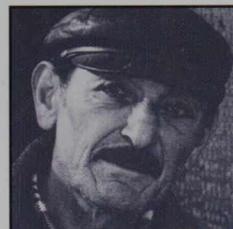
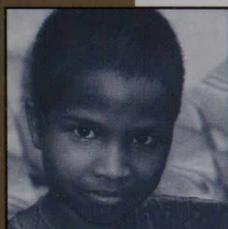


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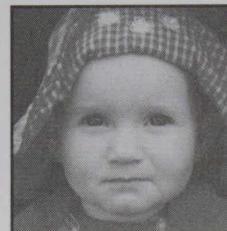
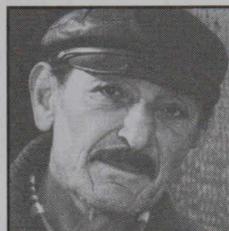
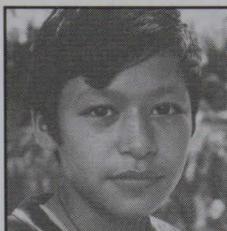
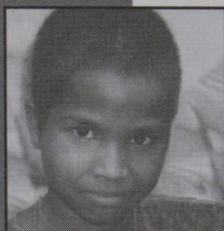
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# HUMAN RIGHTS INTERNET (HRI)

Founded in 1976, Human Rights Internet (HRI) is a world leader in the exchange of information within the worldwide human rights community. An international non-governmental organization (NGO) based in Ottawa, Canada, HRI has consultative status with the Economic and Social Council (ECOSOC) of the United Nations and with UNICEF and observer status with the African Commission on Human and Peoples' Rights.

On the premise that accurate information is a precondition for the effective protection of human rights, HRI's primary role is to serve the information needs of international scholars, human rights activists, asylum lawyers, and other organizations via an extensive documentation centre, computerized databases, and a Website on the internet. HRI also serves the information needs of the international human rights community with an active and extensive publications program, which includes regular publications (such as HRI's quarterly *Human Rights Tribune*), human rights directories, and special or occasional publications. A key objective of HRI is to support the work of the global non-governmental community in its struggle to obtain human rights for all. To this end, HRI promotes human rights education, stimulates research, encourages the sharing of information, and builds international solidarity among those committed to the principles enshrined in the International Bill of Human Rights.

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# GLOSSARY OF ACRONYMS

<b>CAT</b>	Committee Against Torture
<b>CCPR</b>	Committee on Civil and Political Rights, also known as the Human Rights Committee (HRC)
<b>CEDAW</b>	Committee on the Elimination of Discrimination Against Women
<b>CERD</b>	Committee on the Elimination of Racial Discrimination
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights
<b>CHR</b>	Commission on Human Rights
<b>CRC</b>	Committee on the Rights of the Child
<b>DAW</b>	Division for the Advancement of Women
<b>CSW</b>	Commission on the Status of Women
<b>ECOSOC</b>	Economic and Social Council
<b>GA</b>	General Assembly
<b>HRC</b>	Human Rights Committee, also known as the Committee on Civil and Political Rights (CCPR)
<b>ICC</b>	International Criminal Court
<b>ICJ</b>	International Court of Justice
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>SC</b>	Security Council
<b>S-G</b>	Secretary-General
<b>SR</b>	Special Rapporteur
<b>SRep</b>	Special Representative
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNHCHR</b>	United Nations High Commissioner for Human Rights
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>WG</b>	Working Group

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# PREFACE

## BY THE MINISTER OF FOREIGN AFFAIRS

Called "a common standard of achievement for all peoples and all nations", the Universal Declaration of Human Rights, adopted in 1948, was a landmark achievement. The Declaration embodies the fundamental rights of the individual human being and has served as a touchstone for all human rights activity in the last 50 years.

The 50th anniversary of the Declaration, commemorated throughout the world in 1998, was a chance for members of the international community to reaffirm their commitment to human rights. It was also a chance for states, non-governmental organizations, the international community and individuals to take stock of how far we have come from the first heady days of the UDHR, and how far we have to go.

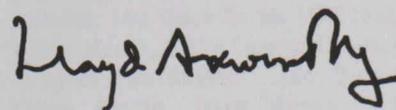
For Canada, the concept of human rights has become an essential element in diplomacy and policy-making. Over the last 50 years, we have developed an impressive array of international human rights instruments and mechanisms to monitor their implementation. And we continue to do so. Two outstanding examples from 1998 are the adoption of the "Defenders Declaration", initiated 13 years ago by Canada and Norway, and the Statute of the International Criminal Court, a major step forward in the battle against impunity.

Our reflections throughout this year have also brought home the fact that the challenge of universal human rights is far from met. While most governments recognize that human rights should be respected, grave violations continue throughout the world, evidence that the universality of human rights is not yet accepted nor realized everywhere.

The struggle to achieve the goals set for us in the Universal Declaration is one that everyone can and should embrace. In that struggle, the importance of being well-informed cannot be overestimated. That is why I am pleased to have been able to join in partnership with civil society for a second time to produce *For the Record 1998: The United Nations Human Rights System*.

Based solely on UN documents, this report provides in one place all the relevant information about the human rights situation in every country around the world as discussed and examined in the United Nations. Its intent is to simplify, encourage and improve human rights policy-making. It provides a concise, readily available information and reference source to researchers, academics, civil servants, diplomats, lawyers, human rights activists, journalists and others who work to promote and protect universal human rights.

In 1998 the international community reaffirmed its commitment to promote and protect human rights. We must do all that we can to ensure that the progress of the last 50 years continues to move us forward.



Lloyd Axworthy  
Minister of Foreign Affairs

## FOREWORD BY THE UN COMMISSIONER FOR HUMAN RIGHTS

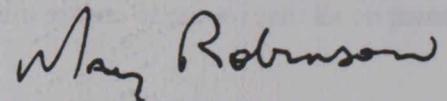
### ***“For The Record 1998: The United Nations Human Rights System”***

The commemoration of the 50th anniversary of the Universal Declaration of Human Rights in 1998 reaffirmed the aspirations and the spirit contained in that historic document. The Declaration remains an inspiration, for although the work of the United Nations in promoting and protecting human rights has made undeniable strides, there is still much to be done. We are called upon to renew our commitment to the ideals, principles and common international standard of human rights embodied in the Declaration. “All Human Rights for All”, the theme of the 50th anniversary, must remain at the top of the international agenda in the years to come.

Interest in the human rights work of the United Nations has increased markedly in recent years. The Organization’s human rights machinery has accumulated information and experience of remarkable breadth over the last half century. At the same time, this very wealth of information has impeded easy access to required data. We have learned from experience that United Nations human rights information needs to be categorized, structured and annotated for easier access and assimilation by Governments, organizations and groups, as well as by individuals. “*For the Record 1997: The UN Human Rights System*”, the first attempt to do just that, has proven to be an excellent tool for those who look for comprehensive information on human rights within the United Nations.

“*For the Record 1998*” continues this valuable work. It simplifies the access of a wider, non-specialized public to the labyrinth of United Nations official human rights documents available previously only to experienced researchers. I therefore wish to commend this initiative on the part of the Government of Canada, as well as the excellent work put in by the Human Rights Internet as a contribution to the commemoration of the 50th anniversary of the Universal Declaration of Human Rights.

I believe that this project will continue to provide those who are concerned with and work for the promotion and protection of human rights with a highly efficient working tool.



Mary Robinson  
Geneva, 25 January 1999

# INTRODUCTION

This is the second year that Human Rights Internet, in partnership with the Canadian Department of Foreign Affairs and International Trade (DFAIT), is publishing the annual report, *For the Record: The United Nations Human Rights System*. The report is a summary of the human rights documentation produced, and the human rights activities undertaken, by the United Nations, from 1 January to 31 December, 1998, organized by country as well as thematically.

A key purpose of the report is to facilitate access to the UN's very substantial output of human rights material so that the information is readily accessible to governments, non-governmental organizations, researchers, journalists and others. The hope is that this will facilitate informed policy-making in the area of human rights, whether by governmental, inter-governmental or non-governmental actors.

While much of the documentation on which this report is based is now available on the website of the Office of the High Commissioner for Human Rights and/or on the Optical Disk System (ODS) of the United Nations, to get country-specific information about UN action in the field of human rights involves visiting a plethora of different web pages, as well as the ODS, to locate the relevant documents. *For the Record* greatly facilitates that task.

As with the 1997 report, the 1998 report has been produced in three different formats: in hardcopy as a set of six volumes; on the Worldwide Web, with full hyperlinks to all the original documentation; and as a CD-ROM for dissemination in the South.

Last year, we produced the report in Canada's two official languages, English and French, but were only able to provide hyperlinks to the English documents on our website, since very few French documents were accessible to us at that time. This year, because the UN has been posting documents in French as well as English, our website and CD-ROM are fully bilingual.

The response we had to last year's report was so positive that we made the commitment to produce this as an annual report. Moreover, since *For the Record* on our website has been receiving over 100,000 hits per month, we decided to post sections of the report on the web as soon as documents become available and are summarized. Therefore, in 1998, we began to produce a "rolling report". During 1999, we intend to speed up that process to an even greater degree.

The 1998 report, like the 1997 one, maintained a focus on the main bodies that take action in the area of human

rights — on the work of the Commission on Human Rights which meets in (March/April), the Sub-Commission (August), ECOSOC (July), the Third Committee of the General Assembly (November), the sessions of the treaty-bodies (whenever they meet throughout the year), and actions or decisions of the Security Council and UN field presences whenever these are relevant. In future years, we intend to expand the coverage to encompass the work of other bodies and agencies in the UN system — particularly since human rights is now being integrated throughout the UN system.

Once again, it is important to stress that, while we must of necessity summarize actions and decisions of UN bodies and mechanisms, we have striven to present the material objectively and with no editorial comment.

Because of the size of the report, we are again presenting it in six volumes to make it manageable for those who want the report close at hand when they attend relevant UN meetings. Vol. 1 (which includes this introduction) also contains: the Thematic Section of the report; the Appendix describing UN bodies and mechanisms; a calendar indicating when the different mechanisms of the Commission on Human Rights are up for renewal; and a calendar indicating when treaty-bodies plan to consider the reports of specific countries. The other volumes are geographically organized: Vol. 2, Africa; Vol. 3, Asia; Vol. 4, Latin America and the Caribbean; Vol. 5, Central and Eastern Europe; and Vol. 6., Western Europe and Other.

## Acknowledgements

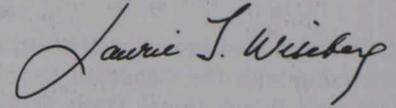
This report has been produced by Human Rights Internet (HRI) — an international NGO in consultative status with ECOSOC, headquartered in Ottawa, Canada — working closely with the Division of Human Rights, Humanitarian Affairs and International Women's Equality of DFAIT. The research, writing and editing, as well as the development of the website, was done by an HRI team which included: Mark Erik Hecht, HRI's Deputy Director who acted as the project coordinator; Jan Bauer, researcher/writer; Karen Austin, Steve Mason, Nell Stewart and Christina Torsein, HRI interns; Britt Elliott, Paul Williams and Solange Benoit, research and documentation; Claude Roy and Paul Cowles, website implementation; and Laurie S. Wiseberg, HRI's Executive Director.

The commitment to this annual report of The Honourable Lloyd Axworthy, Canada's Minister of Foreign Affairs, has been of central importance.

The International Advisory Committee which assisted in the production of this report included: Peter Burns, Professor of Law at the University of British Columbia, a member of the UN Committee against Torture; Jane Connors, Chief of the Women's Rights Unit of the UN Division for the Advancement of Women; Susanne Rodin, Information Systems Officer, Information Services and Dissemination Section, UN Department of Humanitarian Affairs; Osamu Shiraishi, Office of the UN High Commissioner for Human Rights; and Nicole Rivard-Royer, Policy Branch, Canadian International Development Agency (CIDA).

Financial support for the project was provided by both DFAIT and the Canadian Centre for Foreign Policy Development. Support for the production and distribution of the CD-ROM has been provided by the Canadian International Development Agency (CIDA).

The above notwithstanding, Human Rights Internet alone assumes responsibility for any errors in fact or judgment found in this report.



Laurie Wiseberg  
Executive Director, Human Rights Internet  
January 1999

## OVERVIEW 1998

On December 10, 1998, ceremonies were held at UN headquarters in New York, as well as in other cities and towns around the world, to commemorate the 50th anniversary of the Universal Declaration of Human Rights (UDHR). The 30 articles of the UDHR are considered the fountainhead — the source which has inspired the development of the UN human rights system, as well as regional and national human rights regimes. It was therefore symbolic that on December 9 the United Nations General Assembly (GA) commemorated the anniversary of the UDHR by adopting the Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized fundamental rights and freedoms — more commonly known as the Declaration on the Rights of Human Rights Defenders, or the Defenders' Declaration. The open-ended working group that finally agreed on the text of the Defenders Declaration had been established by the Commission on Human Rights in 1985. It took 13 years, and eventually a great deal of pressure by human rights non-governmental organizations (NGOs) and sympathetic governments to ensure that there would be agreement on an acceptable text that would be adopted by the Commission on Human Rights, and subsequently the GA, in 1998.

The problems faced by human rights defenders were highlighted at an international Defenders Summit which took place in Paris during the week of December 10 at the Palais de Chaillot, where the UDHR was signed in 1948. More than 300 defenders from all regions of the world — individuals who had put their lives or liberty on the line to defend the human rights of others — together with representatives of major human rights NGOs, adopted the Paris Declaration on human rights defenders, and a draft programme of action to be further elaborated upon in 1999. On the first day of the Summit, UN Secretary-General Kofi Annan received a set of books carrying the signatures or thumbprints of over 12 million individuals, who personally committed themselves to the fulfilment of the Universal Declaration of Human Rights. This was the culmination of a year-long NGO campaign to commemorate the 50th anniversary.

