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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF
DISAPPEARANCES AND SUMMARY EXECUTIONS**

Extrajudicial, summary or arbitrary executions

Report of the Special Rapporteur, Philip Alston

Summary

This report begins with an outline of the Special Rapporteur's terms of reference, legal framework, and methods of work. In this first report by the new Special Rapporteur, the emphasis is on continuity in all these respects, although a different approach is adopted in terms of the focus and format of the report itself.

In relation to communications, the report summarizes, in broad categories, the issues raised and emphasizes the importance of the addendum (E/CN.4/2005/7/Add.1) containing full details of correspondence with Governments. Several changes of approach are noted, designed to improve a governmental response rate of only 54 per cent.

In relation to country visits, details are provided of requests made and a follow-up procedure is outlined.

The analytical part of the report focuses in depth on a narrow range of issues, with an overall emphasis on accountability. The four principal topics addressed are: (i) genocide and crimes against humanity; (ii) violations of the right to life in armed conflict and internal strife; (iii) capital punishment; and (iv) violations of the right to life by non-State actors.

The report concludes with a succinct set of conclusions and recommendations.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1 - 4	4
I. THE MANDATE	5 - 12	4
A. Terms of reference	5 - 7	4
B. Violations of the right to life upon which the Special Rapporteur takes action	8	5
C. Legal framework and methods of work	9 - 12	5
II. ACTIVITIES	13 - 31	6
A. General remarks	13	6
B. Communications	14 - 24	6
C. Visits	25 - 31	11
III. OVERVIEW OF SELECTED ISSUES OF CONCERN AND THE KEY CHALLENGE OF ACCOUNTABILITY	32 - 76	13
A. Genocide and crimes against humanity	36 - 40	14
B. Violations of the right to life in armed conflict and internal strife	41 - 54	15
C. Capital punishment	55 - 64	17
D. Violations of the right to life by non-State actors	65 - 76	19
IV. CONCLUSIONS AND RECOMMENDATIONS	77 - 88	22
A. Conclusions	77 - 81	22
B. Recommendations	82 - 88	22

Introduction

1. This is the first report submitted to the Commission on Human Rights by Philip Alston subsequent to his appointment as Special Rapporteur on extrajudicial, summary or arbitrary executions in August 2004. He is the fourth person to hold this mandate since it was established 22 years ago as the first of the Commission's thematic special rapporteurs.¹ The report is submitted pursuant to Commission on Human Rights resolution 2004/37.
2. The report takes account of information received and communications sent in the period from 1 December 2003 to 30 September 2004. It should be noted, however, that the addendum to the present report - which contains the details of the communications sent and the replies received - follows a different chronology, the details of which are explained below.²
3. In general, this report is intended to ensure continuity within the mandate. It thus follows the approach taken by the previous Special Rapporteur, Asma Jahangir, as well as by her predecessors, Amos Wako and Bacre Waly Ndiaye. During her six years as Special Rapporteur, Ms. Jahangir brought deep commitment, dynamism and extraordinary insight to her role. The new Special Rapporteur considers his task to be twofold: to maintain and build upon the successful efforts already undertaken under this mandate, and to contribute in a constructive way to its future evolution.
4. In that spirit, the present report is structured differently from previous reports. The assumption is that there is no fixed formula for such reports and that what matters is the advancement of the values underpinning the mandate. The best means by which that can be done will change over time and the Special Rapporteur intends to vary his approach in response to particular challenges and concerns.

I. THE MANDATE

A. Terms of reference

5. The principal activities foreseen under the Special Rapporteur's mandate are to collect information from all concerned, to respond effectively to reliable information, to undertake country visits, to follow up on communications and country visits, to seek the views and comments of Governments, and to reflect each of those factors in his overall report.
6. The terms of reference of this mandate are not best understood through efforts to define individually the terms "extrajudicial", "summary" or "arbitrary", or to seek to categorize any given incident accordingly. These terms had important roles to play in the historical evolution of the mandate but today they tell us relatively little about the real nature of the issues. The broad coverage of the mandate as it now exists reflects the very real needs perceived over time by the Commission to be able to respond to a range of contexts in which killings have taken place in circumstances which contravene international law and which the Commission has determined require a response. Thus, the most productive focus is on the mandate itself, as it has evolved over the years through the various resolutions of the General Assembly and the Commission.

7. On the basis of the agreed legal framework of the mandate, as reflected in the relevant resolutions of the Commission on Human Rights and the General Assembly, the Special Rapporteur's terms of reference include the following:

- (a) To examine situations of extrajudicial, summary or arbitrary executions and to submit findings, together with conclusions and recommendations, to the Commission;
- (b) To respond effectively to information, including situations when an extrajudicial, summary or arbitrary execution is imminent or seriously threatened, or has occurred;
- (c) To engage in a constructive dialogue with Governments, and to follow up on recommendations made after country visits;
- (d) To pay special attention to extrajudicial, summary or arbitrary executions of women and to ensure that a gender perspective is reflected in the work under the mandate;
- (e) To pay special attention to extrajudicial, summary or arbitrary executions of children, and of persons belonging to minorities;
- (f) To pay special attention to extrajudicial, summary or arbitrary executions where the victims are individuals carrying out peaceful activities in defence of human rights, including those participating in demonstrations and other peaceful public manifestations;
- (g) To monitor the implementation of international standards, including safeguards and restrictions, relating to the imposition of capital punishment, bearing in mind the comments made by the Human Rights Committee in its interpretation of article 6 of the International Covenant on Civil and Political Rights, as well as the Second Optional Protocol thereto.

B. Violations of the right to life upon which the Special Rapporteur takes action

8. The Special Rapporteur follows the guidelines developed by his predecessors, which were restated most recently in the report to the Commission in 2002 (E/CN.4/2002/74, para. 8).

C. Legal framework and methods of work

9. In addition to, and in conformity with, the relevant resolutions of the Commission and of the General Assembly, the work of the Special Rapporteur reflects the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (especially articles 6, 14 and 15), and the Convention on the Rights of the Child (especially article 37), as well as other treaties, resolutions, conventions and declarations adopted by United Nations bodies relating to violations of the right to life.

10. The legal framework includes principles and guidelines specified in:

- (a) The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions;

- (b) The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- (c) The Rome Statute of the International Criminal Court;
- (d) The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

11. The Special Rapporteur's principal methods of work are: (i) sending "urgent appeals" requesting action by Governments in response to emergency cases; (ii) responding to individual complaints by communicating the details to Governments, with a summary of the facts and a request for clarification (methods (i) and (ii) are pursued only where sufficient information is available and has been provided by a well-known or credible source); (iii) issuing press statements where appropriate to the circumstances; (iv) undertaking country visits designed to ascertain the facts on a first-hand basis, to situate issues within a broader perspective, and to work in a spirit of cooperation with Governments; and (v) undertaking general promotional activities to advance the objectives identified by the Commission on Human Rights and the General Assembly.

