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

Summary of arbitrary executions

Report by the Special Rapporteur, Mr. S. Amos Wako, appointed  
pursuant to resolution 1983/36 of 27 May 1983 of the  
Economic and Social Council

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## INTRODUCTION

### Background

1. The question of summary or arbitrary executions has been discussed in the United Nations with ever growing concern, especially since 1980. This concern has been professed, for example in General Assembly resolution 35/172 of 15 December 1980 entitled "Arbitrary or summary executions", a resolution on extra-legal executions, adopted by the Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders (Caracas, 25 August to 5 September 1980), resolution 1 (XXXIV) of 3 September 1981 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and General Assembly resolutions 36/22 of 9 November 1981 and 38/96 of 16 December 1983 entitled "Arbitrary or summary executions".
2. In 1982 the Commission on Human Rights by resolution 1982/29 of 11 March 1982 recommended that the Economic and Social Council should request the Chairman of the Commission to appoint an individual of recognized international standing as special rapporteur to submit a comprehensive report to the Commission at its thirty-ninth session on the occurrence and extent of the practice of summary or arbitrary executions together with his conclusions and recommendations. This resolution was subsequently adopted by the Economic and Social Council as resolution 1982/35 of 7 May 1982.
3. In accordance with the above-mentioned resolution, Mr. S. Amos Wako was appointed as Special Rapporteur. At its thirty-ninth session the Commission on Human Rights considered the first report of the Special Rapporteur on summary or arbitrary executions (E/CN.4/1983/16 and Add.1, and Add.1/Corr.1).
4. At its 52nd meeting, on 8 March 1983, the Commission on Human Rights adopted without a vote resolution 1983/36, containing a draft resolution for adoption by the Economic and Social Council. The draft resolution was subsequently adopted by the Economic and Social Council on 27 May 1983 as resolution 1983/36 (see annex I).
5. The relevant part of that resolution reads as follows:
  - "4. Decides to continue the mandate of the Special Rapporteur, Mr. S.A. Wako for another year;
  5. Requests the Special Rapporteur to review his report in the light of the information received, taking particularly into account any new information, including relevant internal legislation, provided by concerned Governments as well as views expressed in the Commission on Human Rights at its thirty-ninth session and to submit a report to the Commission at its fortieth session;
  6. Considers that the Special Rapporteur in carrying out this mandate, should continue to seek and receive information from Governments, United Nations bodies, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council;

7. Expresses its appreciation to those Governments that have extended invitations to the Special Rapporteur to visit their respective countries and urges the Special Rapporteur to respond positively to such invitations;"

6. The General Assembly at its thirty-eighth session in 1983, adopted resolution 38/96 entitled "Summary or arbitrary executions". In that resolution the General Assembly requested the Commission on Human Rights at its fortieth session, on the basis of the report of the Special Rapporteur to be prepared in conformity with Economic and Social Council resolutions 1982/35 and 1983/36, to make recommendations concerning appropriate action to combat and eventually eliminate the practice of summary or arbitrary executions.

7. The present report is submitted pursuant to resolution 1983/36 of the Economic and Social Council. In the course of its preparation, careful consideration has been given to the views and observations made in the Commission at its thirty-ninth session, as well as of the information which has reached the Special Rapporteur subsequently.

8. In the first report, the international standards considered relevant to this subject were outlined and reference was made to the specific information related to various situations where summary or arbitrary executions were reported or alleged to have taken place. Written replies received from Governments concerned were appended to the report, while the views of other Governments were reflected in the summary records of the Commission's debate on this subject.

9. In view of the limited time available, the information on the internal legislation of various countries which was in the possession of the Special Rapporteur at that time was not included in the first report. In accordance with resolution 1983/36 of the Economic and Social Council, in this report an attempt has been made to analyse available internal legislation as compared with the international legal instruments relative to the subject. However, it must be said that in view of the vastness of the subject and the number of countries involved, this analysis cannot be considered exhaustive. Time has not allowed the Special Rapporteur to do research into this area and, therefore, he has had to rely exclusively on the information supplied by Governments.

10. Further, in accordance with the Economic and Social Council resolution, the present report is intended to provide the Commission, as appropriate, with any information which has become available on the situations mentioned in the first report, or any new situation which has arisen during the last year. The Special Rapporteur considers that discussions of arbitrary or summary executions should now advance to an examination of the types of situations in which such executions usually take place with a view to identifying elements which could guide future action in this area. The Special Rapporteur also considers that an examination of factors which trigger summary or arbitrary executions could similarly assist in identifying practical recommendations which could be offered for stopping such executions. The preliminary analysis which follows is offered as a pilot effort to elicit the reactions of the Commission with a view to further discussions and concrete decisions of these and related issues.

Activities of the Special Rapporteur

11. Since Economic and Social Council resolution 1983/36 decided to extend the mandate of the Special Rapporteur on summary or arbitrary executions for another year, the Special Rapporteur has engaged himself in activities that fall within the sphere of his mandate, as described below.

12. The Special Rapporteur visited the Centre for Human Rights at the United Nations Office at Geneva from 4 to 9 July 1983 for consultations. He again visited Geneva from 17 to 21 October 1983, from 31 October to 2 November 1983 and from 19 to 25 January 1984 to finalize the report. The Special Rapporteur also visited Copenhagen on 19 and 20 October 1983 for consultations with the Government of Denmark.

13. On 29 July 1983 notes verbales and letters were sent to Governments, United Nations bodies, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council, seeking information concerning the question of summary or arbitrary executions (annex II). On 6 November 1983 letters were sent to Governments requesting any additional information (annex III).

14. In the course of his present mandate, the Special Rapporteur received communications from the following:

(a) Governments:

Argentina, Bahamas, Belgium, Belize, Canada, Central African Republic, Chad, Czechoslovakia, Democratic Kampuchea, Democratic Yemen, Denmark, France, Germany, Federal Republic of, Guatemala, Holy See, Honduras, Indonesia, Iraq, Jordan, Mexico, New Zealand, Peru, Portugal, Qatar, Republic of Korea, Spain, Suriname, Turkey, Tuvalu, United Kingdom of Great Britain and Northern Ireland, United States of America, United Republic of Tanzania, Uruguay, Zambia.

(b) United Nations bodies:

Office of the Commissioner for Namibia and the United Nations High Commissioner for Refugees.

(c) Specialized agencies and regional intergovernmental organizations:

Food and Agriculture Organization, International Bank for Reconstruction and Development, International Labour Organisation, International Maritime Organization, Organization of American States, World Health Organization, United Nations Educational, Scientific and Cultural Organization.

(d) Non-governmental organizations in consultative status with the Economic and Social Council:

Amnesty International, Caritas Internationalis, International Commission of Jurists, International Federation of Journalists, International Peace Academy, Pax Romana, Salvation Army, Union of Arab Jurists, World Federation of Trade Unions, World Jewish Congress, World Young Women's Christian Association, Young Lawyers' International Association.

15. Some of these communications referred to information contained in the Special Rapporteur's report before the Commission at its thirty-ninth session. In that context the Special Rapporteur wishes to state the following.

16. In his report to the Commission at its thirty-ninth session, the Special Rapporteur indicated, in regard to a number of situations, that at the time when that report was being prepared, information had not yet been received with regard to allegations that had been transmitted to the respective Governments at short notice. This applied inter alia to situations in Afghanistan (para. 125 of previous report), Burundi (para. 135), India (paras. 157-160), Pakistan (para. 189) and the Philippines (paras. 191-194). Following the renewal of his mandate, the Special Rapporteur received information from these Governments.

17. In regard to the information concerning Afghanistan and Pakistan, the Special Rapporteur wishes to emphasize his statement in his report to the Commission to the effect that he had refrained from including in that report a brief summary of the allegations received, since they referred to events having taken place prior to 1980, as explained in paragraph 71 of the same report. In line with this criterion adopted in the previous report the Special Rapporteur has refrained from including in this report the replies received from the Governments of Afghanistan and Pakistan.

18. In regard to the statement in paragraph 135 concerning Burundi, the Special Rapporteur wishes to reiterate his statement in his report to the Commission to the effect that he had refrained from including in that report a brief summary of the allegations received since those allegations referred to events taking place prior to 1980 as explained in paragraph 71 of the same report. However, at the specific request of the representative of Burundi his statement at the thirty-ninth session of the Commission on Human Rights is reproduced in annex IV. The Special Rapporteur confirms that the allegations of summary or arbitrary executions which are in his possession concern the previous regime and not the current Government.

19. In regard to the statement contained in paragraphs 157-160 of the previous report concerning India, the Special Rapporteur wishes to state the following. The representative of the Government of India met the Special Rapporteur on 20 October 1983 and 24 January 1984 and referred him to the information communicated by the Government of India concerning the allegations of summary or arbitrary executions mentioned in paragraphs 157-160 of the previous report. This information consisted of (1) Aide memoire from the Permanent Mission of India to the United Nations Office at Geneva of 20 October 1983 denying the allegations referred to in paragraphs 157-160 of the report; (2) Comments on the charge of massacre in the encounter of Uttar Pradesh police with dacoits by the Uttar Pradesh government with: (a) tables showing the numbers of dacoities committed during the last five years, the numbers of encounters with dacoits, the numbers of dacoits killed or captured and arms seized, and the numbers of policemen killed or injured; (b) a list of gangs in existence between 1975 and 1983; (c) comments on a case involving the death of one person with a description of his criminal history; (d) a brief note regarding five specific cases of encounters mentioned in a bulletin issued by the People's Union for Civil Liberties (pages 29-30 of PUCL Bulletin, March-April 1982 issue); (3) Detailed comments of the Uttar Pradesh government in regard to cases of alleged fake encounters mentioned in the report of Amnesty International; (4) Some case studies by Uttar Pradesh State government

describing two cases of encounters; (5) Information of the State government of Punjab providing a table of cases of 80 persons with names and ages, villages and districts, details of allegations and comments by the Punjab government; (6) Note on encounters in the State of Andhra Pradesh referring to allegations contained in the Bulletin of the People's Union for Civil Liberties (March-April 1982 issue quoted above), with tables on extremist violence and encounters between extremists and the police in Andhra Pradesh from 1968 to 1983. a/ This exhaustive and detailed information illustrates the following assertion of the Government of India: (a) the death of so-called Naxalites, dacoits, murderers and other criminal elements in the course of law enforcement activities occurred in genuine encounters and every such death was the subject of a magisterial inquiry; if such an inquiry indicated any miscarriage of justice, prompt and suitable action was taken against those found guilty; a number of investigating agencies function at the state and national levels; (b) it is incorrect to allege that 6,000 people were killed during the years 1979-1981 and that they were victims of police action after arrests; this allegation was especially inadmissible as India has various constitutional legal and judicial processes as well as a free press which safeguards the right to life, personal security and liberty of individuals. The Special Rapporteur has referred to information concerning the Constitution and other legislation relative to this issue, which shows that in India the rule of law prevails and the judiciary is independent of the Executive. The Special Rapporteur has not received any information indicating that the judiciary is not independent of the Executive. The Special Rapporteur was referred to the 1983 report entitled "Human Rights in the World" by the Political Affairs Committee of the European Parliament which states that summary executions do not take place in India.

20. In regard to the statements contained in paragraphs 191-194 of the previous report concerning the Philippines, reference is made to annex V which contains the reply received from that Government in a note dated 1 March 1983.

21. In addition to the communications referred to above in the context of the note verbale sent on 17 September 1982 under the original mandate of the Special Rapporteur, replies were received from the following Governments: Bahamas, Barbados, Madagascar, and the Philippines.

22. On 29 July 1983, letters were sent to the Governments of Guatemala and Suriname concerning the invitations extended by those Governments to the Special Rapporteur. The Special Rapporteur responded positively to these invitations in the context of paragraph 7 of Economic and Social Council resolution 1983/36.

23. With regard to the invitation from the Government of Guatemala, it may be recalled that the Special Rapporteur stated that, due to constraints of time, he would not be able to avail himself of that invitation prior to the thirty-ninth session of the Commission.

24. On 20 October 1983, the Permanent Representative of Guatemala to the United Nations in Geneva informed the Special Rapporteur that, in view of the fact that the Special Rapporteur of the Commission on the question of Guatemala, under

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a/ These materials are available at the secretariat for consultation.



resolution 1983/37, had already visited Guatemala in the context of his mandate and was scheduled to make a second visit in November 1983, the Government was of the view that a visit by the Special Rapporteur on summary or arbitrary executions was not necessary.

25. On 1 September 1983, the Government of Suriname informed the Special Rapporteur of its willingness to have him visit the country.

26. On 6 September 1983, the Special Rapporteur informed the Government of Suriname of his willingness to visit the country, either in the week beginning 3 October or that beginning 31 October. On 9 September 1983 the Government of Suriname indicated its concurrence with the proposal of the Special Rapporteur that he visit Suriname in the week of 31 October 1983.

27. Accordingly, on 30 September 1983 the Special Rapporteur communicated the programme that he proposed to follow in the course of his mission in Suriname.

28. On 14 October 1983, the Special Rapporteur was informed that a Commission of the Government of Suriname would discuss the Special Rapporteur's programme upon arrival; on 24 October 1983 the Government of Suriname further informed the Special Rapporteur by cable as follows:

"CONCERNING VISIT SPECIAL RAPPORTEUR CHR DR WAKO TO SURINAME FROM OCT 30 TO NOV 4, 1983, REGRET TO COMMUNICATE UPON INSTRUCTIONS GOVERNMENT OF THE REPUBLIC OF SURINAME THAT SURINAMESE COMMISSION UNDER CHAIRMANSHIP OF MR PH AKRUM IS NOT IN A POSITION TO RECEIVE DR WAKO DURING THE ABOVE-MENTIONED PERIOD ON ACCOUNT OF PARTICULAR UNFORESEEN CIRCUMSTANCES, WHICH SUDDENLY AROSE.

OFFERING YOU ON BEHALF OF THE SURINAMESE GOVERNMENT OUR APOLOGIES FOR ANY INCONVENIENCE THIS TEMPORARY DELAY MIGHT CAUSE YOU."

On 28 October 1983, the Special Rapporteur informed the Government of Suriname as follows:

"I confirm that I have received a copy of your telex dated 24 October 1983 by which you inform me of your Government's decision to postpone my visit to Suriname, scheduled to take place from 31 October to 4 November 1983.

I would be grateful to be informed in due course and at the convenience of your Government of the dates on which the visit may take place. I would particularly appreciate being informed in sufficient time so that mutually convenient dates can be arranged."

29. No further communication has been received by the Special Rapporteur from the Government of Suriname at the time of the completion of the present report.

30. Among the communications received by the Special Rapporteur, information on national legislations concerning the protection of the right to life was communicated to him. This information was examined by the Special Rapporteur and is reflected in chapter I below.

31. Among the communications received by the Special Rapporteur were a number containing allegations of summary or arbitrary executions which had already taken place. Most of those allegations concerned incidents which occurred during 1983. These allegations refer to occurrences of summary or arbitrary executions in 10 countries. Those allegations have been duly communicated to the Governments concerned five of whom have transmitted replies to the Special Rapporteur. In some instances the Permanent Representatives of the Governments concerned have taken up contact and consulted with the Special Rapporteur. Since most of these allegations came to the Special Rapporteur in November 1983, the Governments concerned have explained to the Special Rapporteur that more time would be required to look into them. For this reason the Special Rapporteur has refrained at this stage from mentioning the States concerned and the nature of the allegations against them.

32. All the information which has come into the possession of the Special Rapporteur since he was appointed forms the basis of chapter II. The Special Rapporteur believes that this approach which shows the type of situations in which arbitrary or summary executions usually take place and the elements which may be identified as factors which lead to summary or arbitrary executions will give another perspective to the problem and therefore enhance the understanding of the phenomena (see para. 10 above).

33. In addition, in the course of his mandate the Special Rapporteur received appeals from various sources making allegations of imminent or threatened summary executions which might appear prima facie relevant to his mandate. In this context the Special Rapporteur addressed an urgent message by telex to the Governments concerned, namely Bangladesh, Belize, Chile, Ghana, Guatemala, Iran, Iraq, Libya, Malawi and Sri Lanka. Replies were received from the Governments of Belize, Guatemala, Iraq and Sri Lanka. The Special Rapporteur expresses his appreciation to those Governments which replied to his urgent messages. The Special Rapporteur considers that this urgent action procedure is an invaluable part of the response of the international community in dealing with summary or arbitrary executions and that this form of urgent action should be maintained and developed for as long as this problem remains on the international agenda.