1998 was not only the 50th anniversary of the UDHR, it was also the 5th anniversary of the adoption of the Vienna Declaration and Programme of Action by the World Conference on Human Rights (Vienna, June 1993) — the year designated for reviewing the extent to which the obligations undertaken in Vienna by governments, inter-governmental organizations and NGOs had been fulfilled. In as much as no Special Session of the General Assembly was planned for this review, there was a con-

cern that NGOs would have no forum in which to participate in the review process. Therefore, Human Rights Internet, together with 30 major regional and international human rights NGOs, organized an international NGO forum in Ottawa with support from the Canadian government and other donors. The Vienna Plus Five forum (June 22-24, 1998) brought together 250 NGO representatives from all regions of the world, for three intensive days of workshops. The Conference report, which examined accomplishments, shortcomings, and new challenges since the World Conference, was an important contribution to the Secretary-General's report to the General Assembly and the governmental review of Vienna.

Yet, when NGOs came to New York to present this report to the Third Committee of the GA, another problem was highlighted: that UN regulations permit NGOs in consultative status with the Economic and Social Council to address ECOSOC bodies, but not the General Assembly or its committees. Thus, NGOs were not permitted to speak at the Third Committee but had to present their report indirectly — to a dialogue between NGOs and interested government representatives called by the High Commissioner for Human Rights. The difficulty of NGO access to United Nations system was, in fact, addressed in 1998 in a Report of the Secretary-General entitled "Arrangements and Practices for the Interaction of Non-Governmental Organizations in All Activities of the United Nations System." This document will be substantively reviewed next year, to give governments and NGOs adequate time to study it and offer their comments on the document.

1998 was also important for the adoption (on 17 July in Rome) of the statute of the International Criminal Court (ICC). The vote was 120 states in favour, seven opposed, and 21 abstentions. Four categories of crime fall under the Court's jurisdiction: genocide, crimes against humanity, war crimes and aggression. As of the end of 1998, 70 countries (including Canada) had signed the Statute. The ICC will only come into being however after the Statute is ratified by 60 states.

During 1998, considerable progress was achieved by the ad hoc international criminal tribunals for Rwanda and for the former Yugoslavia.

Sitting in Arusha, the International Criminal Tribunal for Rwanda (ICTR) had 30 suspects in custody in November 1998, including many of those accused of planning and directing the Rwandan genocide. On September 2, the ICTR brought in an historic ruling which found Jean-Paul Akayesu, a local mayor, guilty of genocide and

crimes against humanity, including extermination, murder, torture, rape and other inhumane acts. This was the first time that an international tribunal had interpreted the definition of genocide as set down in the 1948 UN Genocide Convention. It was also the first criminal conviction by an international tribunal for acts of sexual violence in an internal conflict. As well, the ICTR decision set a precedent in recognizing rape as genocide, stating that: "Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole." On September 4, two days after the Akayesu verdict came in, the ICTR sentenced former Prime Minister of Rwanda, Jean Kambanda, who had pleaded guilty to genocide, to life imprisonment.

In 1998, the International Criminal Tribunal for former Yugoslavia (ICTFY) also moved forward. New arrests or surrenders tripled the number of detainees in custody to 28 and the Court was engaged in an extraordinary amount of litigation activity. While the Republic of Yugoslavia (Serbia and Montenegro) continued to refuse to arrest or transfer indicted persons to the custody of the Tribunal — at least 30 indicted suspects are still free in territory under the control of Bosnian Serbs or in Yugoslavia, including the two most wanted men of the war, Radovan Kardzic and Ratko Mladic — some progress was made with the arrest by NATO forces in November of Bosnian Serb Radislav Krstic. Moreover, while Belgrade challenged the ad hoc tribunal's jurisdiction in the Kosovo war, refusing to issue visas to investigators of the Office of the Prosecutor, resolutions of the Security Council in September and October made it clear that the Yugoslav government was to cooperate with the Tribunal regarding alleged atrocities committed in Kosovo, as well as elsewhere in the Republic of Yugoslavia.

The issue of impunity remained a priority on the international agenda with the arrest, in October, of former Chilean dictator, General Augusto Pinochet, who was in

London for medical treatment. Pinochet was apprehended by British authorities on the basis of a provisional Spanish arrest warrant, charging him with genocide, torture and terrorism, because of the murder of Spanish citizens in Chile by his security forces. The central question is whether a former head of state enjoys diplomatic immunity or whether he has to answer for crimes committed by his regime. The verdict is not yet in on this case since the first decision of the House of Lords (handed down on November 25) — which, on appeal, overturned an October 28 decision of the British High Court that had ruled in Pinochet's favour — had to be set aside, and a new appeal will be heard in 1999.

It will be recalled that in December 1997, governments from around the world gathered in Ottawa, Canada to sign a treaty implementing a total ban on the production, use, stockpiling or transfer of anti-personnel landmines. Moving ahead with record speed, by September 1998 the 40th government had ratified the Landmines Convention, with forty the number of ratifications needed for the treaty to enter into force. This will therefore occur in March 1999, at which time the countdown will begin for the destruction of all stock piles (four years) and for the removal of all mines from the ground (ten years).

Finally, in considering developments in 1998, the Bureau of the Commission on Human Rights, which was charged at the 54th CHR session in April to begin a review aimed at enhancing the effectiveness of the Commission's mechanisms, conducted broad consultations with both governments and NGOs. In December, it released a report with recommendations, proposals and observations with respect to the special procedures of the Commission, the confidential procedure established by ECOSOC resolution 1503 (XLVIII), the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, and working groups established by the Commission to conduct standard-setting exercises. That report will be considered by the 55th CHR session in April 1999.

# THEMATIC MECHANISMS AND APPROACHES

## CHILDREN

### Special Rapporteur on sale of children, child prostitution and child pornography

The mandate of the Special Rapporteur on sale of children, child prostitution and child pornography was established by the Commission at its 1990 session. The question of the adoption of children for commercial purposes has been incorporated into the mandate. The Special Rapporteur (SR) in 1998 was Ofelia Calcetas-Santos (Philippines).

The report prepared for the 1998 session of the Commission (E/CN.4/1998/101) reviews the methods and activities of the SR, provides commentary on international developments relating to the role of the judicial system (see A/51/456 and E/CN.4/1997/95) and gives a special focus to media, including the Internet (see A/52/482 for a summary of preliminary work undertaken) and education. On the latter, the report covers such areas as the international legal framework, the role of the traditional media, the media and the rights of the defendant, new media, and education as a catalyst. Recommendations on the media and education as well as networking between governmental and non-governmental organizations are also included.

The section of the report focussing on media and education sets the context by stating: the right of children to be protected from exploitation may at times appear to contend with the right of the communications media to express themselves and disseminate information freely; however, the rights of the media to publish and broadcast information, and the rights of audiences to receive information, have to be carefully balanced against the rights of the child to be protected from abuse and the child's right to privacy.

Points noted on the question of the participation of children in the media include, *inter alia*, that:

- ♦ media are among the strongest influences on the self-image of a child and the image which is portrayed to society in general; that image can either create and convey respect for children and young people, or spread prejudices and stereotypes which may have a negative effect on public opinion; the child's participation in this process is vital and must take place in such a way as to avoid exploitation of the child participant while resulting in a positive effect upon the whole range of viewers, children and adults alike;
- ♦ concerns have been raised as a result of films documenting young victims of sexual abuse, i.e., while such documentaries have been commended for bringing the subject into the public arena and raising awareness about child abuse, concerns have been expressed for the psychological well-being of the child actresses or actors who portray the victims;
- ♦ care must be taken when making, distributing, selling and showing films which involve forced or consensual under-age sexual activity in order not to create a new "genre" of such docudramas through which audiences will become desensitized to the real horrors of paedophilia and child sex;
- ♦ careful regulation is needed in the use of children as fashion models, in catalogues or live or filmed presentations, bearing in mind that the use of teenage girls to model adult fashions may create the impression that thin pre-pubescent bodies are the most sexually desirable and inadvertently communicate to paedophiles the message that their desires are "normal", especially as the children are encouraged to look and behave like adults in front of the camera; and
- ♦ care must be taken in relation to the use, by advertisers, of images of children as sexual objects "to sell almost anything from food to perfume and cars".

Commentary on the protection of children against harmful influences through the media is based on two elements: (a) the potential for direct harm to the child as viewer of the material, and (b) the less direct but equally dangerous impact upon the behaviour of adults towards children, when they are repeatedly exposed to material which "normalizes" juvenile sexual activity. The report notes approaches that have been considered or enacted to protect children from harm, including the "V-chip", viz. the encoding of programmes on the basis of a common classification system and a mechanism on each television enabling parents to filter out certain programmes.

The section addressing respect for the integrity of the child in media reporting cites the two main issues addressed by the Committee on the Rights of the Child: (a) the way in which the media should approach children; and (b) the child's access to the media.

Consideration of new media builds on previous work done by the SR with regard to the commercial sexual exploitation of children on the Internet. The report notes, *inter alia*, that: no single entity administers the Internet;

there is no central point at which all the information is stored or from which it is disseminated; it would not be technically feasible for any one entity to control all of the information conveyed on the Internet; the educational value of the wealth of information available on the Internet is to be commended; children are exposed to danger online and can be potentially harmed by child pornography by being filmed/photographed or made the subject of the pornographic material in some other way, or by being exposed to such material as viewers; technological advances have made the creation and distribution of child pornography easier, cheaper and more difficult to detect, allowing it to develop into a multi-million-dollar industry which can be run from the exploiter's home; the Internet can be used by paedophiles to contact each other and they can set up bulletin boards to exchange information relating to their sexual interest in children, or have running conversations in the form of "chat rooms" on such subjects.

The recommendations in the report are divided into several sections. First, with regard to the media and education, the recommendations focus on laws for the protection of children, the sensitization of children to enable them to identify the risks, media programming relative to the needs and rights of children, awareness-raising with regard to HIV/AIDS and implementation of sexual health education, and the need to minimize the dangers of the Internet being used for purposes of commercial sexual exploitation of children. Second, on the questions of response and intervention, the report refers to mechanisms for reporting crimes against children and existing response mechanisms, training for all sectors of society involved with children with a view to early detection of physical and sexual abuse, and sensitization of the public to the needs of a child victim of sexual abuse and exploitation so as to avoid ostracism, further revictimization or unfair punishment. The third set of recommendations deals with issues related to recovery and reintegration. The fourth, on networking between governmental and non-governmental organizations, notes obstacles to effective networking and underlines the need for adequate funding of projects and initiatives aimed at protecting and promoting the rights of the child and better coordination and cooperation between groups and individuals working with or on behalf of children.

The Special Rapporteur's interim report to the General Assembly (A/53/311) notes the ongoing effort to gather information from governments and others on trafficking of children, including: paths within countries through which children are trafficked, international trafficking routes, profiles of the children involved and of those involved in the trafficking, the purposes for which children are trafficked, whether children are part of a general trafficking path along with commodities, such as drugs or firearms, and provisions related to the prevention, extrication, repatriation, and rehabilitation of the child victims of trafficking.

The report also comments on the definition of terms related to the mandate of the SR. With regard to "sale" in

its commercial application, the report notes that no consensus currently exists with respect to the sale of children, stating that the traditional concept of sale is that it pertains only to property — real, personal or incorporeal — and that the consideration is always price in money. The SR defined "sale" as "the transfer of parental authority over and/or physical custody of a child to another on a more or less permanent basis in exchange for financial or other reward or consideration". With regard to "traffic" and "trafficking", the report recalls that there is as yet no internationally recognized definition of "trafficking in persons" although, in resolution 49/166, the General Assembly defined it as the "illicit and clandestine movement of persons across national and international borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations for profit of recruiters, traffickers and crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labour, false marriages, clandestine employment, and false adoption". With this noted, the report refers to other definitions developed by various national and international bodies. The SR noted that there are some basic elements in all of the definitions devised, namely: some degree of involuntariness on the part of the person being trafficked, either through the employment of deceit, coercion or actual force, abuse of authority, confiscation of travel documents, or debt bondage. The report states that, with respect to children, the element of involuntariness would be for the most part assumed, regardless of any actual consent of the child to the transaction.

The identified aims of trafficking are noted as including those associated with commercial sexual exploitation as well as:

- ♦ inter-country adoption: especially of babies and very young children, as a result of, *inter alia*, the shortage of children available for adoption in most developed countries, rising infertility rates in some countries, the widespread use of contraceptives, legalization of abortion, and changing mores which now enable single mothers to keep their children; the need to pay special attention to the situation of unmarried or especially poor women, who, because of their financial situation or the social unacceptability of their circumstances, may be forced or pressured into giving up their children for adoption;
- ♦ labour: noting that over and above prostitution, many children are recruited as a cheap source of labour; while not literally enslaved, children are extremely vulnerable and are often victims of sexual abuse, end up working in construction, agriculture or in factories where they are exposed to a multitude of health risks, many of which prove fatal;
- ♦ criminal activities: referring to organized crime networks using children in various capacities, such as street-corner crack dealers;

- ♦ mendicancy and recruitment of beggars: noting the lure, for poor children, of stories about the easy money to be earned in big cities or tourist resorts and the fact that the recruiters and leaders of the begging rackets can earn a small fortune from their syndicate of beggars; children with disabilities are particular targets for the recruiters of beggars who believe that the disability will induce sympathy in the giver; that belief puts these children at serious risk of being deliberately maimed in order to increase their earning potential;
- ♦ armed conflict: the abduction and forcible conscription of children who are used, for example, as cooks, messengers and porters and for mine clearance, spying and suicide bombing;
- ♦ sports: referring to the situation of young boys in the Gulf States or trafficked to the Gulf States, who are used as camel jockeys for the entertainment of spectators at camel races;
- ♦ marriage: referring to the trafficking of "mail-order brides" which may involve girls as young as 13, often for men who are looking for women as servants and sex partners; some men use their "wives" as prostitutes or for pornography, and there are reports of such women being tortured and killed; and
- ♦ trafficking in organs: noting reports that, in a number of countries, street children are being killed so that their organs can be used in transplant operations; also noting that at the present time, available information does not substantiate the claims that are made.