12. The Special Rapporteur has been greatly assisted in the conduct of his work by the staff of the Office of the High Commissioner for Human Rights whose expertise and professionalism are greatly appreciated.

II. ACTIVITIES

A. General remarks

13. Shortly after assuming office, the Special Rapporteur undertook intensive consultations with diplomats and other governmental representatives, as well as with key civil society actors who are knowledgeable about the issues dealt with under his mandate. These consultations were extremely valuable and the shape of the present report reflects some of the suggestions made in the course of those discussions. A consultative approach will continue to be adopted in relation to this mandate and the Special Rapporteur welcomes comments, whether critical or otherwise, in the spirit of discouraging and deterring killings, exposing those that do occur, and holding Governments to account where they are responsible or have failed to take appropriate steps in response to the actions of others.

B. Communications

14. The mandate conferred upon the Special Rapporteur to engage in communications with Governments in response to credible allegations is a part of one of the most significant functions conferred upon the Commission. It is thus of the utmost importance that Governments should respond in the spirit of a constructive dialogue on matters of concern.

15. It is equally important for the Special Rapporteur to ensure that such exchanges are frank, productive and focused. For his part the Special Rapporteur has endeavoured to eliminate, or at least temper, the arcane and often impenetrable language traditionally used in communicating with Governments. He will seek to be precise in relation to the object of his concerns and to

emphasize tangible results rather than formal outputs. Thus, the sending of fewer but more detailed, reasoned and targeted communications is preferable to engaging in a larger number of pro forma exchanges.

16. This report covers communications³ sent and received by both the present Special Rapporteur and his predecessor in the course of 2004.⁴ In their annual reports, previous Special Rapporteurs have highlighted a wide range of situations brought to their attention through communications. This year, in part because the Special Rapporteur is new to the post, as well as to encourage greater attention to the specificities of the situations detailed in the addendum to this report and to allow for a more detailed treatment of issues of particular concern, this report has adopted a different approach.

17. This part of the report begins by summarizing the range of issues dealt with in the addendum, which pertains to the period covered by the present report. It should be emphasized that the addendum is an integral, and for some purposes even the most important part of the report on work done under this mandate. In order to facilitate its use as a reference document a summary of all actions taken in relation to each State has been introduced at the beginning of this year's report.

18. In the period under review, the Special Rapporteur transmitted 201 communications to 63 countries (including 112 urgent appeals and 89 letters of allegations) concerning a total of 1,799 individuals. A breakdown of the subjects of those appeals shows that they involved 578 males, 94 females, 1,134 persons of unknown sex, 152 minors, 105 refugees, some 500 internally displaced persons, 30 members of religious minorities, 270 members of ethnic or indigenous minorities, 29 human rights defenders, 19 journalists, 19 persons exercising their right to freedom of opinion and expression, 7 persons (including 1 child) killed in the name of passion or of honour, 4 persons killed for various discriminatory reasons, including their sexual orientation, and 3 lawyers and judges.

19. The Special Rapporteur sent communications to the Governments of the following countries in relation to the situations specified:

(a) Non-respect of international standards relating to the imposition of capital punishment: Afghanistan (1), Barbados (1), China (7, including 1 minor at the time of the crime), Indonesia (2), Iran (Islamic Republic of) (10, including the cases of 4 minors at the time of their execution or when the death sentence was handed down), Iraq (1), Japan (1), Kazakhstan (1), Lebanon (1), Libyan Arab Jamahiriya (1), Myanmar (2), Pakistan (4, including 2 communications for the same individual), Sudan (2), Tajikistan (3), United States of America (10, including 1 minor at the time of committing the crime), Uzbekistan (2) and Yemen (1);

(b) Death threats and fear of imminent extrajudicial executions by State officials, paramilitary groups, or groups cooperating with or tolerated by the Government, as well as unidentified persons who may be linked to the categories mentioned above and when the Government is failing to take appropriate protection measures: Algeria (1), Azerbaijan (1), Bangladesh (1), Brazil (1), Cameroon (1), Chile (1), China (1), Colombia (9), Côte d'Ivoire (2),

Democratic Republic of the Congo (6), Ecuador (3), Equatorial Guinea (1), Honduras (2, including 1 concerning a human rights defender), India (1), Indonesia (1), Iran (Islamic Republic of) (1), Malaysia (1), Mexico (1), Pakistan (2), Peru (3), Russian Federation (1), Sri Lanka (2), Thailand (1), The former Yugoslav Republic of Macedonia (1, concerning 2 minors), Turkey (1), Uzbekistan (1), Venezuela (2) and Viet Nam (1);

(c) Deaths in custody due to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention: Brazil (1), Cameroon (1), China (1), Colombia (1), Democratic Republic of the Congo (2), Egypt (4), Equatorial Guinea (1), Honduras (1, including 105 minors), India (3), Malaysia (1), Mauritania (1), Mexico (1), Nepal (2), Pakistan (3), Sri Lanka (2), Sudan (1), Togo (1), Tunisia (1), Turkmenistan (1), Uganda (1) and Ukraine (1);

(d) Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality: Algeria (1), Angola (1), Bangladesh (1), Côte d'Ivoire (1), Equatorial Guinea (1), Ethiopia (1), Haiti (2), Honduras (1 concerning 2 minors), India (1), Indonesia (1), Jamaica (1), Lao People's Democratic Republic (1), Lebanon (1), Morocco (1), Mexico (1), Pakistan (2), Sri Lanka (4), Syrian Arab Republic (1), Thailand (2), The former Yugoslav Republic of Macedonia (1), Venezuela (1), Yemen (1) and Zimbabwe (1);

(e) Deaths due to attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State: Afghanistan (1), Colombia (4), Democratic Republic of the Congo (2), Myanmar (4), Nepal (3), Philippines (3), Russian Federation (2) and Viet Nam (1);

(f) Violations of the right to life during armed conflicts, especially of the civilian population and other non-combatants, contrary to international humanitarian law: Israel (5), Sudan (1), United Kingdom of Great Britain and Northern Ireland (1) and United States of America (1);

(g) Expulsion, refoulement, or return of persons to a country or a place where their lives are in danger: Malaysia (1), Sweden (1), United States of America (1) and Zimbabwe (1);

(h) Impunity, compensation and the rights of victims: Bolivia (1), Pakistan (2), Thailand (1), The former Yugoslav Republic of Macedonia (1), Togo (1), Turkey (1) and United Kingdom of Great Britain and Northern Ireland (1).