34. The messages of the Special Rapporteur to the Governments concerned and replies from the Governments are reproduced in chronological order as follows:

- (i) On 22 June 1983 a telex was sent to the Minister for Foreign Affairs of the Islamic Republic of Iran stating:

"MY ATTENTION HAS BEEN DRAWN TO REPORTS OF IMMINENT EXECUTIONS OF A NUMBER OF PERSONS, AMONG THEM: NUREDDIN KIANURI, EHSAN TABARI, MAHMUD ETEMADZADEH, REZA SHALSUKI, HASSAM GHAEMPANAH, GAGIK DER AVANESSIAN, KIOMAR ZARSHEINASS. I HAVE THE HONOUR TO REFER TO ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1983/36 BY WHICH THE COUNCIL RENEWED MY MANDATE AS SPECIAL RAPPORTEUR OF THE COMMISSION ON HUMAN RIGHTS ON THE QUESTION OF SUMMARY OR ARBITRARY EXECUTIONS. AS I HAD OCCASION TO INFORM THE COMMISSION IN MY FIRST REPORT WHICH I PRESENTED IN FEBRUARY 1983, THE RIGHT TO LIFE IS SACROSANCT AND SHOULD BE RESPECTED IN ACCORDANCE WITH FUNDAMENTAL PRINCIPLES OF JUSTICE. WITHOUT IN ANY WAY WISHING TO ENTER INTO ANY MATTER WHICH MAY PERTAIN TO THE DOMESTIC AND SOVEREIGN JURISDICTION OF YOUR EXCELLENCY'S GOVERNMENT, I WISH, ON A PURELY HUMANITARIAN BASIS, TO APPEAL TO YOU TO ENSURE THAT NO

EXECUTIONS TAKE PLACE ESPECIALLY IF SUCH EXECUTIONS RESULT FROM A SUMMARY TRIAL OR ANY OTHER PROCEDURE IN WHICH THE RIGHTS OF THE INDIVIDUALS ARE NOT FULLY PROTECTED. IN PARTICULAR MAY I REFER TO ARTICLES 5, 6, 14 AND 15 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS TO WHICH THE ISLAMIC REPUBLIC OF IRAN IS PARTY"

No reply has been received from the Government of the Islamic Republic of Iran.

(ii) On 29 June 1983 a telex was sent to the Minister for Foreign Affairs of the Republic of Iraq stating:

"I HAVE THE HONOUR TO REFER TO ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1983/36 BY WHICH THE COUNCIL RENEWED MY MANDATE AS SPECIAL RAPPORTEUR OF THE COMMISSION ON HUMAN RIGHTS ON THE QUESTION OF SUMMARY OR ARBITRARY EXECUTIONS. MY ATTENTION HAS BEEN DRAWN TO REPORTS OF EXECUTIONS OF SIX PERSONS WHICH REPORTEDLY TOOK PLACE IN MAY 1983. THE NAMES OF THE SIX WERE GIVEN AS: SAYID ABDUL-SAHIB AL-HAKIM, SAYID ALL'EDIN AL-HAKIM, SAYID MOHAMMAD HUSSAIN AL-HAKIM, SAYID KAMAL SAYID YOUSIF AL-HAKIM, SAYID ABDUL WAHAB AL-HAKIM, SAYID AHMAD SAYID MOHAMMAD RIDHA AL-HAKIM. WITHOUT IN ANY WAY WISHING TO INTERFERE WITH MATTERS WHICH MAY PERTAIN TO THE DOMESTIC SOVEREIGN JURISDICTION OF YOUR EXCELLENCY'S GOVERNMENT, I AM COMPELLED TO EMPHASIZE THAT THE RIGHT TO LIFE IS A MOST FUNDAMENTAL AND CRUCIAL HUMAN RIGHT AND TO APPEAL TO YOU ON A PURELY HUMANITARIAN BASIS TO ENSURE THAT NO EXECUTIONS TAKE PLACE ESPECIALLY IF SUCH EXECUTIONS RESULT FROM A SUMMARY TRIAL OR ANY OTHER PROCEDURE IN WHICH THE RIGHTS OF THE INDIVIDUALS ARE NOT FULLY PROTECTED. IN PARTICULAR MAY I REFER TO ARTICLES 5, 6, 7, 14 AND 15 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS TO WHICH THE REPUBLIC OF IRAQ IS PARTY."

A reply dated 7 November 1983 was received from the Permanent Mission of the Republic of Iraq, containing the following message of the Government of the Republic of Iraq:

[Original: Arabic]

"Far from being arbitrary, as mentioned in your note, the execution of these six persons took place after proper investigation and trial during which they enjoyed all of the legally prescribed safeguards and, in particular, the right to legal counsel for their defence. The circumstances of the case, as summarized in the judgement based on evidence and their own confessions, are that Muhammad Hussein Al-Hakim, Abdul Sahib Muhammad Muhsin Mahdi Al-Hakim, Ala-ud-Din Muhsin Al-Hakim, Kamal-ud-Din Youssuf Muhsin Al-Hakim, Abdul Wahhab Youssuf Muhsin Al-Hakim, and Ahmad Muhammad Ridha Al-Hakim were convicted of acts prejudicial to the security, safety and territorial integrity of the country and involving espionage for the benefit of a hostile foreign country in a state of war with Iraq, namely Iran, through the fugitive Muhammad Baqir Al-Hakim, leader of the so-called 'Supreme Council of the Islamic Revolution in Iraq' which is based in Iran. They were also found guilty of criminally conspiring to provoke sedition and disseminate a spirit of odious intercommunal antagonism, of distributing among their partisans weapons and explosives sent to them from Iran, and of engaging in assassinations and acts of sabotage against civilian institutions in Baghdad and other cities in Iraq with a view to

creating anarchy and confusion in an attempt to overthrow the regime by force. Since these criminal acts render their perpetrators liable to the penalties prescribed in articles 156 and 175/2 of the Penal Code, on the basis of articles 49, 50 and 53 concerning complicity, the competent court sentenced them to death by hanging and this sentence was carried out in accordance with the normal legal procedures."

(iii) On 22 July 1983 a telex was sent to the President of the Republic of Guatemala stating:

"I HAVE THE HONOUR TO REFER TO ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1983/36 BY WHICH THE COUNCIL RENEWED MY MANDATE AS SPECIAL RAPPORTEUR OF THE COMMISSION ON HUMAN RIGHTS ON THE QUESTION OF SUMMARY OR ARBITRARY EXECUTIONS. MY ATTENTION HAS BEEN DRAWN TO ALLEGATIONS RECEIVED OF IMMINENT EXECUTIONS OF A NUMBER OF PERSONS SENTENCED TO DEATH BY THE SPECIAL TRIBUNALS. WITHOUT IN ANY WAY WISHING TO INTERFERE WITH MATTERS WHICH MAY PERTAIN TO THE DOMESTIC AND SOVEREIGN JURISDICTION OF YOUR EXCELLENCY'S GOVERNMENT I SHOULD LIKE TO EMPHASIZE THE PRIMACY OF THE RIGHT TO LIFE AND APPEAL TO YOUR EXCELLENCY ON A PURELY HUMANITARIAN BASIS TO ENSURE THAT NO EXECUTIONS TAKE PLACE ESPECIALLY IF SUCH EXECUTIONS RESULT FROM A SUMMARY TRIAL OR ANY OTHER PROCEDURE IN WHICH THE RIGHTS OF THE INDIVIDUALS ARE NOT FULLY PROTECTED; IN THIS CONNECTION MAY I DRAW YOUR EXCELLENCY'S ATTENTION TO ARTICLES 3, 10 AND 11 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND TO ARTICLES 5, 6, 14 AND 15 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS."

A reply dated 27 July 1983 was received from the Permanent Mission of the Republic of Guatemala in Geneva.

[Original: Spanish]

"The Permanent Mission of Guatemala to the European Office of the United Nations presents its compliments to the Assistant Secretary-General, Director of the United Nations Centre for Human Rights, and has the honour to transmit below the text of the information bulletin of the Government of Guatemala dated 26 July 1983, with the request that this text should be forwarded to Mr. Amos Wako, Special Rapporteur of the Commission on Human Rights for the item on summary or arbitrary executions, with reference to the telegram sent to the President of the Republic of Guatemala dated 22 July 1983:

"The Government of the Republic of Guatemala has decided to suspend the death sentences imposed by courts of special jurisdiction and established a commission of jurists to study the possibility of modifying or replacing these courts and transferring them to ordinary jurisdiction. The foregoing was announced on 26 July 1983 by the Minister for Foreign Affairs of Guatemala."

(iv) On 28 July 1983 a telex was sent to the President of the Democratic Socialist Republic of Sri Lanka stating:

"I HAVE THE HONOUR TO REFER TO ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1983/36 BY WHICH THE COUNCIL RENEWED MY MANDATE AS SPECIAL RAPPORTEUR OF THE COMMISSION ON HUMAN RIGHTS ON THE QUESTION OF SUMMARY OR ARBITRARY EXECUTIONS. MY ATTENTION HAS BEEN DRAWN TO A NUMBER OF ALLEGATIONS THAT A CONSIDERABLE NUMBER OF PEOPLE BELONGING TO THE TAMIL MINORITY HAVE BEEN KILLED IN RECENT INCIDENTS IN SRI LANKA. WITHOUT IN ANY WAY WISHING TO INTERFERE WITH MATTERS WHICH MAY PERTAIN TO THE DOMESTIC AND SOVEREIGN JURISDICTION OF YOUR EXCELLENCY'S GOVERNMENT, I SHOULD LIKE TO EMPHASIZE THE PRIMACY OF THE RIGHT TO LIFE AND APPEAL TO YOUR EXCELLENCY ON A PURELY HUMANITARIAN

BASIS TO ENSURE THAT THE RIGHT TO LIFE OF INDIVIDUALS BE FULLY PROTECTED IRRESPECTIVE OF THEIR RACIAL, POLITICAL, RELIGIOUS, SOCIAL OR OTHER STATUS OR BACKGROUND. IN THIS CONNECTION MAY I DRAW YOUR EXCELLENCY'S ATTENTION TO ARTICLE 6 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS TO WHICH THE SOCIALIST DEMOCRATIC REPUBLIC OF SRI LANKA IS PARTY."

A reply dated 15 August 1983 was received from the Permanent Mission of the Democratic Socialist Republic of Sri Lanka in Geneva, containing the following message from its Government:

"1. There have been no executions whether summary or arbitrary during recent disturbances, or as a matter of fact, at any time in Sri Lanka.

2. There were unfortunate incidents in the recent past when a number of persons lost their lives.

These incidents occurred under the following circumstances:

- (i) Since 1975 and up to 22 July 1983, terror squads claiming to belong to a Tamil extremist group and seeking to set up a separate state in Sri Lanka killed 73 persons by attacks with machine guns and other automatic weapons. The 73 were made up of 51 Tamils, 21 Sinhalese and one Muslim.
- (ii) On 23 July 1983, thirteen Sinhala soldiers were ambushed and killed by members of the separatist group operating in northern Sri Lanka.
- (iii) Thirty-seven civilians were killed in service operations arising out of the above-mentioned ambush.
- (iv) The ambush and murder of the thirteen Sinhalese soldiers on 23 July by Tamil terror squads sparked off a reaction against Tamils and Tamil-owned residences and business.

Investigations have revealed that this incidence of violence had been taken advantage of by groups of persons interested in disrupting the maintenance of law and order with a view to overthrowing the lawfully constituted Government by unlawful means. The attacks of Tamil households and the means of production and institutions owned by Tamils were part of this strategy.

- (v) 316 civilians were killed in the disturbances by civilians, this includes fifty-two convicted and remand prisoners killed at Welikada prison by fellow prisoners.

3. The Government has taken all possible measures to restore law and order, and normalcy has now returned. In addition to utilizing the regulars in the police and armed forces, the Government mobilized the volunteer forces and the police reservists for restoring order and peace.

4. The Government of Sri Lanka has taken and will continue to take all possible steps to protect the right to life and property of all persons, irrespective of their racial or ethnic origin.

5. 1,150 persons have been taken into police custody for offences of looting and arson. Persons displaced from their homes on account of the violence have been cared for in several welfare centres both in Colombo and in the outstations. The fact that the number of these welfare centres has dwindled from 80,000 at its peak to 10,000 today is an indication of the fact that normalcy is now restored.

6. The Government of Sri Lanka which is party to the International Covenant on Civil and Political Rights is fully conscious of its obligations and has taken all possible steps to ensure protection to all individuals irrespective of their racial, political, religious, social or other status or background."

The Representative of Sri Lanka called on the Special Rapporteur during the last week in January when he was in Geneva and briefed him on the situation and in particular on the political process which was underway in which all political parties were participating to find a solution to these delicate problems.

(v) On 3 August 1983 a telex was sent to the Minister for Foreign Affairs of the Socialist People's Libyan Arab Jamahiriya stating:

"I HAVE THE HONOUR TO REFER TO ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1983/36 BY WHICH THE COUNCIL RENEWED MY MANDATE AS SPECIAL RAPPOREUR OF THE COMMISSION ON HUMAN RIGHTS ON THE QUESTION OF SUMMARY OR ARBITRARY EXECUTIONS. MY ATTENTION HAS BEEN DRAWN TO INFORMATION ACCORDING TO WHICH THREE PERSONS WHOSE NAMES WERE GIVEN AS FOLLOWS: FARID ASHRAF, MUHAMMAS HILLAL AND MUSTAPHA AL NAWARI - MAY BE FACING IMMINENT EXECUTION. WITHOUT IN ANY WAY WISHING TO INTERFERE WITH MATTERS WHICH MAY PERTAIN TO THE DOMESTIC AND SOVEREIGN JURISDICTION OF YOUR EXCELLENCY'S GOVERNMENT, I SHOULD LIKE TO EMPHASIZE THE PRIMACY OF THE RIGHT TO LIFE AND APPEAL TO YOUR EXCELLENCY ON A PURELY HUMANITARIAN BASIS TO ENSURE THAT NO EXECUTIONS TAKE PLACE, ESPECIALLY IF SUCH EXECUTIONS RESULT FROM A SUMMARY TRIAL OR ANY OTHER PROCEDURE IN WHICH THE RIGHTS OF THE INDIVIDUALS ARE NOT FULLY PROTECTED. IN THIS CONNECTION MAY I DRAW YOUR EXCELLENCY'S ATTENTION TO ARTICLES 6, 14 AND 15 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS TO WHICH THE SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA IS PARTY."

No reply has been received from the Government of the Socialist People's Libyan Arab Jamahiriya.

(vi) On 4 August 1983 a telex was sent to the Government of Belize, stating:

"I HAVE THE HONOUR TO REFER TO ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1983/36 BY WHICH THE COUNCIL RENEWED MY MANDATE AS SPECIAL RAPPOREUR OF THE COMMISSION ON HUMAN RIGHTS ON THE QUESTION OF SUMMARY OR ARBITRARY EXECUTIONS. MY ATTENTION HAS BEEN DRAWN TO INFORMATION ACCORDING TO WHICH TWO PERSONS WHOSE NAMES WERE GIVEN AS JOSE FRANCISCO VALDEZ AND MARIO LOPEZ WERE SENTENCED TO DEATH AND MAY BE FACING EXECUTION. WITHOUT IN ANY WAY WISHING TO INTERFERE WITH MATTERS WHICH MAY PERTAIN TO THE DOMESTIC AND SOVEREIGN JURISDICTION OF YOUR EXCELLENCY'S GOVERNMENT, I

SHOULD LIKE TO EMPHASIZE THE PRIMACY OF THE RIGHT TO LIFE AND APPEAL TO YOUR EXCELLENCY ON A PURELY HUMANITARIAN BASIS TO ENSURE THAT NO EXECUTIONS TAKE PLACE, ESPECIALLY IF SUCH EXECUTIONS RESULT FROM A SUMMARY TRIAL OR ANY OTHER PROCEDURE IN WHICH THE RIGHTS OF THE INDIVIDUALS ARE NOT FULLY PROTECTED. IN THIS CONNECTION MAY I DRAW YOUR EXCELLENCY'S ATTENTION TO ARTICLES 3, 10 AND 11 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND TO ARTICLES 6, 14 AND 15 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS."

A reply dated 12 August 1983 was received from the Prime Minister of Belize as follows:

"IN REPLY TO YOUR TELEX OF 4 AUGUST CONCERNING SENTENCES OF DEATH PASSED ON TWO PERSONS BY THE BELIZEAN COURTS, I HAVE THE HONOUR TO ASSURE YOU THAT THIS IS NOT A CASE OF SUMMARY OR ARBITRARY ACTION WHICH MIGHT FALL WITHIN THE ARTICLES YOU MENTIONED. THE TWO PERSONS CONCERNED JOSE FRANCISCO VAIDEZ AND MARIO ORLANDO LOPEZ, BOTH GUATEMALAN CITIZENS TOGETHER WITH A THIRD PERSON WHO IS A MINOR 17 YEARS OLD, JOSE ERNESTO HERNANDEZ, WERE TRIED BY A JUDGE AND TWELVE MEMBER JURY IN THE SUPREME COURT OF BELIZE AND FOUND GUILTY OF THE MURDER OF TWO PERSONS COMMITTED DURING THE COURSE OF A ROBBERY. FOLLOWING THEIR CONVICTION, VAIDEZ AND LOPEZ WERE GIVEN THE MANDATORY SENTENCE OF DEATH BY HANGING. THE TRIAL WAS CONDUCTED IN ACCORDANCE WITH THE LAWS OF BELIZE AND THE SENTENCE WAS THE REGULAR AND JUDICIAL ONE FOR MURDER. HERNANDEZ BEING A MINOR, RECEIVED A SENTENCE OF INDEFINITE IMPRISONMENT ALSO IN ACCORDANCE WITH OUR LAWS. ALL THE ACCUSED WERE REPRESENTED AT THE TRIAL BY AN ATTORNEY AT LAW. THEY HAVE THE RIGHT TO APPEAL THEIR CONVICTIONS TO THE COURT OF APPEAL IF THEY SHOULD SO DESIRE. BELIZE DOES NOT HAVE A PRESIDENTIAL SYSTEM OF GOVERNMENT. AS PRIME MINISTER, I HAVE NO POWER UNDER THE CONSTITUTION TO PARDON CONVICTED PERSONS. THE RULE OF LAW PREVAILS AND THERE IS STRICT OBSERVANCE OF THE INDEPENDENCE OF THE JUDICIARY. THE BELIZE CONSTITUTION DOES PROVIDE FOR THE EXERCISE OF THE PREROGATIVE OF MERCY BY HER EXCELLENCY THE GOVERNOR GENERAL, ACTING ON THE ADVICE OF THE BELIZE ADVISORY COUNCIL WHO WILL CONSIDER THE CASE IN DUE COURSE."