Commentary on the causes of sale and trafficking notes, *inter alia*: poverty, lack of employment opportunities, low social status of girls, a general lack of education and awareness, inadequate legislation in the countries concerned, and weak law enforcement machinery. The effects of prostitution on children are noted as including: injury, disease and trauma associated with multiple sexual encounters; forcible separation from families; isolation by a foreign language and culture; dependency on and a dangerous attachment to pimps and brothel operators; risk of arrest and prosecution for prostitution, for illegal immigration and for having false identity documents; possible detention or deportation and, if returned home, the risk of being rejected by families and communities, re-sold, or forced to return to prostitution.

The SR recommended, *inter alia*, that:

- ♦ the sale and trafficking of persons be unequivocally condemned as an affront to human dignity, since it reduces people to the level of objects of trade and commerce;
- ♦ international standards with regard to sale and trafficking be set, together with international mechanisms to ensure reporting and monitoring of state activities;
- ♦ hospitals, clinics, and care institutions be strictly monitored, in order to reduce the risk of abduction, sale and trafficking of children from such places;
- ♦ the possibility of establishing international and regional registers for children adopted internationally be considered;
- ♦ international and regional registers for missing children, containing all the pertinent information for identification, be established;
- ♦ programmes and initiatives be established to address the issue of stigmatization of single mothers and to empower them to keep their children, should they so desire;
- ♦ all law enforcement agents, border police, customs and immigration officials, relevant governmental ministers, and members of the judiciary in the countries affected be trained on, and sensitized to, issues of trafficking and the rights and needs of the victims; immigration and deportation policies of the receiving countries be revised to prevent further marginalization and traumatization of trafficked children;
- ♦ victims of trafficking be guaranteed freedom from persecution or harassment by those in positions of authority and access to free legal assistance and qualified interpreters during all proceedings;
- ♦ the state where the trafficking took place or where the trafficked child is found take all necessary steps to prosecute all the perpetrators;
- ♦ priority be given to the ratification and the effective and accelerated enforcement of existing conventions and instruments on human rights, on trafficking of persons and on slavery and slavery-like practices; and
- ♦ procedures be elaborated to distinguish between victims of trafficking and illegal immigrants, to enable the victims to take action against the traffickers, and to enable them to return safely to their countries of origin with the assistance of reintegration programmes.

### Special Representative on the protection of children affected by armed conflicts

Following the 1993 session of the General Assembly, an independent expert was appointed to study the impact of armed conflict on children. The Machel Report (A/51/306 and Add.1), which was submitted to the General Assembly in 1996, provided the first comprehensive assessment of the many ways in which children are abused and brutalized in the context of war. It set out findings and recommendations for action in several areas, including child soldiers, refugee and internally displaced children, sexual exploitation and gender-based violence, landmines and unexploded ordnance, the impact of sanctions on children, health and nutrition, psychological recovery and social reintegration, educa-

tion, demilitarization and reconstruction. Following consideration of the reports by the Independent Expert, the 1996 General Assembly, in resolution 51/77, requested the Secretary-General to appoint a Special Representative on the protection of children affected by armed conflicts. The Special Representative (SRep) in 1997 was Mr. Olara A. Otunnu.

**The SRep's interim report** (E/CN.4/1998/119) was submitted to the 1998 Commission on Human Rights and sets the context for consideration of issues related to children and armed conflict. The report contains commentary on, *inter alia*: taking norms and values seriously; promoting prevention, protection and rehabilitation; building partnerships; focussing on selected themes; and, the steps taken to lay the groundwork for future work within the mandate.

The report describes the reality in which children are caught, noting, *inter alia*: today's conflicts are primarily internal, often fought by multiple, semi-autonomous armed groups within existing state boundaries; the international rules of warfare are routinely ignored in these situations of "total war"; such protracted conflicts can expose successive generations of children to horrendous violence; conventional weapons and ordnance used in these conflicts are increasingly accessible and destructive; such conflicts are often characterized by the demonization of the "enemy community" and the orchestration of vicious hate campaigns; in the intense and intimate setting of today's internecine warfare, the village has become the battlefield and civilian populations the primary target; and many societies exposed to protracted conflicts have seen their community values radically undermined if not shattered altogether, giving rise to an "ethical vacuum" in which international standards are ignored with impunity and where local value systems have lost their influence.

The report addresses a number of aspects of prevention, noting that such prevention entails the strengthening of the "normative foundation of societies and mobilizing public opinion in order to create a social and political climate that is capable of impeding abuse against children."

The report notes that from the many issues highlighted in the Machel Report priority attention should be given, in the near term, to: participation of children in armed conflict, sexual abuse and gender-based violence, mine awareness and rehabilitation of child victims, integrating standards into UN operations, and the impact of sanctions on children.

The report concludes by noting that the preliminary steps taken to establish the groundwork for the mandate included: (a) outreach and advocacy through consultations with governments and others; (b) initial projects, including input into the draft statute for the International Criminal Court, discussions on the issue of standards, procedures and training relating to the conduct of UN peacekeeping personnel, development of pilot projects in post-conflict situations to develop "best practices" and a more systematic application of "lessons

learned", and preliminary work to strengthen the knowledge base through, for example, the establishment of an electronic database and Website; and, (c) establishment of a secretariat for the SRep and mobilization of voluntary contributions to support the work.

**The SRep's report to the 1998 General Assembly** (A/53/482) includes commentary on, *inter alia*: promoting prevention, protection and rehabilitation; participation of children in armed conflict; taking norms and values seriously; rape and sexual abuse in the context of armed conflict; mine awareness and rehabilitation of child victims; displaced children; the impact of small arms on children; the impact of sanctions on children; incorporating standards into UN operations; field missions and initiatives with regard to Afghanistan, Liberia, Sierra Leone, Sri Lanka, Sudan, and Federal Republic of Yugoslavia (Kosovo); political advocacy; and, partnerships for children.

The report covers many of the same themes and subjects as the report to the 1998 Commission. On additional issues, the report notes, *inter alia*: children constitute well over 50 per cent of the 24 million people who are either refugees or internally displaced persons; there is a strong link between the accessibility of small arms and the victimization of children; the proliferation of these weapons has made it possible for very young children to be perpetrators of violence; there are some 50 countries in which children are currently affected by armed conflict; and, civil society organizations and key actors from the private sector are important partners in the broad movement to protect children's rights and welfare in the context of armed conflict.

The priority areas for immediate future action are identified and include: missions to areas affected by armed conflict to advocate for commitments by conflicting parties to stop the involvement and targeting of children, to assure humanitarian access and to advocate humanitarian cease fires; development of a stronger and more comprehensive advocacy communications strategy involving, in particular, networks of non-governmental organizations and the various media; the organization of regional symposia to raise awareness of the situation of children affected by armed conflict and to mobilize partnerships for children; efforts to bring together countries in subregional groupings in which children face common threats — such as cross-border small arms trade, the use of landmines, child abductions or child recruitment into armed groups — in order to seek commitments from states and non-state parties to take concrete collective measures to protect children better in their neighbourhoods; the monitoring of post-conflict situations where concerted international assistance in support of children's needs could prove particularly effective in the peace-building process ("best practices" and "lessons learned"); and promotion of research on thematic issues, for example, sexual abuse and violence — particularly against girls and young women, and the role of local value systems.

The recommendations in the report include, *inter alia*, that:

- ♦ concerned governments incorporate the protection of children prominently in their foreign policies and, with other key international actors, be prepared to use their collective weight and influence to deny political legitimacy, diplomatic recognition, the supply of weapons or the flow of funds to those responsible for committing atrocities and abuses against children;
- ♦ the Security Council remain actively engaged in the protection of children in armed conflict and make the rights, protection and welfare of children affected by conflicts a central and continuing concern in future consideration of specific crisis situations;
- ♦ non-governmental and other civil society organizations develop activities in three areas in particular: building a movement of advocacy at both the national and international levels; developing operational programmes on the ground to respond better to the needs of victimized children; and serving as an important source of independent and objective information on particular situations and issues;
- ♦ the international community seek to construct concrete initiatives on the ground with regard to: access to populations in distress, most of whom are women and children; recruitment and use of children; monitoring and restricting the supply of arms, especially light weapons, to theatres of conflict; and attending more effectively to the needs of displaced populations, the majority of whom are children;
- ♦ in post-conflict peace-building, sustained assistance for reconstruction be provided in order to consolidate peace and to support indigenous rehabilitation capacity; key actors responsible for designing post-conflict peace-building programmes — in particular the World Bank, the European Union, UNDP and bilateral development agencies — make the needs of children a central concern from the outset of their planning, and ensure that post-conflict peace-building does not mean a return to the conditions that gave rise to the conflict in the first place;
- ♦ local capacities for advocacy be built, with strong support from the international community, through, for example, the formation of an informal group of eminent persons to serve as local advocates within a country and the establishment of local radio stations or programmes devoted to the needs and interests of children;
- ♦ the age limit for recruitment and participation in armed conflict be raised from 15 to 18 years and a more effective campaign of pressure for the observance of existing legal standards in present theatres of conflict be organized;
- ♦ with regard to impact of sanctions on children, all efforts be made to relieve the suffering of children

living under sanctions regimes and a review of the impact on children of the sanctions regimes against Burundi and the FRY be undertaken, addressing in particular the health, educational and nutritional needs of affected children;

- ♦ the various institutions and networks that traditionally inculcate values and protect children and promote their welfare — such as parents, extended families, elders, teachers, schools and religious institutions — be strengthened; and
- ♦ the international community exert greater and concerted political efforts to address directly the real issues in conflict situations and not allow the humanitarian response to crises to become a substitute for political action.

### **Optional Protocols to the Convention on the Rights of the Child**

#### **Sale of children, child prostitution, child pornography**

By resolution 1994/90, the Commission on Human Rights established a working group to elaborate a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. The working group held its fourth session in January 1998. The report of that session (E/CN.4/1998/103) reflects discussion on, *inter alia*: definitions; penalization of offenders and protection of child victims; prevention, assistance and compensation; and information, education and participation.

The report notes that there was increasing support among states for the inclusion of definitions in the protocol, setting out specific definitions for “sale of children”, “child prostitution”, “child pornography” and “child sex tourism” in which the scope of meaning would be clear. Discussions on other points referred to: definitions of punishable conduct/acts/activities; protection of children who are exploited and issues related to the potential liability of children who exploit others; the status of the protocol vis-à-vis provisions in national law; the appropriateness, or not, of the protocol referring to the “spiritual and moral needs” of children; and, freedom of expression and the use of mass media to achieve the objectives of the protocol, particularly with regard to providing information and the education of the public.

The Annex to the report contains the draft texts resulting from the working group’s fourth session as well as texts to be considered at the 1999 session.

#### **Involvement of children in armed conflict**

By resolution 1994/91, the Commission on Human Rights established a working group to elaborate a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts. The working group held its fourth session prior to the 1998 Commission. The report of the session (E/CN.4/1998/102) notes that topics discussed included: the ques-

tion of the minimum age of persons participating in hostilities, the issue of direct or indirect involvement in hostilities, the age of recruitment — voluntary or compulsory — into the armed forces, and whether or not a clause should be included in the draft optional protocol preventing child recruitment by non-governmental armed groups. Non-governmental organizations appealed to the working group to assume fully the serious responsibility of helping to bring an end to the practice of using children in combat by setting a clear minimum age of 18 years for all forms of recruitment into the armed forces and for participation in hostilities. It was pointed out that in recent years the involvement of children in many armed conflicts had continued unabated and even increased as conflicts were prolonged, economies collapsed, and light weapons proliferated.

The report notes that participants agreed that the key issue of the draft optional protocol was that of the age limit for participation in hostilities. Consideration of specific articles of the draft text did not produce an agreement on the minimum age of voluntary or compulsory recruitment. The most recent draft text of the protocol is contained in Annex I of the report.

### **Resolution of the Commission on Human Rights**

Under agenda item 20 the Commission adopted by consensus an omnibus resolution (1998/76) addressing various issues related to the rights of the child.

**In a general statement**, the Commission, *inter alia*: reaffirmed the need for mechanisms and programmes related to the rights of the child to be strengthened to combat the exploitation and abuse of children, including in such areas as female infanticide, harmful child labour, sale of children and their organs, child prostitution and child pornography and other forms of sexual abuse; expressed profound concern that the situation of children in many parts of the world remains critical as a result of poverty, inadequate social and economic conditions, natural disasters, armed conflicts, displacement, economic and sexual exploitation, illiteracy, hunger, intolerance, disability and inadequate legal protection; recognized the need for a stronger political commitment related to governments implementing their laws and complementing legislative measures with effective action in such fields as law enforcement, the administration of justice, and social, educational and public health programmes; underlined the need to mainstream a gender perspective in all policies and programmes related to children; and reaffirmed that the best interests of the child should be a primary consideration in all actions concerning children.

**With regard to the Convention on the Rights of the Child**, the Commission, *inter alia*: welcomed the nearly universal ratification of or accession to the Convention and publication by UNICEF of the "Implementation Handbook for the Convention on the Rights of the Child"; called on states parties to implement the Convention fully and cooperate closely with the Committee,

withdraw reservations incompatible with the objects and purposes of the Convention, and accept the approved amendment to the Convention increasing the membership on the Committee from 10 to 18; called on states parties to ensure non-discrimination in respect of the rights set out in the Convention, and ensure that every child alleged or recognized as having infringed penal law is treated with dignity; called on states parties to encourage training on the rights of the child for those involved in activities concerning children; and encouraged the Committee to continue to give attention to the needs of children requiring special protection.