20. In addition, in the spirit of the resolutions of the Commission dealing with the rights of women and with the rights of children, the following breakdown indicates the situation in relation to those categories:

(a) Violations of the right to life of women: Bangladesh (1) death threats; Brazil (1) death threats; Cameroon (1) death threats; Chile (1) death threats; China (2) death threats; Colombia (5) death threats, (2) attacks by armed groups tolerated by the State and (1) death in custody; Democratic Republic of the Congo (1) death threats and (1) attacks by paramilitary groups tolerated by the State; Equatorial Guinea (1) fear of death in custody; Honduras (1) death

threats; Indonesia (1) non-respect of international standards relating to the imposition of capital punishment; Iran (Islamic Republic of) (3) non-respect of international standards relating to the imposition of capital punishment and (1) death threats; Israel (1) violation of the right to life during an armed conflict contrary to international humanitarian law; Lao People's Democratic Republic (1) death due to excessive use of force; Lebanon (1) death due to excessive use of force; Libyan Arab Jamahiriya (1) non-respect of standards relating to the imposition of capital punishment; Mexico (1) death threats; Myanmar (4) death due to attacks or killings by armed forces; Nepal (2) death due to attacks or killings by armed forces and (1) death in custody; Pakistan (1) death threats and (2) honour killings; Peru (1) death threats; Philippines (2) death due to attacks or killings by security forces; Sudan (1) non-respect of international standards relating to the imposition of capital punishment and (1) violation of the right to life in an armed conflict contrary to international humanitarian law; The former Yugoslav Republic of Macedonia (1) death threats; Turkey (1) honour killing and (1) death threats; and Venezuela (1) death threats. A communication was also sent to the Palestinian Authority (1) violation of the right to life in an armed conflict contrary to international humanitarian law;

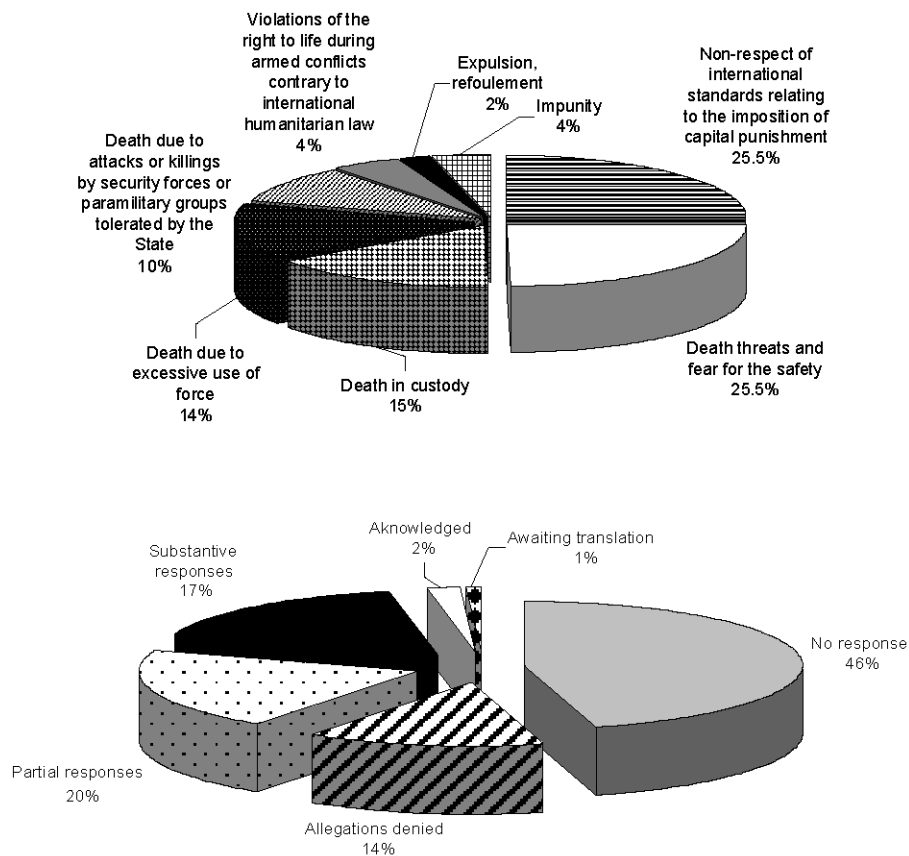
(b) Violations of the right to life of children: Colombia (1) death threats and (1) ethnic minority; Honduras (1) death in custody and (1) death due to excessive use of force; Iran (Islamic Republic of) (4) non-respect of international standards relating to the imposition of capital punishment; Israel (1) violation of the right to life in an armed conflict contrary to international humanitarian law; Kenya (1) allegedly killed for membership of an ethnic minority; Lao People's Democratic Republic (1) death due to excessive use of force; Myanmar (2) death due to attacks or killings by armed forces; Nepal (1) death in custody and fear of death in custody and (2) death due to attacks or killings by armed forces; Pakistan (1) honour killings; Philippines (2) death due to attacks or killings by security forces; Syrian Arab Republic (1) death due to excessive use of force; The former Yugoslav Republic of Macedonia (1) death threats; Turkey (1) death threats; and Venezuela (1) death threats. A communication was also sent to the Palestinian Authority (1) violation of the right to life in an armed conflict contrary to international humanitarian law.

21. Overall, the proportion of government replies received to communications sent during the period under review remains low, on average of 54 per cent.⁵ This means that almost half of all communications sent drew no response from the Government concerned within a reasonable time period.

22. This response rate must be considered problematic, particularly in the case of a long-established procedure which, for the most part, addresses issues as grave as alleged violations of the right to life. Several steps are thus being adopted by the Special Rapporteur in the hope of enhancing the rate of responsiveness on the part of Governments. First, communications will be more precise in detailing the Special Rapporteur's concerns and the measures that might be considered by Governments under the circumstances. Second, the amount of information sought in relation to most cases will be reduced and the questions posed streamlined. Third, the responses received will be classified according to five categories designed to assist the Commission in its task of evaluating the effectiveness of the mandate. Those categories are as follows (the figure in brackets is the percentage of replies which fell into each category in 2004):

1. “Substantive response” denotes a reply clarifying a case (17 per cent).
2. “Partial response” denotes a reply providing some information, or where additional details have been sought (20 per cent).
3. “Allegations denied” denotes a reply denying the allegations made (14 per cent).
4. “Acknowledged” denotes an acknowledgement of receipt of a communication, not followed by the provision of any substantive information (2 per cent).
5. “No response” (46 per cent).
6. “Awaiting translation” (1 per cent).

23. The information contained in the preceding paragraphs is also reflected in the following graphs which help to visualize the range of issues dealt with and the types of replies received.



24. Finally, in relation to communications, the Special Rapporteur notes that a response submitted by the Government of Ghana and included in the addendum to the report to the Commission in 2004 should have been, but was not also taken into account in the Special Rapporteur's report to the General Assembly (E/CN.4/2004/7/Add.1, para. 155).

