakhstan, Kyrgyzstan, Lebanon, Niger, Portugal, Rwanda, Sierra Leone, Singapore, Tajikistan, Trinidad and Tobago, Turkmenistan, United Arab Emirates and Uruguay.

364. The Special Rapporteur is concerned that some of these countries have not replied to any of the communications transmitted to them since 1992. He reiterates his appeal to all Governments to cooperate with his mandate, in the common interest of a better protection of the right to life.

365. In a number of cases where Governments did reply and the contents of their replies were sent to the sources of the allegations, according to the procedures established, the latter provided the Special Rapporteur with comments and observations. While in some instances the sources confirmed the information received from the Government or stated that they did not possess of any further details on certain cases, the majority of replies were contested by the sources which on a number of occasions provided additional elements to reinforce their earlier allegations. Due to the lack of human resources, it was impossible to take initiatives with a view to clarifying contradictions in the information received from Governments and sources.

Under the present circumstances, it is not possible for the Special Rapporteur to monitor in a comprehensive and systematic manner the way Governments comply with their obligations under international law to protect the right to life and to ensure exhaustive and impartial investigations in cases where this right appears to have been violated.

Follow-up on recommendations

366. The apparent lack of attention given by the members of the Commission on Human Rights to the conclusions and recommendations presented by special rapporteurs mandated by them is another point of concern to the Special Rapporteur. This lack of interest was sadly illustrated by the case of Rwanda, where decisive action on the part of the international community early in the year might have rendered the situation in this country less susceptible to the disastrous events there after 6 April 1994. In his report on the visit to Rwanda in April 1993 (E/CN.4/1994/7/Add.1) and in his introductory statement before the Commission on Human Rights in March 1994, the Special Rapporteur had presented his concern at the alarming level of violations of the right to life in that country, without effect. Moreover, in the conclusions of his annual report, the Special Rapporteur had warned of the possible consequences of communal violence and, citing Burundi, Rwanda and Zaire among the countries where violent confrontations between members of different ethnic groups had been reported, wrote: "Such conflicts, if allowed to continue, may degenerate into genocide" (E/CN.4/1994/7, para. 709).

367. However, Rwanda is not the only example where the international community chose to ignore recommendations made by one of its emissaries after an on-site visit. In fact, the Special Rapporteur has not received any concrete information concerning the implementation of the recommendations formulated after the publication of the report on his visit to Peru.

368. In this context, the Special Rapporteur wishes to note that, while invitations to undertake on-site visits are most welcome, this should not be the end of the cooperation with the Government concerned. In other words, it is not enough to invite the Special Rapporteur and show cooperativeness during the mission if the recommendations made as a result thereof are ignored. The Special Rapporteur has repeatedly stressed that he views visits as the beginning of a dialogue aimed at strengthening respect for the right to life. His conclusions, even though they may refer to violations of the right to life, are not put forward in an accusatory spirit. Rather, the Special Rapporteur believes that recognizing the problems encountered, and naming them, constitutes the precondition for attempts to solve them. On the basis of his experience and expertise in the matter, the Special Rapporteur offers once again his assistance.

Resources

369. The Special Rapporteur has repeatedly expressed concern at the scarce resources, both human and material, put at his disposal for the implementation of the mandate entrusted to him. In his report to the Commission on Human Rights at its fiftieth session, he called for an increase of the resources of the Secretariat so as to be able to carry out the day-to-day work involved in the assessment of incoming information, the preparation of urgent appeals

and case summaries to be transmitted to the Governments concerned, the organization of missions, etc., which would require at least three Professional staff members and one secretary working exclusively on the mandate (E/CN.4/1994/7, para. 727). During the past year, staff assistance for the Special Rapporteur has not only not increased but, on the contrary, diminished, as the number of mandates to be serviced by the Secretariat and the work related to them has risen considerably, particularly after the establishment of a human rights field operation in Rwanda.

370. An enormous effort was made to continue, nevertheless, the work of the mandate. However, the Special Rapporteur notes with regret that this could not be done as thoroughly as hoped, and indeed envisaged. Priorities had to be set. While the Special Rapporteur is satisfied that in all cases where information received from credible sources indicated the need for his immediate intervention, urgent appeals were sent to the Governments concerned, it was not possible to process all the reports and allegations of extrajudicial, summary or arbitrary executions that have come before him which, according to the procedures established for the mandate, should have been transmitted by letter. Furthermore, as stated above, no active research on information or additional details on allegations received could be conducted. The number of entries in the database which was established in 1992 has reached 4,000, referring to alleged violations of the right to life of more than 10,000 persons in almost 100 countries. With this in mind, it comes as no surprise that the follow-up of allegations transmitted since 1992 which had remained without reply, or where the replies received from Governments could not be considered as final, also suffered from the lack of human resources available to service the mandate of the Special Rapporteur.

371. The Special Rapporteur appeals to the international community to see to it that the mandate on extrajudicial, summary or arbitrary executions be allotted sufficient human and material resources so that he may carry out his tasks effectively.

B. Violations of the right to life - allegations received and acted upon

372. Little appears to have changed with regard to the different types of violations of the right to life on which the Special Rapporteur has taken action during 1994. The different countries where such violations are said to have taken place may have varied to some extent, but the analysis of the problems shows that the causes for their continuing existence have remained very much the same. As in the past, impunity is the key to the perpetuation of violations of the right to life in most countries. While this continuity in the problems observed, with regard to both causes and manifestations, may give rise to feelings of impotence or even resignation, it should, on the other hand, permit the identification of measures that would need to be taken to redress these problems, and to concentrate on the implementation of such measures. The Special Rapporteur encourages Governments, intergovernmental organizations and non-governmental organizations to continue efforts in this direction and build on progress made in some areas. He hopes that his suggestions and recommendations, as expressed in earlier reports and contained in the present one, may be of use in this regard.

1. Capital punishment

373. In his report to the Commission on Human Rights at its fiftieth session, the Special Rapporteur presented a detailed analysis of his concerns with regard to the death penalty (E/CN.4/1994/7, paras. 673-687). His action in response to allegations of violations of the right to life in connection with capital punishment continued to be guided by:

(a) The desirability of abolition of the death penalty, as expressed on numerous occasions by the General Assembly, the Human Rights Committee and the Economic and Social Council;

(b) The need to ensure the highest possible standards of independence, competence, objectivity and impartiality of judges and juries and full respect of guarantees for a fair trial in proceedings which may lead to the imposition of the death penalty, including full respect for the right to an adequate defence, the right to appeal and to seek pardon, commutation of the sentence or clemency; and

(c) Full observation of special restrictions on the application of the death penalty for crimes committed by persons below 18 years of age; mentally retarded or insane persons; pregnant women and young mothers.

374. The desirability of the abolition of capital punishment was reaffirmed strongly by the Security Council, which, in its resolutions 808 (1993) of 22 February 1993 and 955 (1994) of 8 November 1994 on the establishment of international criminal jurisdictions for the former Yugoslavia and Rwanda, respectively, has excluded the death penalty, establishing that imprisonment is the sole penalty to be imposed by these tribunals for crimes as abominable as genocide and crimes against humanity. The Special Rapporteur welcomes this endorsement by the Security Council of a tendency favourable to the protection of the right to life even in circumstances where those who may benefit from this protection have themselves not shown respect for the right to life.

375. In this context, reports of an expansion of the scope of the death penalty, in the recent past, in the national legislations of a number of countries are most disappointing. In 1993, the Special Rapporteur expressed concern at such tendencies, clearly contrary to the trend observed at the international level, in Bangladesh, China, Egypt, Pakistan and Saudi Arabia. He had also approached the Governments of Peru and of the United States of America after being informed of proposals to widen the scope of capital punishment in a new constitution and a new federal crime bill, respectively. During 1994, the Special Rapporteur was disturbed to learn that the legislative initiatives had been carried out in both countries, in the case of the latter both on the federal level and in the State of Kansas. The Government of Peru provided a reply explaining its points of view. Even though the Special Rapporteur's concerns in the matter persist (see above para. 262), the willingness of the Peruvian authorities to enter into a dialogue on the issue is much appreciated. The Special Rapporteur notes with regret that the Government of the United States of America did not respond to any of the communications transmitted by him during the year. An expansion of the scope of the death penalty during 1994 was also reported in Nigeria. The

Special Rapporteur emphasized once again that the scope of the death penalty should never be extended and invites those States which have done so to reconsider.

376. Reports were also received concerning death sentences imposed after proceedings in which the defendants did not fully benefit from the rights and guarantees for a fair trial contained in the international instruments. Such reports concerned the following countries: Algeria, Bosnia and Herzegovina, Central African Republic, China, Egypt, Iran (Islamic Republic of), Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Myanmar, Nigeria, Sierra Leone, Singapore, Trinidad and Tobago, Ukraine, United Arab Emirates, United States of America and Yemen.

377. Proceedings leading to the imposition of capital punishment must conform to the highest standards of independence, competence, objectivity and impartiality of judges and juries. All defendants in capital cases must benefit from the full guarantees for an adequate defence at all stages of the proceedings, including adequate provision for State-funded legal aid by competent defence lawyers. Defendants must be presumed innocent until their guilt has been proven without leaving any room for reasonable doubt, in application of the highest standards for the gathering and assessment of evidence. All mitigating factors must be taken into account. A procedure must be guaranteed in which both factual and legal aspects of the case may be reviewed by a higher tribunal, composed of judges other than those who dealt with the case at the first instance. In addition, the defendants' right to seek pardon, commutation of sentence or clemency must be ensured.

378. While in many countries the law in force takes account of the standards for fair trials as contained in the pertinent international instruments, this alone does not exclude that a death sentence may constitute an extrajudicial, summary or arbitrary execution. It is the application of these standards to each and every case that needs to be ensured and, in case of indications to the contrary, verified, in accordance with the obligation under international law to conduct exhaustive and impartial investigations into all allegations of violations of the right to life.

379. Moreover, the Special Rapporteur reiterates his concern that special jurisdictions to speed up proceedings, often set up as a response to acts of violence committed by armed opposition groups or situations of civil unrest, do not offer these guarantees as the standards of due process and respect for the right to life of proceedings before them are almost always lower than in ordinary criminal proceedings. This is particularly worrying, as these special jurisdictions are generally used in situations which, in themselves, usually entail an increase in human rights violations. Reference is made to the sections of this report on Algeria, Egypt or Nigeria.

380. As concerns death sentences handed down on persons convicted for crimes committed when they were under 18 years of age, or legislation allowing for the imposition of capital punishment on minors, whether or not this legislation is applied in practice, the Special Rapporteur expresses concern at the allegations and reports received concerning Algeria, Pakistan and the United States of America. As regards the United States of America, the Special Rapporteur also continued to receive allegations of death sentences

imposed, and carried out, in cases where the defendants were said to suffer from mental retardation. In addition, allegations were received concerning one such case in Japan.