**With regard to the girl child**, the Commission, *inter alia*: called on all states to take the necessary measures and institute legal reforms to ensure the full and equal enjoyment by girls of all human rights and fundamental freedoms; called on international and non-governmental organizations to develop and implement gender-sensitive strategies to address the rights and needs of children, especially the rights and need of girls with regard to education, health and nutrition, and to eliminate harmful cultural attitudes and practices against girls; called on states to eliminate all forms of discrimination against girls and the root causes of son preference by, *inter alia*, enacting and enforcing laws protecting girls from violence — including female infanticide, prenatal sex selection, genital mutilation, incest, sexual abuse and exploitation; called on states to develop age-appropriate, safe and confidential programmes and medical, social and psychological support services to assist girls who are subjected to violence; and called on states to intensify efforts to raise awareness and mobilize opinion concerning the harmful effects of female genital mutilation and other traditional or customary practices affecting the health of women and girls.

**With regard to sale of children, child prostitution and child pornography**, the Commission, *inter alia*: called on states to develop and implement measures to eliminate the sale, traffic, abduction and sexual exploitation or abuse of children, including through child sex tourism; called on states to criminalize commercial and all other forms of sexual exploitation and sexual abuse of children, including child sex tourism, and ensure that a person who exploits a child for sexual abuse in another country is prosecuted by competent national authorities, either in the offender's country of origin or in the destination country; called on states to step up cooperation and concerted action to combat the existence of a market that encourages criminal practices against children and dismantle national and international networks trafficking in children; called on states and relevant UN bodies and agencies to commit resources to comprehensive and gender-sensitive programmes to provide physical and psychological rehabilitation to child victims of trafficking and any form of sexual exploitation and abuse, and promote social reintegration; renewed the mandate of the Special Rapporteur for a further three years; and requested the working group elaborating the draft optional protocol to continue its work prior to the 1999 session.

**On the issue of children affected by armed conflict**, the Commission, *inter alia*: welcomed the appointment for three years of the Special Representative; called on states, in accordance with the norms of international humanitarian law, to integrate into their military programmes — including those for peacekeeping — instruction on responsibilities towards the civilian population, particularly women and children; called on states and relevant UN bodies to contribute on an ongoing basis to international mine-clearance efforts; urged states to take stronger action to promote gender- and age-appropriate mine-awareness programmes and child-centred rehabilitation; welcomed the adoption of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction; called on states and other parties to armed conflict to respect international humanitarian law; called on states to end the use of children as soldiers and to ensure their demobilization, and to implement effective measures for the rehabilitation and reintegration into society of child soldiers, child victims of armed conflict or foreign occupation, including victims of landmines and all other weapons, and victims of gender-based violence; called on states as well as UN agencies to ensure access of humanitarian aid and assistance to children affected by armed conflicts; reaffirmed that rape in the conduct of armed conflict is a war crime and may be a crime against humanity and an act of genocide; called on all states to take the required measures to protect children and women from all gender-based violence and strengthen mechanisms to investigate and prosecute perpetrators; reaffirmed that all humanitarian responses in armed conflict situations should emphasize the special reproductive health needs of girls and women; reaffirmed the importance of preventive measures such as early-warning, preventive diplomacy and education for peace to prevent conflicts; reaffirmed the importance of special attention for children in situations of armed conflict in such areas as health and nutrition, education and social reintegration; reaffirmed its support for an assessment and monitoring of the consequences of sanctions on children; requested the working group elaborating the optional protocol to continue its work prior to the 1999 session; and requested the Secretary-General, in cooperation with others, to consider modalities for organizing regional training programmes for members of the armed forces related to the protection of children and women during armed conflicts.

**With regard to the protection of refugee and internally displaced children**, the Commission, *inter alia*: called on states to protect refugee and internally displaced children, including through policies for their care, well-being and development, in such areas as health, education and psycho-social rehabilitation; called on UN bodies and agencies, in coordination with international humanitarian organizations, to ensure the early identification and registration of unaccompanied refugee and internally displaced children, give priority to programmes for family tracing and reunification and continue monitoring care arrangements for such children; and called on other parties to armed conflicts to recog-

nize that refugee and internally displaced children are particularly exposed to risks of injury, exploitation and death.

**On the elimination of the exploitation of child labour**, the Commission, *inter alia*: called on states that have not yet done so to ratify the ILO conventions related to the abolition of forced labour (No. 29) and the minimum age for admission to employment (No. 138); called on those states that are parties to these conventions, as a matter of priority, to eliminate all extreme forms of child labour such as forced labour, bonded labour and other forms of slavery; called on states to eliminate progressively and effectively all forms of child labour contrary to accepted international standards and support ILO efforts to finalize an instrument aimed at eradication of the most intolerable forms of child labour; and called on states to ensure that all children have access to free and relevant primary education and make secondary education generally available and accessible to all.

**With regard to street children**, the Commission, *inter alia*: called on states to continue actively to seek comprehensive solutions to the problems of children working and/or living on the street; called on all states to ensure the reintegration of street children into society and provide adequate nutrition, shelter, health care and education; and called on states to take urgent measures to prevent the killing of street children, combat torture and violence against them, and ensure that legal and juridical processes respect children's rights to protect them against arbitrary deprivation of liberty, mistreatment or abuse.

**With regard to children with disabilities**, the Commission, *inter alia*: welcomed the general debate by the Committee on the Rights of the Child focussing on the rights to life and development, self-representation, full participation and inclusive education for children with disabilities; called on all states to adopt the necessary measures to ensure the full enjoyment in equal conditions of all human rights and fundamental freedoms by children with disabilities, especially by ensuring effective access to education and health services; and, called on all states to develop and implement legislation prohibiting discrimination against children with disabilities.

### **Statement by the President of the Security Council**

In June 1998 the Security Council agreed to a statement by the President (S/PRST/1998/18) on the issue of children affected by armed conflict. The Council, *inter alia*: expressed grave concern at the harmful impact of armed conflict on children; condemned the targeting of children in armed conflicts, including their humiliation, brutalization, sexual abuse, abduction and forced displacement, as well as their recruitment and use in hostilities in violation of international law; called upon all parties concerned to put an end to such activities and to comply strictly with their obligations under international law; stressed the obligation of all states to prosecute those

responsible for grave breaches of international humanitarian law; gave its support to the work of Special Representative of the Secretary-General; declared its intention to pay serious attention to the situation of children affected by armed conflicts and, to this end, to maintain contact, as appropriate, with the Special Representative and with the relevant programmes, funds and agencies of the UN system; expressed its readiness, while dealing with situations of armed conflict, to (a) consider, when appropriate, means to assist with the effective provision and protection of humanitarian aid and assistance to civilian populations in distress, in particular women and children, (b) consider appropriate responses whenever buildings or sites that usually have a significant presence of children — such as schools, playgrounds, hospitals — are specifically targeted, (c) support efforts aimed at obtaining commitments to put to an end the recruitment and use of children in armed conflicts in violation of international law, (d) give special consideration to the disarmament and demobilization of child soldiers, and to the reintegration into society of children maimed or otherwise traumatized as a result of an armed conflict, and (e) support or promote child-focussed mine clearance and mine-awareness programmes, as well as child-centred physical and social rehabilitation programmes; recognized the importance of special training of personnel involved in peacemaking, peacekeeping and peace-building activities on the needs, interests and rights of children, as well as on their treatment and protection; and recognized that, whenever sanctions are adopted, consideration should be given to their impact on the civilian population, bearing in mind the needs of children, in order to consider appropriate humanitarian exemptions.



## DETENTION

### Working Group on Arbitrary Detention (E/CN.4/1998/44; E/CN.4/1998/44/Add.1)

The Working Group (WG) on Arbitrary Detention was established in 1991 and is made up of five independent experts. The Group's mandate is subject to renewal every three years. As defined by resolution 1991/42 of the Commission on Human Rights, the WG's mandate is to investigate cases of detentions that are imposed arbitrarily or are inconsistent with the standards set out in the Universal Declaration of Human Rights and other relevant international human rights instruments. Cases considered by the WG are those that fall into one or more of three categories in which the deprivation of liberty or freedom is arbitrary:

1. as it manifestly cannot be linked to any legal basis (such as continued detention beyond the execution of the sentence or despite an amnesty act);

2. based on facts giving rise to prosecution or conviction related to the exercise of certain fundamental freedoms which are protected by the Universal Declaration and the International Covenant on Civil and Political Rights (the latter for states parties) and, in particular, the rights to freedom of thought, conscience and religion, freedom of opinion and expression, and the right of peaceful assembly and association; and/or
3. based on non-observance of all or part of the international provisions related to the right to fair trial to the extent that it confers on the deprivation of freedom, of whatever kind, an arbitrary character.

The Group's report to the 1998 Commission covers the period from January to December 1997, during which 26 communications (concerning 119 new cases of alleged arbitrary detention — 5 women and 114 men) and 55 urgent appeals (on behalf of 563 individuals, at least 11 women) were transmitted to 46 governments as well as the Palestinian Authority.

In the resolution adopted at the 1997 session of the Commission (1997/50), the WG was requested to devote all necessary attention to reports concerning the situation of immigrants and asylum seekers who are allegedly being held in prolonged administrative custody without the possibility of administrative or judicial remedy, and to include observations on this issue in the report to the 1998 session. On that basis, the 1998 report established a definition of this mandate, stating that, for the WG's purposes, the word "asylum" signifies a place of refuge and the term "political asylum" refers to refuge that is sought in another jurisdiction, when the persons concerned are in immediate peril of persecution either in their country of origin, country of nationality or country of regular residence. The WG noted that an asylum seeker is also an immigrant, while there are immigrants who are not asylum seekers but who might also be detained for prolonged periods without the possibility of an effective administrative or judicial remedy. Such immigrants may have made or may have attempted to make illegal entry into a country that, under its laws, is entitled to detain them, though not necessarily as persons having committed a criminal offence, but pending the determination of their status under the applicable laws. The WG stated that, in the process of such determination, certain appropriate procedures may have to be followed to ensure that the detention is not arbitrary.

The report includes a compilation of international and regional instruments that are applicable, including but not limited to: the Universal Declaration, the ICCPR, the Convention against Torture, the Convention relating to the Status of Refugees, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the OAU Convention governing the Specific Aspects of Refugee Problems in Africa, and the three Latin American Conventions related to political, diplomatic and territorial asylum.

The Working Group identified four main categories of persons whose situation as immigrants or asylum seekers may be affected. These categories are: persons who have been refused entry to the country concerned; persons who have entered the country illegally and have subsequently been identified by the authorities; persons whose authorization to stay in the country has expired; and asylum seekers whose detention is considered necessary by the authorities.

The issues that need to be addressed with these categories in mind are noted as including: strategies to protect the legal rights of detainees including, eventually, the adoption of a unified approach by the international community, and the undesirability of treating asylum seekers as aliens under the immigration laws; if not already covered by legislation, the need to provide for limits to the period of detention, and to apply such limits strictly to ensure that the detention is not prolonged unreasonably; the need make appeal and review procedures effective, not mere formalities — which would include an automatic review by a judge after a specific period, a review before the authorities which took the initial decision to detain, and a right of appeal before a court or tribunal; the need for special legislative provisions for the detention of minors and/or dealing with minors who accompany asylum seekers or immigrants; and guarantee of access to legal counselling and representation because aliens seeking immigration or asylum are ill-equipped or may not have the information necessary to pursue effectively the legal rights or remedies available to them under the applicable legislation.

Referring to juridical aspects, the report notes that two questions of principle need to be addressed. The first relates to the preliminary phase of questioning, preceding custody — especially in the case of identity checks — which is often followed by a period of police custody preceding detention. The report notes that, when such checks are found to be unlawful, the question arises as to whether this factor should entail either the immediate release of the person(s) in order to avoid arbitrary deprivation of liberty or whether the whole procedure should be deemed unlawful. The second question concerns the effectiveness of guarantees for ensuring that the person is not expelled to a country in which there is a serious risk of persecution; in such a case, the expulsion could be considered a form of inhuman or degrading treatment. The WG also noted the need to consider the legal position of a person who — when expelled either by air, sea, rail or road — is under close surveillance or prevented from leaving the means of transport used.

In commentary on the places in which immigrants and/or asylum seekers may be held, the report draws a distinction between “places of custody” (“lieux de rétention”) and “places of detention” by noting that places of “detention” are run by prison authorities and are more specifically related to the penal imprisonment of offenders. The WG opted to use the term “places of custody” to refer to centres or premises designed for the temporary custody of persons whose situations do not

conform to legislation governing the entry and residence of aliens. The Group further decided that the expressions “detention” or “imprisonment” would be appropriate in considering cases of persons brought before the courts either because they are prosecuted for having committed offences, or within the framework of an extradition procedure.

The report then reviews various types of premises in which immigrants and asylum seekers may be held, notably:

- ♦ places of custody situated in frontier areas — either in international or “transit” areas, and understood to include stations, ports and airports connected to foreign countries, in addition to land frontier areas;
- ♦ police facilities — mostly used during the period preceding detention, following a check usually carried out in the street; i.e., the person is questioned on police premises in order to ascertain whether the individual’s presence in the country is in conformity with legislation governing the entry and residence of aliens;
- ♦ premises under the authority of a prison administration — which results in persons in an irregular situation being treated on a par with offenders;
- ♦ ad hoc premises — where the intention is to replace prison with premises which are not under prison authorities and, therefore, better suited to the specific legal status of the aliens concerned; i.e., where there is a concern with decriminalizing offences related to the entry and residence of aliens;
- ♦ house arrest — replacing custody with a form of restriction of liberty rather than deprivation of liberty, a measure that would mean such cases do not necessarily come under the mandate of the WG;
- ♦ international or so-called “transit” areas — another measure that would not constitute deprivation but rather restriction of liberty to come and go; i.e., the area is closed towards the requested country but remains open to other destinations. In such circumstances, the asylum seeker’s possibility of leaving the transit areas is, however, purely theoretical unless another country, which can offer the individual a degree of comparable protection, is prepared or ready to receive the person;
- ♦ gathering centres — premises which are specially prepared, in principle provisionally, to admit large numbers of foreigners fleeing from their country, usually for political reasons or on account of serious domestic unrest; and
- ♦ hospital premises — which receive persons whose health, during custody, requires hospital care and may be equivalent to deprivation of liberty if police personnel keep a close watch on the person who is forbidden to leave the premises.