C. Visits

1. Requests for visits made in 2004 and responses received

25. As noted above, country visits are an essential part of the mandate and are designed to ascertain the facts on a first-hand basis, to situate issues within a broader perspective, and to enable the Special Rapporteur to work in a spirit of cooperation with Governments.

26. During the course of 2004 a number of visits have been requested. Replies have been received in some but not all of those instances. The details are as follows:

(a) Islamic Republic of Iran: a request was made on 14 January 2004, noting that a standing invitation has been extended by the Government. The following day a reply was received indicating that a visit would be acceptable in principle but would have to be considered in the context of missions sought by other special procedures. No further information has been provided in response to subsequent inquiries;

(b) Nigeria: letters of request were sent on 28 January and 22 May 2003. On 12 July 2004 a response indicated that the visit would be scheduled in 2005. Further clarification is being sought and the Special Rapporteur is optimistic that a visit will take place;

(c) Russian Federation: a request was made on 17 September 2004. The Government replied on 8 October 2004 stating that a reference in the Special Rapporteur's letter to Commission resolution 2000/58 was "bewildering and inappropriate" because the Government had "never considered [itself] to be bound" by that resolution. The letter added that, "due to a tight schedule of planned visits of international organizations' delegations to the Northern Caucasus, the consideration of the possibility to extend an invitation to the Special Rapporteur to visit the Russian Federation is at this stage irrelevant". The Special Rapporteur notes that a visit by the Special Rapporteur on violence against women is scheduled for December 2004, and that various other special procedures have made requests in recent years;

(d) Indonesia: a request was made, especially in relation to the province of Aceh, on 27 September 2004. No reply has yet been received;

(e) Nepal: a request was sent on 27 September 2004. An acknowledgement was sent two days later indicating that "the contents of your letter have been forwarded to Kathmandu with positive recommendation";

(f) Sri Lanka: a request was sent on 21 October 2004. No reply has yet been received;

(g) Thailand: a request was made on 8 November 2004, especially in relation to the southern provinces of Narathiwat, Pattani and Yala. In a reply of 22 November 2004 the Government noted its deep regret at the 78 deaths that occurred in relation to the transportation

of detainees and characterized it as a “process which, in hindsight, with greater care and more scrupulous preparations could have been avoided”. It also noted its commitment to “ensuring that the incident is promptly, independently and thoroughly investigated” and that “where wrongdoing is found, those responsible would be held to account by due process of law”. The Government also indicated that preventive measures would be taken for the future, that redress and compensation would be paid, and that a dialogue had been launched to promote peace and harmony in the area. In the Government’s view, domestic processes of investigation “should be permitted to pursue their work unperturbed”. The view was also expressed that a public request to visit by the Special Rapporteur “could well affect the overall climate under which the Independent Commission has to work, to the detriment of its effectiveness and likely to prejudice its findings”. The Special Rapporteur greatly appreciates the rapid and detailed reply submitted by the Government of Thailand. He entirely agrees that a visit by a special rapporteur could never be a substitute for appropriate domestic processes. In his view such visits are much more likely to raise confidence in those procedures, and to demonstrate that a Government is extending its full cooperation to the special procedures of the Commission on Human Rights. He looks forward to the outcome of the prompt report which the Government has undertaken to produce in relation to this matter, and reaffirms his willingness to undertake a visit at an appropriate time.

27. The Special Rapporteur intends to address in his future reports any concerns he might have in relation to countries which he has unsuccessfully sought to visit.

2. Visit undertaken in 2004

28. The previous Special Rapporteur undertook one visit during 2004. Her report on her mission to the Sudan is before the Commission at its present session (E/CN.4/2005/7/Add.2).

3. Follow-up procedure for country visits

29. In conformity with the emphasis placed by the Commission, in its resolution 2004/37, on the importance of following up on reports and recommendations, and in light of its request to him “to follow up on communications and country visits” and its request to the States that have been visited “to examine carefully the recommendations made ... [and] to report to the Special Rapporteur on the actions taken on those recommendations”, the Special Rapporteur intends to pursue an appropriate follow-up procedure of the type already being implemented by other comparable special procedures.

30. The procedure will involve a report, to be prepared within one to two years of each country visit, on efforts made by Governments to consider and implement his recommendations, while taking into account any constraints relating thereto. This analysis will reflect information provided by the Government and will also take account of information received from other appropriate sources, including non-governmental organizations and civil society groups.

31. In order to prepare each country visit follow-up report, written information regarding follow-up measures to each of the recommendations should be submitted by non-State sources by 1 September of the relevant year. A summary of any such information received will be forwarded to the Government concerned upon receipt. Submissions from the Government will be due on 1 November. On the basis of such information, the Special Rapporteur will produce a

report, to be contained in an addendum to his annual report. This procedure will be instituted in relation to each visit undertaken by this mandate in the past two years and will thus apply to the Sudan (E/CN.4/2005/7/Add.2), Brazil (E/CN.4/2004/7/Add.3) and Jamaica (E/CN.4/2004/7/Add.2 and Corr.1).

III. OVERVIEW OF SELECTED ISSUES OF CONCERN AND THE KEY CHALLENGE OF ACCOUNTABILITY

32. This part of the report deals only with selected issues. It is not in any sense intended to be a comprehensive review of all of the specific issues dealt with under the mandate. Given the strict word limit for this report the Special Rapporteur considers that the space available is best devoted to a more in-depth examination of a limited range of issues each year. The focus will change over time and there will be limited repetition from one report to the next, thus giving greater cumulative significance to the reports over time.

33. In dealing with the range of killings and executions covered by this mandate there are two aspects of particular importance. They are prevention and accountability. The first priority is to devise means by which to prevent the occurrence of all executions that transgress applicable international legal norms. Reports submitted by the previous Special Rapporteur have recommended a variety of preventive measures. For example, in her report to the Commission in 2004, she called, inter alia, for: early-warning mechanisms in relation to genocide and crimes against humanity, human rights training for law enforcement officials, measures to ensure respect for the rights to freedom of association and expression, legislative changes to ensure that "honour killings" are treated with the full force of the law, and training of the judiciary to promote greater sensitivity to gender issues (E/CN.4/2004/7, para. 96). Recognition of the importance of prevention also inspired the appointment by the Secretary-General of a Special Adviser on the Prevention of Genocide (see paragraph 38 below).

34. The principal emphasis of the present report is, however, on the second of the two approaches: accountability. The essential thrust of international human rights law is to establish and uphold the principle of accountability for measures both to protect human rights and to respond fully and appropriately to violations of those rights. If measures are not in place to prevent and to respond to extrajudicial, summary, and arbitrary executions, they are unlikely to be effective in responding to other human rights violations either.