(vii) On 5 August 1983 a telex was sent to the President of the Republic of Ghana stating:

"I HAVE THE HONOUR TO REFER TO ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1983/36 BY WHICH THE COUNCIL RENEWED MY MANDATE AS SPECIAL RAPPORTEUR OF THE COMMISSION ON HUMAN RIGHTS ON THE QUESTION OF SUMMARY OR ARBITRARY EXECUTIONS. MY ATTENTION HAS BEEN DRAWN TO INFORMATION ACCORDING TO WHICH A NUMBER OF PERSONS MAY BE FACING IMMINENT EXECUTION. WITHOUT IN ANY WAY WISHING TO INTERFERE WITH MATTERS WHICH MAY PERTAIN TO THE DOMESTIC AND SOVEREIGN JURISDICTION OF YOUR EXCELLENCY'S GOVERNMENT, I SHOULD LIKE TO EMPHASIZE THE PRIMACY OF THE RIGHT TO LIFE AND APPEAL TO YOUR EXCELLENCY ON A PURELY HUMANITARIAN BASIS TO ENSURE THAT NO EXECUTIONS TAKE PLACE, ESPECIALLY IF SUCH EXECUTIONS RESULT FROM A SUMMARY TRIAL OR ANY OTHER PROCEDURE IN WHICH THE RIGHTS OF THE INDIVIDUALS ARE NOT FULLY PROTECTED. IN THIS CONNECTION MAY I DRAW YOUR EXCELLENCY'S ATTENTION TO ARTICLES 3, 10 AND 11 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND TO ARTICLES 6, 14 AND 15 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS."

No reply has been received from the Government of the Republic of Ghana.

(viii) On 11 October 1983, a telex was sent to the President of the Republic of Guatemala stating:

"MY MANDATE AS SPECIAL RAPPORTEUR OF THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS ON THE QUESTION OF SUMMARY OR ARBITRARY EXECUTIONS HAS BEEN RENEWED BY ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1983/36. AS SPECIAL RAPPORTEUR, I NOTE WITH SATISFACTION THE MEASURES RECENTLY TAKEN BY YOUR EXCELLENCY'S GOVERNMENT WITH REFERENCE TO THE ABOLITION OF SPECIAL COURTS AND THE ADOPTION OF DECREE-LAW 91-83, ARTICLE 10 WHEREOF PROVIDES THAT PERSONS ARRESTED SHALL IMMEDIATELY BE PLACED AT THE DISPOSAL OF THE JUDICIARY. IN THIS CONTEXT, I HAVE RECEIVED REPORTS OF THE POSSIBLE EXECUTION BY FIRING SQUAD OF 35 PERSONS WHO WERE PRESUMED TO HAVE DISAPPEARED AND ARE ALLEGED TO INCLUDE, AS DETAINEES IN THE JOSE RUFINO BARRIOS BARRACKS, THE LAWYER YOLANDA URIZAR, ANGELA AYALA AND LUCRECIA ORELLANA. WITHOUT WISHING TO INTERFERE IN THE INTERNAL AFFAIRS OF STATE OF YOUR EXCELLENCY'S GOVERNMENT, I SHOULD LIKE TO EMPHASIZE THE PRIMACY OF THE RIGHT TO LIFE AND TO APPEAL, ON PURELY HUMANITARIAN GROUNDS, FOR THE EXECUTIONS TO BE SUSPENDED IF THEY RESULT FROM VERDICTS OF COURTS IN WHICH THE RIGHTS OF THE INDIVIDUALS WERE NOT FULLY PROTECTED. IN THIS CONNECTION, I DRAW YOUR EXCELLENCY'S ATTENTION TO ARTICLES 3, 10 AND 11 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND ARTICLES 5, 6, 14 AND 15 OF THE COVENANT ON CIVIL AND POLITICAL RIGHTS."

A reply dated 19 October 1983 was received from the Permanent Mission of Guatemala in New York, stating:

"The reports that were furnished to you of 35 persons that were about to be executed in Guatemala and among them Mmes. Angela Ayala, Lucrecia Orellana and Yolanda Urizar are false and away from reality.

As indicated in the above mentioned cable, I was told to assure you that in Guatemala, summary or arbitrary executions are not taking place; the death penalty is one of exceptional nature, and it can only be imposed for very serious crimes. It can be imposed solely by judges of the criminal courts who are part of the judicial body and they are the only ones enabled to render verdicts and give a sentence of death after having followed a legal and due process, going through at least two instances, the first one before a judge and the second one before a tribunal of several members; the defendant can also utilize the extraordinary recourse of cassation, which is also taken before the Supreme Court in its Criminal Chamber, composed of 5 magistrates.

The Government of Guatemala, as it has been indicated to me, believes that the denouncement presented to you is no more than a manoeuvre by persons or groups interested in disrupting the image of the Government of Guatemala.

The Government of Guatemala reiterates to you the commitment it has made to the people of Guatemala and to the international community to respect human rights and keep its actions within the law.

Further evidence of its intention is having revoked the Law of Special Courts and having recently announced that the Law on Defence of Democratic Institutions will be revoked also.



The Government has requested the Supreme Court of Justice a report on whether prosecution is being followed in any court against the above mentioned persons. The outcome of this report will be conveyed to you in due time.

I have also been asked to let you know that military bases are not detention centres and that the centres which now exist in Guatemala to keep common delinquents are well known by the population; also that relatives and friends of the inmates can visit them in accordance with prison regulations.

The Government mentions that every time that the General Assembly of the United Nations deals with human rights in the Third Committee, these campaigns begin to operate in order to make an impression on the Delegates."

(ix) On 22 October 1983 a telex was sent to the President of the Republic of Chile stating:

"I HAVE THE HONOUR TO REFER TO ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1983/36 BY WHICH THE COUNCIL RENEWED MY MANDATE AS SPECIAL RAPPORTEUR OF THE COMMISSION ON HUMAN RIGHTS ON THE QUESTION OF SUMMARY OR ARBITRARY EXECUTIONS. MY ATTENTION HAS BEEN DRAWN TO INFORMATION ACCORDING TO WHICH THE MILITARY PROSECUTOR OF SANTIAGO, GENERAL OSVALDO HERNANDEZ FERREROS IS REPORTED TO HAVE CONVOKED A WAR TRIBUNAL AND HAS ALLEGEDLY ASKED FOR THE DEATH PENALTY FOR THREE PERSONS AMONG THE FIVE WHO IT IS REPORTED WILL BE TRIED ON 25 NOVEMBER 1983 BY THE WAR TRIBUNAL. NAMES OF THE THREE ARE GIVEN AS JORGE PAIMA DONOSO, CARLOS ARANEDA MIRANDA, AND HUGO JORGE MARCHANT. WITHOUT IN ANY WAY WISHING TO INTERFERE WITH MATTERS WHICH MAY PERTAIN TO THE DOMESTIC AND SOVEREIGN JURISDICTION OF YOUR EXCELLENCY'S GOVERNMENT, I SHOULD LIKE TO EMPHASIZE THE PRIMACY OF THE RIGHT TO LIFE AND APPEAL TO YOUR EXCELLENCY ON A PURELY HUMANITARIAN BASIS TO ENSURE THAT CAPITAL PUNISHMENT DOES NOT RESULT FROM PROCEDURES IN WHICH THE RIGHTS OF THE INDIVIDUALS ARE NOT FULLY PROTECTED. IN THIS CONNECTION MAY I DRAW YOUR EXCELLENCY'S ATTENTION TO ARTICLES 6 AND 14 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS TO WHICH THE REPUBLIC OF CHILE IS PARTY."

No reply has been received from the Government of the Republic of Chile.

(x) On 2 February 1984 a telex was sent to the President of the Republic of Bangladesh stating:

"I HAVE THE HONOUR TO REFER TO ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1983/36 BY WHICH THE COUNCIL RENEWED MY MANDATE AS SPECIAL RAPPORTEUR OF THE COMMISSION ON HUMAN RIGHTS ON THE QUESTION OF SUMMARY OR ARBITRARY EXECUTIONS. MY ATTENTION HAS BEEN DRAWN TO INFORMATION ACCORDING TO WHICH A PERSON WHOSE NAME IS GIVEN AS GOLAM MUSTAFA WAS SENTENCED TO DEATH BY SPECIAL MARTIAL LAW COURT AND MAY BE FACING EXECUTION. WITHOUT IN ANY WAY WISHING TO INTERFERE WITH MATTERS WHICH MAY PERTAIN TO THE DOMESTIC AND SOVEREIGN JURISDICTION OF YOUR EXCELLENCY'S GOVERNMENT, I SHOULD LIKE TO EMPHASIZE THE PRIMACY OF THE RIGHT TO LIFE AND APPEAL TO YOUR EXCELLENCY ON A PURELY HUMANITARIAN BASIS TO ENSURE THAT NO EXECUTIONS TAKE PLACE, ESPECIALLY IF SUCH EXECUTIONS RESULT FROM A SUMMARY TRIAL OR ANY OTHER PROCEDURE IN WHICH THE RIGHTS OF THE INDIVIDUALS ARE NOT FULLY PROTECTED."

IN THIS CONNECTION MAY I DRAW YOUR EXCELLENCY'S ATTENTION TO ARTICLES 3, 10 AND 11 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND TO ARTICLES 6 AND 14 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS."

No reply has been received from the Government of the Republic of Bangladesh.

(xi) On 9 February 1984 a télex was sent to the President of the Republic of Malawi stating:

"I HAVE THE HONOUR TO REFER TO ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1983/36 BY WHICH THE COUNCIL RENEWED MY MANDATE AS SPECIAL RAPPORTEUR OF THE COMMISSION ON HUMAN RIGHTS ON SUMMARY OR ARBITRARY EXECUTIONS. MY ATTENTION HAS BEEN DRAWN TO INFORMATION ACCORDING TO WHICH THE DEATH SENTENCES IMPOSED ON ORTON AND VERA CHIRWA BY THE SOUTHERN REGION TRADITIONAL COURT WERE UPHOLD BY THE NATIONAL TRADITIONAL COURT OF APPEAL AND THE TWO PERSONS MAY BE FACING EXECUTIONS. WITHOUT IN ANY WAY WISHING TO INTERFERE WITH MATTERS WHICH MAY PERTAIN TO THE DOMESTIC AND SOVEREIGN JURISDICTION OF YOUR EXCELLENCY'S GOVERNMENT, I SHOULD LIKE TO EMPHASIZE THE PRIMACY OF THE RIGHT TO LIFE AND APPEAL TO YOUR EXCELLENCY ON A PURELY HUMANITARIAN BASIS TO ENSURE THAT NO EXECUTIONS TAKE PLACE, ESPECIALLY IF SUCH EXECUTIONS RESULT FROM A SUMMARY TRIAL OR ANY OTHER PROCEDURE IN WHICH THE RIGHTS OF THE INDIVIDUALS ARE NOT FULLY PROTECTED. IN THIS CONNECTION MAY I DRAW YOUR EXCELLENCY'S ATTENTION TO ARTICLES 3 AND 10 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND TO ARTICLES 6 AND 14 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS."

No reply has been received from the Government of the Republic of Malawi.

## I. PROTECTION OF THE RIGHT TO LIFE: REVIEW OF NATIONAL LEGISLATIONS

35. The right to life is not only the fundamental right par excellence, but is also the prerequisite for all other rights. Article 3 of the Universal Declaration of Human Rights states that "everyone has the right to life, liberty and security of person". The International Covenant on Civil and Political Rights, the American Convention on Human Rights and the African Charter on Human and People's Rights each specify that no individual shall be "arbitrarily deprived of his life". The European Convention provides that "no one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law". The International Covenant, the European Convention and the American Convention each state that the right to life "shall be protected by law".

36. In all the replies containing legislative provisions received from Governments, "the right to life" and man's inherent dignity and inviolability is recognized in the supreme law of the land namely in the constitution or basic laws. Most of the replies received indicate that stringent and scrupulous procedures are laid down in the laws of the land which must be followed before a judicial authority can mete out the sentence of death on an accused person. Most of the procedures laid down in the laws of the countries which replied to the request of the Special Rapporteur for information, substantially conform to the provisions of articles 6, 9, 14 and 15 of the International Covenant on Civil and Political Rights and the Code of Conduct for Law Enforcement Officials which was adopted by the General Assembly in 1979. However, some of the legislation would appear to be in conflict with the letter and spirit of the above-mentioned International Covenant and the Code of Conduct as will be elaborated in the following paragraphs.

37. The wide scope and complexity of the question of the right to life and the diversity of national legislations as well as the information which came to the possession of the Special Rapporteur, give to the following paragraphs a general scope which cannot be expected to cover all aspects of the subject and are not meant to be exhaustive. The Special Rapporteur, however, feels that they do reflect the more outstanding features obtained from his analysis.

### A. Articles 6, paragraph 2, and 15 of the International Covenant on Civil and Political Rights

38. The death sentence is to be imposed for the most serious crimes and the act or omission must be one which constituted an offence "at the time when it was committed".

#### 1. Death penalty

39. In a number of countries, the death penalty has been abolished completely. However national legislations relating to the death penalty vary from country to country as regards the variety of offences as well as the frequency with which this punishment is imposed. In certain countries the death penalty is commonly imposed for violent criminal offences, but may also be applied according to the circumstances prevailing in a particular country for a whole range of other offences which might be regarded as relatively minor in other situations.

## 2. Crimes punishable by death

40. A survey of capital offences reveals that the death penalty may be imposed for the following categories of offences:

### (a) Crimes against the person

- (i) Crimes resulting in loss of life: a number of countries which retain the death penalty for ordinary offences have restricted its use to murder. In some of these countries the death penalty can be applied for crimes resulting in loss of life, although it may not have been the intention of the accused person to kill, as in the case of robbery causing death.
- (ii) Crimes causing grievous injury or suffering: some countries have laws providing the death penalty for crimes resulting in serious injury or acute suffering, without necessarily involving loss of life. Among such crimes are grievous bodily harm with specified aggravating circumstances such as torture, kidnapping with torture, cruel and inhuman treatment of people in custody.
- (iii) Crimes liable to cause serious injury or death: in some countries, the death penalty can be applied for actions liable to cause injury or death, even if they have not resulted in this. Such offences include kidnapping with intent to murder or when the victim is placed in danger of being murdered, the use of explosives against individuals, demanding specific transport facilities or allowing them to be damaged if life or foreign-owned property is thereby jeopardized.
- (iv) Armed robbery: faced with a rapid increase in the incidence of armed robbery, many countries, particularly developing countries, have introduced a mandatory death sentence for this offence.

### (b) Crimes against property and economic crimes

A number of countries provide the death penalty for crimes against property and economic crimes not necessarily involving violence. In some countries, the death penalty has been introduced for certain economic crimes such as hoarding grain or consumer goods, embezzlement and fraud, illegal currency dealing, smuggling and black marketeering. Theft or appropriation of property, if committed more than once, and unlawful misappropriation of public property or foodstuffs are also punishable by death in certain countries. In a number of developing countries, damage to the economy such as aggravated economic sabotage, sabotaging the production or distribution of essential commodities such as petroleum products, passing industrial secrets to unauthorized persons is punishable by death. Persons have been executed for illegally exporting prawns and importing cars and video equipment.

### (c) Crimes against the state and political offences

In many countries treason, piracy and military crimes are punishable by death. Insurrection, sabotage and attempted coups, threats to the authority of the Government, counter-revolutionary activities, illegal strikes and demonstrations, terrorism and illegal activities connected with political parties carry the penalty of death.

- (i) The severe use of the death penalty is also to be observed in attempts to suppress drug trafficking. Some countries have passed laws making the death penalty mandatory for a variety of drug offences.
- (ii) Immorality and behaviour such as adultery, rape, sexual relationship with a girl under the age of 12, fornication and sodomy are punishable by death in several countries.
- (iii) In a few countries to join or advocate membership of certain groups and organizations of a political or religious nature is punishable by death.

### 3. Retroactive legislation

41. In at least two countries a new law which either introduced the death penalty or extended the number of offences which were punishable by death was made retroactive to cover persons already in custody for acts which did not constitute an offence at the time they were committed.