Annex I to the report contains information on the Group's revised methods of work and opinions adopted at the Group's November/December 1997 session. The revised methods of work address such areas as the functioning of the Group, implementation of its mandate, submissions and consideration of communications, actions taken on communications, the procedure for review of opinions, the urgent action procedure and coordination with other human rights mechanisms. Annex II contains statistics, covering the period from January to December 1997, on cases in which the WG adopted an opinion relative to whether or not the detention had been arbitrary.

Annex III summarizes the opinions adopted by the Group at its November/December 1997 session. These opinions related to cases involving, *inter alia*: detention for more than five years on charges of rebellion and sedition; arrest by order of a military court and detention at a military installation on the basis that the detainee had publicly denounced a misappropriation of public funds in a 90-per-cent state-owned enterprise; arrests either on suspicion of involvement in a politically motivated killing or without warrant or charge; re-arrest and charges of destabilizing national unity, printing and publishing material without official registration and improper use of official secret documents; and arrest on a charge of having sabotaged the government's policy of religious solidarity, abuse of the rights to liberty and democracy in order to harm the interests of the state, and intending to overthrow the government.

The addendum to the WG's main report contains the decisions adopted by the Group at its November/December 1996 session and the opinions adopted at its May and September 1997 sessions. These cases involved, *inter alia*: arrest on a charge of being an accessory after the fact to treason; the distribution of leaflets and the brandishing of flags during a demonstration; charges of sedition against supporters of a political party; charges of transporting explosive materials, and terrorist acts; arrest and charges of having expressed hostility, hatred or contempt of the government; detention and accusation of collaboration with or involvement in a terrorist organization; arrest on a charge of acting in a manner prejudicial to the security of the state; and arrest during a public demonstration.

### Resolution of the Commission on Human Rights

Under agenda item 8 the Commission adopted a resolution by consensus (1998/41) in which the Commission, *inter alia*:

- ♦ noted the preliminary observations made by the WG on the situation of immigrants and asylum-seekers;
- ♦ requested governments to take appropriate steps to remedy the situation of persons arbitrarily deprived of liberty;

- ♦ encouraged governments to pay attention to the Group's recommendations related to persons detained for a number of years;
- ♦ encouraged governments to ensure that legislation conforms with relevant international standards and legal instruments, not to extend states of emergency beyond what is strictly required by the situation, or to limit its effects;
- ♦ encouraged all governments to invite the WG to visit; and,
- ♦ requested relevant governments to give the necessary attention to urgent appeals sent by the Group.



## DEVELOPMENT

### Intergovernmental Group of Experts on the right to development

At its 1996 session the Commission on Human Rights established an intergovernmental group of experts, for a two-year period, with a mandate to elaborate a strategy based on concrete and practical measures for implementation and promotion of the right to development. In 1997, the Commission requested the Group to consider the possibility of establishing a follow-up mechanism, or enhancing existing ones, to the Declaration on the Right to Development.

The Intergovernmental Group of Experts (IGGE) met from 29 September to 10 October 1997. The report of the meeting (E/CN.4/1998/29) includes information on, *inter alia*: elements of a global strategy for the promotion and implementation of the right to development (by the UN and other international organizations, states, and civil society) and a possible follow-up mechanism to the IGGE. The Annex to the report includes a summary of comments made by some observer governments.

The suggestions set out in the report for a global strategy on the right to development are based on a number of premises, including that: issues related to sustainable development and human rights are a high priority to the international community; to arrive at a global strategy to implement the right to development, the international community should focus on these issues in an "atmosphere" of dialogue; it should be the responsibility of each UN member state and international organization to protect and promote all human rights and fundamental freedoms, including the right to development; human rights for women and the rights of the child should always be of the highest priority on all human rights and right to development agendas; there is an urgency to the need to implement this right because of the effects of poverty in developing countries and even in developed countries, and because the lack of human development presents a threat to security and peace at the national and interna-

tional levels; the globalization of the world economy and the increasing pre-eminence of market rules have provided new opportunities, but also new risks, in the efforts to achieve development; these risks were identified (e.g., marginalization of countries, groups and individuals, economic or financial instability, social discontent); the right to development requires further efforts to highlight not only its multidimensional aspects and content, but also corresponding obligations at both the national and international levels.

The report includes a number of references to international economic issues and realities, and states that the content of, and procedures for, structural adjustment programmes and policies should be reviewed in terms of their effects on development possibilities, economic options, and the realization of the right to development. The report also states that human rights, and in particular their selective interpretation or application, should not be used as an instrument of trade protectionism or of leverage for narrow economic or commercial ends, or to constrain unfairly the legitimate development programmes of countries. On the question of aid, the IGGE noted the need for a larger share of aid to be targeted at the eradication of poverty, the promotion of social and sustainable development, and the promotion of human rights. Further, the report notes the need for states, in their public expenditure patterns, to allocate a larger share to addressing health, education and welfare needs, especially of the poor.

With regard to the trade side of the international economic environment, a number of points are made, including: there should be coherence between the respect for the right to development and the functioning of the international trading system; steps should be taken to ensure that less economically developed countries do not suffer losses from trade rules; a study should be undertaken of the effects of trade rules on equity and on development prospects and options, especially of the developing and the least developed countries, and, if necessary, the rules should be adapted to enable the realization of the right to development; concerns related to social development, equity and the realization of the right to development should be major aspects in the design of present and future international trade rules; efforts should be renewed to overcome the problem of low and unstable prices of commodities from developing countries; all appropriate institutions should make every effort to ensure an adequate net flow of financial resources to developing countries; additional resources to developing countries should be used, in particular, for programmes to meet basic needs, especially of the poor; and, the specific needs of developing countries which are net food-importers should be addressed in trade liberalization programmes and activities in order to ensure the enjoyment of the right to food.

The report recommends that the UN human rights programme, the ILO and other UN agencies undertake efforts to, *inter alia*: (a) promote and protect the rights of all categories of working people; (b) do everything within

their competence to protect the cultural identity of minorities and indigenous peoples, including the cultural identities of migrants and refugees; (c) coordinate work for the promotion and protection of the cultural diversity and the cultural identities of national and local populations; and (d) in addition to monitoring respect for civil and political rights, encourage and monitor political participation, popular participation, accountability, transparency and anti-corruption efforts at the national level and, as appropriate, at the international level. The Group stated that the freedoms of movement, association, assembly, information, expression and opinion are all universal rights, and it recommended that states implement, and the UN and its agencies monitor, without discrimination, the promotion and respect of these rights by all states. Reference is also made to the need to establish an adequate and prompt response to the threat that the lack of development may pose to international and internal peace and security.

The section of the report dealing with aspects of the right to development relevant to individual states asserts that state responsibility for the realization of the right to development can be examined at three levels: the obligation to respect, the obligation to protect, and the obligation to fulfil. The IGGE encouraged states to consider legislative and constitutional changes, when their legal system permits, to guarantee the precedence of treaty law over internal law. States were also encouraged to ratify human rights treaties, reconsider the validity of reservations made to them, accept the monitoring mechanisms and procedures, and cooperate with the international monitoring bodies for the further promotion and protection of human rights and fundamental freedoms.

Specific areas related to other actions by states in support of the right to development were seen to include: adoption of economic and social measures in order to avoid the exclusion of groups marginalized by extreme poverty; respect for and protection of the economic basis and conditions of life of local populations; measures to ensure that the population living in areas where conflicts have or are occurring are able to retain the right to property and legally acquired rights; measures to ensure that poor and vulnerable groups, including landless farmers, indigenous people and the unemployed, have access to productive assets such as land, credit and the means for self-employment; respect in an equal manner for the social rights of all people and, therefore, the establishment of health and educational programmes in border areas between states and within their respective jurisdictions; respect for migrants' human rights, including through the incorporation of human rights aspects in immigration policies; all necessary efforts to promote and protect the rights of all categories of working people, including organized and unorganized labour, farmers and the unemployed; promotion of and adherence to internationally recognized core labour standards, particularly in the context of ensuring the social dimension of the globalization process; establishment or strengthening of national institutions for the promotion and protection of all human rights; encouragement to national judges to apply

international human rights law; measures to make corruption punishable in national law and enable affected individuals and groups to submit complaints to both national and international bodies, including in cases of alleged nepotism; and avoidance of the unilateral imposition of policies related to, for example, coercive economic measures and extraterritorial application of domestic laws.

The report states that the UN system, the World Trade Organization (WTO) and other international organizations should expand the space for participation of NGOs and other civil society organizations in their meetings, conferences and consultative and policy formulation processes. Additional points on the role of civil society included, *inter alia*: states should adopt the principle of recognizing and enlarging the role of civil society organizations in the economic, social and political life of their countries; groups representing vulnerable persons and the public interest should be given effective roles and channels to communicate their interests in arenas of local and national decision-making; civil society organizations should incorporate the principles of the right to development in their activities and promote the right at the local, national, regional and international levels; states and civil society organizations should collaborate and establish forums for dialogue to monitor and discuss various aspects of the globalization process; civil society groups should address the implications of transnational corporations and financial institutions especially in terms of the ethics of their behaviour, economic, environmental, health and cultural effects, effects on local firms and sectors, and on the right to development; there should be a commitment on the part of civil society in all its forms to the promotion and achievement of participatory democracy, sustainable development and respect for human rights and fundamental freedoms and for the rule of law; and local, regional and national programmes for development should be adopted and carried out with the participation of civil society.

With its two-year mandate concluded, the IGGE recommended that a followup mechanism be established to ensure promotion and implementation of the Declaration on the Right to Development. The IGGE noted a range of possibilities for such a mechanism. The Commission on Human Rights could establish: a group of high-level experts; a working group of the CHR composed of experts nominated by the regional groups; or a committee on the right to development composed of a limited number of states from each regional group for a defined period (e.g., three years).

### **The Report of the Secretary-General on the right to development**

The report of the Secretary-General on the right to development (A/53/268) recalls General Assembly resolution 52/136 (December 1997) which reaffirmed the importance of the right to development for every person and for all peoples in all countries, in particular the developing countries, as an integral part of fundamental human rights.

The report takes note of the policy document of the United Nations Development Programme (UNDP) entitled "Integrating Human Rights with Sustainable Human Development". That document suggests that the role of UNDP is the development of a national capacity for the promotion of human rights through three main focus areas: (a) governance, which contributes to developing the national capacity for human rights promotion in governing institutions and provides support for human rights institutions in the public and private sectors, including non-governmental organizations; (b) human rights mainstreaming in all activities in the framework of sustainable human development; and (c) human rights advocacy as part of the policy dialogue with governments. The report notes that a memorandum of understanding (MOU) was signed between the Office of the High Commissioner for Human Rights and UNDP to serve as a catalyst in this process. A joint task force was established in Geneva to follow up the implementation of the MOU.

Other institutional measures within the UN to promote the right to development are noted as including the establishment of the United Nations Development Group and the establishment of the Ad Hoc Working Group on the Right to Development within that larger Group. The Ad Hoc Working Group is chaired by the Office of the High Commissioner of Human Rights and has the mandate to develop: (a) a common Development Group approach for enhancing the human rights dimension in development activities; (b) a matrix outlining specific human rights goals for the Development Group as a whole as well as for individual members, including benchmarks and terms of accountability; and (c) a training module for Development Group staff on the right to development and its implications for development operations.

### **Resolution of the Commission on Human Rights**

At its 1998 session, the Commission adopted by consensus a resolution on the right to development (1998/72). The Commission, *inter alia*: recalled that the right to development is an inalienable human right and that equality of opportunity for development is a prerogative of both nations and individuals; recognized the Declaration on the Right to Development as an integral link between the Universal Declaration and the Vienna Declaration and Programme of Action; expressed concern at situations of absolute poverty, hunger, disease, lack of adequate shelter and illiteracy affecting over one billion people; noted that the human person is the central subject of development and that policy should make the human being the main participant and beneficiary of development; affirmed the need to apply a gender perspective in the implementation of the right, for example, by ensuring that women play an active role in the development process; welcomed adoption by the General Assembly, in December 1997, of the Agenda for Development which declares that development is one of the main priorities of the UN; underlined the important role of the High Commissioner for Human Rights in the

promotion and protection of the right to development; reaffirmed that democracy, development and respect for human rights and fundamental freedoms, including the right to development, are interdependent and mutually reinforcing; affirmed that the gap between developed and developing countries remains unacceptably wide and developing countries face difficulties participating in the globalization process; affirmed that non-fulfilment of development expectations risks the rekindling of non-democratic forces; affirmed, *inter alia*, that (a) structural reforms which do not take social realities into account could destabilize democratization processes, (b) effective popular participation is an essential component of successful and lasting development, and (c) the participation of developing countries in the international economic decision-making process needs to be broadened and strengthened; welcomed the high priority given by the High Commissioner to activities related to the right to development; decided to establish for a three-year period a follow-up mechanism, consisting of an open-ended working group and an independent expert; invited the High Commissioner to present a report to the Commission each year, for the duration of the mechanism, covering: (a) activities of the OHCHR related to implementation of the right, (b) implementation of relevant resolutions adopted by the General Assembly and the Commission, and (c) inter-agency coordination within the UN system for implementation of relevant resolutions; and, requested the Secretary-General to submit a comprehensive report to the 1998 General Assembly and the 1999 Commission on the implementation of the various provisions of this resolution.

The open-ended working group was authorized to meet for five days prior to the Commission's sessions in the years 2000 and 2001 and was given the tasks of:

- ♦ monitoring and reviewing progress made in the promotion and implementation of the right to development;
- ♦ reviewing reports and other information submitted by states, UN agencies, other international organizations and NGOs on the relationship between their activities and the right to development; and
- ♦ presenting a sessional report on its deliberations to the Commission.

The independent expert was mandated to prepare for each session of the working group a study on the current state of progress in the implementation of the right to development.



## DISABILITIES

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities were adopted by the General Assembly in 1993. The Rules stipulated that they would be monitored within the framework of the Commission

for Social Development (CSD). In March 1994, the Secretary-General appointed a Special Rapporteur (SR) for a period of three years to monitor implementation of the Standard Rules. The SR mandate was renewed by the CSD at its 1997 session. The SR in 1998 was Mr. Bengt Lindqvist.