35. Like the challenge of ensuring respect for human rights, accountability begins at home. By far the most important mechanisms are domestic and the role of international mechanisms is appropriately seen as secondary. That role includes supporting domestic initiatives, acting as a catalyst to promote appropriate action, monitoring the effectiveness of such measures, and recommending appropriate measures to the Commission when Governments clearly fail in their responsibilities. This is not to suggest, however, that in his own role the Special Rapporteur can abdicate from his responsibility to promote accountability, or that he can or should postpone the steps that the Commission has mandated him to take solely because a national initiative of some sort is announced. Where executions and killings are concerned there is always an urgency involved and, as noted below, all too high a proportion of the accountability measures set in motion by Governments in response to serious allegations end up producing precious little.

A. Genocide and crimes against humanity

36. The way in which individual States and the international community as a whole deal with the most serious human rights violations of all - those involving genocide or crimes against humanity - tells us a lot about the priorities involved and about the current state of human rights protection. The overall picture is too often characterized by outright denial, refusal to address the issue, or positive undermining of initiatives designed to respond in some way to these most serious of all allegations. One continuing trend over the past year has been an excessive legalism which manifests itself in definitional arguments over whether a chronic and desperate situation has risen to the level of genocide or not. In the meantime, while some insist that the term is clearly applicable and others vigorously deny that characterization, all too little is done to put an end to the ongoing violations.⁶ At the end of the day the international community must be judged on the basis of its action, not on its choice of terminology.

37. At the same time opposition has escalated in some quarters to the International Criminal Court, despite the fact that it is the only mechanism that has ever been established in order to determine systematically and objectively when the crime of genocide has been committed, and thus to lay down guidelines which will reduce the likelihood of legalistic arguments masking inaction in the future.

38. Nevertheless, there have been several encouraging developments in the past year. One of those was the appointment by the Secretary-General of Juan Méndez as his Special Adviser on the Prevention of Genocide. Another was the appointment of an independent International Commission of Inquiry "in order immediately to investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties, to determine also whether or not acts of genocide have occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable" (Security Council resolution 1564 (2004), para. 12). This step followed the report of a country visit undertaken by the then Special Rapporteur, whose report is currently before the Commission. One of the conclusions of her report was that there are "strong indications that the scale of violations of the right to life in Darfur could constitute crimes against humanity for which the Government of the Sudan must bear responsibility" (E/CN.4/2005/7/Add.2, para. 57). In terms of action as opposed to inquiries, however, the High-level Panel on Threats, Challenges and Change commented in December 2004 on "the glacial speed at which our institutions have responded to massive human rights violations in Darfur".⁷

39. A third positive development in 2004 was the High-level Panel's emphasis on more concerted action against genocide, which included calling upon the Security Council to authorize "military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent".⁸ The Panel also asked "the permanent members [of the Security Council], in their individual capacities, to pledge themselves to refrain from the use of the veto in cases of genocide and large-scale human rights abuses".⁹ If the latter proposal were to have a serious prospect of being adopted, there would be a role for the Commission on Human Rights in suggesting when such situations exist.

40. The Special Rapporteur has already met with the Special Adviser on the Prevention of Genocide and the two experts have agreed that they will work closely together whenever the desired outcome would be facilitated thereby.

B. Violations of the right to life in armed conflict and internal strife

41. Recent years have seen a growing number of civilians and persons *hors de combat* killed in situations of armed conflict and internal strife. One result has been a general lessening of respect for established and clearly binding international norms. This is manifested in part by the proliferation of proposals that seek to justify illegal executions. Thus, it is increasingly common to read arguments along the lines that “targeting and eliminating known terrorists is more efficient and costs fewer lives than waging conventional war”.¹⁰ While there are a great many empirical arguments that might be made in order to show that such strategies will be counterproductive, the point is that such proposals directly undermine the essential foundations of human rights law. Empowering Governments to identify and kill “known terrorists” places no verifiable obligation upon them to demonstrate in any way that those against whom lethal force is used are indeed terrorists, or to demonstrate that every other alternative had been exhausted. While it is portrayed as a limited “exception” to international norms, it actually creates the potential for an endless expansion of the relevant category to include any enemies of the State, social misfits, political opponents, or others. And it makes a mockery of whatever accountability mechanisms may have otherwise constrained or exposed such illegal action under either humanitarian or human rights law.

42. There are several responses which need to be made to recent developments, and the Commission can contribute significantly to this effort through its work. The first is to reject unequivocally the killing of all innocent civilians and non-combatants by no matter whom and in no matter what circumstances. This includes those struggling against foreign occupation, for whom an exception is sometimes claimed. But, as the High-level Panel on Threats, Challenges and Change concluded at the end of a detailed analysis of the issue, “the central point is that there is nothing in the fact of occupation that justifies the targeting and killing of civilians”.¹¹

43. The second response is to underscore the fact that efforts to eradicate terrorism must be undertaken within a framework clearly governed by human rights law as well as international humanitarian law, and that executions occurring in the context of armed conflict that violate that framework fall squarely within the remit of the Special Rapporteur. These issues have assumed particular salience in the past couple of years because they have been contested by some Governments. The most important responses in this regard have come from the Government of the United States in relation to two sets of allegations. The first concerned the alleged killing of six men by a “U.S.-controlled Predator drone aircraft” when they were travelling in a car in Yemen. At least one of those killed was said to have been a suspected senior figure of Al-Qaida. While there was no armed conflict in Yemen at the time, the United States pointed out that since Al-Qaida was waging war unlawfully against it, the situation constituted an armed conflict and thus “international humanitarian law is the applicable law”. In its view, “allegations stemming from any military operations conducted during the course” of such an armed conflict “do not fall within the mandate of the Special Rapporteur”, or of the Commission itself (E/CN.4/2003/G/80, annex).