#### B. Article 6, paragraph 4, of the International Covenant on Civil and Political Rights

"Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases".

42. In the legislation of most States, the right to seek pardon or commutation of the sentence is provided. In a number of countries, the head of State is empowered to grant a pardon or commute the sentence while in some others this is under the authority of the Minister of Justice. In some countries institutions such as a judicial commission or an advisory committee on the prerogative of mercy are designated to examine appeals for a pardon in order to advise the head of State or to make decisions on its own. In some countries the death penalty can be carried out only after it is reviewed and confirmed by the head of State or the designated government official. In a number of countries review of the death sentence by a higher court is automatic and obligatory.

43. According to one Government, an act of grace, being anachronistic, has disappeared from [the] law; pardon is a general measure which is not granted in cases of serious crimes which have adversely affected society's conscience and is specifically omitted from the laws governing such crimes; this is also the case in respect of the law of amparo (enforcement of constitutional rights)... The remedy of amparo is a means of controlling legality, the purpose of which is to ensure that government measures or the decisions of courts pay due respect to the liberty of citizens, human rights and the fundamental norms which govern the legal life of the country, thereby preventing abuses of power in order to ensure the rule of law. The Supreme Court assumes the role of a court of amparo.

44. Regarding military courts, in some countries, there is no system of appeal to a higher court. In some countries, a death sentence by the military court has to be confirmed by the Government.

45. In a number of cases persons have been executed within hours of the sentence being passed under circumstances which show that either the competent authority, whether the head of State or Court of Appeal, has not had an opportunity to consider the appeal or pardon or, if he has, it has been done in an arbitrary way.

C. Article 6, paragraph 5, of the International Covenant on Civil and Political Rights

46. Article 6, paragraph 5, provides that the sentence of death shall not be imposed for crimes committed by persons below the age of 18 years nor carried out on pregnant women. A number of Governments comply with this provision in their legislation. Some Governments in their reply state that in their laws a person over 70 years of age is also excluded from the execution of the death sentence.

D. Articles 6, paragraph 2, and 14 of the International Covenant on Civil and Political Rights

1. Impartial, independent and competent court

47. It is universally recognized that one of the best guarantees for the implementation of legal safeguards applicable to all fair trials is the existence of an independent judiciary.

48. If we refer to the constitution or basic laws of practically any country, whatever the basic principles underlying the constitutional system, there are provisions which are designed to ensure or insulate that the judiciary is free from political pressure and that the judge is competent and independent. In many constitutions it is provided that the judiciary shall be independent in the exercise of its functions or shall be separated from the executive at all levels. Sometimes it is stipulated that neither the executive nor the legislature may exercise any judicial function or intervene in any judicial proceedings.

49. Some constitutions prohibit the establishment of any extraordinary commissions or tribunals of a temporary nature, outside the framework of the judiciary, to try any particular cases or persons. In one country it is specifically provided that no one may be tried by exclusive laws or special courts. Military jurisdiction only applies in cases of offences against military discipline, but the military courts shall in no case and on no grounds extend their jurisdiction to persons not belonging to the army.

50. A number of Governments state that their laws provide for systems to guarantee impartiality and independence of the court, such as appointment of judges by a commission independent from the executive. In order to guarantee the independent status of judges, special measures have been established for their appointment, disciplinary control and removal.

51. Several devices have also been adopted in various countries in relation to the selection of judges in order to achieve the necessary independence of the judiciary from the executive. In some countries, judges may be appointed by the executive only with the consent of the legislative body, its leader or one of its chambers. In other countries, judges may also be appointed by the executive upon the nomination or with the advice of the judiciary or a representative thereof. There is a growing tendency for judges to be appointed on the recommendation of, or by, a judicial service commission or a superior council of the judiciary, in an attempt to remove appointment from the arena of politics, to ensure high qualifications and to maintain continuity of judicial administration.

52. According to one Government, under its constitution "the appointment of judges of the Supreme Court and Court of Appeal is made by the President of the Republic and cannot be removed except by a special procedure involving the assent of two thirds of the Members of Parliament", and "the judges of the High Court, District Courts and Lower Courts are subject only to the disciplinary control of the Judicial Services Commission consisting of the Chief Justice and the two other Judges of the Supreme Court".

53. When the judges are appointed by the executive, emphasis is often placed on security of tenure as a means of guaranteeing the independence of the judiciary, and the rules governing their transfer from one post to another are often calculated or intended to promote their feeling of security and therefore to preserve their independence. Similarly, many other rules relating to salary, pension, limitation of non-judicial activities and disqualifications are intended to protect the independence of the judiciary and consequently to ensure the right of everyone to a fair trial.

## 2. Special courts

54. Among the basic principles for the safeguarding of the independence of the judiciary, one is of particular concern when dealing with criminal offences. It concerns the creation of special courts to try one person or a group of persons or to try specific offences. A number of countries have established special courts, or special military or revolutionary courts, to try political offences or crimes. In other countries State Security Courts were established to try a number of offences including crimes against State security, economic espionage and drug smuggling. Special criminal courts have been created with jurisdiction over crimes of violence or other crimes such as embezzlement of public funds and offences involving damage to State property.

55. While some Governments state that no kind of special courts or military tribunals can exist under their laws and that all criminal charges are tried by ordinary courts, in a number of States military courts and special courts such as revolutionary courts also have jurisdiction over civilians. In certain countries military courts have jurisdiction only over members of the armed forces. In some other countries the jurisdiction of military courts is extended to try civilians on certain categories of offences under certain situations, such as a state of emergency. One Government mentions the Security Tribunal which tries crimes against the security of the State and those concerning public order and the national interest.

## 3. Public trial

56. A number of Governments state that under their laws criminal trials are held in public, except for reasons of morals, public order or national security or for the vital interest of the parties concerned and that the Court may decide that, in exceptional cases, all or some of the trials should be conducted in camera and attended only by the parties concerned.

57. Some Governments also state that verdicts must be delivered in public.

## 4. Fair trial

58. A number of Governments refer to their jury system as a guarantee to ensure a fair trial. Some other Governments mention the system of investigation and inquisition by magistrates. A number of Governments state that the accused shall be presumed innocent until proved guilty and has the right to be heard, either by himself or through the counsel of his own choice, or by both. A number of Governments mention the obligation of the State to provide legal assistance at its own expense in cases where the accused cannot afford legal assistance of his own choice.

59. A number of Governments mention their laws and regulations concerning evidence, and state that strict rules as to the admissibility of evidence are established with the burden of proof placed on the prosecution. Some Governments state that any confession obtained by coercion is inadmissible as evidence and that admission of guilt by the accused is inadmissible as evidence for the death penalty. Some Governments mention the right of the accused to produce defence witnesses and to cross-examine witnesses for the prosecution.

60. Reference is also made to the right of an accused person to have free assistance from an interpreter if he cannot understand or speak the language used in the court.

61. One Government, referring to the procedures of military courts, states that the rights of the accused are protected in the same manner as in civil criminal courts "except with regard to the time element".

62. In one country the procedures of a special court provide that "the indictment must be communicated in writing to the defendant or to his lawyer at least three days before the court meets" and that "the court must allow the defendant and his lawyer at least 15 hours to plead".

#### 5. Double jeopardy

63. In a number of countries the law provides that "no person shall be twice put in jeopardy of punishment for the same offence". The constitution of one country, which is typical of many, provides:

"No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal".

#### E. Article 9 of the International Covenant on Civil and Political Rights

64. Constitutions and other laws in most countries refer to their legal safeguards against arbitrary arrest or detention. Some of the laws provide for procedures of a lawful arrest or detention of a person, embodying the institution of habeas corpus, a means of judicial supervision to ensure the right to liberty and security of person. Under these laws the unlimited continuous detention of a suspected or accused person is strictly prohibited. For example one constitution provides that any person who is arrested or detained and who is not released, shall be brought before a court as soon as is reasonably practicable. It also provides for the official notification of detention in a gazette within 14 days, and the right of the detained to request a review of this detention by an independent and impartial tribunal.

65. Another constitution provides that "any person who is arrested or detained shall be informed as soon as is reasonably practicable, in a language that he understands, of the reasons for his arrest or detention".



66. In a number of countries, during a state of emergency the right to liberty and security of persons may be limited and arbitrary arrest and detention may be authorized in so far as the circumstances of any situation existing during the state of emergency reasonably justifies such arrest and detention. In some cases constitutional guarantee of the right to liberty and security of person is suspended by emergency legislation, orders, decrees and instructions issued by the executive. The mechanism for checking and controlling the use of State powers originally envisaged in the constitution is rendered nominal. Arrest without a warrant and detention without charge and incommunicado for an extended period of time are legal under certain legislations.

67. Some legislations provide for the bail system under which persons awaiting trial may be released. The constitution of one country provides that "all persons except those charged with capital offences when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties. In this regard exceptions are found in cases of a certain category of crimes related to the security of State.

F. Article 3 of the Code of Conduct for Law Enforcement Officials

68. Article 3 of the Code of Conduct for Law Enforcement Officials

"Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty".

69. One Government states that detailed regulations concerning the use of firearms by the police has been enforced and that these regulations are kept within the scope of the notion of "self-defence". All incidents in which firearms have been used or where threats of the use of force have been made must be reported to the national Commissioner of Police.

70. Another Government states that the policy of the successive governments of the country is that the police should not be generally armed and that they may need to be armed when it is known that they may have to face armed and dangerous criminals. It also states that it would be for a court of law to decide, in the event of death or injury resulting from police use of firearms, whether reasonable force had been used in the circumstances to prevent crime and that any police officer to whom a firearm is issued is answerable personally in law as any other private citizen would be for his action.

71. Another Government states that under certain laws enforced upon the declaration by the Government of certain areas as "disturbed areas", the armed forces are empowered to use force, even to the extent of causing death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons and the like. It is also stated that such force, can, however, be used only after giving due warning to the person concerned and only when it is considered necessary to do so for the maintenance of public order. A member of the armed forces violating the legal provisions in this connection may be prosecuted in a court of law.

## II. ANALYSIS OF SITUATIONS IN WHICH ARBITRARY AND SUMMARY EXECUTIONS USUALLY TAKE PLACE

### A. Situations

72. Despite much diversity from country to country, the following situations in which summary or arbitrary executions have taken place are common.

1. Political upheavals
2. Internal armed conflicts
3. Suppression of opposition groups or individuals
4. Abuse of power by agencies entrusted with law enforcement
5. Other situations.

73. These features may exist concurrently or in sequence in the same country.

74. Typical examples described in the following paragraphs were selected from the information in the possession of the Special Rapporteur in order to illustrate the practice of summary or arbitrary executions in the context of real situations.

#### 1. Political upheavals

75. In a number of countries mass executions have been carried out after violent changes of governments. Due to the institutional and legal vacuum immediately following the fall of a regime, during the transition period, armed forces, revolutionary tribunals or even mass public rallies assume the role of imposing "justice". Many executions are carried out without any trial. Even when trials are held death sentences are often delivered after brief or summary trials without any procedures for safeguarding the rights of the accused, who are accorded no rights, and sentences are often delivered without any legal base. Many of the convicted are executed immediately or within an extremely short period of time after sentencing. In many cases the convicted are given no opportunities for appeal or review of the sentence or for pardon. Killings by or after torture in prison or detention camps are also commonly reported.

76. Those executed are people suspected of their collaboration with the enemy, former government officials, military officers, policemen, supporters and associates of the former regimes, persons suspected of their opposition to the new regime and to the new government's policies. It is not unusual that family members and friends of those accused or executed, including women and children, are also among the victims.

77. Mass executions are often justified by characterizing the victims as traitors, foreign agents, counter-revolutionaries, enemies of the people, etc. The following are typical examples.

#### Situation A

78. Having achieved independence after a long period of armed struggle against colonial rule, the country remains in a state of civil war with several political movements competing for power, each backed by a foreign power and foreign troops. Having achieved control of the greatest area of the territory, one group establishes a government and adopts one-party rule. Some time after independence, the death penalty is introduced for the first time for offences against the security of the State.

79. After an attempted coup within the ruling party, a special military tribunal is set up to try those arrested for complicity in the attempted coup. The proceedings of the special military tribunal are conducted in secret and its verdicts and sentences are not made public. It is not known what procedures the tribunal follows, nor is it known whether the defendants are accorded basic defence rights. In addition to those tried by the tribunal, the exact number of whom is not known, a considerable number of people have been executed without any trial.

80. Suspected members and supporters of the armed opposition groups have allegedly been killed in detention centres or prisons on the orders of security forces.

#### Situation B

81. Since the military administration council took power and abolished a feudal system of government which had been in existence for many years, a large number of executions and killings have occurred in the turbulent political situation. A special penal code was proclaimed and special military tribunals were set up. The tribunals were empowered to impose the death penalty on civilians without providing adequate safeguards for a fair trial. A few years later, what was termed "revolutionary justice" took over. Executions are carried out after brief trials held by communal leaders or without any form of trial.

82. The victims include members of the ruling family, former officials, military officers, members of opposition and rival factions within the post-revolutionary government and ordinary citizens suspected of holding opinions and conducting activities against the Government.

#### Situation C

83. Soon after the fall of the regime, a large number of executions began to take place. Those executed were former government officials, military and security police personnel and supporters of the former regime. Later the victims included opponents of the new regime and its policies, as well as those suspected of certain offences, such as drug trafficking, sexual and moral offences, and of being members of ethnic and religious minorities. Executions are carried out without any trial, and those tried by the revolutionary tribunals are not accorded procedural safeguards. In a large number of cases, arrested persons are held incommunicado; charges are not communicated to the accused and access to legal counsel is denied. Torture is common. In a number of instances, trials are extremely brief or held in camera and executions are carried out immediately after sentencing. The victims include a considerable number of minors.

#### Situation D

84. As soon as the revolutionary forces took power, the new government began executing former government officials and military personnel; this has been followed by systematic executions of a large number of persons who were suspected of their association with the former administration, opposition to the new government and disobedience regarding the new government's policies. Those executed include intellectuals, teachers and persons with secondary or higher education. Besides the killing of political and social groups, a large number of individuals have been executed for minor infringements of work discipline and disobedience of official instructions. Several persons have been executed for shirking work. Within the ruling group, officers, soldiers and their families have been executed because of political differences.

Situation E

85. During the rule of the former government, the country experienced a complete breakdown of the rule of law and the destruction of institutions guaranteeing the most basic civil and political rights. Even after the fall of the former government disturbances continued. Both the government forces and armed opposition groups reportedly killed unarmed civilians. People fleeing both guerrillas and army soldiers flocked into army camps for fear of being killed in the countryside which has become a de facto "free fire" zone. Anyone caught by soldiers outside the camps is considered a guerrilla and shot in an indiscriminate manner. In response to allegations of mass killings by the armed forces, the government denies that there are executions by the army, and states that killings are being carried out by guerrillas wearing stolen army uniforms.

Situation F

86. After many years of internal armed struggle, the revolutionary group took the power. All officers of the former government's armed forces and police were sent to special camps with the avowed purpose of (political) re-education. It is alleged that a number of people who continued to oppose the new regime have been charged with "plotting to overthrow the revolutionary government" by organizing opposition. In one case several persons who originally received sentences of life imprisonment have been condemned to death after a second trial conducted by the same court as heard the original trial. The second trial was brief and held in camera and defence witnesses were not allowed.

2. Internal armed conflicts

87. A large number of people have been killed in countries where there has been internal armed conflict. Killings have been carried out by both government as well as opposition forces. Indiscriminate killings of non-combatant civilians have often been carried out by government forces in the areas where guerrillas are active. In a number of countries intensive counter-guerrilla operations have been carried out using the strategy of emptying such areas of the entire civilian population in order to eliminate any possible support for the guerrillas, and often indiscriminate killings have occurred, involving entire village populations including women and children. Villagers have also been abducted and killed by "death squads" under military control. Torture and mutilation have been routinely practised. In some cases, people trying to flee the areas of armed conflict or who reached refugee camps in neighbouring countries have been indiscriminately attacked by government forces and many of them have been killed. Often it is claimed that those villages and refugee camps were infiltrated by guerrilla forces and that death occurred in armed clashes between government troops and guerrilla forces.

88. In a number of countries a state of siege or a state of emergency has been imposed and constitutional guarantees for human rights are suspended or severely curtailed. In some other countries heavy security measures are enforced and arbitrary arrest and detention of those suspected of their involvement with guerrilla movements result in frequent executions of detainees.

Situation A

89. Since a coup d'état which deposed the head of State, there has been a civil war between the armed forces of the new president and those loyal to the former

president. Allegations of indiscriminate killings of civilians and captured persons have been made by both sides. Government troops are reported to have tortured and killed civilians in areas far from battle zones. Several killings have been carried out in reprisal for armed attacks upon government forces or officials. Those civilians regarded as actual or potential opponents to the new president have been summarily or arbitrarily executed.