381. The Special Rapporteur calls on all Governments concerned to revise legislation, where appropriate, and to ensure that in both their legislation and practice the guarantees, safeguards and restrictions on the application of capital punishment, as contained in the pertinent international instruments, are fully respected.

382. Among the many preoccupying cases that have come before the Special Rapporteur during the past year, one warrants special mention: the execution of Glen Ashby in Trinidad and Tobago on 14 July 1994, while appeal procedures were still pending. The Special Rapporteur wishes to express his most profound concern at this clear violation of the right to life. He recalls, in this context, the 1993 judgement of the Privy Council of the United Kingdom of Great Britain and Northern Ireland, the supreme judicial instance for the member States of the Commonwealth, in which it held that awaiting the execution of a death sentence for five years after it had been handed down constituted in itself cruel and inhuman punishment. Glen Ashby was executed four years and eleven months after having been sentenced to death in June 1989. In his report to the Commission on Human Rights at its fiftieth session, the Special Rapporteur had expressed his concern that the decision of the Privy Council might encourage Governments to carry out executions of death sentences more speedily, which, in turn, was likely to affect defendants' rights to full appeal procedures (E/CN.4/1994/7, para. 682). The Special Rapporteur reiterates his view that the judgement should rather be interpreted in the light of the desirability of the abolition of capital punishment: the risk that the imprisonment of a person on death row becomes cruel and inhuman punishment could easily be avoided by not imposing the death sentence in the first place. To solve the problem by killing the person is simply unacceptable.

383. The Special Rapporteur is also deeply concerned at the reports of the execution of Adzhik Aliyev in Tajikistan, one day before the signing of an agreement under which he may have been eligible for release from prison.

384. In this context, the Special Rapporteur would like to express his view that, although the death penalty is not prohibited under international law, there is no such thing as a right to capital punishment, restricted only by some limitations contained in the pertinent international instruments. In view of the irreparability of loss of life, the impossibility of remedying judicial errors and, indeed, the well-founded doubts expressed by a wide range of experts in criminology, sociology, psychology, etc. as to the deterrent effect of capital punishment, the Special Rapporteur once again calls on the Governments of all countries where the death penalty still exists to review this situation and make every effort towards its abolition.

385. Finally, the Special Rapporteur has received encouraging reports concerning a project currently under consideration by the Council of Europe with a view to a protocol additional to the European Convention on Human Rights aiming at the abolition of capital punishment under any circumstances and a moratorium on the execution of death sentences. The Special Rapporteur

welcomes this initiative and encourages Governments to follow the example, either unilaterally or within other regional human rights institutions. As to activities undertaken by other United Nations organs, the Special Rapporteur would like to mention a worldwide survey carried out by the Crime Prevention and Criminal Justice Branch of the United Nations Secretariat on developments with regard to capital punishment.

2. Death threats

386. Reports and allegations alerting the Special Rapporteur to situations where the lives and physical integrity of persons are feared to be at risk continue to account for a large part of the information brought to his attention. In the past year, he has transmitted urgent appeals with the aim of preventing loss of lives to the Governments of: Angola, Argentina, Bangladesh, Brazil, Colombia, Cuba, El Salvador, Guatemala, Haiti, Honduras, India, Iran (Islamic Republic of), Mexico, Nepal, Peru, Philippines, Rwanda, South Africa, Togo, Turkey and Venezuela. As in the past, numerous human rights activists, trade unionists, community workers, members of political opposition parties and movements, writers and journalists, lawyers and persons working in the administration of justice were among those reported to be at serious risk. The Special Rapporteur noted with profound concern that the following persons on whose behalf he had sent urgent appeals, in 1994 or earlier, were reported to have been killed: Manuel Cepeda Vargas (Colombia); as well as Feizollah Meikhoubad and the Reverends Mehdi Dibaj and Mikhailian (Islamic Republic of Iran). Moreover, patterns of intimidation and threats, often followed by extrajudicial, summary or arbitrary executions, seem to persist in a number of countries such as Brazil, Colombia, El Salvador, Guatemala, South Africa and Turkey, despite numerous urgent appeals in which the Special Rapporteur had called on the authorities to ensure effective protection of the right to life.

387. The Special Rapporteur urges all Governments to adopt effective measures, in accordance with the requirements of each particular case, to ensure full protection of those who are at risk of extrajudicial, summary or arbitrary execution. The Special Rapporteur calls on the authorities to conduct investigations into all instances of death threats or attempts against lives which are brought to their attention, regardless of whether or not any judicial or other procedures have been activated by those under threat. The Special Rapporteur also feels that, in circumstances where political dissent, social protest or the defence of human rights are viewed, and reacted to, as a threat by certain State authorities or sectors of the civil society, statements by the Governments concerned recognizing unequivocally their legitimacy could help create a climate more favourable for their exercise and thus reduce the risk of violations of the right to life. With a view to effective protection in cases of death threats, the authorities might consider establishing funds for the training and employment of security personnel selected by the persons at risk. This might be particularly helpful where there is fear that the threats emanate from State security forces. Steps taken in this respect by the Government of Colombia are most welcome.

3. Deaths in custody

388. During 1994, the Special Rapporteur received numerous reports concerning deaths in custody. Such deaths were said to be the result of torture in: Argentina, Bolivia, Cambodia, Cameroon, China, Colombia, Egypt, Haiti, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Mexico, Morocco, Pakistan, Peru, Philippines, Syrian Arab Republic, Tajikistan and Turkey. In some instances, lack of medical attention after torture was said to have contributed to the death of the detainees. In other cases, it was reported that the prison conditions were such as to cause the death of persons detained or spark violence leading to the death of inmates. In Gabon, more than 70 clandestine immigrants were said to have died as a result of serious overcrowding. Particularly preoccupying reports of deaths in custody as a result of violence in overcrowded prison facilities, both between inmates and as a consequence of excessive and arbitrary use of force by security personnel in response to riots and attempts to escape, were received concerning Venezuela.

389. The Special Rapporteur is concerned at the persistence of allegations of deaths in custody suggesting patterns of violence against detainees, very often with a lethal outcome, in countries such as Cameroon, Colombia, India, Pakistan or Venezuela, without there being any indication of systematic investigations to determine causes and responsibilities, and to identify possible ways of redressing the situation. It is also disturbing that not only in countries where such patterns appear to exist, but as a general rule, there is very little indication of effective action to bring those responsible for extrajudicial, summary or arbitrary executions in custody to justice.

390. The Special Rapporteur appeals once again to all Governments to see to it that conditions of detention in their countries conform to the Standard Minimum Rules for the Treatment of Prisoners and other pertinent international instruments. He also urges them to adopt adequate measures to ensure full respect for the international norms and principles prohibiting any form of torture or other cruel, inhuman or degrading treatment. Prison guards and other law enforcement personnel should receive training so as to be familiar with these norms as well as the rules and regulations concerning the use of force and firearms to prevent escape or control disturbances. The Special Rapporteur also calls on the competent authorities to prosecute and punish all those who, through action or omission, are found responsible for the death of any person held in custody, in breach of the aforementioned international instruments; to grant adequate compensation to the families of the victims; and to prevent the recurrence of violence against detainees. Furthermore, the Special Rapporteur appeals to all Governments to cooperate fully with the International Committee of the Red Cross.

4. Deaths due to abuse of force by law enforcement officials

391. The Special Rapporteur received a considerable number of allegations concerning violations of the right to life as a consequence of excessive or arbitrary use of force. Cases in this category were reported in Bangladesh, Brazil, Burundi, Cambodia, Chad, China, Colombia, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Mali, Mexico, Myanmar, Niger, Nigeria, Peru, Saudi Arabia, Sri Lanka, Turkey, United Kingdom of Great Britain and

Northern Ireland, Uruguay, Uzbekistan, Venezuela and Zaire. In Costa Rica, Djibouti, Guatemala, Indonesia, Togo and Zaire, numerous people were reportedly killed by security forces using excessive force against participants in demonstrations or other public manifestations of dissent. As in the past, the Special Rapporteur received alarming reports of deliberate use of firearms against minors: street children were reportedly killed by Brazilian military police, security forces personnel participating in "social cleansing" activities in Colombia and members of the Guatemalan police. Reports brought to the attention of the Special Rapporteur concerning the arbitrary killing of a large number of persons, including children, by members of the Israeli Defence Forces in the occupied territories were particularly disturbing.

392. Arbitrary and excessive force were also said to be resorted to by members of paramilitary groups or armed individuals cooperating with security forces or operating with their acquiescence. Sometimes, such groups were reported to have been established by the security forces themselves; in other cases they were said to be at the service of individuals or organizations for the defence of particular, in most cases economic, interests. Violations of the right to life by such paramilitary groups were reported in Brazil, Colombia, El Salvador, Guatemala, Haiti, Peru, the Philippines and Turkey.

393. The Special Rapporteur calls on all Governments to ensure that the security forces receive thorough training in human rights matters, in particular with regard to the restrictions on the use of force and firearms in the discharge of their duties. Such training should include methods of keeping crowds of people under control without resorting to excessive force. Full and independent investigations must be carried out into alleged deaths due to abuse of force, and all law enforcement officials responsible for the right to life must be held accountable. This obligation to investigate and bring to justice those responsible for violations of the right to life extends to members of paramilitary groups. With regard to persistent acts of violence against street children, Governments should make efforts to strengthen assistance and education programmes.

5. Violations of the right to life during armed conflicts

394. Numerous reports suggest that deaths as a consequence of armed conflicts, both international and internal, in various parts of the world continue to occur on an alarming, and increasing, scale. During 1994, innumerable violations of the right to life were said to have been committed in a variety of countries and situations. Reports of killings of former combatants who had been captured or after they had laid down their arms, and particularly of civilians, were received from, for example, Afghanistan, Angola, Armenia, Azerbaijan, Colombia, Djibouti, Guatemala, Rwanda, Somalia, Sri Lanka, Tajikistan, Turkey, the conflict areas of the former Yugoslavia and Yemen. Many thousands of people not participating in armed confrontations were said to have lost their lives as direct victims of the conflict, for instance, through indiscriminate shelling or deliberate executions, or indirectly, as a consequence of sieges, blocking off water, food and medical supplies. As in the past, such measures were said to have particularly affected children, elderly and those in poor health.

395. The Special Rapporteur wishes to draw the attention of the international community once again to violations of the right to life in the context of communal violence. Communal violence, understood as acts of violence committed by groups of citizens of a country against other groups, were reported in Bangladesh, Burundi, Cameroon, Chad, Djibouti, Mali, Nigeria or Somalia. Rather than intervening to stop violence between different groups, government forces are often said to support one side in the conflict or even to instigate hostilities. In 1993, the Special Rapporteur warned that such conflicts, if allowed to continue, may degenerate into massacres or even genocide.