44. The second set of allegations concerned reports that United States military personnel had used excessive force against civilians in the city of Fallujah, Iraq, in 2003.¹² In a subsequent communication the Special Rapporteur expressed concern about reports that United States soldiers had been given orders to “shoot on sight” persons suspected of looting property in Iraq. In reply, the United States Government stated that “inquiries related to military operations conducted by the United States do not fall within the mandate of the Special Rapporteur, which does not extend to the laws and customs of war”, and requested that consideration of the incidents raised be discontinued.¹³

45. These responses raise a number of matters which warrant clarification. The first concerns the place of humanitarian law within the Special Rapporteur’s mandate. The fact is that it falls squarely within the mandate. All major relevant resolutions in recent years have referred explicitly to that body of law. Most recently, the General Assembly, in resolution 59/197 of 20 December 2004, dealing with the mandate of the Special Rapporteur, urged Governments “to take all necessary and possible measures, in conformity with international human rights law and international humanitarian law, to prevent loss of life ... during ... armed conflicts” (para. 8 (b)). Consistent with this approach, every single annual report of the Special Rapporteur since at least 1992 has dealt with violations of the right to life in the context of international and non-international armed conflicts.¹⁴

46. The second matter concerns the applicability of the right to life in a situation such as that under which United States troops were operating in Iraq in 2003. The right to life in article 6 of the International Covenant on Civil and Political Rights, to which both the United States and Iraq are parties, is non-derogable. Thus, the existence of an armed conflict does not per se render the Covenant inapplicable in the territory of a State party. The Human Rights Committee has held that a State party can be held responsible for violations of rights under the Covenant where the violations are perpetrated by authorized agents of the State on foreign territory, “whether with the acquiescence of the Government of [the foreign State] or in opposition to it”.¹⁵

47. In 2004 in an Advisory Opinion the International Court of Justice approved of the Human Rights Committee’s reasoning and held that the Covenant “is applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory”.¹⁶ It follows that any case involving the arbitrary deprivation of life of Iraqi or other nationals by United States military personnel (or other authorized government agents) may amount to a violation of the Covenant and would thus fall squarely within the Special Rapporteur’s mandate.

48. The third matter concerns the relationship between human rights law and humanitarian law. The implications of the United States position in this regard would appear to be twofold: (i) extrajudicial, summary or arbitrary executions, falling within the Special Rapporteur’s mandate, can take place only in situations where international human rights law applies; and (ii) where humanitarian law is applicable, it operates to exclude human rights law.

49. Acceptance of this analysis would dramatically reduce the mandate of the Special Rapporteur since so many of the executions brought to his attention take place in contexts of armed conflict. It would mean that in many situations in which a Government declares itself to be under attack and argues that the resulting conflict is governed by the laws of armed conflict, the applicability of human rights law would be entirely excluded.

50. This proposition is not supported by general principles of international law. It is now well recognized that the protection offered by international human rights law and international humanitarian law are coextensive, and that both bodies of law apply simultaneously unless there is a conflict between them. In the case of a conflict, the *lex specialis* should be applied but only to the extent that the situation at hand involves a conflict between the principles applicable under the two international legal regimes. The International Court of Justice has explicitly rejected the argument that the International Covenant on Civil and Political Rights was directed only to the protection of human rights in peacetime:

“... [T]he protection of the International Covenant of Civil and Political Rights does not cease in times of war, except by operation of Article 4 [derogation in a time of national emergency]. Respect for the right to life is not, however, such a provision. In principle, the right not arbitrarily to be deprived of one’s life applies also in hostilities. The test of what is an arbitrary deprivation of life, however, then falls to be determined by the applicable *lex specialis*, namely, the law applicable in armed conflict which is designed to regulate the conduct of hostilities.¹⁷”

51. The Court repeated and approved of this passage in its 2004 Advisory Opinion.¹⁸

52. It follows that the application of international humanitarian law to an international or non-international armed conflict does not exclude the application of human rights law. The two bodies of law are in fact complementary and not mutually exclusive.

53. One additional matter warrants particular attention in this context. Governments which are criticized for violating the right to life under human rights law or for failing to respect humanitarian law by killing civilians who are not directly taking part in hostilities sometimes announce that they have initiated an investigation into the relevant incidents. In such cases it is essential that the results of the investigation be published, including details of how and by whom it was carried out, the findings, and any prosecutions subsequently undertaken. Broad, general statements of findings, or non-disaggregated information as to the number of investigations and prosecutions, are inadequate to satisfy the requirements of accountability in such contexts. Formalistic investigations are almost always the precursors of a degree of impunity.

54. Remedial proposals to inculcate higher “ethical” standards or to develop a greater “moral” sensibility in the offending military personnel are also inadequate. Respect for human rights and humanitarian law are legally required and the relevant standards of conduct are spelled out in considerable detail. Remedial measures must be based squarely on those standards.

C. Capital punishment

55. The Commission on Human Rights has consistently requested the Special Rapporteur to monitor the implementation of all standards relating to the imposition of capital punishment. Previous Special Rapporteurs have recalled that the death penalty must under all circumstances be regarded as an extreme exception to the right to life, and that the standards pertaining to its use must therefore be interpreted in the most restrictive manner possible. Similarly, full respect for fair trial standards is particularly indispensable in proceedings relating to capital offences.

56. In the present report the focus is on three dimensions of the use of the death penalty: the need for transparency, the importance of regular reviews of the implementation of the death penalty, and the mandatory death penalty.

1. Transparency

57. In a considerable number of countries information concerning the death penalty is cloaked in secrecy. No statistics are available as to executions, or as to the numbers or identities of those detained on death row, and little if any information is provided to those who are to be executed or to their families. Such secrecy is incompatible with human rights standards in various respects. It undermines many of the safeguards which might operate to prevent errors or abuses and to ensure fair and just procedures at all stages. It denies the human dignity of those sentenced, many of whom are still eligible to appeal, and it denies the rights of family members to know the fate of their closest relatives.

58. Moreover, secrecy prevents any informed public debate about capital punishment within the relevant society. In a reply to the Special Rapporteur in 2003 the Government of China observed that the “ultimate worldwide abolition [of the death penalty] will be the inevitable consequence of historical development”, and that “[e]ach country should decide whether to retain or abolish the death sentence on the basis of its own actual circumstances and the aspirations of its people”.¹⁹ It is clear, however, that such decisions and aspirations cannot be formed in a state of ignorance about the facts.

59. Countries that have maintained the death penalty are not prohibited by international law from making that choice, but they have a clear obligation to disclose the details of their application of the penalty. For a Government to insist on a principled defence of the death penalty but to refuse to divulge to its own population the extent to which, and the reasons for which, it is being applied is unacceptable. The Commission should, as a matter of priority, insist that every country that uses capital punishment undertake full and accurate reporting of all instances thereof, and should publish a consolidated report prepared on at least an annual basis.

2. Periodic reviews

60. Experience shows that even in the most sophisticated legal systems, mistakes occur which result in wrongful executions. This is a constant risk and no country’s legal system can comprehensively and reliably ensure that such errors do not occur. In relation to lesser punishments, the penalty is neither so severe nor so final, and mistakes can always be rectified. Capital punishment, however, is in a class all of its own and the appropriate legal regime governing it cannot be compared to that relating to other sentences.

61. It is therefore incumbent upon those countries that retain the death penalty to undertake regular periodic reviews, staffed by persons independent of the criminal justice apparatus, to evaluate the extent to which international standards have been complied with and to consider any evidence (such as DNA) that might be available which casts doubt upon the guilt of an executed person.

62. The Commission should call upon all retentionist countries to undertake such reviews and to report to it on the outcome thereof.