#### Situation B

90. In the situation of a widespread armed conflict between government forces and opposition groups, tens of thousands of non-combatants have been killed by government forces or "death squads" which had government support, if not approval. Traditionally the country has been dominated by the military who subjected it to a series of coups d'état. After the most recent successful coup, a state of siege was imposed and martial law was declared. The military control the executive and legislative powers and ruled by decrees which have the force of law, often eliminating the safeguards to protect basic human rights. The judiciary is subordinated in practice to the regime and its policies. Those regarded as opponents of the regime have been assassinated by "death squads". The victims include trade-unionists, political party members, university staff, students, human rights activists and church people. The government occasionally admits the involvement of security or armed forces personnel in the killings, but maintains that such killings are committed by personnel exceeding their authority. However no action seems to have been taken against those officials who exceeded their authority and in fact some of them have received promotion.

#### Situation C

91. Armed guerrilla movements have been active in areas where poverty and illiteracy are prevalent. The military, supported by a small group of the country's privileged who control politics and the economy, have led counter-insurgency campaigns for over a decade. Most of the deaths and disappearances occurring during this period have been attributed to government forces or semi-official paramilitary groups. The victims were mostly peasants in areas where guerrillas operated, but students, lawyers, university teachers, journalists and opposition politicians were also included. Constitutional provisions prohibiting torture and instituting a form of habeas corpus are not implemented. The judges are rendered powerless.

#### Situation D

92. Armed conflicts between the occupying forces and the members of a liberation movement conducting guerrilla warfare have been intense for an extended period of time. Civilians including women, children and old persons are the victims of indiscriminate killing during raids by the occupying forces on villages, communities and refugee camps, which the military authorities claim to be used by the guerrillas as support bases. Detention without charge and incommunicado for a prolonged period has often led to the death of detainees.

#### Situation E

93. As guerrilla movements have become increasingly active in several areas of the country, killing a large number of village peasants for their suspected co-operation with the government, the security forces have carried out massive counter-insurgency operations. The areas in which guerrillas are active are designated as emergency zones and put under military rule. Those killed in the counter-insurgency operations are described as guerrillas in official accounts,

but it is alleged that in the remote areas of the emergency zone the security forces have carried out large scale, sometimes random, killings of members of local communities suspected of having supported guerrillas. Killings have also been carried out by "community patrols" which consist of community members under the direction of the regional military authorities which rule the area.

#### Situation F

94. The state of emergency has been repeatedly extended with the avowed purpose of eliminating armed dissident activities in a certain area of the country and many killings by government soldiers have been reported. According to the government, most of these killings were carried out by dissidents in stolen army uniforms with the purpose of fomenting rebellion.

#### 3. Suppression of opposition groups or individuals

95. Illegal killings of opponents and suspected opponents to governments have been carried out in a large number of countries, either with or without legal proceedings in areas where there is no armed conflict.

96. In a number of countries individuals are killed in order to eliminate movements opposed to the regime. The victims are from a wide variety of professional backgrounds and include trade-unionists, as well as people who are simply suspected of opposition to the regime. They are assassinated in the streets, or abducted and made to disappear and are often found dead later showing signs of torture. These killings are allegedly carried out by the military, security forces, police or paramilitary groups with the sanction of the authorities. Although in some cases governments have admitted the involvement of security forces or armed forces personnel in such killings, it is explained that the deaths occurred during a "shoot-out" with government forces or police. In other cases these killings are attributed to independent "death squads" which the government claims, operate outside its control. However, no action appears to have been taken by governments against such "death squads".

97. In some situations a large number of executions follow attempted coups. Those suspected of their involvement in such attempts are executed often secretly and without trial. In some situations it is alleged that charges of attempted "coups" are apparently made in order to justify the elimination of the target groups or individuals. In a number of countries, people are executed, often without trial, only for their membership in certain religious sects or ethnic groups which are rivals of the ruling sects or groups.

98. There are frequent attacks by armed forces, security forces or police on peaceful demonstrations, political gatherings and workers and students on strike, causing a large number of deaths by shooting, bayonetting, or clubbing. Under states of siege or heavy security measures the armed forces and police have been given extended powers and made immune from prosecution.

99. The independence of the judiciary has often been seriously undermined. Frequently, trials have been carried out without any guaranteed safeguards to protect the rights of the accused. Executions have taken place often immediately after sentencing, eliminating any possibility or chance of appeal, even when the right of appeal is granted by the law. In a large number of cases, a confession, often extracted under torture, is the only evidence that leads to the death penalty. Arrest without warrant and extended detention incommunicado without charge is institutionalized in several instances and this often leads to deaths in detention.

100. In some countries prisoners are intentionally deprived of food and water or medical attention, often after being tortured, and left to die. In some instances opponents and critics of governments are assassinated even outside the countries concerned.

#### Situation A

101. Under the continuous imposition of the state of siege the military took power by a coup d'état. During this period the armed forces killed a large number of opponents or presumed opponents of the military government as part of the "war against subversion". Most of these killings occurred after the victims "disappeared". The bodies were found showing signs of torture. The practice of "disappearances" was attributed to the police, security forces or in some cases armed squads claiming public authority. The victims were often taken from their houses at night by men who identified themselves as agents of the police or armed forces. Many of the victims were taken to secret camps of the armed forces or police, and the majority were never seen again. Others were killed as they were being abducted. A considerable number of corpses have subsequently been found in unmarked graves.

#### Situation B

102. Immediately following the coup d'état which toppled a constitutionally instituted government, a large number of people were reportedly executed within a period of a few months. In subsequent years, political activists, trade-unionists, students, intellectuals and peasants have been killed or made to disappear after being arrested by the security forces or police. Deaths during detention by the security forces and in incidents officially described as "confrontations" with members of the security forces are frequently reported. A number of persons have allegedly been killed by secret organizations reported to have consisted of members of the security forces.

#### Situation C

103. A large number of people have allegedly been executed every year. Deaths by torture are also regularly reported. The victims are members of ethnic and religious minorities, members of political organizations and those suspected of opposing the government and its policies. Minors are also included among the victims. Most of those executed are sentenced to death by permanent or temporary special courts for offences of a political nature. The procedures of the special courts do not provide legal safeguards for the rights of the accused and for a fair trial. The independence of the courts is non-existent, the right of defence is severely restricted and there is no right of appeal. The law is interpreted according to the political principles of the ruling party. Under the penal code the death penalty can be imposed for a wide range of criminal and political offences. A large number of crimes against the internal security and external security of the State are listed in the code, even including the crime of being a member of a particular religious or ethnic organization.

#### Situation D

104. In the continuing campaign to eliminate dissidents, a declaration has been issued, calling for the death of enemies of the revolution living abroad, and of counter-revolutionary elements within the country. Since then a number of citizens living abroad have been killed or wounded in assassination attempts. Also in the months following the declaration a number of persons in exile were sentenced to death in their absence by a revolutionary tribunal. There are also

reports of deaths in detention of former members of a banned political party, students, lawyers, teachers and writers. In some cases the deaths have been described as suicide.

#### Situation E

105. Since its independence the country has been ruled by a life president. Persons opposing or perceived to be opposing the president are assassinated in exile, found shot dead or abducted from outside the country to be tried and convicted of treason by a special court, the procedures of which do not embody safeguards for the rights of the accused. The victims include cabinet ministers and opposition leaders.

#### Situation F

106. In a situation of active opposition, martial law was imposed. Under martial law, the president of the country was given extensive powers and human rights guaranteed by the constitution were suspended by presidential decrees and other administrative orders. Even after the lifting of martial law, habeas corpus remains suspended in certain regions and with respect to persons detained for crimes related to the security of the State. The armed forces and police are empowered to arrest without a warrant and, if need be, to detain persons suspected of rebellion or subversion and related crimes. A large number of killings by government troops and security forces has occurred mainly in areas where opposition groups are active. A number of victims have been found dead after they were arrested by military personnel or security agents. Others simply disappeared and were later found dead.

#### Situation G

107. Under the official policy of racial discrimination, security laws are applied to suppress the majority who belong to a different racial group. Several detainees held under these security laws have died. In all cases the detainees were allegedly tortured during interrogation by the police before they died. By law, indefinite detention without trial is authorized for both State witnesses and suspected offenders. The security police is also empowered to withhold all information about the detainees.

#### Situation H

108. After a small group of non-commissioned officers took power by a coup d'état a state of emergency was imposed and the constitution was suspended. Soon after an attempted coup d'état, the military authorities declared a state of war under which the army was authorized to conduct a field court martial and to carry out the death penalty. Faced with general strikes, demonstrations and demands calling for elections and a return to democracy, the government arrested a number of leading figures in the country, without any legal basis or proceedings. These persons were killed while in detention. The victims were trade-unionists, lawyers, journalists, businessmen, university professors and army officers. An official explanation stated that they were killed while trying to escape.

#### Situation I

109. Under the state of emergency all constitutional guarantees of the basic rights of the individual were suspended and the Minister of the Interior held extraordinary powers of arrest and detention. In response to increasing



opposition activities by various groups, the security forces have carried out mass killings and executions of the opponents to the government. Trials by military courts are summary, denying the right of defence and the right of appeal. Torture is commonly employed before the prisoners are executed. Members of a religious dissident group are reportedly killed in detention. In one incident a large number of inhabitants of a town were shot dead collectively for their suspected involvement with the religious movement. A considerable number of individuals were assassinated allegedly for their opposition to the government. The victims included doctors, engineers, lawyers, dissident religious leaders and journalists.

#### Situation J

110. Over an extended period of time a considerable number of people died in detention or were killed in an arbitrary manner by the security forces. Although under the code of criminal procedure arrested persons should be referred to the public prosecutor's office within 48 hours of arrest, in practice civilian and military security services carry out arrests and detain suspects incommunicado indefinitely without charge and without reference to the judiciary. Death sentences are imposed on those charged with alleged opposition to the regime. Trials held by the state security court or council of war are carried out in a summary manner without adequate means of defence, the right of appeal and other procedural safeguards for a fair trial. In some cases executions are carried out when cases are still at the appeal stage. Death sentences in absentia and secret executions are also reported.

111. Deaths in detention are attributed to the use of arbitrary or excessive force by the security forces. A number of prisoners also died due to lack of food and adequate medical care.

#### 4. Abuse of power by agencies entrusted with law enforcement

112. In a number of situations, killings have been carried out by police and security forces as a result of their abuse of power and in the absence of governmental sanction or order. Individuals are killed and prisoners or detainees ill-treated, in some cases on the orders of low levels of command, or in other cases by law enforcement agents or soldiers without any order.

113. Killings have often occurred to suppress local popular movements at the request of privileged sectors of the population. The victims in many cases are peasants, local social activists, trade-unionists, community organizers, lawyers or politicians. They are killed in many cases after arrest by the police or security forces, but are officially announced as having been killed in armed confrontations. Unrestrained ill-treatment of detainees by law enforcement officers has often resulted in death in detention. The deaths have been explained by the authorities as suicide, or having been shot while attempting to escape, or simply as "mysterious killings".

114. Even though investigation by both governmental and independent commissions have been initiated in a few cases, remedial measures or punishment of the officers responsible are rarely enforced. The existence of security laws giving law enforcement agencies extended powers of arrest and detention, or to fire upon suspected persons without warning, contribute to the unchecked abuse of power.

Situation A

115. A large number of killings are reported in connection with land conflicts between small farmers and large landowners, private enterprises, real estate brokers as well as public organizations. Some of the killings are attributed to the police force and others to hired professional assassins. A number of deaths are allegedly the result of torture by the police or others with police permission or encouragement. It is also alleged that the police took action on the request of large landowners, outside legal procedures. No judicial action is known to have been taken to stop these abuses of power. The victims are farmers, leaders of rural workers, union leaders, lawyers who are assisting farmers and rural workers.

Situation B

116. A large number of killings by the police were reported from several areas of the country. The rise in deaths coincided with the beginning of an active political movement. In response to this movement, strong measures were taken in a number of regions. Under a special legal authority, the police hold extended powers to arrest or fire upon suspects without verification or control. The victims include both persons suspected of belonging to opposition movements and social activists. It is alleged that the victims are killed by the police after arrest and often after having been tortured. According to an official account, these deaths in police custody are due to accidents, suicide, being shot while attempting to escape or in armed confrontation with the police.

5. Other situations

117. In a number of countries during campaigns against crime, harsh measures have been taken against those accused or suspected of criminal offences. Capital punishment has been extended to a large number of crimes which were formerly punishable by less severe sentences. Trials have often been held with summary procedures and in some cases military courts were used in trying civilians.

118. In several countries killings have been ordered by the head of State for no apparent serious reason at all. In one country, lawlessness and lack of discipline in the army caused the execution of civilians by soldiers for personal or material motives.

Situation A

119. A large number of people were executed after being convicted of murder, rape, robbery, drug trafficking, embezzlement, espionage, smuggling of art treasures, etc. These executions are a part of a campaign against crime. In order to try criminals swiftly the law of criminal procedure has been amended and safeguards ensuring a fair trial revoked or abridged. Under these amendments the courts can bring defendants to trial without informing them of the charges against them and without notifying the defence counsel. The maximum time-limit for appeal was shortened, in the case of trials of criminals involved in serious crimes and other activities that "seriously threaten public safety" and "if the facts of the crime are clear, the evidence is conclusive".

Situation B

120. Under rule by the military regime, an increasing number of civilians are tried and sentenced to death by military courts. The provisional constitution

order has been enacted annulling the Constitution and its guarantees for basic rights of the individual, and doing away with the independence of the judiciary by requiring judges to take an oath barring the highest courts from scrutinizing any action taken by the military authorities or from reviewing military court proceedings.

Situation C

121. In a campaign to eliminate criminals, a large number of criminal suspects have been killed allegedly by the security forces and with government approval. The killings were carried out by "hit squads" drawn from an army unit, without any judicial process to determine the guilt of the suspects. A number of victims were abducted first and their bodies were afterwards found lying in the streets, thrown into the river or left in remote areas. It is alleged that on a number of occasions high government officials and army leadership have admitted the involvement of the security forces and approved the killings as a drastic solution to the growing crime problem in the country. An official explanation attributes these deaths to unknown or mysterious causes.

Situation D

122. In recent years an increasing number of death penalties have been imposed on persons accused of security crimes or drug offences. Trials have been held with special procedures that deprive the defendant in security cases of basic legal safeguards. The government has announced its intention of imposing the death penalty on persons found possessing firearms, ammunition and explosives in an area declared as a "security area".

B. Common factors

123. In examining the background of situations in which summary or arbitrary executions take place, a number of characteristic elements may be identified as factors likely to foment conditions for the occurrence of summary or arbitrary executions. Those factors could be divided into (1) civil and political factors and (2) economic and social factors.

1. Civil and political factors

(a) Absence of a democratic political process

124. In a considerable number of situations arbitrary or summary executions have resulted from the absence of a democratic political process; it either did not exist or was seriously obstructed despite formal constitutional guarantees. In such situations there was little room for political opposition groups to voice their opinions freely and influence the Government and its policies legally. In other situations, where only a limited degree of political freedom existed and opposition to the Government and its policies was tightly checked, excesses have also been committed.

125. In many situations arbitrary or summary executions followed a transfer of power by violent means, such as a coup d'état, and by assassination of those in power. In not a few cases the military took power by a coup d'état, abolished the democratic political process, suspended the basic human rights guaranteed in the Constitution and remained in power until they decided to hand it over to civilians or until another coup d'état removed them from office; during this period, they clamped down heavily on vulnerable sectors of the population.

126. In some situations the rulers have remained in power from the independence of the country or since they were initially chosen by peaceful means as the political leaders of the country, becoming increasingly oppressive and dictatorial with time. Opposition against their régimes and any attempts to seek transfer of power have been systematically suppressed. Under these conditions institutions, whether political, legal or judicial, which could normally be expected to check and control political power and its likely abuse ceased to function. The legislative and judiciary branches were simply subjected to the wishes of the executive branch.

(b) Existence of special security measures, such as states of siege, states of emergency and security legislations

127. Summary or arbitrary executions have frequently followed various kinds of security measures taken, with Governments seeking control over situations such as internal armed conflicts, opposition movements against the régime and political disturbances. A state of siege and/or a state of emergency have often been declared and (though in a few situations where they were originally justified) maintained for an extended period even after the original circumstances no longer applied. In a number of countries, laws embodying security measures have been enacted and in some others, the security measures have been enforced by decrees issued by the executive.

128. Those security measures usually suspend a substantial number of the basic human rights guaranteed by the Constitution or other laws and give extraordinary powers of arrest and detention to the executive, including military and law enforcement agencies. Abuses of power and serious violations of human rights by the Government could therefore not be properly checked. Writs of habeas corpus

were not implemented. Security measures often authorized the police, armed forces or security forces to arrest "suspected" persons and detain them indefinitely without charge or incommunicado for interrogation. Control by the judiciary or other independent bodies over such detention was nominal or simply non-existent. Law enforcement agents are often authorized to shoot a person trying to "escape" arrest or detention, with immunity from prosecution. In one instance a public security decree authorized the police, with the approval of government authorities, to bury dead bodies in secret without any inquest or post-mortem examination. This decree applied to the burying of any dead body, including persons who died in custody.