396. The Special Rapporteur calls on all parties to conflicts, international or internal, to respect the norms and standards of international human rights and humanitarian law which protect the lives of the civilian population and those no longer taking part in the hostilities. The Special Rapporteur also reiterates his call on all Governments of countries where acts of communal violence occur to do their utmost to curb such conflicts at an early stage, and to work towards reconciliation and peaceful coexistence of all parts of the population, regardless of ethnic origin, religion, language or any other distinction. With a view to prevention of excessive and arbitrary use of force in the context of armed conflicts, the Special Rapporteur stresses once again the importance of bringing to justice and punishing those responsible for such acts. Training of security forces personnel should include thorough instruction on human rights issues. Furthermore, provision should be made, for example, in peace agreements between Governments and armed groups, for reinsertion into civilian life of former combatants and effective protection of their security. The Special Rapporteur urges Governments to refrain from all propaganda and incitement to hatred and intolerance which might foment acts of communal violence or condone such acts.

6. Expulsion of persons to a country where their life is in danger

397. During the past year, the Special Rapporteur received allegations concerning the imminent extradition of one person from Macao to China, where it was feared that he would be sentenced to death in circumstances where his fair trial rights might not be guaranteed. The Special Rapporteur once again calls on all Governments to take due notice of the norms and principles contained in international instruments that refer to the question of extradition of persons to countries where their lives may be at risk. He urges them to refrain from extraditing a person in circumstances where respect for his or her right to life is not fully guaranteed.

7. Impunity

398. In his report to the Commission on Human Rights at its fiftieth session, the Special Rapporteur made ample reference to the obligation under international law to carry out exhaustive and impartial investigations into allegations of violations of the right to life, to identify, bring to justice and punish their perpetrators, to grant adequate compensation to the victims or their families, and to take effective measures to avoid the recurrence of such violations (see E/CN.4/1994/7, paras. 688-699). The right of every person to enjoy his or her human rights under protection, if necessary, of appropriate judicial and administrative institutions, is firmly anchored in

such international instruments of human rights and humanitarian law as the Universal Declaration of Human Rights (arts. 6, 7 and 8), the International Covenant on Civil and Political Rights (arts. 2 (3), 9 (5) or 15 (2)), the Convention on the Prevention and Punishment of the Crime of Genocide (arts. I, IV, V and VII), the four Geneva Conventions of 1949 and the two Additional Protocols thereto of 1977, as well as a number of other conventions, declarations and resolutions.

399. With regard to impunity in cases of violations of the right to life, the Special Rapporteur wishes to refer, in particular, to the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary or Summary Executions (Economic and Social Council resolution 1989/65 of 24 May 1989), which set forth in detail the aforementioned obligations, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The Human Rights Committee, the body established under the International Covenant on Civil and Political Rights to monitor compliance with the obligations contained in this treaty, has clearly stated, both in its general comments to article 6 of the Covenant and in a number of decisions, that States parties are required to investigate all human rights violations, in particular those affecting the physical integrity of the victim; to purge and try those responsible; to pay adequate compensation to the victims or their dependants; and to prevent the future occurrence of such violations. A single act is sufficient for a State party to be obliged to undertake these measures.

400. Impunity continues to be a central issue in the work of the Special Rapporteur, as it is the principal cause for the perpetuation of extrajudicial, summary or arbitrary executions. The way in which a Government reacts to human rights violations committed by its agents, through action or omission, clearly shows the degree of its willingness to ensure effective protection of human rights. Very often, statements and declarations in which Governments proclaim their commitment to respect human rights are contradicted by a practice of violations and impunity.

401. The mechanisms of impunity are manifold. In his report to the Commission on Human Rights at the fiftieth session, the Special Rapporteur mentioned, and analysed, a number of them. These included, in some countries, impunity by law, through legislation exempting perpetrators of human rights abuses from prosecution, or impunity in practice, despite the existence of laws providing for the prosecution of human rights violators; threats and intimidation directed against victims of and/or witnesses to human rights violations, thereby jeopardizing investigations; and problems related to the functioning of the judiciary, particularly its independence and impartiality. During 1994, these were again the subject of a large number of reports received by the Special Rapporteur.

402. In the vast majority of alleged extrajudicial, summary or arbitrary executions brought to the attention of the Special Rapporteur over the past three years, sources report that either no investigation at all has been initiated, or that investigations do not lead to the punishment of those responsible. In many countries where perpetrators of human rights violations are tried before military courts, security forces personnel escape punishment due to an ill-conceived esprit de corps. In others, the civilian justice system does not function properly, often for lack of resources. Judges

frequently lack independence and, in a number of countries, judges, lawyers, complainants and witnesses suffer from threats and harassment or become victims of extrajudicial, summary or arbitrary executions. National human rights institutions mandated to monitor the conduct of State agents often have no powers at all to implement their decisions or recommendations. The same applies, in some instances, to special commissions established to investigate particular cases of alleged violations of human rights. Reports resulting from these investigations are often not made public or are not known to have led to any follow-up action with a view to prosecuting those responsible. This adds to concerns that such commissions are used, in reality, as tools to evade the obligation to carry out thorough, prompt and impartial investigations into alleged violations of the right to life. Numerous examples to illustrate the different phenomena leading to impunity may be found in the section of the present report on country-specific situations.

403. The reports and allegations received indicate that breaches of the obligation to investigate alleged violations of the right to life and punish those responsible occur in most of the countries the Special Rapporteur is dealing with in the framework of his mandate. The Special Rapporteur reiterates his appeal to all Governments concerned to provide for an independent civilian justice system with an independent and competent judiciary and full guarantees for all those involved in the proceedings. Where national legislation provides for the competence of military tribunals to deal with cases involving violations of the right to life by members of the security forces, such tribunals must conform to the highest standards required by the pertinent international instruments as concerns their independence, impartiality and competence. The rights of defendants must be fully guaranteed before such tribunals, and provision must be made to allow victims or their families to participate in the proceedings.

404. The Special Rapporteur also calls on all Governments to conduct exhaustive and impartial investigations into all cases of alleged extrajudicial, summary or arbitrary executions, identify those responsible and bring them to justice, grant adequate compensation to the victims or their families, and take the necessary steps to prevent further violations, in conformity with their obligation under international law. The Special Rapporteur calls particularly on the Governments of those countries where patterns of violence seem to exist, often over years, to carry out in-depth investigations with a view to identifying the roots of these problems as well as ways and means of solving them. The Special Rapporteur also urges Governments to establish independent and effective mechanisms to control the conduct of law enforcement and other State agents.

405. Only in a small number of the cases that have come before the Special Rapporteur do Governments appear to be in a position to comply with this obligation through their national jurisdictions. Given the enormous importance, with a view to prevention, of bringing human rights violators to justice, the Special Rapporteur would like to suggest that, where national judicial institutions do not function, international jurisdiction in cases of violations of the right to life be considered as a means to combat impunity. Given the gravity and irrevocability of extrajudicial, summary or arbitrary executions, States should bring to justice those responsible in any territory under their jurisdiction, no matter where the violations were committed. The

Special Rapporteur calls on all Governments to take an initiative towards the recognition of international jurisdiction over violators of the right to life and to express explicitly and unequivocally the obligation to bring them to justice in any territory under their jurisdiction. The situation with regard to torture and other cruel, inhuman or degrading treatment or punishment, where such international jurisdiction has been established under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, may serve as an example in this regard.

406. In this context, the Special Rapporteur also wishes to refer to the international criminal tribunals established under Security Council resolutions 808 (1993) and 955 (1994) for a number of serious crimes, including violations of the right to life, committed in the former Yugoslavia and in Rwanda. The Special Rapporteur welcomes these initiatives. He appeals to all Governments to cooperate fully with these tribunals, in the interest of holding the authors of such crimes committed in the former Yugoslavia and Rwanda responsible as well as of the possible deterrent effect this may have in other, potentially similar situations. Concerns have been raised as to the apparent selectivity with regard to the countries for which international tribunals have been established. In fact, the former Yugoslavia and Rwanda are not the only conflict areas where massive violations of human rights and humanitarian law justify such an institution. Others, such as Angola or Cambodia, come readily to mind. The Special Rapporteur feels that international conventions providing for a combination of international jurisdiction over violators of the right to life and an international criminal court may help to overcome this perception of selectivity and contribute to a more impartial, more comprehensive approach to the problems of impunity. Such an international criminal court would have to be endowed with an adequate mandate and sufficient means so as to be in a position to conduct proper investigations and ensure the implementation of its decisions.

407. As regards the obligation of States to provide compensation to the victims of violations of the right to life or their families, the Special Rapporteur notes with concern the numerous reports received which indicate that no such compensation is received. In most cases, this appears to be a corollary of impunity. In others, the Special Rapporteur is informed that judgements handed down by courts provide for indemnification to be paid, but in practice no such payments are made. The Special Rapporteur calls on all Governments to grant adequate compensation to the victims of human rights violations and their families, in compliance with the pertinent international instruments.

408. In this context, the Special Rapporteur also notes that neither of the two Security Council resolutions establishing international criminal jurisdictions for the former Yugoslavia and Rwanda contains provisions concerning indemnification for the victims. The Special Rapporteur feels that the establishment of an international fund for reparation payments should be considered. This might permit at least some compensation to be paid to the victims or their families which would undoubtedly enhance their faith in the work of these tribunals and their willingness to cooperate with them.

409. As stated in his report to the Commission on Human Rights at its fiftieth session (E/CN.4/1994/7, para. 708), the Special Rapporteur wishes to

point out that the obligation to investigate human rights violations also extends to the United Nations itself and the actions undertaken by personnel of its peace-keeping and observer missions. Reference is made, in this context, to the section in the present report on Somalia.

410. The Special Rapporteur has learnt recently that efforts are under way to amend the Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (ST/CSDHA/12) produced by the Crime Prevention and Criminal Justice Branch of the United Nations Secretariat in May 1991. The Special Rapporteur will once again try to establish contacts with the Branch, with a view to coordinating efforts in a field of common concern and providing whatever assistance may be useful in the further development of the mandate.

C. Issues of special concern to the Special Rapporteur

411. The following sections contain conclusions and recommendations, as appropriate, in response to requests for special attention to violations of the right to life directed against certain groups of victims, or in determined situations, as well as on a number of issues which the Special Rapporteur feels are of particular importance.

1. Violations of the right to life of minors, particularly street children

412. The Special Rapporteur transmitted more than 152 cases of alleged violations of the right to life where the victims were said to be under 18 years of age, the youngest only 5 months old. In nine other cases, the children concerned were said to have been under 10. As in the case of women, these are the cases where it was specifically reported that the victims were minors, or where the age of the children was communicated to the Special Rapporteur. Allegations concerning minors were sent to the following 16 Governments: Brazil (3 cases), Cambodia (2), Chad (2), Colombia (12), Djibouti (2), Guatemala (17), Haiti (1 identified 17-year-old as well as the children living in the "Lafanmi Selavi" orphanage), Indonesia (2), Iran (Islamic Republic of) (1), Israel (18), Mexico (1), Peru (3), Togo (1), Turkey (6), United Kingdom of Great Britain and Northern Ireland (1), United States of America (1). Ten of the victims were said to have been living as street children in Brazil, Colombia and Guatemala.