At its 1997 session, the Commission on Human Rights invited the SR to present a report to its 1998 session. The report prepared for the CSD and made available to the Commission (A/52/56, issued as a 1997 General Assembly document) provides information on, *inter alia*: the background and framework for the SR's activities; the activities and programmes within the UN system and among non-governmental organizations in support of persons with disabilities; steps taken with regard to promoting the implementation of the Standard Rules; and surveys of progress in such areas as legislation, accessibility, education and employment.

The report recalls that section IV of the Standard Rules established three components related to implementation, viz. that: monitoring take place within the framework of the sessions of the CSD; a special rapporteur be appointed to do the actual monitoring and report to the CSD; and, non-governmental organizations in the disability field be invited to establish among themselves a panel of experts to be consulted by the SR. The report notes that the recommendations made by the NGO panel of experts (five women and five men) included, *inter alia*, that:

- ♦ the World Programme of Action concerning Disabled Persons, adopted by the General Assembly in 1982, be seen as the framework for prevention, rehabilitation and equalization of opportunities; the long-term strategy adopted by the General Assembly in 1994 be seen as a tool in the implementation of the Standard Rules;
- ♦ monitoring be carried out cooperatively between the UN and the panel of experts and between governments, national NGOs and the UN;
- ♦ bearing in mind that the goal is to achieve implementation of all 22 rules, monitoring efforts concentrate on six areas: legislation, coordination of work, organizations of persons with disabilities, accessibility, education and employment;
- ♦ efforts be made to involve UN specialized agencies and regional commissions in implementation of the Rules; and
- ♦ further action be taken to increase awareness in governments, NGOs and the UN system of the Rules and the need for their implementation.

The effort to assess the extent to which the Standard Rules have been implemented and the impact they have had involved several rounds of correspondence with governments. In general, the results of the first survey, based on a limited number of responses, indicated that: (a) most governments had "acted in the spirit of the

Rules" or were drafting new policies in accordance with them; (b) in many countries the Rules had been translated into the national language and, in some cases, local languages; (c) many countries had established national coordination committees and, in others, such bodies were being created; (d) countries placed a strong emphasis on active participation by organizations of persons with disabilities in developing policies and programmes in the disability field; (e) some countries had adopted or were in the process of drafting legislation or other measures using the principles in the Rules; and (f) in some countries the Rules were used in awareness-raising campaigns.

The results of a second round of correspondence indicated that, while it is acknowledged that an officially recognized disability policy is essential to attain equality of opportunity, in some countries such a policy is not expressed in law but rather in guidelines and/or policy documents; in such policies the highest importance is placed on rehabilitation and prevention (a welfare approach) with less emphasis given to accessibility and anti-discrimination law; and, measures taken to implement and publicize official policy have included translation and wide dissemination of the Rules, media programmes conveying the message of full participation, and support for research projects.

In terms of legislation the responses indicated: governments have tended to use both special and general legislation to protect the rights of persons with disabilities; in most countries the most common measure to protect the rights of persons with disabilities is legal remedy through the courts and the most common non-judicial measure is through a government body (administrative); more than one-quarter of the responses from governments indicated that persons with disabilities are not considered to be full-fledged citizens under general legislation (e.g., with the right to vote, right to property, right to privacy); in some countries persons with disabilities are not guaranteed by law the rights to education, employment, marriage, parenthood/family, health care and services, social security, rehabilitation, and access to courts of law; in 14 of the countries responding, persons with disabilities have no political rights; in 34 countries, the right to participate in decision-making is not guaranteed by law.

On the issue of accessibility, responses showed that: in most countries there are standards to ensure access to public places but in practice such access is limited in the absence of transportation for persons with disabilities; governments cited three main obstacles to ensuring access — economic/budgetary factors, attitudinal factors and lack of enforcement mechanisms, with attitudinal factors being a major obstacle; in the majority of responding countries no disability awareness component has been incorporated into the training of planners, architects and/or construction engineers; approximately half of the responding governments indicated that no measures had been taken to encourage the media or other public service providers to make their services accessible; and, services to blind and visually impaired

persons receive the most attention while services to the deaf and persons with mental disabilities are more limited.

With regard to organizations of persons with disabilities, in most responding countries a national umbrella organization existed and in some cases there are legal provisions mandating representatives of such organizations to participate in policy-making and work with governmental institutions. In the majority of countries where national organizations exist, governments provide them with financial support; however, in others only organizational or logistical support is given; and, in still others, no support is given. In general, persons with disabilities participate to a very limited extent in government, legislatures and judicial areas. On coordination, the SR noted that approximately one-quarter of the responding countries did not have a national coordinating committee or similar body to address issues related to persons with disabilities.

With regard to education, responses indicated that: in a number of countries general legislation applied to children with special educational needs, but in 34 countries children with severe disabilities were excluded from education, some by law and others because of non-legal factors; reasons for exclusion include the severity of disability, lack of facilities and trained staff, long distances to schools and the fact that regular schools do not accept pupils with special educational needs; in 10 countries no legislation on special education exists; in some countries parents' involvement in decision-making and their right to choose placement in special education is severely limited; in general, schooling for children with disabilities is still predominantly provided in a segregated educational system in which the rate of school attendance is very low.

And, with regard to employment, 54 of the responding countries had ratified ILO Convention No. 159 on vocational rehabilitation, promotion of employment opportunities and equal treatment of "disabled" women and men. Within the states that have ratified the Convention, the measures that are least implemented relate to vocational rehabilitation in rural areas, cooperation with organizations of persons with disabilities and availability of qualified staff in vocational rehabilitation. The anti-discrimination measure related to employment is the one that is most implemented.

Based on these and other points the report recommends, *inter alia*, that:

- ♦ the role of the focal point within the UN for implementation of the Standard Rules be further developed, cooperation between the Secretariat and specialized agencies be better coordinated, and an inter-agency mechanism be established to facilitate this;
- ♦ states that have not yet done so ratify ILO Convention No. 159 and states that have ratified make further efforts to reflect the Convention's provisions in national law and practice;

- ♦ governments develop further cooperation with organizations representing persons with disabilities at all levels and strengthen their support for the work of these organizations; and
- ♦ the UN take measures to assist governments in the monitoring and evaluation of mechanisms established to facilitate implementation of the Standard Rules.

The report concludes by noting the need to develop further the human rights aspects both implicit and explicit in the Standard Rules and, also, to give more attention to the child aspect and the gender perspective in future implementation efforts.

### Resolution of the Commission on Human Rights

Under the agenda item dealing with the report of the Sub-Commission, the Commission adopted by consensus a resolution on the human rights of persons with disabilities (1998/31). The Commission, *inter alia*: recalled that all persons with disabilities have the right to protection against discrimination and full and equal enjoyment of human rights; reaffirmed the continuing validity and value of the World Programme of Action concerning Disabled Persons; recalled General Assembly resolution 52/107 (12 December 1997) calling for the full and equal enjoyment of all human rights by children with disabilities; welcomed initiatives to hold international conferences related to persons with disabilities; re-emphasized the responsibility of governments to remove, or facilitate the removal of, barriers and obstacles to the full integration and participation of persons with disabilities in society; expressed concern at the extent of disabilities caused by the indiscriminate use of anti-personnel mines, particularly among civilian populations; recognized that any violation of the principle of equality and any discrimination or negative differential treatment of persons with disabilities is an infringement of the human rights of such persons; welcomed the decision of the Commission on Sustainable Development (CSD) to renew the mandate of the Special Rapporteur (SR); invited the CSD SR to address the session of the Commission in the year 2000; encouraged governments to support non-governmental organizations active in the promotion and protection of human rights for persons with disabilities; recognized the right of such persons, individually and collectively, to form and become members of organizations of persons with disabilities and the right of such organizations to speak for and act as legitimate representatives of their members; urged governments to implement the Standard Rules, with particular attention given to the needs of children, women and persons with developmental and psychiatric disabilities; expressed grave concern that situations of armed conflict have especially devastating consequences for the human rights of persons with disabilities; welcomed increased international efforts with respect to anti-personnel mines and noted the conclusion of the Convention on the

Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction; called on states and relevant UN bodies to contribute on an ongoing basis to international mine clearance efforts; urged states to take further action to promote gender- and age-appropriate mine-awareness programmes and rehabilitation; called on the UNDP and all intergovernmental institutions for development cooperation to integrate disability measures into their mainstream activities; encouraged governments to work towards the development of appropriate education policies and practices for children and adults with disabilities; and, invited the ILO to take the lead internationally in formulating policies and strategies that will lead to equal employment opportunities.



## DISAPPEARANCES

### Working Group on enforced or involuntary disappearances: (E/CN.4/1998/43)

The Working Group (WG) on enforced or involuntary disappearances was established by the Commission at its 1980 session. At that time, the mandate of the Group was to act as a channel of communication between families of disappeared persons and the governments concerned, with a view to ensuring that sufficiently documented and clearly identified individual cases were investigated and the whereabouts of the disappeared persons clarified. This mandate continues and, following adoption by the General Assembly in 1992 of the Declaration on the Protection of All Persons from Enforced Disappearances, the Working Group was also given the task of monitoring states' compliance with the Declaration. The effect of the Declaration was to place states under an obligation to take effective measures to prevent and terminate acts of enforced disappearance by making them continuing offences under criminal law and establishing civil liability.

The report to the 1998 Commission includes information on, *inter alia*: meetings and missions of the WG, communications, methods of work, a draft international convention related to disappearances, compensation, presumption of death and exhumation, and implementation of the Declaration. The report also includes summaries of information on cases related to a number of countries as well as the Palestinian Authority.

The total number of cases transmitted to governments since the Group was established stands at 47,758. The total number of cases being kept under active consideration, pending clarification, stands at 44,940. The number of countries with outstanding cases of alleged disappearance was 63 in 1997. Between January and 21 November 1997, the period upon which the report is based, the WG received some 1,111 new cases of disappearance in 26 countries, 180 of which allegedly occurred in 1997.

On the question of an international convention on the prevention and punishment of enforced disappearance, the report states that a monitoring body would be essential in order to supervise the compliance of state parties. The WG restated its opinion that, in order to avoid a further proliferation of treaty monitoring bodies, the task of monitoring should either be entrusted to one of the existing treaty bodies — for example by adopting a further optional protocol to the International Covenant on Civil and Political Rights — or to the Working Group. In the latter case, the WG would be prepared, in analogy to the double role of the Inter-American Commission on Human Rights, to examine the possibility of continuing to function both as a thematic mechanism of the UN Commission on Human Rights with respect to all countries of the world where cases of disappearances are alleged to occur, and as a treaty monitoring body with respect to states parties to the future convention on disappearances.

The narrative on compensation, presumption of death and exhumation notes that, in recent years, a number of countries have started to compensate financially victims and the families of victims of enforced disappearance. It also notes that there have been significant variances in the legal, procedural and financial aspects taken by each country. Emphasizing the importance that it places on the issue, the WG communicated with governments in countries with more than 20 pending cases of alleged disappearance, requesting information on their practices with regard to compensation, presumption of death and exhumation. The Working Group posed a number of specific questions:

1. What is the legal basis for compensation in your country?
2. What are the legal requirements and legal procedures leading to a presumption of death? Who initiates such a procedure? Can a person be presumed dead over the objections of the family?
3. Does the payment of compensation require a presumption of death?
4. Has your Government used the method of exhumation to determine the identity of a person reported to have disappeared?
5. Has your Government compensated victims or families of victims of disappearance?

At the time the report was prepared the replies of 12 governments variously indicated that:

- ♦ the legal bases for compensation included: compensation for victims of enforced disappearance or death caused by the action of the armed forces, the security forces or paramilitary groups prior to the return of democracy; compensation for non-surviving victims of human rights violations, disappearances or executed detainees, whose disappearance occurred during a specific time period; provisions in criminal and civil codes on criminal responsibility and related

civil liability; orders to pay compensation rendered by the national human rights commission; and, provisions in law stipulating compensation to be paid to next of kin of persons who have died or sustained injuries as a result of violence, terrorist activity, related security operations and consequent to civil unrest; and

- ♦ legal requirements and procedures leading to a presumption of death, include varying periods of time which must have elapsed, for example, 1 to 10 years, and the periodic publication in official organs, as well as other media, of proceedings aimed at a declaration of a presumption of death; in some states proceedings may be initiated by any concerned or interested party while, in others, this process is limited to family members or cohabiting partners; in some cases a prior notice of presumption of death or a "declaration of absence" is required before compensation is paid.

Following on this consideration of issues related to compensation, the report refers to article 19 of the Declaration on the Protection of All Persons from Enforced Disappearances which stipulates: "The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependants shall also be entitled to compensation." The report notes that the right to obtain redress in article 19 of the Declaration is broader than the right to an effective legal or judicial remedy as stipulated, for instance, in article 2 (3) of the International Covenant on Civil and Political Rights. The WG stated that, as has been recognized in the jurisprudence of UN treaty monitoring bodies and in the draft basic principles and guidelines on the right to reparation for victims of [gross] violations of human rights and international humanitarian law (E/CN.4/1997/104, Appendix), the right to obtain redress derives from the general obligation of states to ensure human rights and applies, in particular, to cases of gross violations.

