

eral system, for example by providing that judges be elected for longer terms; in view of the above, consider inviting the Special Rapporteur on the independence of judges and lawyers to undertake a visit to the U.S.;

- ♦ withdraw the reservations, particularly on article 6, and the declarations and understandings entered to the ICCPR; ratify the Convention on the Rights of the Child; consider ratifying the first and second Optional Protocols to the ICCPR;
- ♦ ensure that all alleged violations of the right to life are investigated, police officials responsible brought to justice, compensation provided to the victims, and measures taken to prevent recurrence of these violations; ensure that the Justice Department systematically investigates patterns of use of lethal force; ensure that training on international standards on law enforcement and human rights is included in police academies; put in place independent organs, outside the police departments, to investigate all allegations of violations of the right to life promptly and impartially; and
- ♦ appoint special prosecutors more frequently — in order to avoid conflict of interest with the local district attorney's office — to conduct investigations into allegations of violations of the right to life, to identify perpetrators and bring them to justice.

The government provided a written response to the SR's report (E/CN.4/1998/174) in which the legal process and the protection of the rights of defendants in capital cases were outlined. The government criticized the report on the basis that it omitted valuable and extensive information provided to the SR on the "strong and effective" procedural protections in the U.S. against miscarriages of justice. The government also expressed the view that the SR should devote more time to the primary mandate — investigations in those countries where summary, arbitrary and extrajudicial executions are serious problems — and less time on the secondary mandate related to international standards on the death penalty, "particularly in countries where those international standards of due process are fully protected, as they are in the United States." The response provides narrative on, *inter alia*: treaties as law; the form of government in the U.S. — Republican with federal and state components; Courts of Appeal and District Courts; the relationship between Federal and State courts; the law and practice related to capital punishment; decisions by the Supreme Court vis-à-vis the Eighth Amendment of the Constitution; application of the death penalty with regard to juveniles and persons with mental disabilities; and, provisions and measures related to police brutality.

The report of the Secretary-General on the question of the death penalty (E/CN.4/1998/82, section "Comments from states") summarizes information provided by the government stating, *inter alia*: in a majority of states (currently 38 out of 50), voters have chosen through their freely elected officials to retain the death penalty for the

most serious crimes (almost without exception, aggravated murder); at the federal level, Congress has mandated capital punishment for certain very serious Federal crimes; under U.S. law, capital punishment is only carried out under laws in effect at the time of the offence and after exhaustive appeals; the Supreme Court has held that the Eighth Amendment to the Constitution (which proscribes cruel and unusual punishment) does not prohibit capital punishment; the death penalty cannot be imposed even for such serious crimes as rape, kidnapping, or robbery unless they result in the death of the victim; and, that the crime resulted in death is not per se sufficient to trigger imposition of capital punishment.

The report notes that, according to the government: it is further required that the crime have attendant aggravating circumstances; these restrictions on the imposition of the death penalty arise out of the constitutional requirement that the punishment not be disproportionate to the personal culpability of the wrongdoer and the severity of the offence; U.S. law places special emphasis on due process protection for those accused of capital offences and almost all of the 38 states whose penal codes include capital punishment statutes provide for both automatic review of each death sentence and automatic review of the conviction; those states that do not mandate automatic review of capital sentences nevertheless authorize review when the defendant wishes to appeal; typically, review is undertaken automatically regardless of the defendant's wishes and is conducted by the state's highest appellate court; if an appellate court vacates either the sentence or the conviction, it may remand the case to the trial court for additional proceedings or for retrial; as a result of re-sentencing or retrial, it is possible for the death sentence to be reimposed; and the Supreme Court has found that where a sentencing jury may impose capital punishment, the jury must be informed if the defendant is ineligible for parole, in other words, where a sentence of lifetime imprisonment could not result in parole.

The report also notes that, according to the government: Congress passed the Anti-Terrorism and Effective Death Penalty Act in 1996, which introduced a series of improvements to federal criminal procedure, including a partial reform of the federal law governing *habeas corpus* petitions; a state may not prohibit acts of executive clemency, including amnesty, pardon, and commutation of sentence; the Supreme Court has recognized the availability of executive clemency for persons facing the death penalty whose convictions have been affirmed, whose collateral appeal rights have been exercised and exhausted, and who thereafter present a newly articulated claim of factual innocence; and, the ex post facto clause of the Constitution bars retroactive increases in the penalties available in criminal cases and forbids the government from imposing the death penalty on an offender for a crime that was not subject to capital punishment at the time it was committed.

The government also stated, *inter alia*, that: under U.S. law, capital punishment may be imposed on wrongdoers