413. The Special Rapporteur is deeply concerned at reports and allegations concerning violations of the right to life of minors. As in former years, children were said to have been among the victims of all different categories of violations of the right to life brought to his attention. In addition, persons and institutions striving to provide assistance and education to children and adolescents without homes continued to be targets of attacks and threats in Brazil, Colombia and Guatemala. The Special Rapporteur was particularly shocked at the numerous reports received of arbitrary and excessive use of lethal force against children and youths by Israeli Defence Forces in the occupied territories. The Special Rapporteur calls once again on all Governments to ensure full respect for the right to life of children and to effectively protect them from all forms of violence.

2. Violations of the right to life of women

414. During 1994, the Special Rapporteur acted upon alleged violations of the right to life of 118 women. As stated earlier, these are the cases where it was specifically indicated that the victim was female, or where this was clear from the name of the person concerned. Violations of the right to life of women were said to have occurred in the following 29 countries: Argentina (2 women), Bangladesh (1), Brazil (1), Cambodia (1), Chad (1 said to be pregnant), China (1), Colombia (35), Djibouti (2), El Salvador (2), Ethiopia (2), Guatemala (15), Haiti (1), Honduras (2), India (3), Indonesia (2), Iran (Islamic Republic of) (1), Iraq (1), Israel (2), Mexico (3), Myanmar (1), Pakistan (1), Peru (7), Philippines (2), South Africa (2), Sri Lanka (2), Togo (7), Turkey (2), Venezuela (1), Zaire (5).

415. As in 1993, the proportion of women among the victims of alleged extrajudicial, summary or arbitrary executions appears to be very small and again suggests that women are not particularly targeted because of their sex. The Special Rapporteur's analysis as presented to the Commission on Human Rights at its fiftieth session is still pertinent (E/CN.4/1994/7, para. 716): the underrepresentation of women in positions of influence means that they are less exposed to acts of violence, as they are not regarded as so much of a threat; this translates into a much smaller number of attacks. On the other hand, women who are actively participating in public life seem to be in a position similar to their male counterparts. Thus, during 1994, the Special Rapporteur acted on behalf of the following cases: human rights activists Hebe de Bonafini (Argentina) and Nineth de Montenegro (Guatemala); indigenous leader Teófila Roa (Colombia); political activists Aída Abella (Colombia), Nidia Díaz and Marta Alicia Mejía Herrera (El Salvador); trade unionist Sonia Victoria Wilson (Guatemala); community activist Clare Stewart (South Africa); writer Taslima Nasreen (Bangladesh), as well as lawyers Elena Mendoza (Argentina) and Dr. Emma Vigueras Minaya (Peru). Moreover, in a number of cases, women were said to be targeted for being related to men who were persecuted, for one reason or another, by security forces or groups cooperating with them.

3. Violations of the right to life of persons belonging to national or ethnic, religious and linguistic minorities

416. In a number of cases that have come before the Special Rapporteur in 1994 it was alleged that the victims subjected to death threats or extrajudicial, summary or arbitrary executions belonged to national, ethnic, religious or linguistic minorities. Such cases were said to have occurred in the 19 countries as listed below. The national, ethnic, religious or linguistic groups to which the victims were said to belong is noted in parenthesis: Bangladesh (Jumma people), Brazil (a member of the Maxcui indigenous community), Cambodia (ethnic Vietnamese), Cameroon (Shua Arabs), Colombia (members of various indigenous organizations), Djibouti (members of the Afar ethnic group), Guatemala (a member of the Cakchikel indigenous group), Honduras (a member of the Xicaque indigenous group), Iran (Islamic Republic of) (leaders of Christian churches), Iraq (Marsh Arabs), Israel (Palestinians), Mali (members of the Tuareg ethnic group), Mexico (members of various indigenous organizations), Nigeria (members of the Ogoni ethnic

group), Pakistan (persons belonging to the Christian faith, members of the Ahmadiyya community), Turkey (Kurds), United States of America (black Americans), Venezuela (members of the Yucpa indigenous community), Zaire (persons originating from Kasai). Reference is made to the sections of the present report concerning these countries. The Special Rapporteur calls on all Governments to ensure full respect for the rights and guarantees of national or ethnic, religious and linguistic minorities.

4. Violations of the right to life of staff members of the United Nations and of the specialized agencies

417. In 1994, the Special Rapporteur was informed of an amnesty granted to several military officers involved in the assassination of a staff member of the Centro de Estudio de Demografía para América Latina (CELADE), an organ pertaining to the United Nations, in Chile (see above para. 91).

5. Violations of the right to life against persons exercising their right to freedom of opinion and expression

418. As in the past, the Special Rapporteur received a preoccupying number of reports and allegations concerning violations of the right to life involving a breach of the right to freedom of opinion and expression, peaceful assembly and association. More than 520 persons were said to have been victims of extrajudicial, summary or arbitrary executions or death threats, including members of political parties and movements, trade unionists, human rights activists, members of professional associations, particularly lawyers, participants in demonstrations, writers, poets and journalists in the following 37 countries: Afghanistan, Angola, Argentina, Bangladesh, Brazil, Cambodia, China, Colombia, Costa Rica, Cuba, Djibouti, Egypt, El Salvador, Ethiopia, Guatemala, Haiti, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Mexico, Nepal, Nigeria, Pakistan, Peru, Philippines, Rwanda, South Africa, Sri Lanka, Togo, Turkey, Uruguay, Uzbekistan, Venezuela, Zaire.

419. The Special Rapporteur urges all Governments to respect fully the right of all persons to freedom of opinion and expression, peaceful assembly and association, as guaranteed in the pertinent international instruments. Where the peaceful exercise of this right in the context of political opposition parties or movements, trade unions, or human rights and other civic or professional associations is perceived as a threat by security forces, armed groups cooperating with them or certain sectors of the civilian society, Governments should make clear and public statements recognizing the legitimacy of such activities and calling for respect and tolerance. The Special Rapporteur also urges Governments to take decisive action against all those responsible for violations of the right to life.

6. The right to life and the administration of justice

420. As in the past, the Special Rapporteur has paid particular attention to the protection of human rights in the administration of justice. Fair trial issues are of relevance to his mandate in connection with judicial proceedings that may lead to the imposition of the death penalty (see above paras. 373 to 385). Rights and guarantees of due process of law must also be respected

in proceedings against those responsible for violations of the right to life. The Special Rapporteur calls on all Governments to provide for legislation governing trial procedures in full conformity with the safeguards and guarantees contained in the pertinent international instruments, and to ensure that these standards are applied in practice.

421. During the past year, the Special Rapporteur was concerned at reports and allegations of death threats and extrajudicial, summary or arbitrary executions against judges, prosecutors, lawyers, complainants and witnesses in judicial proceedings involving agents of the State before national jurisdictions in Argentina, Brazil, Colombia, Mexico, Peru, the Philippines and Turkey. In the case of Turkey, allegations were received of violations of the right to life against persons who had filed complaints of human rights violations with the European Commission on Human Rights. The Special Rapporteur launches an urgent appeal to all Governments concerned to ensure that those involved in the administration of justice, in whatever capacity, may exercise their functions freely, without being subjected to harassment, threats or, in the extreme case, extrajudicial, summary or arbitrary executions. The Special Rapporteur calls on Governments to provide for adequate protection including funds for the employment of bodyguards trusted by those under threat or measures to ensure the safety of witnesses.

7. The right to life and terrorism

422. A number of countries encounter the problem of violence caused by armed opposition groups resorting to terrorism as a means and tactic of armed struggle against the Government. The Special Rapporteur received many reports of killings by terrorist groups directed against members of the security forces, but also indiscriminately against civilians, with the aim of spreading terror and insecurity among the population, for example in Algeria, Colombia, Egypt, India, Israel, Peru, the Philippines and Turkey. The Special Rapporteur notes with concern the similarity of the reaction of Governments in countries such as Colombia, Guatemala, Peru, the Philippines and Turkey, where such armed insurgent groups operate in rural areas: a counter-insurgency strategy aimed at isolating the armed insurgents by eliminating all those known or suspected to be members or supporters of these groups.

423. While the Special Rapporteur acknowledges the seriousness of the problem and fully understands the difficulties faced by the security forces in trying to bring the situation under control, he emphasizes that the right to life is absolute and must not be derogated from, even under the most difficult circumstances. The Special Rapporteur urges all Governments facing the problem of armed opposition resorting to terrorism to ensure that security forces personnel carry out their operations with full respect for the right to life and within the restrictions on the use of force and firearms set forth by the pertinent international instruments.

8. The right to life and civil defence forces

424. Self-defence groups formed by civilians, particularly in rural, often remote areas continue to be used as a form of protection against threats to lives and property in a number of countries. As in the past, they were said to be used as auxiliaries of the security forces in their struggle against

armed insurgents. Most of these groups have been referred to repeatedly in the Special Rapporteur's reports of the last years: the civil defence patrols (PAC) in Guatemala, the rondas campesinas and comités de defensa civil in Peru, the Citizens' Armed Forces Geographical Units (CAFGUs) in the Philippines, Home Guards in Sri Lanka, and the Kontrgerilla and Village Guards in Turkey. The Special Rapporteur continues to receive allegations of the same nature as in former years: extrajudicial, summary or arbitrary executions committed by members of such groups, either in cooperation with security forces or with their acquiescence, and with virtually total impunity. Those suffering from abuses by civil defence groups are in most cases peasants, either because they are suspected of being members or supporters of the armed insurgents, or because they refuse to participate in the self-defence groups. Thus, experience has led to the almost paradoxical conclusion that civil self-defence groups, rather than improving security in the area they are operating in, appear to contribute very often to an increase in the level of insecurity.

425. Thus, the Special Rapporteur notes with concern that his recommendation, expressed on repeated occasions, that these groups be subjected to strict control appears not to have been implemented. He has not received any indication that the arms distributed to such groups have been registered. Similarly, the reports and allegations of abuses imputed to members of these groups suggest that either no efforts have been made to train them to act in conformity with the restrictions and limitations on the use of force and firearms contained in the pertinent international instruments, or that such efforts have not been successful. The Special Rapporteur therefore feels compelled to urge the Governments concerned to dismantle such groups and ensure that arms distributed to them are returned to the security forces.