The report then reviews aspects of the Declaration related to compensation and the right to obtain redress noting, *inter alia*: states have an obligation to make acts of enforced disappearance an offence under criminal law and bring the perpetrators to justice; bearing in mind that impunity is one of the major root causes of the widespread practice of enforced disappearance, many victims of such acts and their families consider the prosecution and punishment of the perpetrators as important redress for their suffering; states also have an obligation to adopt legislative and other measures in order to enable the victims to claim compensation before the courts or special administrative bodies empowered to grant compensation; in addition to the victims who survived the disappearance, their families are entitled to compensation for the suffering during the time of disappearance and, in the event of the death of the victim, his or her dependants are entitled to compensation; the Declaration stipulates that

the compensation shall be "adequate", that is, proportionate to the gravity of the human rights violation — for example, the period of disappearance and/or the conditions of detention — and to the suffering of the victim and the family; monetary compensation shall be granted for any damage resulting from an enforced disappearance such as physical or mental harm, lost opportunities, material damages and loss of earnings, harm to reputation and costs required for legal or expert assistance; civil claims for compensation shall not be limited by amnesty laws made subject to statutes of limitation or made dependent on penal sanctions imposed on the perpetrators; the right to adequate compensation set out in the Declaration shall be distinguished from the right to compensation for arbitrary executions, viz. the right of compensation shall not be made conditional on the death of the victim; and the right to obtain redress also includes the means for as complete a rehabilitation as possible through medical and psychological care and rehabilitation, legal and social rehabilitation, guarantees of non-repetition, restoration of personal liberty, family life, citizenship, employment or property, return to place of residence and similar forms of restitution, satisfaction and reparation which may remove the consequences of the enforced disappearance.

The report concludes with a number of observations on the phenomenon of disappearances and the WG's role in combatting it and relieving the suffering of the victims and their families. The points made in this section include, *inter alia*, that: since the 1960s and early 1970s the practice of disappearances has spread to a number of regions; most of the more recent cases occurred in the context of internal armed conflicts, ethnic and religious tensions and other forms of internal disturbances; the high percentage of unresolved cases partly reflects the fact that many of these disappearances date back to the 1970s or early 1980s and, while most of the victims have probably been dead for a long time, it remains extremely difficult to establish beyond a reasonable doubt the exact fate and whereabouts of the victims; according to the Group's methods of work, such proof is a precondition for considering the case clarified; in recent years the WG has intensified its efforts to mediate between the families of missing persons and the respective governments to find a solution to these old cases which might be acceptable to all sides concerned; although many of these governments have changed, and the new administrations show a keen interest in clarifying old cases, the families and non-governmental organizations often accuse them of not taking sufficient measures to investigate these cases and to bring the perpetrators to justice; these same governments, however, often enacted amnesty laws which legally prevent them from prosecuting the alleged perpetrators, a course of action which clearly is not in conformity with article 18 of the Declaration; the WG offers its assistance in those cases to find a solution by means of a judicial declaration of presumption of death, with the concurrence of the families, and the payment of adequate compensation to them; and, another method of clarifying old cases is the

exhumation and identification of remains from mass graves and other places where victims of enforced disappearance had been clandestinely buried.

The WG also observed that, in addition to financial compensation, the right to obtain redress for acts of enforced disappearance includes: other forms of compensation such as medical, psychological, legal and social rehabilitation; restoration of personal liberty, employment and property; and forms of restitution, satisfaction and reparation which may remove the consequences of the enforced disappearance. The WG further observed that: impunity is one of the root causes of enforced disappearances, and at the same time one of the major obstacles to clarifying past cases; in some states with a high number of outstanding cases, families of missing persons demand that governments comply with their obligations under the Declaration to carry out thorough investigations, to inform the public of the outcome of such investigations, and to punish the perpetrators — considered to be pre-conditions for a lasting solution to the problem; non-cooperation by some governments remains one of the principal reasons that a significant number of cases remain unresolved; equal in importance to clarification of past cases of enforced disappearance is the need for governments to take effective legislative, administrative and judicial measures aimed at preventing the occurrence of such acts in the future; although article 4 of the Declaration applies to all states and not only to those in which enforced disappearances actually take place, almost no government has amended its criminal laws in order to ensure that acts of enforced disappearance, as such, are offences punishable by appropriate penalties; and, the enactment and effective implementation of such laws would be a major step towards ending the widespread culture of impunity and preventing acts of enforced disappearance.

The Group noted that article 10 of the Declaration imposes three obligations on government, related to a recognized place of detention, limits of administrative or pre-trial detention, and prompt judicial intervention. Additional obligations are set out related to: the right of all detainees to have prompt access to their families and to lawyers and doctors of their own choice, the maintenance of official up-to-date registers of all persons deprived of their liberty, regular inspection of all places of detention by independent bodies, and proper human rights training of all prison and law enforcement personnel and members of the armed forces.

The report concludes with three recommendations, namely that:

- ♦ all states with a considerable number of outstanding cases develop comprehensive programmes of forensic activities and compensate the families of deceased victims of enforced disappearance;
- ♦ governments comply with their obligations under the Declaration not to impede investigations by enacting amnesty laws and to stop the cycle of impunity; and

- ♦ the Commission on Human Rights take appropriate action in relation to countries that have never cooperated with the WG in its efforts to clarify cases of disappearance.

### Resolutions of the Commission on Human Rights

Under agenda item 8, the Commission adopted two resolutions, the first on enforced or involuntary disappearances, the second on restitution and compensation.

#### In the resolution on enforced or involuntary disappearances (1998/40) the Commission, *inter alia*:

- ♦ expressed deep concern at the intensification of disappearances in various regions and the growing number of reports related to harassment, ill-treatment and intimidation of witnesses of disappearances or relatives of disappeared persons;
- ♦ emphasized that impunity is one of the underlying causes of disappearances and a major obstacle to the clarification of cases;
- ♦ deplored the fact that some governments have never provided substantive replies to cases of disappearance in their countries or acted on the WG's recommendations;
- ♦ urged governments to cooperate with the Group, in particular by inviting it to visit their countries;
- ♦ urged governments to take steps to protect witnesses of disappearances, lawyers and family members against any intimidation or ill-treatment;
- ♦ urged governments faced with long-unresolved cases to continue efforts to clarify the fate of the individuals concerned and begin a process with their families to achieve an appropriate settlement;
- ♦ urged governments to provide in their legal systems mechanisms to ensure fair and adequate reparation to victims and/or their families;
- ♦ reminded governments that all acts of enforced or involuntary disappearance are crimes and of the need to ensure that competent authorities immediately undertake impartial inquiries into reports of cases; and
- ♦ encouraged the WG to continue to (a) promote communication between families of disappeared persons and governments to ensure investigation into cases, (b) observe in its humanitarian task UN standards and practices related to the handling of communications and consideration of replies from governments, (c) consider the question of impunity in light of relevant provisions in the Declaration and the final reports submitted by the rapporteur of the Sub-Commission appointed to study this question, (d) pay particular attention to cases of disappeared children and children of disappeared persons and cooperate

closely with governments to search for and identify these children, (e) pay particular attention to cases indicating ill-treatment against, or threats or intimidation of witnesses of disappearances or relatives of disappeared persons, (f) pay particular attention to cases of disappearance of "human rights defenders" wherever they occur, and make appropriate recommendations for preventing such cases and improving the protection of such persons, (g) continue to apply a gender perspective in its work, (h) provide appropriate assistance relative to implementation of the Declaration, and (i) continue deliberations on its methods of work and report on this to the 1999 session.

The Commission renewed the mandate of the Working Group for a further three years.

#### In the resolution on the right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms (1998/43), which was adopted by consensus, the Commission, *inter alia*:

- ♦ reaffirmed that victims of grave violations of human rights should receive, in appropriate cases, restitution, compensation and rehabilitation;
- ♦ reiterated the importance of addressing the issue in a systematic and thorough way at the national and international levels;
- ♦ called on the international community to give due attention to the issue;
- ♦ appointed an expert to prepare a revised version of the draft basic principles and guidelines, taking into account the views and comments provided by states and others; and,
- ♦ requested the expert to submit the revised version to the 1999 Commission, with a view to adoption by the General Assembly.

### Resolution of the General Assembly

At the 1998 session, the General Assembly adopted by consensus a resolution on enforced or involuntary disappearances (A/C.3/53/L.46). The GA, *inter alia*: expressed deep concern over the intensification of enforced disappearances in various regions of the world and by the growing number of reports concerning the harassment, ill-treatment and intimidation of witnesses of disappearances or relatives of persons who have disappeared; reaffirmed that any act of enforced disappearance is an offence to human dignity and a grave and flagrant violation of human rights and fundamental freedoms as well as a violation of the rules of international law; reiterated its invitation to all governments to take appropriate legislative or other steps to prevent and suppress the practice of enforced disappearances; called on governments to take steps to ensure that, when a state of emergency is introduced, the protection of human rights is ensured, in particular as regards the prevention of

enforced disappearances; reminded governments of the need to ensure that authorities conduct prompt and impartial inquiries in all circumstances, whenever there is a reason to believe that an enforced disappearance has occurred in territory under their jurisdiction, and that, if allegations are confirmed, perpetrators should be prosecuted; and again urged the governments concerned to take steps to protect the families of disappeared persons against any intimidation or ill-treatment to which they might be subjected.

With regard to the Working Group (WG), the GA, *inter alia*: recalled the importance of the WG as a channel of communication between the families of disappeared persons and the government concerned; invited the WG to identify obstacles to the realization of the provisions of the Declaration, to recommend ways of overcoming those obstacles, and to continue a dialogue with governments and relevant intergovernmental and non-governmental organizations; encouraged the WG to continue to consider the question of impunity, in close collaboration with the rapporteur appointed by the Sub-Commission and with due regard for relevant provisions of the Declaration; and requested the Group to pay the utmost attention to cases of children subjected to enforced disappearance and children of disappeared persons, and to cooperate closely with the governments concerned to search for and identify those children. The GA also appealed to the governments concerned to cooperate fully with the WG, to reply promptly to its requests for information, and to give serious consideration to inviting the WG to visit their countries.



## ECONOMIC, SOCIAL AND CULTURAL RIGHTS

### Reports of the Secretary-General

The reports of the Secretary-General (SG), as requested by the 1997 Commission, were to consider economic, social and cultural rights from the perspective of the special problems faced by developing countries attempting to achieve these human rights. They were to focus on the international debt strategy and contain an analysis of its effects on the enjoyment of the human rights of the people of the developing countries, and in particular of the most vulnerable and low-income groups.

The first report (E/CN.4/1998/24) summarizes comments and observations received from the government of Ecuador, the Food and Agriculture Organization, the UN Industrial Development Organization, and from two NGOs, OXFAM International and the Foodfirst Information and Action Network (FIAN). The report also includes a summary of the comments and proposals made during the second session of the Intergovernmental Group of Experts on the Right to Development in October 1997.

The second report (E/CN.4/1998/25) is based on information and observations received from: the governments of Cuba, Lebanon and Morocco; the UN Department of Economic and Social Affairs, the Department of Public Information, the Division for Palestinian Rights and the UN Environment Programme (UNEP); two of the UN's specialized agencies, viz. the Food and Agriculture Organization (FAO) and the International Labour Organisation (ILO); the Council of Europe; and two NGOs, viz. the International Federation of Settlements and Neighbourhood Centres and Pax Romana. A number of comments were addressed to the question of whether or not a special rapporteur on economic, social and cultural rights should be appointed by the Commission. Criticisms of such an appointment included that it would: not guarantee effective promotion and protection of these rights; would essentially duplicate the monitoring process of the UN conferences on economic and social issues; be very broad and carry the danger of the work being unfocused; function more as a promotional mandate, therefore requiring more resources but potentially receiving only the same resources as those allocated to other mechanisms; and duplicate a significant part of the mandate of the OHCHR as well as that of the ILO. Some support for an appointment was expressed, on the understanding that the mandate should be well-defined and highly focussed.

### The right to food

At its 1997 session, the Commission adopted resolution 1997/8, reaffirming that hunger constitutes an outrage and a violation of human dignity and, further, that urgent measures at the national, regional and international level were needed for its elimination. The resolution also endorsed the request made in the World Food Summit Plan of Action to the High Commissioner for Human Rights, in consultation with others, to define better the rights related to food in article 11 of the International Covenant on Economic, Social and Cultural Rights, and propose ways to implement and realize those rights. The Commission invited the High Commissioner to report to the 1998 session on the implementation of the 1997 resolution.

The High Commissioner's report to the 1998 Commission (E/CN.4/1998/21) notes that one of the concrete and practical responses made by the OHCHR to the objectives and commitments set out in the Rome Declaration and Programme of Action was, in December 1997, to convene an expert consultation on the human right to adequate food. The seminar was attended by a number of independent experts as well as representatives from FAO, World Food Programme, International Fund for Agricultural Development, the UNHCR, the Subcommittee on Nutrition of the Administrative Committee on Coordination, as well as the Chairman of FAO's Committee on World Food Security.

The summary of the general discussion held at the Committee on Economic, Social and Cultural Rights referred to the need to ensure that a human rights framework was

used to define the content of the provisions in the Covenant on Economic, Social and Cultural Rights because: (a) such a framework implied a normative, legal basis, even if that was not ideally drafted or spelled out with the desirable detail; (b) human rights are obligatory for states, not optional, in contrast to recommendations such as those of the World Summit on Social Development or the World Food Summit; (c) by using a human rights entry point, the entire human rights framework is brought into play, civil and political as well as economic, social and cultural rights; (d) international human rights should have a corresponding legal basis within states; (e) human rights require active and effective remedies, though not necessarily through the use of courts; and, (f) rights implied accountability, both domestically and internationally.

Other points made during the seminar included that: the normative content of the right to food was relatively clear and did not, in general, mean a right to be provided for by the state, although the state can create the conditions under which people are able to take care of their own needs, including that for food; in the absence of a participatory process, the right to food would not progress; in their reports to the Committee, states should be encouraged to present not only a description of the existing situation but the steps they are taking, including legislation, to remedy any gaps in the enjoyment by everyone of the right to food; realization of the right to food means creating and sustaining conditions under which the right to food in fact is enjoyed; implementation must be carried out both at the national and international levels; the concept of “progressive realization” of Covenant rights, set out in article 2, was important and the World Food Summit set the target of reducing by 50 per cent the number of undernourished by the year 2015; and, bearing in mind the minimum core obligation the Committee has defined for states, any state party in which there is a significant number of individuals who are deprived of essential foodstuffs, essential primary health care, basic shelter and housing, or the most basic forms of education is, *prima facie*, violating the Covenant. Reference was made to the International Code of Conduct on the Human Right to Adequate Food, cooperatively drawn up by a number of non-governmental organizations. The Code: (a) establishes a framework for the implementation of the right to food at the national and the international levels based on four levels of obligations: to respect, protect, facilitate and fulfil the right; and (b) presupposes that states have international obligations not to undermine the possibility of other states securing the enjoyment of the right to food for their own inhabitants.