3. Mandatory death sentences

63. The legislation of a significant number of States provides for the death penalty to be mandatory in certain circumstances. The result is that a judge is unable to take account of even the most compelling circumstances to sentence an offender to a lesser punishment, even including life imprisonment. Nor is it possible for the sentence to reflect dramatically differing degrees of moral reprehensibility of such capital crimes. Moreover, in some States even the exercise of clemency is automatically precluded in relation to certain crimes, including those that do not involve violence. It is appropriate, therefore, to note a recent judgement of the Privy Council in response to a ruling by the Court of Appeals of Barbados. The relevance of such a case in the present context is that it was decided on the basis of a careful review of international legal standards. The majority of the Court observed that the maintenance of the mandatory death penalty “will ... not be consistent with the current interpretation of various human rights treaties to which Barbados is a party”.²⁰

64. On that issue, the minority judgement reached the same conclusion, but went into greater detail:

“[T]he jurisprudence of the Human Rights Committee, the Inter-American Commission and the Inter-American Court has been wholly consistent in holding the mandatory death penalty to be inconsistent with the prohibition of cruel, inhuman or degrading treatment or punishment. ... The appellants submitted that ‘No international human rights tribunal anywhere in the world has ever found a mandatory death penalty regime compatible with international human rights norms’, and this assertion has not been contradicted.”²¹

D. Violations of the right to life by non-State actors

65. One of the more complex issues arising especially under this mandate concerns killings by non-State actors. The fact that this category is not readily susceptible of a clear definition increases the complexity. Indeed, in recent years the term “non-State actors”, which was long used primarily to describe groups whose purposes are essentially benign such as non-governmental organizations, religious groups and corporations, has increasingly come to be associated with groups whose agendas include wreaking havoc and terror upon innocent civilians.²²

66. Although it has not yet come, there will be a time when the international community decides that this category has outlived its usefulness and that it should instead be looking at different ways of dealing with very different actors.

67. Various non-State actors have featured in the reports of previous Special Rapporteurs. Thus, for example, in her 2004 report to the Commission (E/CN.4/2004/7) the Special Rapporteur addressed members of this group under the following three sections of the report: (i) “deaths due to attacks or killings by security forces of the State, or by paramilitary groups, death squads or other private forces cooperating with or tolerated by the State”; (ii) “violations of the right to life of women”; and (iii) “impunity, compensation and the rights of victims”.

68. For understandable reasons, the focus on killings carried out by individuals or groups occupying no official position, and whose actions might even be condemned by the Government, has given rise to some controversy within the Commission. It thus seems desirable to seek to clarify the basis upon which such matters are dealt with in these reports.

69. The most important category of non-State actor within the context of this mandate are those groups which, although not government officials as such, nonetheless operate at the behest of the Government, or with its knowledge or acquiescence, and as a result are not subject to effective investigation, prosecution, or punishment. Paramilitary groups, militias, death squads, irregulars and other comparable groups are well known to the readers of the Special Rapporteur's reports. There is no legal complexity in relation to this group because insofar as the Government is directly implicated its legal responsibility is engaged.

70. A second group, which is becoming far more numerous and very much a part of the landscape in many of the situations brought to the attention of the Special Rapporteur, is private contractors or consultants who, although not government officials in any way, are nonetheless exercising functions which would otherwise have been carried out by the State. This might include prison management, law enforcement, interrogation, etc. In dealing with such cases the Human Rights Committee has made clear, in relation to torture for example, that States parties to the International Covenant on Civil and Political Rights should report on the provisions of their criminal law not only in relation to acts committed by public officials or persons acting on behalf of the State, but also by private persons.²³ In final Views adopted in 2003 the Committee concluded that "the contracting out to the private commercial sector of core State activities which involve the use of force and the detention of persons does not absolve a State party of its obligations under the Covenant".²⁴ While there may be some debate over what constitutes a "core State activity", it is clear that actions carried out by contractors and consultants which attract the attention of the Special Rapporteur may well engage the responsibility of the State concerned.

71. Criminal actions might also evolve into a third, and very important, category of non-State actors of relevance to this mandate. Crimes, including murder, carried out by individuals can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators as well as to address any attitudes or conditions within society which encourage or facilitate such crimes. Two sometimes contested examples include honour killings (as defined in previous reports) and killings directed at groups such as homosexuals and members of minority groups. Other examples which have drawn attention in recent times include sustained attacks on trade unionists, so-called social cleansing of "undesirable" elements, or repeated attacks on professional groups such as doctors who are subjected to extortion demands. Also included in this category would be the activities of any of the groups described in the first category above insofar as it can be shown that there is no element of governmental involvement or complicity in their activities.

72. In most situations, the isolated killing of individuals will constitute a simple crime and not give rise to any governmental responsibility. But once a pattern becomes clear in which the response of the Government is clearly inadequate, its responsibility under international human rights law becomes applicable. Through its inaction the Government confers a degree of impunity upon the killers.

73. The term most frequently used in international legal instruments to characterize the State's obligations in such contexts is "due diligence". Its substance was formulated in considerable detail more than 25 years ago in a report to the General Assembly by Abdoulaye Dieye of Senegal in his capacity as an expert in relation to the situation in Chile (A/34/583/Add.1, para. 124). He examined in depth the responsibility of States for acts such as disappearances which are not committed by government officials or their agents. He observed that a State is responsible in international law for a range of acts or omissions in relation to disappearances if, *inter alia*, the authorities do not react promptly to reliable reports, the relevant legal remedies are ineffective or non-existent, the State does not act to clarify the situation in the face of reliable evidence, or it takes no action to establish individual responsibility within the national framework.

74. This approach was endorsed by the Inter-American Court of Human Rights in a landmark case almost a decade later,²⁵ and the concept of due diligence has since been further developed in a variety of United Nations contexts, especially in relation to violence against women (see, e.g., E/CN.4/2000/68, para. 53).

75. Thus, in taking up the types of issues noted above, the Special Rapporteur is following clearly established principles of international law, and is raising with Governments matters which engage State responsibility, as opposed to the responsibility of individual murderers or other criminals.