9. The right to life and mass exoduses

426. In the framework of the mandate of the Special Rapporteur, information on massive displacements of populations is received mainly in the context of communal violence and indiscriminate military attacks against areas inhabited by civilians during counter-insurgency operations. As stated earlier, government forces often do not intervene to halt violence between different groups of the population. In many instances, the Government forces are even said to foment such confrontations and support one side. Often, those belonging to the less favoured group flee their areas of residence. This was reported, for example, in the case of the Jumma people of the Chittagong Hill Tracts in Bangladesh, many of whom have sought refuge in Tripura, India. Massive internal displacement and refugee flows followed the mass killings of October and November 1993 in Burundi. Similarly, members of the Afar ethnic group in Djibouti moved to the capital to escape violence in the north of the country. Indiscriminate bombing of civilian settlements as part of government counter-insurgency tactics have been reported over the years in Colombia, Guatemala or south-eastern Turkey. There, too, massive displacement of populations was said to be the result. Armed conflicts such as those in the territory of the former Yugoslavia, Nagorno-Karabakh, Abkhazia or Rwanda, which cause the deaths not only of combatants but also numerous civilians, including children, women and elderly persons, also generate the exodus of large numbers of people. From the reports and allegations brought to the attention of the Special Rapporteur, it becomes clear that, as long as

communal violence or armed conflicts continue, internally displaced and refugees do not dare to return to their home areas. Often, this situation persists after the cessation of armed confrontations, as the climate remains insecure and returnees are subjected to threats and harassment or are even killed.

427. The Special Rapporteur is concerned at reports of violations of the right to life not only in the context of the hostilities creating the exodus of populations but also as a result of violence directed against displaced persons and refugees. Reports of extrajudicial, summary or arbitrary executions and threats, allegedly by security forces, against displaced persons, for example in urban areas in Colombia or Peru, where the displaced live in conditions of poverty and misery, or in Djibouti, are most disturbing. The Special Rapporteur has also learnt with deep concern of violence by Zairian security forces against refugees in camps along the border with Rwanda, and of killings within the camp housing several hundred thousand Rwandese refugees in Benaco, United Republic of Tanzania. There, refugees have been abused as human shields behind which those allegedly responsible for mass killings and other war crimes have been hiding. In addition, as they receive donations of food, clothes, etc. from the international community and thus constitute a source of revenue, refugees are prevented by the latter from leaving the camps and returning to Rwanda. In the camps in northern Burundi, along the border with Rwanda, refugees are exposed to reprisal attacks each time violence flares up between the ethnic groups in Burundi. In addition, the Special Rapporteur repeatedly received reports of death threats and extrajudicial killings, allegedly with the involvement of the security forces, of Guatemalans who had returned to their country after being refugees in Mexico, and of members of organizations providing them with assistance.

428. There is general awareness of the threat this situation poses to the right to life and security of those seeking refuge from violence in their countries or areas of origin. Once a person is accepted into the territory of a State, for example, as a refugee or asylum seeker, it is the obligation of this State to protect him or her from violations of the right to life. Indeed, the very purpose of the right to asylum is to protect lives. Those responsible for violations of the right to life should be brought to justice before the national courts of the host countries. Where the receiving countries are unable to cope with the refugee flow, the international community should provide them with assistance to guarantee security within the camps and to strengthen their own criminal justice systems, as appropriate. A common effort should be made to avoid refugee camps becoming rife with practices violating the right to life and the status of refugees.

429. The Special Rapporteur calls on all Governments to do their utmost to avoid massive exoduses of populations. Reference is made to the sections above containing recommendations aimed at preventing the outbreak of communal violence and abuses against the civilian population in counter-insurgency operations or during armed conflicts. The recent past has shown very clearly that the cost of prevention is relatively small when compared with the enormous amount of resources that have to be put into place to try to limit abuses and violations, including violations of the right to life, that accompany and follow mass exoduses. For a broader overview of the phenomenon

and its repercussions on different aspects of human rights, reference is made to the report on human rights and mass exoduses presented to the Commission on Human Rights by the Secretary-General (E/CN.4/1995/49).

10. Forensic experts

430. The Special Rapporteur has repeatedly referred to the need for the assistance of specialists in various forensic disciplines during investigations into extrajudicial, summary or arbitrary executions and the importance of support for efforts to establish a standing team of independent experts that could participate in such examinations to ensure that they are carried out according to the highest professional standards. During 1994, the Special Rapporteur has reiterated the need for forensic experts, indispensable for thorough investigations of human remains, in communications to the Governments of Gabon, Guatemala, Mexico, Peru, Sri Lanka and Venezuela. The Special Rapporteur could also envisage availing himself of the assistance of a forensic expert during on-site visits where preliminary investigations might be required.

11. World Conference on Human Rights

431. As pointed out in his report to the Commission on Human Rights at its fiftieth session, the Special Rapporteur regrets that the Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights in 1993, does not include a programme to eliminate extrajudicial, summary or arbitrary executions. He also notes that, contrary to the announcements made at the World Conference, the resources of the Secretariat have not been strengthened in a way that could be felt in work of the past year.

12. Prevention

432. By way of conclusion, after three years of activities, the Special Rapporteur cannot but repeat that extrajudicial, summary or arbitrary executions can be fought effectively only if there is a genuine will to recognize and enact the safeguards and guarantees for the protection of the right to life of every person. Declarations of commitment to the protection of the right to life by Governments, either unilaterally or together with others, for example through numerous resolutions adopted in different forums, have not been lacking. These declarations, however, are only effective to the extent to which they are translated into practice. If the aim is protection of the right to life, the emphasis must be on prevention of violations of this fundamental right and their consequences, which are very often irreparable. Again, the importance of fighting impunity cannot be overemphasized.

433. The Special Rapporteur calls upon each Government to respect and protect the right to life by bringing to justice and punishing all those responsible for violating it. The Special Rapporteur also appeals to all Governments to seek peaceful solutions, at the earliest possible stage, to potential conflict situations and to refrain from fomenting differences and promoting violence between different groups of citizens, both in their own and in other countries.

434. The Special Rapporteur calls on the international community to concentrate its efforts on the effective prevention of further human rights crises, and on the implementation of the standards already existing for the protection of the right to life. The Special Rapporteur feels that one of the ways to do so would be to take decisive action in cases where Governments are clearly not complying with their obligations under international law to protect the right to life of every person. In his first report to the Commission on Human Rights at its forty-ninth session, the Special Rapporteur had pointed out the problem of Governments that consistently refused to cooperate and sought guidance from the Commission as to which strategy to pursue in such cases (see E/CN.4/1993/46, para. 692). He wishes to call once again on the member States of the Commission to give thought to this problem and consider appropriate measures in cases where Governments clearly do not cooperate with the special rapporteurs. The appointment of country-specific special rapporteurs as a way to ensure permanent monitoring of the situation should be envisaged.

435. Decisive action by the Commission on Human Rights in the case of Rwanda would not necessarily have averted the human rights catastrophe in that country. The Commission's lack of interest, however, has certainly not helped to prevent the death and suffering of many thousands.

436. In this context, the Special Rapporteur calls on the Commission on Human Rights to intensify its efforts to establish an early-warning mechanism that could be activated when the signs of an imminent crisis become apparent, as was the case in Rwanda. In the present situation, the Special Rapporteur fears that with the Commission showing little or no interest in the reports of its special rapporteurs, representatives, independent experts or working groups, whatever impact these procedures may have with regard to early warning and prevention of incumbent human rights and humanitarian crises is simply lost.

437. The Special Rapporteur also wishes to encourage the non-governmental organizations and individuals who have provided him with information on alleged violations of the right to life, and whose role in alerting the international community is particularly important, to continue their efforts and pay particular attention to signs of incipient conflict situations.

438. As in the past, the Special Rapporteur is ready to offer his full collaboration and assistance to all who wish to engage in the common endeavour to promote respect for and enjoyment of the right to life.

VIII. CONCLUSION BY THE SPECIAL RAPPORTEUR ON MEASURES TO COMBAT CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE (E/CN.4/1995/78, paras. 130-133)

130. The information gathered shows that, both at the national, regional and international levels, there has been a mobilization of Governments and competent organizations and institutions against the rise of racism, racial discrimination, xenophobia and related intolerance. The Special Rapporteur can only welcome this trend and encourage all the individuals and bodies

concerned to keep up their efforts and to redouble their vigilance so as to frustrate racist and xenophobic acts and practices, which often parade as nationalism and national or continental preference.

131. The Special Rapporteur hopes that strict measures will be taken against individuals and organizations engaging in racist attacks and endangering the life or violating the physical integrity of foreigners, refugees or persons belonging to ethnic minorities, so as to put an end to racist and xenophobic violence in 1995.

132. The Special Rapporteur supports the measures taken by the Government of Germany to bring racist and xenophobic violence under control, eliminate racist propaganda and ban the activities of neo-Nazi organizations and the skinhead movement.

133. The Special Rapporteur also welcomes the efforts made by the Government of Colombia to allow the black communities access to collective ownership of the lands they occupy and to ensure the political representation of those communities in State bodies. He also expresses satisfaction at the efforts made on behalf of the indigenous communities.

IX. CONCLUSIONS AND RECOMMENDATIONS BY THE SPECIAL RAPPORTEUR ON THE IMPLEMENTATION OF THE DECLARATION ON THE ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF (E/CN.4/1995/91, paras. 198-226)

198. During the period under review, the Special Rapporteur continued to receive communications - in increasing numbers and based in most cases on specific evidence - alleging violations of rights and freedoms proclaimed in the 1981 Declaration. Through dialogue initiated with Governments, the Special Rapporteur requested clarification of and views and comments on particular cases or incidents, requested documents and information, suggested approaches, drew attention to situations and called for urgent initiatives or measures, as the circumstances required.

199. In addition to the cooperation that was shown him in fulfilling his mandate, the Special Rapporteur appreciated the interest and open-mindedness with which many Governments considered the matters with which he was charged, as well as their determination to resolve the problems raised.

200. The Special Rapporteur still believes that the attitudes of reluctance which he sometimes noted, on rare and isolated occasions, have to be dealt with patiently, through dialogue and with determination to see prevail both the rights and freedoms proclaimed by the 1981 Declaration and all the international instruments relating to human rights, and the justifiable concerns of all the parties involved. Any prejudgment constitutes, in his view, a wrong approach; any generalization is an error and any excessive action will ultimately be meaningless. The situations involved are highly complex and therefore cannot readily be reduced to types and classifications and even less to slogans and clichés. The culture of human rights, and particularly of tolerance, cannot be decreed. It is learned and absorbed progressively through initiatives and measures over the long term, which, although altering with time, should not be conjugated in a past tense.