129. In a number of situations security laws also amended the criminal code and rules of criminal court procedures, introducing the death penalty for a large number of offences, some of which carried a mandatory death penalty. Special court procedures were introduced for trials of "security cases", depriving defendants of basic legal safeguards for a fair trial. In one situation, under the special regulations of procedure for security cases, evidence could be heard from witnesses whose identity need not be revealed to the defendant. Hearsay and secondary documentary evidence, as well as the uncorroborated confession of accomplices could be admitted. The burden of proof was on the defence.

(c) Existence of special courts and tribunals

130. In a considerable number of situations special courts and tribunals, such as revolutionary courts and security tribunals, were set up outside the normal judicial system of the country. In a number of situations the military courts also tried civilians outside the control of the judiciary. Such special courts and tribunals were empowered to try "political", "security" or "anti-revolutionary" offenders, and in most cases, they were not bound to follow the established procedures of the ordinary courts. The safeguards for a fair trial have often been ignored by these special courts and the right of defence has been extremely limited. In some cases legal representation was not allowed in the special court. In other cases accused persons were not informed of their charges until the opening of trials, allowing no adequate preparation for defence. Cross-examination of prosecution witnesses was also not allowed. Evidence presented by the prosecution could often not be contested. The right of appeal to a higher court was frequently denied. The judges of the courts and tribunals were not necessarily independent persons with legal backgrounds but often military personnel. The courts and tribunals were controlled by and answerable to the executive or the military. In some situations special courts were set up on an ad hoc basis by decision of the government or the military. Trials were often held in camera and sentencing was often not the result of application of the law, but was dictated by political exigencies. Capital punishment was made mandatory for a large number of offences by decrees issued by the executive power which were applied retroactively. The offences for which the death penalty was made applicable by the special courts were murder, terrorism, sabotage, treason, other "security crimes" and, in some countries, moral and economic crimes. Executions were often carried out immediately or shortly after sentencing.

(d) Control of the judiciary by the executive or military power

131. In a considerable number of situations the independence of the court has been severely curtailed or non-existent, often in contradiction to the constitutional guarantees for the independence of the judiciary. Conviction and sentencing was often influenced or predetermined by the executive. The status of judges is controlled directly by the executive. In a number of instances ordinary

courts have been deprived of jurisdiction over certain categories of cases without any legal justification. Those cases were tried by the military courts or special courts. In some situations, judges were intimidated to make decisions favourable to the executive or were, by nature of their appointments and tenure, for example, inclined to make decisions which conformed to the wishes of the executive.

(e) Existence of secret police, security forces and paramilitary groups outside the normal law enforcement apparatus

132. In a considerable number of countries special units of armed forces, secret police security forces have existed, acting outside ordinary legal procedures under the supervision of the authorities or with their approval or connivance. In a number of situations, paramilitary groups of civilians, police and armed forces personnel, sometimes called "death squads", have operated in a similar manner. Those special units or forces have carried out arrests and detention and in many cases have killed suspects without any of the legal formalities required by law and without reference to the judiciary. Their activities in most cases have been kept secret and outside the control of the judiciary. Information on arrests or detention is not communicated even to the families of the arrested or detained.

(f) Absence of discipline among law enforcement agents or military personnel

133. In a number of situations police or military personnel have arbitrarily or disproportionately used force against individuals or groups of individuals without being punished for their acts. Often no investigation has been carried out on such wrongdoings or misconduct. A code of conduct for such personnel often did not exist or was ignored. Where it existed, the training of personnel did not pay due attention to the rights of those suspected, arrested or detained.

134. In some countries corruption penetrated law enforcement and military institutions and police or military actions were frequently taken in favour of the interests of certain individuals, groups, social classes or organizations upon their request.

2. Economic and social factors

(a) Inequitable distribution of wealth

135. In a number of situations only a few landowners have traditionally controlled most of the country's wealth and the vast majority of the population has lived in extreme poverty. In one case 80 per cent of the agricultural land was held by 2 per cent of the owners. The fertile farmlands were held by such wealthy owners, producing export crops while the mass of the rural poor pursued subsistence farming on uneconomic plots with poor soil. Many of the impoverished farmers and peasants, often illiterate, were forced to leave their lands with or without nominal compensation by the government, large landowners, or enterprises, and became farm workers or slum dwellers in cities without stable means to support their families. Social movements for the rural and the urban poor have led to conflicts between the poor and the rich, between the underprivileged and the privileged. Governments, often representing the interests of the privileged, have utilized the police force or private groups of individuals to suppress those movements. In some situations security forces and paramilitary groups, at the request of large landowners, have arbitrarily adopted violent means to expel people from their land, carried out arbitrary arrests, and destroyed the houses of small farmers who were involved in land disputes.

136. In the cities the majority of the population lived in extreme poverty in sharp contrast to the small minority who were rich. The government often took action against leaders of community movements in slums accusing them of "subversive activities".

137. This inequitable distribution of wealth is often along ethnic, tribal, racial or even religious lines. Those who hold power are often in turn a minority of these groups who identify their survival and economic and social progress with the holding of power to the exclusion of other groups. Political power is used not only to enable them to have access to the nation's wealth but also to deny other groups their due share and to suppress them when they want to assert their rights.

(b) Ethnic conflicts

138. In a number of countries certain ethnic groups were subjected to discrimination and violent attacks by the ethnic groups which held power in the government. In some countries, responding to secessionist movements or terrorist attacks by the ethnic minority members, the government took harsh measures against the ethnic minority as a whole. Tension between different ethnic groups, intensified by other conflicting factors of an economic and social nature, often lead to incidents of communal violence which causes deaths on a wide scale.

139. These situations can at times be exacerbated and a situation may arise in which an ethnic, tribal, racial or religious group feels that its survival is dependent on having an independent State of its own or a State within a federal structure where it can manage its own affairs. This is in most cases unacceptable to the government in power. Instead of dealing sensitively and positively with genuine grievances and trying to eliminate or alleviate the root causes, the government chooses the alternative of suppression, which in turn, leads to violence on both sides and consequent misery.

(c) Religious intolerance

140. In a number of situations, members of certain religious groups have been discriminated against, ostracized or charged as criminals. Members of those religious groups have often been accused of crimes, such as treason, espionage and assistance to the enemy. In some instances, where a government has adopted a certain religion as its official doctrine, it has often forced members of other religious groups to recant their faith, failing which they have been imprisoned, executed or otherwise discriminated against in the political and economic life of the nation.

(d) Racial discrimination

141. In some countries members of certain racial groups have been systematically and ruthlessly discriminated against by the government which represented another racial group. As protests against the discrimination were intensified, the government took harsh and often violent measures against the groups and individuals who were simply asserting and exercising their rights as human beings.

### III. CONCLUSIONS AND RECOMMENDATIONS

142. Developments since the submission of the last report have continued to bear out the factual trends described therein, namely that the practice of summary or arbitrary executions is still a widespread phenomenon in the contemporary international community and that respect for the right to life is far from being a universal reality. For the year 1983, the Special Rapporteur received reports of alleged summary or arbitrary executions involving thousands of persons, even if those who died as a result of anti-guerrilla or counter-insurgency measures that were not executed in accordance with international conventions are excluded.

143. The review of national legislation as analysed in chapter I above, although not exhaustive, shows a dichotomy between the constitutional and legislative provisions which safeguard the right to life, on the one hand, and the actual practice of States in which it is alleged summary or arbitrary executions are committed on the other. Whereas in some cases the national legislations are in conflict with the International Covenants and thus create or permit a situation in which summary or arbitrary executions can take place, in other cases, summary or arbitrary executions have in fact taken place despite safeguards of the right to life being meticulously stipulated in national legislations in conformity with the International Covenants. This applies particularly to those situations which are characterized as states of emergency, whether officially declared or not.

144. The information reviewed in chapter II shows that the situations in which summary or arbitrary executions occur are complex and involve multiple factors. In several instances, abuses of the right to life through arbitrary or summary executions are compounded by economic and social factors in addition to civil and political factors. The information set out in chapter II above illustrates the types of situations in which a combination of those factors can lead, and indeed has contributed, to the spread of the phenomenon of arbitrary or summary executions.

145. The Special Rapporteur has noted that the violation of the right to life through summary or arbitrary executions is the responsibility of State authorities or agencies in several instances. However, the information before the Special Rapporteur also indicates that non-respect of the right to life can be attributed to groups other than governments or quasi-governmental agencies.

146. The Human Rights Committee in its report to the thirty-sixth session of the United Nations General Assembly <sup>1/</sup> rightly emphasized the importance of the right to life even in times of emergency by stating:

"The Committee holds the view that measures taken under article 4 (of the International Covenant on Civil and Political Rights) are of an exceptional and temporary nature and may only last as long as the life of the nation concerned is threatened and that in times of emergency, the protection of human rights becomes all the more important particularly those rights from which no derogations can be made".

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<sup>1/</sup> Official Records of the General Assembly, Thirty-sixth Session, Supplement No.40 (A/36/40), Annex VII.



The Human Rights Committee has on another occasion stated: 2/

"The protection against arbitrary deprivation of life which is explicitly required by the third sentence of article 6 (1) is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also prevent arbitrary killings by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities".

147. One disturbing feature that the Special Rapporteur has noted is the increase in summary or arbitrary executions which are not exclusively politically motivated but which are the result of campaigns to curb a rising crime rate.

148. In view of the continuing gravity and scale of the phenomenon of summary or arbitrary executions, the Special Rapporteur wishes to reiterate the conclusions and recommendations of his first report which continue to retain their validity and relevance for future action. It is the deep conviction of the Special Rapporteur that the Commission should continue to have a mechanism to monitor practices or situations of summary or arbitrary executions, priority being given to those situations where there is an imminent or threatened summary or arbitrary execution.

149. There is also a need for continued study of this phenomenon with special attention being given, on an ongoing basis, to ways and means of reducing and eliminating this abhorrent practice. In this regard, the need for periodic reporting by Governments on their efforts to give effective protection to the right to life could be given consideration. The experience gained by the Special Rapporteur indicates that this is a matter that the Commission should keep under review at all times, rather than just for a limited period.

150. The Special Rapporteur would like to single out for special mention the importance of ensuring that Governments are aware of and support the letter and spirit of the said provisions and are committed to upholding them in their legislations and in practice, and, further, that law enforcement, military and paramilitary officials are placed under their effective control, so as to ensure that excesses cannot take place without the Government's knowledge or outside its control. The Special Rapporteur would therefore strongly recommend that consideration be given to ways and means of enforcing the discipline of law enforcement, military and paramilitary personnel and bringing them under effective control in order to minimize the risks of arbitrary and summary executions taking place. Perhaps this could be examined by the United Nations Committee on Crime Prevention and Control or by the forthcoming United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The Commission may also wish to invite INTERPOL to examine the role it could play in this regard either on its own or in conjunction with the United Nations.

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2/ Ibid., Thirty-seventh Session, Supplement No.40 (A/37/40), Annex V.

151. As part of the process of mobilization the United Nations Department of Public Information could convene a high-level meeting of editors from different regions of the world to examine and strengthen the role of the press and the mass media in combating summary and arbitrary executions.

152. The Special Rapporteur feels strongly that an all-out international mobilization of efforts is required in order to bring summary or arbitrary executions to a halt. As part of this process of mobilization to protect the most fundamental of all human rights, the right to life, it would seem desirable for the United Nations to launch a concerted campaign against summary and arbitrary executions, drawing upon the endeavours of Governments, specialized agencies, regional intergovernmental organizations, non-governmental organizations and the general public.

Annex I

ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1983/36

Summary or arbitrary executions

The Economic and Social Council,

Recalling the Universal Declaration of Human Rights, which guarantees the right to life, liberty and security of person,

Having regard to the provisions of the International Covenant on Civil and Political Rights, which states that every human being has the inherent right to life, that this right shall be protected by law and that no one shall be arbitrarily deprived of his life,

Recalling General Assembly resolution 34/175 of 17 December 1979, in which the Assembly reaffirmed that mass and flagrant violations of human rights were of special concern to the United Nations and urged the Commission on Human Rights to take timely and effective action in existing and future cases of mass and flagrant violations of human rights,

Mindful of General Assembly resolutions 36/22 of 9 November 1981 and 37/182 of 17 December 1982, in which the Assembly condemned the practice of summary and arbitrary executions,

Bearing in mind resolution 5 of 5 September 1980 on extra-legal executions adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Taking note of resolutions 1982/10 and 1982/13 of 7 September 1982 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in which the Sub-Commission recommended that effective measures should be adopted to prevent the occurrence of summary and arbitrary executions, including extra-legal executions,

Deeply alarmed about the occurrence on a large scale of summary or arbitrary executions, including extra-legal executions,

Convinced of the need to continue to deal urgently with the question of summary or arbitrary executions, including extra-legal executions,

1. Strongly deplores, once again, the increasing number of summary or arbitrary executions, including extra-legal executions, which continue to take place in various parts of the world;
2. Appeals urgently to Governments, United Nations bodies, the specialized agencies, regional intergovernmental organizations and non-governmental and humanitarian organizations to take effective action to combat and eliminate summary or arbitrary executions, including extra-legal executions;
3. Takes note of the report of the Special Rapporteur, Mr. S.A. Wako, submitted in accordance with Council resolution 1982/35 of 7 May 1982;
4. Decides to continue the mandate of the Special Rapporteur, Mr. S.A. Wako, for another year;

5. Requests the Special Rapporteur to review his report in the light of the information received, taking particularly into account any new information, including relevant internal legislation, provided by concerned Governments as well as views expressed in the Commission on Human Rights at its thirty-ninth session and to submit a report to the Commission at its fortieth session;

6. Considers that the Special Rapporteur in carrying out his mandate, should continue to seek and receive information from Governments, United Nations bodies, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council;

7. Expresses its appreciation to those Governments that have extended invitations to the Special Rapporteur to visit their respective countries and urges the Special Rapporteur to respond positively to such invitations;

8. Urges all Governments and all others concerned to co-operate with and assist the Special Rapporteur;

9. Requests the Secretary-General to provide all necessary assistance to the Special Rapporteur;

10. Decides that the Commission on Human Rights should consider the question of summary or arbitrary executions as a matter of high priority at its fortieth session under the item entitled "Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories".

Annex II

NOTES VERBALES SENT TO GOVERNMENTS

Note verbale dated 29 July 1983 sent to Governments which replied to the requests for information sent in 1982

and has the pleasure to convey to His Excellency's Government, the appreciation of the Special Rapporteur of the Commission on Human Rights on Summary or Arbitrary Executions, Mr. S. Amos Wako for the co-operation extended to him by His Excellency's Government in putting information at his disposal and the constructive and valuable contribution made on his first Report (E/CN.4/1983/16 and Add.1 copy attached) during its consideration by the Commission on Human Rights at its thirty-ninth session.

The Secretary-General has the honour to refer to the Economic and Social Council resolution 1983/36 entitled "Summary or Arbitrary Executions". A copy of this resolution is attached to this note verbale. By this resolution, the Council decided to continue the mandate of the said Special Rapporteur for one year. The Special Rapporteur was requested to review his report, taking particularly into account any new information including relevant internal legislation. Any information in the possession of His Excellency's Government relevant to his subject, in addition to that already communicated to the Special Rapporteur would be most appreciated. Such information should if possible include the following:

- (a) Information and observations on the occurrence, extent and current trends regarding summary or arbitrary executions wherever they may have occurred or are occurring.
- (b) Comprehensive information on legislation and any judicial decisions concerning:
  - guarantees and procedures relevant to the decision to execute or kill a person by ordinary courts, special courts or law enforcement agencies including the military in all types of situations whether during peace time or states of emergency.
  - when the executive or any other body may detain or hold a person in custody and the rights of a person so held.
  - the structure and composition of and appointment to such courts or tribunals.
- (c) Policies and measures taken by His Excellency's Government to ensure that such guarantees, procedures and the exercise of such powers are correctly followed.
- (d) Suggestions of short and long term measures which should be taken at local and international level to combat effectively this phenomena of summary or arbitrary executions.

(e) Comments and views on matters raised in the recommendations of the first report and in particular paragraphs 225, 226 and 230 of the said report and your detailed recommendations on these matters.

The Special Rapporteur intends to review the information received in response to this note during the second half of October 1983; he will complete his report to the Commission on Human Rights in accordance with the aforementioned resolution during the first half of January 1984. The Special Rapporteur would therefore be most grateful if His Excellency's Government were to formulate any reply taking this programme into account.

Note verbale dated 29 July 1983 sent to Governments which did not reply to the requests for information sent in 1982

...  
and has the honour to refer to Economic and Social Council resolutions 1982/35 and 1983/36 entitled "Summary or Arbitrary Executions". A copy of each of these resolutions is attached to this note verbale. By this resolution the Council decided to continue the mandate of the Special Rapporteur Mr. S. Amos Wako, for another year. It requested the Special Rapporteur to review his report (E/CN.4/1983/16 and Add.1), which was submitted to the Commission at its thirty-ninth session (a copy of which is attached hereto) in the light of the information received, taking particularly into account any new information including relevant internal legislation and to submit a report to the Commission at its fortieth session. Any new information in the possession of His Excellency's Government that may be relevant to this subject, would be very much appreciated. Such information should, if possible, include the following points:

(a) Information and observations on the occurrence and extent regarding summary or arbitrary executions wherever they may have occurred or are occurring.