76. The fourth major group of non-State actors relevant to the Special Rapporteur's mandate is armed opposition groups. The traditional approach of international law is that only Governments can violate human rights and thus, such armed groups are simply committing criminal acts. And indeed this may be an accurate characterization. In reality, however, that is often not the end of the matter and in some contexts it may be desirable to address the activities of such groups within some part of the human rights equation.²⁶ This could mean addressing complaints to them about executions and calling for respect of the relevant norms.²⁷ This may be both appropriate and feasible where the group exercises significant control over territory and population and has an identifiable political structure (which is often not the case for classic "terrorist groups"). In cases in which such groups are willing to affirm their adherence to human rights principles and to eschew executions it may be appropriate to encourage the adoption of formal statements to that effect. And in reporting on violations committed by Governments it may be appropriate to provide details of the atrocities perpetrated by their opponents in order to provide the Commission with an accurate and complete picture of the situation. It goes without saying that any such approaches would in no way diminish the central human rights responsibilities of Governments, nor does it seek to give legitimacy to opposition groups. The condemnation of such groups and insisting that they respect international human rights law should not be taken as equating them with States. On the other hand, in an era when non-State actors are becoming ever more important in world affairs, the Commission risks handicapping itself significantly if it does not respond in a realistic but principled manner.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

77. **Executions involving violations of international humanitarian law fall squarely within the mandate of the Special Rapporteur.**
78. **The application of international humanitarian law to an international or non-international armed conflict does not exclude the application of human rights law. The two bodies of law are thus complementary and not mutually exclusive.**
79. **A State can be held responsible for violations of human rights that are perpetrated by authorized agents of the State on foreign territory.**
80. **The mandatory death penalty which precludes the possibility of a lesser sentence being imposed regardless of the circumstances, is inconsistent with the prohibition of cruel, inhuman or degrading treatment or punishment.**
81. **International human rights law clearly indicates that killings undertaken by non-State actors can engage State responsibility in a number of different circumstances. The obligation upon Governments to show due diligence in such contexts is of the utmost importance.**

B. Recommendations

82. **The International Criminal Court represents an essential element in the struggle to prevent genocide and crimes against humanity. In order to promote those objectives all States should ratify its Statute.**
83. **The permanent members of the Security Council should pledge themselves not to use the veto in cases involving genocide and large-scale human rights abuses. The Commission should consider how it can facilitate progress towards this goal.**
84. **Proposals seeking to justify or rationalize the arbitrary execution or targeted assassination of individuals alleged to have committed crimes or to be linked to terrorism involve a fundamental undermining of international human rights law and should be condemned without reservation.**
85. **The Commission should reject unequivocally the intentional killing of all civilians and non-combatants, no matter by whom and no matter what the circumstances.**
86. **National-level investigation of alleged violations of international law by the armed or security forces are indispensable. To be credible and acceptable, however, the results must be made public, including details of how and by whom the investigation was carried out, the findings, and any prosecutions subsequently undertaken.**

87. **Transparency is essential wherever the death penalty is applied. Secrecy as to those executed violates human rights standards. Full and accurate reporting of all executions should be published, and a consolidated version prepared on at least an annual basis.**

88. **Because it is impossible to ensure that wrongful executions do not occur, countries applying the death penalty should undertake regular, independent, periodic reviews of the extent to which international standards have been complied with and to consider any evidence of wrongful execution. The Commission should ask those States to report to it on the outcome of their reviews.**

Notes

¹ The mandate was established by Economic and Social Council resolution 1982/35.

² See note 4 below.

³ The focus on communications based exclusively on allegations and reports brought to the Special Rapporteur's attention means that there is very little, and sometimes no, information from countries where civil society is unable to function effectively. As a result this report is far from being comprehensive in terms of the occurrence of violations of the right to life worldwide.

⁴ In order to comply with strict reporting deadlines, and to give Governments a minimum of two months to reply, the present report reflects communications sent between 1 December 2003 and 30 September 2004, and responses received from Governments between 1 December 2003 and 1 December 2004. A comprehensive account of communications sent to Governments up to 1 December 2004, along with replies received up to the end of January 2005, and the relevant observations of the Special Rapporteur, are reflected in addendum 1 to this report.

⁵ This figure also includes government replies received in 2004 to some communications sent in 2003, which actually represent 14 per cent of all the responses received in 2004.

⁶ In this respect it is relevant to recall the situation of Rwanda in 1994 when United Nations officials did not use the term until one month after massive killings had begun and some Security Council members continued to resist use of the term for a considerable time thereafter.

⁷ *A More Secure World: Our Shared Responsibility*, report of the Secretary-General's High-level Panel on Threats, Challenges and Change (United Nations, 2004), para. 42.

⁸ *Ibid.*, para. 203.

⁹ *Ibid.*, para. 256.

¹⁰ A variant of this argument is that the United Nations itself should approve targeted killings of "dangerous dictators". Anne-Marie Slaughter, "Mercy killings: why the United Nations should issue death warrants against dangerous dictators", *Foreign Policy*, 1 May 2003.

¹¹ *A More Secure World*, *op. cit.*, para. 160.

¹² Letter from the Special Rapporteur of 12 May 2003.

¹³ Letter of 8 April 2004.

¹⁴ See: E/CN.4/1993/46, paras. 60-61; E/CN.4/1994/7, paras. 10 (l)-(m) and 11 (d); E/CN.4/1995/61, paras. 7 (d) and 8; E/CN.4/1996/4, para. 10 (f); E/CN.4/1997/60, paras. 9 (f) and 38-41; E/CN.4/1998/68, paras. 8 (f) and 42-43; E/CN.4/1999/39, paras. 6 (f) and 27; E/CN.4/2000/3, paras. 6 (f) and 30; E/CN.4/2002/74, paras. 8 (b) and 66-71; E/CN.4/2003/3, paras. 8 (b) and 35-44; E/CN.4/2004/7, paras. 9 (c) and 26-29.

¹⁵ *Lopez v. Uruguay*, communication No. 52/1979, CCPR/C/OP/1 at 88 (1984), paras. 12.1-12.3.

¹⁶ Advisory Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (9 July 2004), paras. 108-111.

¹⁷ Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (8 July 1996), para. 25.

¹⁸ *Lopez v. Uruguay*, op. cit., para. 105.

¹⁹ Reply to a communication dated 9 December 2002.

²⁰ *Boyce and Joseph v. The Queen*, Privy Council Appeal No. 99 of 2002, Judgement of 7 July 2004, para. 6.

²¹ *Ibid.*, para. 81 (3).

²² *A More Secure World*, for example, focuses extensively on non-State actors but exclusively in terms of the nuclear threat they pose.

²³ General comment No. 20 (1992) on art. 7, para. 13.

²⁴ *Cabal and Pasini Bertran v. Australia*, case No. 1020/2001, decision of 7 August 2003 (CCPR/C/78/D/1020/2001), para. 7.2.

²⁵ *Velásquez Rodríguez v. Honduras*, Annual Report of the Inter-American Court of Human Rights, OAS/Ser. L/V./III.19, doc. 13 (1988), 28 ILM (1989) 291.

²⁶ See, e.g., the approach of the United States State Department: “[w]e have made every effort to identify those groups (for example, government forces or terrorists) that are believed ... to have committed human rights abuses”. United States Department of State, *Country Reports on Human Rights Practices 2003* (2004), appendix A.

²⁷ A similar result is achieved in relation to international humanitarian law through the application of common article 3 of the Geneva Conventions of 1949.