201. The Special Rapporteur firmly believes that the achievement of religious tolerance and non-discrimination must go together with the achievement of human rights as a whole. Human rights cannot be promoted in the absence of democracy and development. Consequently, action to promote human rights, including the right to religious freedom, tolerance and non-discrimination, must involve, at one and the same time, measures to establish, strengthen and protect democracy as an expression of human rights at the political level, and measures to contain and progressively eliminate extreme poverty and to promote the right to development as an expression of human rights and human solidarity in the economic, social and cultural areas. As has very frequently been observed, the interdependence of all people is something quite obvious. Selectivity, on the other hand, leads to inconsistency that compromises credibility and therefore endangers the whole structure of human rights. Human rights, and the right to freedom of religion in particular, because the two subjects are extensively linked and interdependent, call for constant attention, thorough investigation and action on the part of States, societies, religious communities and individuals, in a continuous process of interiorization of the values relating to human rights, democracy and development. It is because human rights, in their various complementary expressions, are at a level above contingencies and variables that they must be sheltered from anything that can undermine their foundations or damage their mechanisms and protection procedures.

202. The Special Rapporteur tends towards the view that, avoiding attitudes and behaviours dictated by immediate circumstances, human rights, including the right to freedom of religion, should be dealt with on a continuing basis and should therefore not be the subject of any ambivalence, evasion or functionalization for purposes other than those which constitute their raison d'être.

203. "Hatred, intolerance and acts of violence, including those motivated by religious extremism" are factors potentially capable of promoting the development of situations that may threaten or compromise international peace and security in some way or another and infringe human rights and the right of peoples to peace. The Special Rapporteur is firmly convinced that religious extremism - like the extreme reactions it can unleash, both among authorities and in public opinion - is a factor contributing to the maintenance of tensions that can lead to situations which are difficult to control and expose the credibility of human rights (including the right to peace), to drifting and chance. The Special Rapporteur considers that maintenance of the right to peace should encourage further development of international solidarity so as to curb religious extremism of any kind by acting on both its causes and its effects, without selectivity or ambivalence, and by first of all defining - as certain States have done, often within the framework of regional international organizations - minimum common rules and principles of conduct and behaviour towards extremism and towards terrorism.

204. The Special Rapporteur wishes again to place emphasis on education as the essential means of opposing intolerance and discrimination based on religion or relief. The actions and initiatives taken hitherto have been much more concerned with ways of dealing with intolerance and discrimination than with their prevention. In his view, priority in combating intolerance and discrimination based on religion or belief must be given to prevention through

education. This could make a decisive contribution towards the adoption of values based on human rights and to the development, both in individuals and in groups, of tolerant and non-discriminating attitudes and behaviour, thus helping to extend the culture of human rights. The Special Rapporteur is firmly convinced that lasting progress in the areas of tolerance and non-discrimination in the area of religion and belief can be ensured mainly through education and particularly through the schools. The questionnaire on this subject which was sent to States could constitute the first stage of a process aimed at increasing knowledge of freedom of religion and belief and at first curbing and then eradicating intolerance and discrimination based on religion or belief.

205. The information gathered by the Special Rapporteur demonstrates the international community's interest in problems of religious intolerance and discrimination and the genuine efforts being made by many Governments to limit their impact. As the Special Rapporteur noted in his previous report (E/CN.4/1994/79), his role is not to level accusations or make value judgements, but rather to promote understanding of the circumstances underlying religious intolerance and discrimination, mobilize international public opinion and establish a dialogue with the Governments and any other parties concerned.

206. The Special Rapporteur also expresses appreciation to the non-governmental organizations for their valuable cooperation. Their detailed information and the concerns they have expressed have been extremely useful to him in fulfilling his mandate.

207. During the period covered by this report, the Special Rapporteur received communications from virtually all regions of the world. Once again he notes that manifestations of religious intolerance occur in countries at varying stages of development and with different political and social systems and are in no way confined to a single faith. The majority of the complaints received concerned violations of the right to have the religion or belief of one's choice, the right to change one's religion or belief, the right to manifest and practise one's religion in public and in private and the right not to be subjected to discrimination on these grounds by any State, institution or group of persons.

208. The Special Rapporteur wishes to draw attention to the fact that the violation of the rights mentioned above also jeopardizes the enjoyment of other human rights and fundamental freedoms enshrined in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as in other international human rights instruments. During the present reporting period, violations of the provisions of the 1981 Declaration have had a negative bearing on the right to life, the right to physical integrity and to liberty and security of person, the right to freedom of expression, the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment and the right not to be arbitrarily arrested or detained.

209. The Special Rapporteur once again deplores the frequently serious infringement of the rights of persons belonging to religious minorities in countries with an official or clearly predominant majority religion. He also

notes the difficult situation of the members of certain religious denominations in several countries and certain regions, even when they are not strictly minorities, as is the case of the Shiites in Iraq and Saudi Arabia and the members of the Christian communities in the Sudan, Egypt and Viet Nam, as well as the Buddhists in Viet Nam and in the autonomous region of Tibet.

210. The Special Rapporteur notes the continuing extremism and religious fanaticism in certain countries. Although such expressions of religious discrimination and intolerance are often attributable to various economic, social, political or cultural factors which derive from complex historical processes, they are also the result of sectarianism and dogmatism. The Special Rapporteur was disturbed in particular by cases where extremist opinions had been expressed in public and implemented by Governments themselves and cases where the authorities had not taken the necessary steps in time to prevent the expression of such opinions, when they were in a position to do so.

211. In certain cases the Special Rapporteur had difficulty in establishing a clear distinction between religious conflicts and ethnic conflicts, and between religious intolerance and political persecution. However, he transmitted the allegations to the Governments concerned and invited them to furnish information on the cases reported.

212. The Special Rapporteur is concerned at the abuse of legislation against blasphemy and the groundless accusations of blasphemy in certain countries. Such abuses foster a climate of religious intolerance and even acts of violence, including murder. In Pakistan, he was informed, the blasphemy law was amended to make the admissibility of blasphemy proceedings dependent on sufficient evidence and to make it easier to prosecute spreaders of false accusations of blasphemy and abusers of the law. Notwithstanding these amendments, however, there were reports that the Ahmadiyya and Christian minorities and even Muslims continued to be the victims of serious acts of religious intolerance. In Bangladesh, Mrs. Taslima Nasreen, a writer charged with blasphemy and sentenced to death by religious extremists, was compelled to leave her country in order to escape persecution. In Egypt and the United Arab Emirates, writers were also allegedly prosecuted and convicted for their work which was viewed as blasphemous. Finally, in Canada, a writer was allegedly stabbed, apparently because of a novel that had been considered blasphemous. The Special Rapporteur believes that special attention should be paid to these distressing situations and recommends that a study should be made of blasphemy from the human rights standpoint.

213. The Special Rapporteur also notes with concern the many cases of harm caused to places of worship, special religious sites and religious property of all denominations. These include damage to and confiscation or destruction of places of worship, profanation of cemeteries and denial of authorization to build places of worship or to renovate, restore or use such places. In this connection, the Special Rapporteur draws attention to resolution 1994/18, in which the Commission on Human Rights calls upon all States in accordance with their national legislation to exert their utmost efforts to ensure that religious places, buildings and shrines are fully respected and protected.

214. The Special Rapporteur once again notes that real estate claims by several churches in a number of eastern European countries, such as Albania, have still not been successful despite the progress made in terms of religious freedom since the changes in those countries' regimes.

215. The Special Rapporteur is concerned at the role which the media play in some countries in developing a climate of religious intolerance, and he recommends that specific action be taken under the programme of advisory services in order to remedy the situation. He also deplores that the media suffer from acts, or even policies of intolerance and religious discrimination in other countries, including in particular Algeria.

216. The Special Rapporteur has continued to receive communications describing violations in several countries of the rights and freedoms of sects and other similar or comparable communities. He wishes to point out first of all that the 1981 Declaration is intended to protect not only religions, but also theistic, non-theistic and atheistic beliefs. He also wishes to point out, bearing in mind article 1, paragraph 3 of the Declaration, that freedom of religion and belief does not prevent the State from fulfilling, to the extent necessary and in accordance with pre-established rules consistent with international norms, its inherent obligation to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

217. The Special Rapporteur also believes that greater attention should in future be paid to the increasingly numerous problems posed by sects and other similar or comparable communities, in particular through a study of the topic.

218. The Special Rapporteur has dealt with a number of cases of conscientious objection within the framework of his mandate, in conformity with the provisions of the 1981 Declaration. He also wishes to draw attention to resolution 1989/59 of the Commission on Human Rights, which was reaffirmed in 1991 (resolution 1991/65) and in 1993 (resolution 1993/84), and which recognizes "the right of everyone to have conscientious objections to military service as a legitimate exercise of the right of freedom of thought, conscience and religion as laid down in article 18 of the Universal Declaration of Human Rights as well as article 18 of the International Covenant on Civil and Political Rights", and recommends to States "with a system of compulsory military service, where such provision has not already been made, that they introduce for conscientious objectors various forms of alternative service" which "should be in principle of a non-combatant or civilian character, in the public interest and not of a punitive nature".

219. The Special Rapporteur has closely followed the tragic developments on the territory of the former Yugoslavia. He wishes to draw attention to resolution 1994/72, in which the Commission on Human Rights, repelled by the odious practice of "ethnic cleansing" whose principal victims are the Muslim population, expresses alarm at the findings of the Special Rapporteur, Mr. Tadeus Mazowiecki, that the influence of ultra-nationalist ideologies is growing and that indoctrination and misinformation encourage national and religious hatred.

220. The Special Rapporteur is deeply concerned at the serious acts of religious intolerance that are affecting Algerian society as a whole and are likely to have repercussions throughout the Mediterranean region.

221. The Special Rapporteur draws attention to the fact that the United Nations, by its establishment, testifies to the determination to "save succeeding generations from the scourge of war" and, for the achievement of its ends, "to practise tolerance and live together in peace with one another as good neighbours", to maintain, by uniting our strength, "international peace and security", and sets forth, as one of its purposes, the maintenance of international peace and security and "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion". He accordingly recommends that the fiftieth anniversary of the United Nations should be commemorated with particular solemnity and that it should be seen as a special opportunity to reaffirm the determination of the international community as a whole, and also of each of its members, to preserve and develop the right of individuals and of peoples to peace. The Special Rapporteur believes that the nature of religious extremism is such as to jeopardize the right of individuals and of peoples to peace and to prejudice human rights as a whole. He accordingly recommends that the United Nations General Assembly - as well as States themselves - adopt appropriate instruments committing themselves to combating within the framework of the purposes of the United Nations and with due regard for General Assembly resolution 39/11 of 12 December 1984, which contains the Declaration on the Right of Peoples to Peace, "hatred, intolerance and acts of violence, including those motivated by religious extremism" and to "encouraging understanding, tolerance and respect in matters relating to freedom of religion or belief".

222. The Special Rapporteur also recommends that 1995, which has been declared "United Nations Year for Tolerance", should provide an opportunity better to publicize the values of tolerance and non-discrimination. He believes that the Year should of course be marked by the appropriate initiatives and actions, but also by the organization, at a high State level, of an international congress on tolerance and non-discrimination in the sphere of religion and belief.