(b) Information on constitutional, legislative and administrative measures which set out guarantees and procedures relevant to a decision to execute a person or persons by the judiciary and special tribunals and courts such as military tribunals, revolutionary courts, peoples' courts etc., including inter alia:

- the competence of the courts, tribunals, etc.;
- independence of the courts, tribunals, etc.;
- whether evidence obtained in a manner contrary to national and/or international law is admissible;
- publicity of trials and verdicts;
- procedures and relevant substantive rules under states of emergency, exceptions, siege, armed conflict, etc.

(c) Information on constitutional, legislative and administrative measures which set out guarantees and procedures relevant to a decision to execute or kill a person or persons by the executive, including law enforcement agencies, members of armed and paramilitary forces and other governmental officials or agents as well as information on constitutional, legislative and administrative measures relevant to situations in which executions or killings are probable.

Such information could include inter alia:

- rules concerning the application of force by the executive and/or the bodies or persons mentioned above;

- rules and procedures for the protection of detainees and other persons in custody, including the possibility of holding detainees and other persons in custody incommunicado;
- procedures and relevant substantive rules under states of emergency, exception, siege, armed conflict etc.

(d) Policies and measures taken to enforce the guarantees and procedures set out in (b) and (c) above, including any judicial decisions.

(e) Suggestions on the policies and measures that should be taken at the local and international levels to prevent summary and arbitrary executions.

(f) Comments, views and suggestions on matters raised in the recommendations of the first report and in particular paragraphs 225, 226 and 230 of the said report and your detailed recommendations on these matters.

The Special Rapporteur intends to review the information received in response to this note during the second half of October 1983; he will complete his report to the Commission on Human Rights in accordance with the aforementioned resolution during the first half of January 1984. The Special Rapporteur would therefore be most grateful if His Excellency's Government were to formulate any reply taking this programme into account.



Annex III

LETTERS FROM THE SPECIAL RAPPORTEUR TO GOVERNMENTS

Letter dated 8 November 1983 from the Special Rapporteur to the Governments  
which replied to the requests for information sent in 1982

Dear Mr. Ambassador,

I have the honour to refer to Economic and Social Council resolution 1983/36 of 27 May 1983 by which my mandate as Special Rapporteur of the Commission on Human Rights on Summary or Arbitrary Executions was renewed. By this resolution I am requested, in operative paragraph 5:

"to review [my] report in the light of the information received, taking particularly into account any new information, including relevant internal legislation, provided by concerned Governments as well as views expressed in the Commission at its thirty-ninth session and to submit a report to the Commission at its fortieth session" (operative paragraph 5).

I am of the opinion that my report should include a description of the various safeguards and arrangements existing in national legislation for the purpose of protecting the right to life.

In this connection I note with appreciation that Your Excellency's Government had furnished such information in response to previous requests. This information has proved to be most useful in the updating of my report as requested by the Council.

I would be grateful if Your Excellency's Government were to transmit any additional information, if possible, by 31 December 1983 concerning legislation prevailing in your country. It is my intention to complete my report to the Commission by mid-January 1984 and I remain available to Your Excellency's Government should any further clarification be desired.

Please accept, Mr. Ambassador, the assurances of my highest consideration.

(Signed) S. Amos Wako  
Special Rapporteur of the  
Commission on Human Rights on  
Summary or Arbitrary Executions

Letter dated 8 November 1983 from the Special Rapporteur to the Governments  
which did not reply to the requests for information sent in 1982

Dear Mr. Ambassador,

I have the honour to refer to Economic and Social Council resolution 1983/36 of 27 May 1983 by which my mandate as Special Rapporteur of the Commission on Human Rights on Summary or Arbitrary Executions was renewed. By this resolution I am requested, in operative paragraph 5:

"to review [my] report in the light of the information received, taking particularly into account any new information, including relevant internal legislation, provided by concerned Governments as well as views expressed in the Commission at its thirty-ninth session and to submit a report to the Commission at its fortieth session" (operative paragraph 5).

I am of the opinion that my report should include a description of the various safeguards and arrangements existing in national legislation for the purpose of protecting the right to life.

In this connection I note that no information on such legislation has been received from Your Excellency's Government in response to the requests contained in the notes verbale of 17 September 1982 and of 29 July 1983. Since I consider that such information coming from Your Excellency's Government would be most valuable in the preparation of my report I would be grateful to receive whatever information on the subject that may be provided at your earliest convenience and, if possible, by 31 December 1983.

You may wish to note that it is my intention to complete my report to the Commission by mid-January 1984 and I remain available to Your Excellency's Government should any further clarification be desired.

Please accept, Mr. Ambassador, the assurances of my highest consideration.

(Signed) S. Amos Wako  
Special Rapporteur of the  
Commission on Human Rights on  
Summary or Arbitrary Executions

Annex IVSTATEMENT MADE BY THE PERMANENT REPRESENTATIVE  
OF BURUNDI AT THE THIRTY-NINTH SESSION OF THE  
COMMISSION ON HUMAN RIGHTS ON 4 MARCH 1983

[Original: FRENCH]

Mr. President,

Veneration for the fundamental human rights and freedoms, foremost among which is the right to life, is deeply ingrained in the people and Government of Burundi.

The sanctification of human rights in Burundi has reached new heights since the proclamation of the Second Republic on 1 November 1976. The regime instituted by that proclamation surpasses its predecessors by the strength of its attachment to the humanitarian ideals professed and pursued by the United Nations.

These two factors are an encouragement to our Government to comply with the hope expressed by the Secretary-General of the United Nations in his letter G/SO 214(33), of 14 January 1983. We intend to do so fully and unambiguously.

In the section of his report that deals with Burundi, the Special Rapporteur refers to his receipt of a number of reports containing allegations of summary or arbitrary executions that were transmitted to the Government of Burundi on 14 January 1983.

The Permanent Mission of the Republic of Burundi contacted the Centre for Human Rights at the Palais des Nations immediately following the receipt of that document. We did so in order to engage in a direct dialogue with Mr. S. Amos Wako, the Special Rapporteur, and in preliminary discussions aimed at eliciting the clarifications we felt to be necessary. We have been unable to reply until now because of the Special Rapporteur's absence from Geneva.

Thanks to my meeting with Mr. Wako the day following his arrival in Geneva, and in the light of the explanations he kindly provided concerning the content of his report, the Government of Burundi herewith submits the verifiable facts of the case.

It requires but a moment's thought, to realize the impact of the document in question on our country's reputation. In a word, it casts a shadow over Burundi's brilliant history of protection for human rights and safeguarding of individual and collective security.

We should like to begin by dispelling all uncertainty as to the "information" transmitted to the Government of Burundi via the Permanent Mission.

The only allegations of which we were informed appear on page 18 of a report issued in 1972 by Amnesty International.

The Special Rapporteur will, I am sure, be kind enough to provide us with further details. Does Mr. Wako have, in addition to the information from Amnesty International referring to a now-distant period, accusations against Burundi emanating from other sources and covering more recent times? If so, we should be grateful if he would communicate them to us. If not, we shall be obliged to seek clarification from him as soon as we have completed our statement at this meeting.

Our statement will focus on two conflicting factors. On the one hand, the creation of a situation of which the premises call in question, not to say falsify, circumstances in Burundi. On the other hand, the need for Burundi to invoke the right to the restoration of its honour, which the assertions made in the report submitted to the Commission on Human Rights, perhaps in good faith, have compromised. The detrimental effects of the document in question for Burundi will cease only with the verification of the treatment really accorded to the human beings of whom the present Regime has the charge.

We hereby invite the Commission to give the closest scrutiny to every section of this speech in defence of our country's good name.

It goes without saying that we are aware of the legal maxim "nemo iudex in causa sua" (no-one may be judge in his own cause). We wish, however, to invoke another generally-accepted legal rule, to the effect "ut audiatur et altera pars" (hear the other side).

Our first point is that a comparison must be made between the circumstances that actually prevail in Burundi and the allegations made against our country.

For the reconciliation of those two antinomous cases, Burundi proposes and would welcome a close and objective examination of the prevailing situation by the United Nations and other organizations of a truly humanitarian calling, that is to say, organizations whose views are exempt from bias and dogma.

Now that we have, with no trace of tergiversation, declared our total determination to co-operate fully with all the competent United Nations organs in re-establishing the truth, it is time for us to address the essence of the following points:

- (i) The procedure;
- (ii) The discrepancy between the period that the United Nations had in mind and the bar that applies in the case of Burundi;
- (iii) The authentic facts;
  1. Events during the first decade of national independence;
  2. The present circumstances in Burundi;
- (iv) Official exoneration of Burundi or disclosure of objectively conclusive evidence.

#### I. The procedure

In view of the exceptional value that attaches to the good name of a State or political regime, a nation or a people, the Government of Burundi is of the opinion that the greatest caution is required in investigations where that good name is at stake.

That entails, as regards written records, refraining from all hasty assumptions or mere cross-checking on the basis of potentially misleading testimony or information.

However hypothetical or questioning the manner of its expression, any element incorporated in documents of such importance already constitutes an assertion or creates a doubt that may undermine the credibility of a country which does not necessarily deserve to be penalized in that way or to suffer such a fate.

In the opinion of Burundi, the procedure most appropriate for obviating such an eventuality, for forestalling all unwarranted allegations, consists in first comparing the information obtained by the Special Rapporteur with that put forward by the Government under suspicion.

Although the paragraph in question clearly contains neither a substantiated judgement nor a mere expression of opinion, it remains true that the very fact of having, to however slight a degree, mentioned cases reduced to the level of mere hypotheses has given rise to unjustified suspicions against Burundi. That damage could have been avoided if someone had taken the trouble to check the situation through dialogue with the Permanent Mission; if there had then been obstructive behaviour, evasive replies or a refusal to co-operate, the publication of information gleaned from third sources would have been justified.

The approach that we advocate revives the virtues of discreet diplomacy and has the merit of sparing States beyond all shadow of a doubt the damage that results from yielding to the temptation of more ostentatious procedures. It is, moreover, in keeping with the diplomatic methods upheld by H.E. Mr. Perez de Cuellar, the Secretary-General of our Organization.

II. The discrepancy between the period that the United Nations had in mind and the bar that applies in the case of Burundi

It is quite clear that, as indicated in paragraph 71 of the report in question, that document was intended to cover the period from the end of 1980 to the present. The choice of that period coincides with the wishes of the General Assembly and the other United Nations organs, including the Commission on Human Rights. It corresponds to the point at which they started taking a keen interest in "summary or arbitrary executions as phenomena in themselves".

That being so, the report departs from its terms of reference, particularly as regards time. By so exceeding the prescribed limits, it treats the case of Burundi differently from others - if, indeed, there are any situations to be investigated at all.

We shall refute the allegations by Amnesty International, even though they manifestly fall outside the bounds set by the General Assembly and, since they concern 1972, are time-barred in relation to the period for which the General Assembly issued instructions and that it intended should be studied.

The allegations are, therefore, invalid and cannot be the subject of an investigation supposed to cover the past two years. As for the present situation, there could be no plainer proof of the scrupulous respect for human rights in Burundi than the manifest absence of revelations by the same Amnesty International, which, although there is no reason to suppose that it would be any more kindly disposed or less severe towards our country than in the past, reports not even the slightest anomaly in the conduct of the Government of Burundi for 1981 or 1982.

### III. The authentic facts

Although the unjustified complaints made against Burundi fall outside the period under review by the United Nations, our Government is determined to resolve them by shedding the necessary light on the circumstances and by situating them in their context. If the true situation in Burundi is to be adequately illustrated, a distinction must be made between two successive phases:

#### 1. The first decade of national independence

A national crisis broke out in 1972. Its principal causes were totally alien to Burundi. There is no need to go into details that would only be irrelevant. Those who so exaggerate the number of victims would be forced to admit the absolute impossibility of producing plausible evidence in support of their assertions. Such sources confuse the approximations that are so often fallacious with mathematical precision. Amnesty International's logic becomes simply impenetrable when that organization attributes ethnic motives to the disappearance of nationals.

The instigators of internal rivalry in Burundi have not capitulated. They are striving to interfere in our internal affairs not only by raising the bugbear of foreign-controlled ethnocentrism, but also more surreptitiously, through the lure of dazzling advantages.

An examination of the social substratum of Burundi will reveal the incontrovertible existence of a Nation exempt from all trace of ethnic heterogeneity. Scientifically, and therefore sociologically, ethnic groups are distinguished by culture, religion, life-style, linguistic traits, a geographical demarcation line, etc. Disparities in these spheres are totally alien to the Nation of Burundi, whose constituent elements adhere to a common civilization, share a common culture, worship the same Iman Y'Burundi (the God of Burundi).

This postulate is borne out by the fact that the Burundi Nation speaks one single language, Kirundi, with no dialect or variants; that is a virtually unique phenomenon in Africa for a country with a population of close to 5 million. Moreover, Burundis subject to the same economic and social conditions are intermingled as chance or individual welfare dictates, with a total absence of ethnic, geographical or institutional frontiers (that is, frontiers decreed by the authorities).

The civilization of the people of Burundi is unusual in that all citizens have an identical life-style. Prior to the introduction of Christianity towards the end of the last century - prior, therefore, to all contact with the Christian faith - the Burundis had, in the cult of a Supreme Being, monotheistic religious beliefs that were the same for all. Those factors combined constituted the sturdy pillars and the imperishable cement that underpinned their indissoluble unity.

Given this information, you will readily be able to unmask the sinister designs behind the stories put about concerning the people of Burundi. The inadmissible aim of their authors is to undermine the country by creating artificial divisions through such means as livestock censuses or references to the morphological characteristics of Burundis.

The concrete expression of this policy of division was the sponsoring by foreign circles of 24 political parties throughout the period leading up to the campaign for the general elections of 1961 and the campaign itself. In those elections, the Unity and National Progress Party (UPRONA), despite systematic harassment by the authorities of the time, won a resounding victory over its rivals by gaining 58 of the 64 seats.

In percentage terms, this nationalist party won nationwide political representivity by attracting 97 per cent of the votes cast in a secret ballot by direct universal suffrage that was open to all Burundis of either sex aged 18 or over. It should be noted that, since Burundi was at the time a Belgian trust territory, those elections were held under the auspices of the United Nations.

In giving the Unity and National Progress Party its historic score, the people did not vote under the impulse of tribal allegiance, but for the patriotic ideals which the Party embodied.

Correspondence between the human monolithism and the political homogeneity of Burundi

There is in the case of Burundi a certain correspondence between the monolithic nature of the Burundi Nation (absence of tribes) and its political homogeneity (a single party). This homogeneity is a matter of popular choice: it is the result of a massive expression of support by Burundi voters in national elections held with the full knowledge of the Administering Authority, Belgium, and of the United Nations.

The human symbiosis that characterizes Burundi society and the Burundi Nation contrasts strikingly with the virtually automatic tendency of those who live on a diet of clichés and prejudices constantly to attribute the vicissitudes of African life to tribal conflict. As if there was an invariable and immutable equation between the causes of the crises that occur in all countries in that continent. To take such a view of life in Africa is to ignore the originality and specificity of the variable national contingencies in favour of generalization and subjectivization.

During the first decade of our national independence, that is from 1962 to 1972, there were regrettable events, that alas, occasioned loss of life for various reasons.

The year 1972 was marked by the crystallization of the egocentric ideas and sentiments injected from abroad into certain nationals. As adherents to a line incompatible with the mentality and the social substratum of the Nation, those persons encountered strong resistance to their attempt to eliminate a section of the people. The machinations of the authors of the exterminatory plot were thwarted by the people itself.

It goes without saying that, by sowing panic among the population, the aggressors placed themselves in a position of the gravest danger. Whether it was to ensure their individual survival or their collective safety, the targets of the aggression resisted the violent assaults of their attackers. This resulted in numerous deaths on both sides.

Furthermore, the scale of the disturbances was such that the Burundi armed forces and the national youth movement against which Amnesty International has made its accusations were far from engaging in any selective process on the basis of ethnic origin. Our army, conscious of its sacred mission to save the nation, displayed exemplary conduct. For it, ethnic identity had no place among the criteria employed in establishing guilt. The guilty were judged according to their own acts and not on any other consideration.

In view of that dual operation by the population and the security forces, the loss of life can only be seen, not as the result of cold calculation on the part of any government organ, but as the consequence of events that got out of hand. In many cases, the people's anger was such that the leaders of what was an attempt that came close to genocide did not pass through the usual legal machinery, but were the objects of direct popular revenge. The public would have seen any other procedure as equivalent to leniency towards the conspirators on the part of the keepers of public order.

The people of Burundi are, indeed, so strongly attached to peace that they have scant patience with those who disturb it. That being so, the sole explanation for any sporadic excesses lies in citizens' firm determination to eradicate disruptive influences.

The civilization of Burundi is marked by visceral revulsion for cruelty and by the utmost reverence for human values. In the general panic provoked by threats to their lives, stampeding crowds and overworked security forces cannot prevent tragic consequences even when, as was the case, there is no organized scheme of deliberate killing.