223. The Special Rapporteur again stresses the importance of establishing a continuing interfaith dialogue to combat all forms of religious extremism by any religion whatsoever so as to guarantee religious tolerance both internationally and within States. Furthermore, the establishment of firm foundations for religious tolerance will require, as well as specific action in the sphere of education, the establishment of and respect for the rule of law and the proper functioning of democratic institutions, entailing in particular the execution of specific projects within the framework of the programme of advisory services. This edifice also requires respect for economic, social and cultural rights through the implementation of socio-economic measures designed to diminish inequalities and eradicate, in so far as possible, sources of friction and tension between religions.

224. The Special Rapporteur has taken note of resolution 1994/18 of the Commission on Human Rights, which encourages him to examine the contribution that education can make to more effective promotion of religious tolerance,

and has undertaken a number of consultations and studies (see chap. II) which have made it possible to confirm his initial conclusions regarding the role of education as an essential and primary means of combating intolerance and discrimination. As he pointed out in the previous report, education could contribute decisively to instilling the values that focus on human rights and on the emergence, among both individuals and groups, of attitudes and behaviour exhibiting tolerance and non-discrimination and thus participate in disseminating the culture of human rights. School, which is an essential component of the basic educational system, can provide a fertile and vital ground for achieving lasting progress with regard to tolerance and non-discrimination in the matter of religion or belief. The Special Rapporteur has therefore decided to carry out a study, by means of a questionnaire addressed to States, of issues relating to religious freedom and belief from the angle of the curricula and manuals of primary or basic and secondary teaching establishments (see annex). The results of the study could make it possible to draw up an international school strategy to combat all forms of intolerance and discrimination based on religion or belief, which could centre on the elaboration and realization of a minimum joint programme of tolerance and non-discrimination.

225. The Special Rapporteur has also made a number of recommendations regarding education for the Centre for Human Rights programme of advisory services.

226. In conformity with resolution 1994/18, in which the Commission on Human Rights recommended that the promotion and protection of the right to freedom of thought, conscience and religion be given appropriate priority in the work of the United Nations programme of advisory services in the field of human rights and encouraged the Special Rapporteur to consider whether the programme of advisory services in the field of human rights might be of assistance in certain situations, at the request of States, and to make appropriate recommendations in that regard, the Special Rapporteur wishes to make the following recommendations regarding the specific projects to be carried out within the framework of the programme of advisory services:

(a) The provision, upon request, to Governments of expert advisory services for the following purposes:

(i) Preparation of basic legal instruments or adaptation of existing instruments in accordance with the principles set out in the 1981 Declaration;

(ii) Establishment and strengthening of national and regional institutions and infrastructure such as national commissions, an ombudsman and conciliation commissions whose long-term effect will be to improve the implementation of international human rights norms, particularly in the sphere of tolerance and non-discrimination with regard to religion and belief;

(iii) Development of school curricula and textbooks that take into account the teaching of the values of tolerance and understanding with regard to religion and belief.

(b) The organization of national and regional seminars to publicize or ensure better understanding of existing principles, norms and remedies in the areas of freedom of religion and belief. These activities would be intended in particular for members of legislative bodies, the judiciary, the bar and the civil service.

(c) The organization of regional and national training courses for teachers in kindergartens, primary or basic and secondary schools, to acquaint them with the value of teaching principles of tolerance and non-discrimination with regard to religion and belief.

(d) The organization of national and regional workshops, to be attended by persons in key positions within society such as the representatives of specific religions and ideologies and of non-governmental human rights organizations, on the topic of promotion of tolerance and understanding with regard to religion and belief and encouragement of dialogue between religions.

(e) The organization of workshops for media representatives to acquaint them with the importance of disseminating information in conformity with the principles of tolerance and non-discrimination with regard to religion and belief and to educate society and mould public opinion in conformity with those principles.

X. RECOMMENDATIONS BY THE SPECIAL RAPPORTEUR ON THE SALE OF CHILDREN CHILD PROSTITUTION AND CHILD PORNOGRAPHY (A/49/478, paras. 1-48)

A. General

(1) The Special Rapporteur has made a number of recommendations to the Commission on Human Rights during the period of his mandate, and the United Nations General Assembly is invited to bear them in mind so as to encourage more concrete action and responses at the international, national and local levels. In particular, the recommendations in the 1994 report submitted to the Commission (E/CN.4/1994/84) should be noted and given support by the General Assembly, with a view to their effective and expeditious implementation and evaluation at the international, national and local levels.

(2) The General Assembly should encourage all States, national and international organizations, and other entities to provide updated information on all areas of concern to this mandate to the Special Rapporteur. Particular attention should be paid to the interrelationship between child rights, women's rights and the concerns of the family and the girl child. Data should be disaggregated so as to reflect gender and other disparities. Each State should identify and/or establish a national focal point for collecting such information and liaising effectively with the Special Rapporteur. Networking between Governments, non-governmental organizations, the community, the business sector, the family and children on these matters should be fostered and facilitated.

(3) The General Assembly should support the possibility of more field visits under this mandate to both developing and developed countries in order to make the work of the United Nations more accessible to people at the local level

and to reflect their views in the recommendations to the United Nations. While a visit to Africa is planned in 1994, a visit to North America would be welcomed by the Special Rapporteur in the future, and the States of this region are invited to collaborate closely with the Special Rapporteur and facilitate his access to relevant information.

(4) The General Assembly should encourage all States to respond effectively and expeditiously to communications from the Special Rapporteur on behalf of children in difficulties. They should also initiate independent and objective monitoring at the national level to complement the work of the Special Rapporteur.

(5) The General Assembly should call upon all States to accede to all the relevant human rights instruments and implement them efficaciously. In particular, they should accede to the Convention on the Rights of the Child and should enforce it fully at the national and local levels. The national focal point mentioned above should gather information on areas of relevance to these instruments and should forward it regularly to the international human rights mechanisms, including the Special Rapporteur, mandated to deal with child-related issues.

(6) The General Assembly should invite the Secretary-General of the United Nations and the United Nations Security Council to address issues of child abuse and exploitation, as these may have an impact on international peace and security, especially since many forms of child abuse and exploitation are transnational and global by nature. Conversely, the problems facing international peace and security have numerous repercussions for children, since they may be detrimental to the children's survival, development, protection and participation. Children's rights should be seen as a key concern of international peace and security, and protection and assistance targeted to children and their families should be seen as key components of human security.

(7) The General Assembly should exert constructive influence on world financial institutions, especially the World Bank and the International Monetary Fund, to reappraise structural adjustment programmes and to ensure that these do not lead to negative consequences for children, especially child abuse and exploitation. These institutions should initiate and apply "family-and-child impact assessment" tests to all programmes under their mandate so as to prevent and attenuate child abuse and exploitation.

(8) The General Assembly should call upon the Secretary-General of the United Nations and all United Nations peace-keeping operations to pay greater attention to the rights of the child, with relevant training and retraining on this issue for peace-keepers. A code of conduct on child rights in United Nations peace-keeping operations should be drafted and adopted so as to prevent United Nations personnel from becoming involved in child abuse and exploitation.

(9) The General Assembly should ensure that all United Nations agencies incorporate the concerns of children and their families in their programmes. All these agencies should collect and collate information on child rights, especially with regard to the sale of children, child prostitution and child

pornography, and report annually to the General Assembly, as well as to the Special Rapporteur and other concerned entities. Particular attention should be paid to the interrelationship between the rights of women and children, especially the girl child. Data should be disaggregated accordingly.

(10) The General Assembly should reinforce the work of the Committee on the Rights of the Child, UNICEF and relevant entities in protecting and assisting children and their families. Adequate resources should be provided to the Centre for Human Rights and the mandate of this Special Rapporteur to fulfil the broad functions already designated and to facilitate effective implementation of their mandates.

(11) The General Assembly should foster the work of UNESCO, global and national media, and other concerned entities to disseminate information on child rights and to educate government officials, especially law enforcement personnel, the community, non-governmental organizations, the private sector, the family, and children themselves about issues of child abuse and exploitation. This is imperative to overcome negative cultural traditions which perpetuate child exploitation, particularly those which violate the rights of women and the girl child. A sustained community and family socialization, mobilization and education process is required to overcome those traditions, as well as more modern forms of child abuse and exploitation.

(12) The General Assembly should place greater emphasis on preventive strategies and action to counter child abuse and exploitation, particularly in the areas of concern to the Special Rapporteur's mandate. One the one hand, this entails more effective measures to address poverty and inadequate economic and livelihood opportunities as root causes of family disintegration and practices which lead to the sale of children, child prostitution and child pornography. One the other hand, it calls for more action, particularly through more quality law enforcement personnel and community networks and vigilance, to counter the criminal networks and the transnational demand for the sale of children, child prostitution and child pornography.

(13) The General Assembly should interact more closely with INTERPOL, the Crime Prevention and Criminal Justice Branch of the United Nations, UNICEF, ILO, WHO, the Commission on Human Rights and subsidiary bodies, and national authorities and other relevant entities to promote a "pro-child-anti-crime" network to tackle the pervasive criminal systems that exploit and abuse children worldwide.

(14) The General Assembly should encourage all States, with the assistance of relevant United Nations and other bodies, to ensure that all law enforcement personnel are trained in child rights and issues of concern to this mandate. Special units may also be established to counter the sale of children, child prostitution and child pornography, bearing in mind the need for more women than are found currently in police forces and other law enforcement personnel.

(15) The General Assembly should interact more closely with the private sector, particularly the business community and transnational corporations, so that it establishes a network on child protection to act as a monitor of the activities of businesses and prevent child abuse and exploitation. A

"business code on child protection" should be evolved in this sector, with the encouragement of the General Assembly, in order to provide constructive peer pressure on the business community to respect the rights of the child.

(16) The General Assembly should invite all States, national and international organizations, and other concerned entities to operationalize efficaciously and expeditiously the various international standards espoused by the United Nations, and to implement effectively the recommendations of United Nations conferences and other relevant forums. In particular, the recommendations of the 1993 World Conference on Human Rights, contained in the Vienna Declaration and Programme of Action, the 1994 International Year of the Family, and the 1994 United Nations Conference on Population and Development need to be applied effectively, in keeping with the concerns of children and their families in the context of the rights of the child. Moreover, 1995 will witness the World Social Development Summit and the Fourth World Conference on Women which will be key avenues for highlighting the rights of the child, especially the rights of the girl child, and the need to counter both traditional and modern forms of child abuse and exploitation.

(17) The General Assembly should allocate, and invite all States and development aid agencies, whether multilateral, regional, bilateral or national, to allocate more resources to social development, especially the development of families and children. This should be posited in the context of children's rights, particularly the needs of the girl child. The past over-expenditure by States or arms purchases should be curbed and the savings from reduction of arms expenditure should be reallocated to assist and protect families and children as part of a global peace dividend.

(18) The General Assembly is invited to encourage the adoption and implementation of the following specific short-, medium- and long-term measures already proffered to the Commission on Human Rights by the Special Rapporteur in 1994.

B. Specific

1. Short-term measures

(19) The term "short-term measures" refers to measures which should preferably be implemented in the next five years. Many of the short-term measures suggested should also be part of medium- and long-term strategies; they are not mutually exclusive and should be seen as part of a continuing process.

(20) In the light of the 1994 International Year of the Family, the General Assembly should collaborate with all States and with national and international organizations to highlight measures needed to promote a positive nexus between the child and the family, and to counter child abuse and exploitation. In the light of the 1994 United Nations Conference on Population and Development, the General Assembly should reinforce the recommendations of the Conference and advocate their effective and expeditious implementation by all States and other relevant entities, bearing in mind the essential interrelationship between the population issue, access to family planning, family needs, women's rights and the rights of the child, particularly the girl child.

(21) The General Assembly, States and national and international organizations should support and disseminate the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography, and the Programme of Action for the Elimination of the Exploitation of Child Labour already adopted by the Commission on Human Rights and ensure that there is effective monitoring and implementation of these Programmes at all levels, with adequate resource allocations.

(22) The General Assembly, States and national and international organizations are invited to bear in mind strategies of prevention, protection and rehabilitation in curbing the sale of children, child prostitution and child pornography. All three strategies involve short-, medium- and long-term planning, implementation and evaluation. Of the three strategies, the most immediate, in the short term, is that of protection: adequate laws, policies and enforcement can have an instant impact on the situation, given the necessary political and social will. All countries already have laws which can be used to protect children, for example the criminal law; they should be implemented in a more committed manner. This is all the more significant because the scenario is that of criminality, and only through effective law enforcement will it be reduced in the short term. Realizable goals depend on close coordination and adequate budgetary allocations between the national and local levels.

(23) A key priority for action in the short term, with implications for the medium and long term, is in the area of prevention. The General Assembly, States and national and international organizations should promote effectively anti-poverty strategies, improved flow of information, universal primary education, community consciousness raising and mobilization, satisfaction of basic needs, occupational opportunities, alternative forms of employment, and subsidies for families and children in difficulties.

(24) As a root cause of the abuse and exploitation of children is criminality, the General Assembly, States and national and international organizations should broaden anti-crime measures. Community participation should be maximized to protect children through "community watch" programmes, including an alliance between village committees, other vigilance committees, religious leaders, local teachers and leaders, youth and child groups, professional organizations, non-governmental organizations, the business community and the mass media.

(25) The General Assembly, States and national and international organizations should address the issue of improving the quality of the police force, immigration authorities, judges, inspectors and other law enforcement personnel. Low pay and insufficient training in the rights of the child often result in poor law enforcement and corruption. The better among such officials need incentives and in-service training for quality performance. The worst should be identified and penalized for being part of the criminal system.

(26) Increased collaboration between the General Assembly, the Committee on the Rights of the Child, the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Working Group on Contemporary Forms of Slavery, INTERPOL, the Crime Prevention Branch of the

United Nations, the Centre for Human Rights and other relevant entities and this mandate is desired. As the Centre for Human Rights has no resources for the Special Rapporteur to attend several of the meetings held by these entities (for example, those of the Crime Prevention Branch), facilities should be provided to enable the Special Rapporteur to attend key meetings to coordinate with these entities, with adequate back-up support.

(27) The General Assembly, States and national and international organizations should highlight the responsibility of the customer in child abuse and exploitation through national and international campaigns. This implies, in particular, a call to incriminate customers of child victims of prostitution and those who possess child pornography.

(28) The General Assembly, States and national and international organizations should encourage, through bilateral and other means, exchange programmes among law enforcement personnel, as well as related training programmes, to deal with transnational trafficking in children. Such programmes may, for example, entail stationing police personnel in other countries to track the behaviour of one's own nationals where there is a threat to the children of those countries. This can be facilitated by increased exchange of information, such as lists of known paedophiles and crime-linked data.

(29) The General Assembly, States and national and international organizations should facilitate the provision of remedies to help children who are abused and exploited. This may include judicial remedies such as prosecution of abusers, legal aid and assistance, and/or socio-medical remedies such as access to hospices, counselling and other support facilities. More assistance should be available and accessible to those with health problems, including HIV/AIDS. These may include medical and community facilities to help children and their families, as well as measures to protect against discrimination and other harm. Emphasis should be placed upon family-based and community-based rehabilitation rather than State institutionalization.

(30) In regard to adoptions, the General Assembly should encourage States' ratification of and accession to the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption. Both the countries of origin of adopted children and the receiving countries should become parties to this Convention and enforce it effectively. Accession to and implementation of the Hague Convention on the Civil Aspects of International Child Abduction by both the countries of origin of abducted children and receiving countries should also be strengthened.

(31) Where children are trafficked across frontiers, the General Assembly should encourage States and national and international organizations to ensure that the true age of the children is ascertained by independent and objective assessment, preferably with the cooperation of the non-governmental sector. If they are to be returned to the country of origin, their safety must be guaranteed by independent monitoring and follow-up. Pending their return to the country of origin, they should not be treated as illegal migrants by the receiving countries, but should be dealt with humanely as special cases of humanitarian concern. Upon the children's return, the country of origin

should treat them with respect and in accordance with international human rights principles, backed up by adequate family-based and community-based rehabilitation measures.

(32) The General Assembly, States and national and international organizations should work towards closer monitoring of organ transplantation in order to prevent abuses. National laws should prohibit the use of children for organ transplants, bearing in mind the World Health Organization Guiding Principles on Human Organ Transplantation referred to above. The medical sector and related professional organizations should be mobilized as a watchdog against abuses.

(33) The General Assembly, States and national and international organizations should discourage sex tourism, and the private sector, including the service industry, and the World Tourism Organization, should encourage accountability this regard. Peer group pressure in the private sector may help to reprimand those in the same sector who are involved with child exploitation. A code of ethics might be promoted, stipulating the industry's stand against child exploitation.

(34) The General Assembly, States and national and international organizations should ensure that the issue of child prostitution and other forms of child abuse and exploitation is raised openly in the classroom, especially at the primary level, whether in formal or non-formal education, so as to forewarn children of the dangers.

(35) The General Assembly, States and national and international organizations should ensure that the age of recruitment into the armed forces is raised to 18 and that an international instrument is concretized to this effect. When child soldiers are captured in combat, their prisoner of war status must be respected. If they have escaped recruitment, they should be accorded refugee status and accorded international protection. Dialogue with the military of both governmental and non-governmental forces is needed to curb the use of child soldiers. In promoting adherence to international human rights and humanitarian law instruments, safeguards are needed for all children in situations of armed conflict.

(36) The General Assembly should encourage regional organizations, including the Council of Europe, the European Union, the Organization of American States, the Organization of African Unity, the Arab League, the South Asian Association for Regional Cooperation, and the Association of South-East Asian Nations, to set a specific agenda on child protection and establish a unit to monitor the abuse and exploitation of children as an urgent priority in their work. They are also requested to cooperate closely with the Special Rapporteur with respect to his mandate.

2. Medium- and long-term measures

(37) The term "medium- and long-term measures" is used to indicate those measures which may need more than five years to initiate and/or accomplish. Many of the short-term measures discussed above will also need to be continued

in the medium and long term. If the medium- and long-term measures set out below could be initiated and/or accomplished in the short term, this would also be welcomed.

(38) The General Assembly should call upon States and national and international organizations to reappraise their development strategies so as to ensure greater equity, income distribution and resource allocations, including land reform and restructuring of budgets, for needy children and their families. As poverty is a root cause of child abuse and exploitation, it must be tackled with a sustained strategy in both national and international settings to ensure greater social justice for all.

(39) The General Assembly should encourage all States to establish central registries of all adopted children and of all missing children, and transfrontier exchanges of information should be promoted to trace and monitor the children and entities concerned.

(40) The General Assembly, States and national and international organizations should foster an integrated and interdisciplinary approach to tackle the root causes of the abuse and exploitation of children, bearing in mind the Programmes of Action referred to above. National laws need to be reformed to extend jurisdiction to cover the offences of a country's nationals against children in other countries in an extraterritorial manner.

(41) The General Assembly, States and national and international organizations should provide greater assistance to needy families and children in difficulties in order to lift them from the rut of poverty and economic deprivation which drive children into various forms of exploitation. Monitoring of parental behaviour, supervision by social service personnel, access to occupational facilities, provision of family care and child subsidies, and universal access to education and (re)training are required to encourage changes of behaviour on the part of parents and to protect children.

(42) The General Assembly, States and national and international organizations should ensure that laws and policies cover not only formal employment but also less formal types of employment which give rise to child labour exploitation, for example, in the area of agriculture, domestic service and subcontracting, and that they are implemented effectively. A sustained strategy with not only legal but also other measures is required to eradicate bonded labour.

(43) The General Assembly, States and national and international organizations should address the fact that new laws may be needed to counter new forms of technology used for child exploitation. Peer group pressure in the computer industry and the mass media could also be fostered as a watchdog against abuse by members of these sectors. Those who provide services in developing films, processing videos and facilitating mass communications should be requested to report instances of child exploitation to the law enforcement authorities.

(44) The General Assembly should call upon the business sector, including employers' federations, trade unions and the service industry, to promote a worldwide strategy for child protection. As already mentioned, a "business code on child protection" may also be evolved.

(45) As child abuse and exploitation are increasingly transnational, the General Assembly should encourage States to expand extradition arrangements, mutual assistance agreements and less formal types of inter-State cooperation so as to facilitate the transfer of alleged criminals to face charges in the country where the abuse or exploitation has taken place and to facilitate the giving of testimony by children in a child-friendly setting.

(46) The General Assembly should call upon States and national and international organizations to ensure that there are effective laws, policies and a medical code of ethics to prevent commercialization of in vitro fertilization and surrogacy. The close cooperation of the medical sector is sought to establish rules for these practices. Bilateral and transfrontier arrangements are needed to prevent "forum shopping" for services which give rise to abuses.

(47) The General Assembly, States and national and international organizations should foster changes to traditions which perpetuate child exploitation, not only through legislative enactments but also through establishing a broader socialization and education process targeted towards consciousness raising and behavioural changes. A key concern is to eradicate violations of women's rights and abuses of the rights of the child, particularly the girl child.

(48) The General Assembly, States and national and international organizations should promote a reorientation of incentives from the past emphasis on "economic investment" for industries to the more urgent call of "social investment" targeted towards the development of the child and the family. In this respect, incentives, such as tax exemptions, should be accorded more broadly to non-governmental organizations and community initiatives that invest in the livelihood of the community and the family and in child survival, development, protection and participation.