Thus, in those areas of the country where there were attacks on peaceful inhabitants, the people rose up in their own defence. In other cases where the police force rushed to the aid of the victims of aggression, its first duty was to disarm or to disable the assailants. Any severity there may have been during this tragic period was motivated solely by a concern to safeguard and consolidate a national harmony going back several thousands of years.

Had it not been for the revival by the allegations of Amnesty International of situations now more than a decade old, we would have spared the Commission on Human Rights and the United Nations this treatise concerning the distressing events in our country. To our mind, Amnesty International's aim in evoking them is to reopen an old wound. That being so, we cannot but ask ourselves what are the real intentions of those who take pleasure in resuscitating a problem that is now a matter of past history.

As we see it, the objective set for Mr. Wako is not to assemble all the facts nor to evoke all the past events that foreign circles have, rightly or wrongly, dubbed bloody or mass executions. Such an undertaking would serve only to reawaken sterile and destructive animosity and resentment.

In any case, if such were the attitude and approach of the Special Rapporteur or of Amnesty International, we should have to claim for Burundi the right to the same treatment as other countries. What would that mean? Well, while we would not wish to single out any particular country, we would have to say if all previous situations were to be taken into consideration irrespective of when they occurred,



that cases out of all proportion to that of Burundi have arisen and persisted in many regions of our planet. Should they be re-examined, enumerated and displayed once again to the eyes of the world? Such a retrospect would not be without risk. The approach, then, is not one that can be applied solely to Burundi.

What the General Assembly had in mind in its resolution 35/172 are cases that occurred in the recent past (since the end of 1980) or are still topical. The purpose in revealing them is not to transform the United Nations into a sort of universal public prosecutor or omnipresent secular arm for the pursuit of revenge. On the contrary, this universal Organization seeks to discover facts and, by taking them to their source, to determine their causes and then help to remedy them by employing its good offices of conciliation and persuasion - if necessary, among all the parties involved, but first and foremost with States.

## 2. The sanctification of human rights by the Second Republic of Burundi

We shall now consider the case of such abuses as may have been committed under the regimes preceding the present Republic, that was proclaimed on 1 November 1976. No doubt has been expressed concerning the present regime's succession to its two predecessors under the rules of international law that govern the concept of the State and ensure its perpetuity. Those legal principles would, however, be invalid if there had been infringements of fundamental human rights. In that respect, the Second Republic, rather than assume responsibility for wrongs it disapproved, has espoused the clean slate principle.

It considers that the institution of a new order in 1976 signified a complete break with earlier acts of State contrary to the welfare of society.

A new order having replaced the old and negligence or irresponsibility with respect to the protection of citizens' lives having been among the primary causes of the fall of the previous governments, the eradication of the causes of anomalies or abuses has been a priority objective in the legal instruments of the present regime.

On 1 November 1976, a day marked by total absence not only of bloodshed but also of political arrests and by singularly considerate conduct towards the ex-holders of power, none of the authorities was troubled either in his person or in his property. Moved by a spirit of dignity and magnanimity, the agents of change incorporated virtually all the former high officials in the new system. The army and the people, being of like mind and aspiring to the same objective, chose as the Head of State Colonel Jean-Baptiste Bagaza. He has been presiding over the fate of the nation for six years, during which period profound changes have occurred in the mechanisms of State and in Burundi society. The first National Congress of the Unity and Progress Party ratified the army's decision by appointing Colonel Bagaza head of the Party and by conferring upon him a presidential mandate running for five years from December 1979. The people adopted by referendum a Constitution tailored to national contingencies, realities, attitudes, needs and aspirations.

The process of democratization reached its peak with the legislative elections of October 1982. The unicameral National Assembly resulting from that uninominal ballot is already at work. This information constitutes a detailed rebuttal of the biased theorists who have displayed such ingenuity in pronouncing on incurable internal problems.

Prejudicial actions are doomed to nullity and all reminders of them in the old legal and political order will remain devoid of succession. Burundi society has changed its legal status. This change is, as has just been shown, reflected in the performance of the Party and the Government.

V. Official exoneration of Burundi or disclosure of objectively conclusive evidence

The political and social conditions that prevail in Burundi are an encouragement to visits to the country by large numbers of high officials from governments, the world of business and international organizations. Those people can testify to the full enjoyment of human rights by all citizens. Although they come from varying social and professional backgrounds, their opinions on conditions in the country coincide.

Whereas violations were formerly possible, as a result either of the actions of persons beyond the control of the authorities or of the exploitation by officials of the powerlessness of the government, not one single act of violence has been recorded from one end to the other of the national territory since the institution of the Second Republic in 1976. The setting in motion of the machinery of democratization makes impossible the recurrence even of simple excesses of the kind that have, in the past, been denounced as culpable acts.

Although the report submitted to the Commission is, on the face of it, inoffensive, since its contents are limited to allusion and probability, it represents a danger that cannot be ignored. Being presented under the guise of a likely account of events, it may be taken for the truth by the credulous or by persons of good faith. It is all the more dangerous as it remains strikingly silent concerning the present Republic's genuinely impressive record in the sanctification of human rights.

It would have been normal, to say the least, if those charged with investigating our country had bowed to the obvious truth and recognized to the new regime the merit it has so undeniably won by its overriding concern for the consolidation of the peace and security of all nationals. As the document is likely to sustain confusion and leave doubt hanging in the air, the Burundi Government believes that the situation must be fully elucidated.

To this end it proposes:

1. The opening of Burundi to every manner of verification of the status of human rights, including visits by those desirous of dispelling all doubt in that respect;

2. That, if the information and evidence provided by ourselves or by other objective and impartial sources dispels all doubt and attests to the truth of the situation, Burundi should, as seems to us essential after the compromising of the country by the Wako report, be rehabilitated and exonerated by the international circulation of an official United Nations document to alleviate the effects of the allegations contained in that report.

Defamatory publications persist year-in year-out in efforts to tarnish Burundi's reputation. Such disparagement maintains in bad odour a country which, in many respects, deserves nothing but admiration and esteem. It is high time that country was accorded the standing in international public opinion that it so richly deserves.

Even now, when our Republic's exemplary performance in support of human life deserves general praise, allegations are made against Burundi that are as anachronistic as they are distorted.

In order that such fabrications may be quashed once and for all, Burundi undertakes to do nothing whatsoever that will prevent the public demonstration of the facts through the application of the fitting solutions that have been offered to the United Nations on the initiative of our Government.

Annex VCOMMUNICATION FROM THE GOVERNMENT OF THE PHILIPPINES IN REGARD TO STATEMENTS  
CONTAINED IN THE PREVIOUS REPORT

[1 March 1983]

I wish to refer to paragraphs 191, 192 and 193 of document No. E/CN.4/1983/16 entitled "Summary or Arbitrary Executions" and invite attention to the contents of the attached communication dated 17 February 1983 from the Philippine Government addressed to the Assistant Secretary-General, Centre for Human Rights on the comments of the Philippine Government pursuant to Economic and Social Council Resolution 1982/35 on "Summary or Arbitrary Executions".

The cases referred to in the note dated 19 November 1982 from the United Nations Secretary-General should be viewed in the context of the principles contained in the attached communication, particularly on the non-existence and unconstitutionality of summary or arbitrary executions. In support of the foregoing principles, I wish to refer to the summary of constitutional and statutory provisions embodied in the fundamental law and relevant legislations of the Philippines transmitted to the Centre in the aforementioned communication of 17 February 1983.

The aforementioned cases are nevertheless under study by the Philippine Government and replies relating to the specific cases shall be forwarded in due time. It is the hope of the Philippine Government that the United Nations Secretariat share the view on the need for ample time to consider such specific cases.

The Philippine Government would wish to request that this preliminary report be published as revisions to paragraphs 191, 192 and 193 of document E/CN.4/1983/16.

(Signed) Hortencio J. BRILLANTES  
Permanent Representative

[17 February 1983]

I have the honour to submit hereunder the comments of the Philippine Government on the occurrence and extent of the practice of summary or arbitrary executions requested by the United Nations Secretary-General pursuant to Economic and Social Council Resolution No. 1982/35 entitled "Summary or Arbitrary Executions," to wit:

Arbitrary and summary executions do not exist in the Philippines. Constitutional and statutory provisions do not allow this type of penalty which is contrary to the basic requirements of due process of law and Constitutional prohibitions against cruel and unusual punishment.

The death penalty can only be imposed after judicial proceeding where all the rights of the accused are protected. The jurisdiction to affirm a death penalty is constitutionally vested in the Supreme Court which is the highest tribunal in the country. The authority of the Supreme Court to review cases where death penalty has been imposed is automatic. The Constitution furthermore empowers the President to commute a judicial death penalty or pardon the convict.

There are at present 635 male and six female convicts. The last execution of a death convict was in 1976.

The following are constitutional provisions and legislative and administrative measures that prevent arbitrary and summary executions:

In the Constitution of the Philippines

1. Article IV on the "BILL OF RIGHTS"

"SEC. 17. No person shall be held to answer for a criminal offence without due process of law.

"SEC. 18. All persons except those charged with capital offences when evidence of guilt is strong, shall before conviction, be bailable by sufficient sureties. Excessive bail shall not be required. (Underscoring supplied).

"SEC. 19. In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustified." (Underscoring supplied).

"SEC. 20. No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offence shall have the right to remain silent and to counsel and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence." (Underscoring supplied).

"SEC. 21. Excessive fines shall not be imposed, nor cruel or unusual punishment inflicted." (Underscoring supplied).

"SEC. 22. No person shall be twice put in jeopardy of punishment for the same offence. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act."

"SEC. 23. Free access to the courts shall not be denied to any person by reason of "poverty". (Underscoring supplied).

Under the above-quoted provisions of the Constitution of the Philippines, the rights of the accused may be summarized as follows: (1) the right to due process of law; (2) the right to bail; (3) the right to be presumed innocent until proven otherwise; (4) the right to be heard by himself and counsel; (5) the right to be informed of the nature and cause of the accusation against him; (6) the right to speedy, impartial and public trial; (7) the right to meet the witnesses face to face; (8) the right to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf; (9) the right against self-incrimination; (10) the right against excessive fines; (11) the right against cruel and unusual punishment; (12) the right against double jeopardy; and (13) the right against denial of free access to the courts by reason of poverty.

2. Article VII on "THE PRESIDENT"

"SEC. 11. The President may, except in cases of impeachment, grant reprieves, commutations and pardons, remit fines and forfeitures and, with concurrence of the Batasang Pambansa, grant amnesty." (Underscoring supplied).

Section 11, above-quoted, authorizes the President, except in cases of impeachment, to grant reprieves, commutations and pardons and, with the concurrence of the Batasang Pambansa, to grant amnesty.

3. Article X on "THE JUDICIARY"

"SEC. 5. The Supreme Court shall have the following powers:

.....

(2) Review and revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and decrees of inferior courts in -

.....

(d) All criminal cases in which the penalty imposed is death or life imprisonment." (Underscoring supplied).

Section 5, Article X of the Philippine Constitution, as amended likewise above-quoted, authorizes the Supreme Court, inter alia, to review and revise, reverse, modify or affirm on appeal or certiorari, as the laws or the Rules of Court may provide, final judgments and decrees of inferior courts in all criminal cases in which the penalty imposed is death or life imprisonment.

On the Revised Rules of Court

Rule 122 on "APPEAL"

"SEC. 7. Transcribing and filing notes of stenographic reporter upon appeal. When notice of appeal is filed by the defendant the trial court shall direct the stenographic reporter to transcribe his notes of proceedings. When filed by the People of the Philippines the trial court shall direct the stenographic reporter to transcribe such portion of his notes of the proceedings as the Court, upon motion shall specify in writing. The stenographer shall certify to the correctness of the notes and the transcript thereof which shall consist of the original and four copies and shall file the original and four copies of the transcript with the clerk without unnecessary delay.

In case the death penalty is imposed, the stencographer shall within thirty (30) days after rendition or promulgation of the sentence, file the original and four copies of the duly certified transcript of his notes of the proceedings with the clerk, whether the defendant has appealed or not. No extension of the time for the filing of said transcript or stenographic notes shall be granted except by the Supreme Court and solely upon justifiable grounds. (As amended by Resolution of the Supreme Court, dated 5 September 1967).

The same rule shall apply to appealed cases wherein the penalty of life imprisonment (reclusion perpetua) has been imposed. (Underscoring supplied).

"SEC. 9. Transmission of record in cases of death penalty or life imprisonment. The records of all cases in which the death penalty shall have been imposed by a Court of First Instance, whether the defendant shall have appealed or not, shall be forwarded to the Supreme Court for review and judgment as law and justice shall dictate. The record of such cases shall be forwarded to the clerk to the Supreme Court within twenty (20) days, but not earlier than fifteen (15) days, after rendition or promulgation of the sentence in the form prescribed by Section 11 of Rule 41. The transcript shall also be forwarded as provided in Section 12 of Rule 41 within five (5) days after the filing thereof by the stenographer. (As amended by Resolution of the Supreme Court, dated 5 September 1967).

The same rule shall apply to appealed cases wherein the penalty of life imprisonment (reclusion perpetua) has been imposed." (Underscoring supplied).

The second paragraph of Section 7, Revised Rules of Court, above-quoted, directs that where the death penalty is imposed, transcription of the stenographic notes taken at the trial shall be compulsory whether the accused appeals or not. This is because where the death penalty is imposed, review of the case by the Supreme Court is automatic. It is to ensure the correctness of the decision of the trial court sentencing him to death. The Supreme Court under this power of automatic review is called upon to scrutinize the record and look for any error committed by the trial court against the defendant. (People v. Bocarr, 97 Phil. 398/1955). In short, the law provides for the protection of the accused. (People v. Laguna, 17 Phil. 520/1910).

In the Revised Penal Code

"ART. 78. When and how a penalty is to be executed. No penalty shall be executed except by virtue of a final judgment.

A penalty shall not be executed in any other form than that prescribed by law, nor with any other circumstances or incidents than those expressly authorized thereby.

In addition to the provisions of the law, the special regulations prescribed for the government of the institution in which the penalties are to be suffered shall be observed with regard to the character of the penalty to be performed, the time of its performance, and other incidents connected therewith, the relations of the convicts among themselves and other persons, the relief which they may receive, and their diet.

The regulations shall make provision for the separation of the sexes in different institutions, or at least into different departments and also for the correction and reform of the convicts." (Underscoring supplied).

"ART. 79. Suspension of the execution and service of the penalties in case of insanity. When a convict shall become insane or an imbecile after final sentence has been pronounced, the execution of said sentence shall be suspended only with regard to the personal penalty, the provisions of the second paragraph of circumstance number 1 of article 12 being observed, in the corresponding cases.

If at any time the convict shall recover his reason, his sentence shall be executed, unless the penalty shall have prescribed in accordance with the provisions of this Code.

The respective provisions of this section shall also be observed if the insanity or imbecility occurs while the convict is serving his sentence."

"ART. 81. When and how the death penalty is to be executed. The death sentence shall be executed with preference to any other and shall consist in putting the person under sentence to death by electrocution. The death sentence shall be executed under the authority of the Director of Prisons, endeavouring so far as possible to mitigate the sufferings of the person under sentence during the electrocution as well as during the proceedings prior to the execution.

If the person under sentence so desires, he shall be anaesthetized at the moment of the electrocution."

"ART. 82. Notification and execution of the sentence and assistance to the culprit. The court shall designate a working day for the execution, but not the hour thereof; and such designation shall not be communicated to the offender before sunrise of said day, and the execution shall not take place until after the notification, but before sunset. During the interval between the notification and the execution, the culprit shall, in so far as possible, be furnished such assistance as he may request in order to be attended in his last moments by priests or ministers of the religion he professes and to consult lawyers, as well as in order to make a will and confer with members of his family or person in charge of the management of his business, of the administration of his property, or of the care of his descendants."



"ART. 83. Suspension of the execution of the death sentence. The death sentence shall not be inflicted upon a woman within three years next following the date of the sentence or while she is pregnant; nor upon any person over 70 years of age. In this last case, the death sentence shall be commuted to the penalty of reclusion perpetua with the accessory penalties provided in Article 40." (Underscoring supplied).

Under Articles 79 and 83, Revised Penal Code, both above-quoted, the death sentence shall be suspended when the convict becomes insane after final sentence of death has been pronounced; upon a woman, within three years following the date of the sentence or while pregnant; and when the accused is a person over seventy (70) years of age.

In Presidential Decree No. 603 (The Child and Youth Welfare Code)

"ART. 192. Suspension of Sentence and Commitment of Youthful Offender. If after hearing the evidence in the proper proceedings the court should find that the youthful offender has committed the acts charged against him the court shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court shall suspend all further proceedings and shall commit such minor to the custody or care of the Department of Social Welfare, or to any training institution operated by the government, or duly licensed agencies or any other responsible person, until he shall have reached 21 years of age or for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Welfare or the agency or responsible individual under whose care he has been committed.

The youthful offender shall be subject to visitation and supervision by a representative of the Department of Social Welfare or any duly licensed agency or such other officer as the court may designate subject to such conditions as it may prescribe."

"ART. 193. Appeal - The youthful offender whose sentence is suspended can appeal from the order of the court in the same manner as appeals in criminal cases."

(Signed) Hortencio J. BRILLANTES  
Permanent Representative