The report notes that the Consultation should be seen as a first step in a longer-term process following up on the World Food Summit Plan of Action. The Consultation concluded that the human right to adequate food is firmly established in international law. Based on that understanding, a number of points were made, including that: the operational content of the right and means of application are generally little understood; the right remains scarcely implemented; a human-rights approach

to food and nutrition problems is fundamentally different from a basic-needs-oriented approach to development as it introduces a normative basis which is obligatory and requires a legislative response at the state level; a rights approach implies that “beneficiaries” of development are active subjects and “claim holders” and stipulates duties or obligations for those against whom such claims can be held, with the requirement of a corresponding claim or recourse mechanism; a rights approach introduces an accountability dimension not present in basic-needs strategies; a fundamental misunderstanding — which has hindered implementation of the right to food — has been the notion that the principal obligation is for the state to feed the citizens under its jurisdiction (fulfil the right to food), rather than respecting and protecting the rights related to food, as well as emphasizing the obligations of individuals and civil society in this regard; there is considerable agreement on the conceptual content of the right to adequate food, including relevant health and nutrition aspects; the principal challenge lies in achieving consensus on the corresponding obligations and their operationalization; the existing basic analytical framework to define policies and programmes for the realization of the right to food should be used with flexibility in both rural and urban environments; more attention should be given to the role of women in realizing the right to food; and with regard to implementation of the right to food, there is a clear division of labour between human rights institutions and development actors.

Based on the discussions, the Consultation recommended, *inter alia*, that:

- ♦ the Committee on Economic, Social and Cultural Rights draft and adopt a general comment as a contribution to the clarification of the content of the right to adequate food and, on that basis, the Committee consider revising existing reporting guidelines in order to improve the dialogue with states on implementation of the right at the national level;
- ♦ whenever appropriate, the mandates of Special Rapporteurs include the right to adequate food;
- ♦ “best practice” or country case studies on how the right to food is implemented — as well as case studies on the application of other economic, social and cultural rights — be developed as a means of supporting the promotion of a human rights approach to food and nutrition problems;
- ♦ the Commission on Human Rights explore ways in which it could advance, at the political level, the right to adequate food among its members, as well as in the UN system, notably within the framework of the 50th anniversary of the Universal Declaration of Human Rights;
- ♦ the High Commissioner consider practical ways of strengthening the Office’s capacity to deal with the substantive issues of the right to food, including the possibility of appointing an external adviser on the

right to food; the High Commissioner place the issue of a coordinated approach to the right to adequate food throughout the UN system high on her agenda; and

- ♦ a follow-up meeting be convened in early 1998 to continue discussions of the content and means of implementation of the right to adequate food and, further, that the participation of human rights organizations currently concerned mainly with civil and political rights, as well as that of development agencies, be ensured.

### Microcredit programmes

At its 1997 session the Commission adopted resolution 1997/11 in which the High Commissioner for Human Rights was requested to continue discussions with the World Bank and report on the creation of microcredit programmes.

Under the general heading "Human rights and extreme poverty", the High Commissioner's report on microcredit programmes (E/CN.4/1998/23) notes continuing efforts by the OHCHR to establish closer ties and develop concrete projects with the World Bank. Reference is made to the fact that, at the time the report was prepared, no joint programmes had been undertaken.

With regard to the Bank's micro-financing and credit approach, the report recalls the World Bank's programme "Sustainable Banking with the Poor" (SBP) — a collaborative effort of the World Bank, the Ministry of Foreign Affairs of Norway, the Swiss Agency for Development and Cooperation, and the Ford Foundation. Specific points related to the SBP are noted, including that: it is aimed at improving the ability of donors, governments and practitioners to design and implement policies and programmes to build sustainable financing institutions that are effective in reaching the poor; a series of case studies has been carried out, focussing on microfinance institutions in Asia, Africa and Latin America that have pioneered innovative approaches for reducing the costs and risks of providing financial services to a large number of low-income clients; these case studies covered a wide range of types of institutions and programmes, including commercial banks, specialized banks, credit unions, non-governmental organizations and non-bank financial institutions. Other points related to the SBP are that: it draws on several disciplines — economics, finance, anthropology — and uses both quantitative and qualitative approaches to analyse why some programmes have successfully delivered financial services to the poor while others have fallen short; success is defined by financial sustainability and by access and outreach; financial sustainability is measured in terms of key financial performance indicators, including the Subsidy Dependence Index used in the Bank; access and outreach are measured by assessing how far beyond the "frontier of finance" a programme has gone to reach those who have been unable to use formal financial services — whether because of gender, income, illiteracy, ethnic identity, geographic location, or lack of collateral; based

on the case studies, the SBP will produce a number of publications on sustainable banking with the poor that will distil lessons for policy formulation, programme design and implementation; and the SBP project has also established a Seminar Series as a means to disseminate best practice in the Bank and as a forum for discussion of problems and issues emerging in the rapidly growing field of microfinance. At the time the High Commissioner's report was prepared, 18 such seminars had been held, with abstracts produced and circulated for selected seminars.

### Structural adjustment programmes

At its 1997 session, the Commission agreed to the appointment of an independent expert for one year to assist the Working Group on structural adjustment programmes. The Expert was to have submitted the report in time for it to be circulated prior to the Working Group's second session which was scheduled from 16 to 20 February 1998. The report was not submitted as scheduled, however, and, as a consequence, the Working Group's second session was re-scheduled to take place after conclusion of the Commission's 1998 session. Thus, there was no report on structural adjustment programmes and their impact on the enjoyment of economic, social and cultural rights.

### Draft optional protocol to the Covenant on Economic, Social and Cultural Rights

At its 1997 session, the Commission had before it a report by the Secretary-General (E/CN.4/1997/105) to which a draft text for an optional protocol to the Covenant on Economic, Social and Cultural Rights was appended. The draft text for the protocol stipulated:

- ♦ Preamble: establishment of the procedure will make concrete the interdependence of civil, cultural, economic, political and social rights, give substance to the importance of recourse procedures in relation to economic, social and cultural rights, draw a connection between these rights and the international community's broader economic and social development objectives and clarify the obligations of states under article 2 (1) of the Covenant.
- ♦ Article 1: the question of whether violation of a right or the rights recognized in the Covenant had occurred will depend on the facts of the case and the complaints procedure alleging a violation will remain open to both individuals and groups.
- ♦ Article 2: the right to submit a complaint will be extended to individuals and groups acting on behalf of alleged victims provided that such individuals and groups are acting with the knowledge and agreement of the alleged victim(s); all rights set out in articles 1 to 15 of the Covenant will be included, bearing in mind that the right to self-determination will be addressed only from the perspective of the economic, social and cultural dimensions of the right; the failure

of a state to meet its reporting obligations on time will not be susceptible to the complaints procedure and will be handled through other means employed by the Committee; the state has a responsibility to ensure that an individual or group submitting a complaint is not subjected to any persecution or sanction as a result of taking this action.

- ♦ Article 3: communications that are anonymous or filed against a state that is not a party to the Covenant will not be considered; allegations must relate to the rights set out in the Covenant, must not abuse the right of complaint, and must only relate to state actions or events following entry into force of the Covenant in the country concerned; the doctrine of "exhaustion of domestic remedies" will be followed; complaints under examination through another procedure will not be considered unless that process of investigation or settlement is unreasonably long.
- ♦ Article 4: failure by the complainant to provide sufficient substantiation for the complaint may result in a declaration of inadmissibility; re-examination of a complaint may be undertaken if new or further information is received.
- ♦ Article 5: the Committee may request a state to take interim measures to prevent irreparable harm in cases where consideration of a submission has not been completed.
- ♦ Article 6: confidentiality of communications shall be governed by rules of procedure; the state against which the complaint has been made will have six months to provide the Committee with statements or explanations and the remedy, if any, provided; the Committee will facilitate friendly settlement of disputes where and when possible; a report containing a statement of fact and the solution reached will be prepared if a settlement is reached.
- ♦ Article 7: the Committee will adopt such procedures as it considers necessary to assess the extent to which the state has met its obligations under the Covenant; information may be collected from outside sources provided that any such information is communicated to the parties concerned for comment; the Committee may visit the country concerned with the agreement of the government; examination of communications will be conducted in closed-door meetings; the Committee will adopt its views on claims, transmit them to the state and the individual or group submitting the complaint and make them public at the same time.
- ♦ Article 8: the Committee will make specific recommendations to the state in the area of remedies for verified violations; the state will have six months, or longer if stipulated by the Committee, to inform the Committee of measures taken to implement the recommendations made.
- ♦ Article 9: follow-up will be undertaken, to the extent that the Committee may invite a state to discuss mea-

asures taken to implement recommendations; a state party may be invited to include in its reports details of measures taken to implement recommendations; the Committee will include in its annual report information on the communication submitted, examination of it, a summary of the explanations and statements of the state concerned, its own views and recommendations and the response of the state to those views and recommendations.

At the 1998 session, the Commission had before it two reports by the Secretary-General (E/CN.4/1998/84; E/CN.4/1998/84/Add.1) containing the responses of governments, UN organs and agencies and others to the draft text for an optional protocol. Substantive comments were received from Canada, Cyprus, Ecuador, Finland, Germany, Syria, the Office of the Legal Counsel of the UN, the Directorate of Human Rights of the Council of Europe, the American Association of Jurists, the Dutch Section of the International Commission of Jurists, the head office of the International Commission of Jurists, and the International Organization for the Development of Freedom of Education. In general, the comments reflected a range of views — from uncritical support for an optional protocol and the draft text, to qualified support with reservations raised on the issue of justiciability, to a query as to whether the rights set out in the Covenant, and violations thereof, could be better served through a series of detailed general comments by the Committee.

### Resolutions of the Commission on Human Rights

Under the agenda item on economic, social and cultural rights the Commission adopted six resolutions and decisions.

#### Resolution on the realization of economic, social and cultural rights

The resolution (1998/33) was adopted by a vote of 52 in favour, 1 opposed. The Commission, *inter alia*: welcomed all relevant reports of the High Commissioner, the relevant activities of intergovernmental and non-governmental organizations, and the work related to economic, social and cultural rights arising from various UN conferences; noted the report of the Secretary-General, all resolutions of the Sub-Commission related to the realization of economic, social and cultural rights, the work of the Committee on Economic, Social and Cultural Rights and the recommendations adopted by the working group on structural adjustment programmes; reaffirmed that there is an inextricable link between respect for the rights set out in the Covenant on Economic, Social and Cultural Rights and the process of development; reaffirmed the universality and interdependence of human rights; called on states to give full effect to the universality of economic, social and cultural rights and to consider ratifying the ICESCR; called on states to secure full respect for these rights and give priority to individuals, most often women and children, and communities living in extreme poverty; called on states to consider drawing up national

action plans which would include specific benchmarks to be achieved to give effect to minimum essential levels of enjoyment of economic, social and cultural rights; called on states to promote the effective and wide participation of representatives of civil society in decision-making processes related to these rights; called on states parties to the ICESCR to submit their reports in a regular and timely manner and promote a national effort to ensure the participation of civil society in the preparation of their periodic reports and implementation of the Committee's recommendations; established a three-year mandate for a Special Rapporteur, with a focus on the right to education; requested the High Commissioner to urge all states parties to the ICESCR to submit their comments on the draft text for an optional protocol; and, expressed support for the efforts of the High Commissioner to implement the programme of action designed to increase the ability of the Committee on Economic, Social and Cultural Rights to assist governments in their reporting obligations and to increase its capacity to process and follow up on the examination of those reports.

The mandate of the Special Rapporteur on the right to education was defined in eight components:

1. to report on the status throughout the world of the progressive realization of the right to education, including access to primary education, and the difficulties encountered in the implementation of the right;
2. as appropriate, to promote assistance to governments in working out and adopting urgent plans of action, wherever they do not exist, to secure the progressive implementation, within a reasonable number of years, of the principle of compulsory free primary education for all;
3. to take account of gender considerations, in particular the situation and needs of girls, and promote the elimination of all forms of discrimination in education;
4. to make the reports available to the Commission on the Status of Women whenever they concern the situation of women in the field of education;
5. to develop a regular dialogue and discuss possible areas of collaboration with relevant UN bodies, agencies and international organizations in the field of education, including international financial institutions;
6. to identify possible types and sources of financing for advisory services and technical cooperation related to access to primary education;
7. to ensure coordination, to the extent possible, with the Sub-Commission's expert who is preparing a working paper on the right to education; and
8. to submit to the 1999 session of the Commission a report on activities related to the above mandate.

### **Resolution on human rights and extreme poverty**

The resolution (1998/25) was adopted by roll call vote with 51 in favour, 1 opposed. The Commission, *inter alia*: expressed deep concern that extreme poverty continues to spread throughout the world, and its extent and manifestations are particularly severe in developing countries; stressed that in the Declaration and Programme of Action of the World Summit for Social Development governments committed themselves to the goal of eradicating poverty throughout the world; welcomed the launch of a plan of action by the Microcredit Summit (February 1997) to give people living in poverty, particularly women, access to credit for the promotion of self-employment by the year 2005; reaffirmed that extreme poverty and exclusion from society are a violation of human dignity requiring urgent national and international action for their elimination; reaffirmed that it is essential for states to foster participation by the poorest in the decision-making process in their communities; reaffirmed that it is essential for people living in poverty and vulnerable groups to be empowered to organize themselves and participate in all aspects of political, economic and social life; recalled that a better understanding is needed of what is endured by people living in poverty, including women and children, in order to ensure their protection against discrimination; called on states, intergovernmental and non-governmental organizations to continue to take into account the links between extreme poverty and human rights as well as the efforts to empower people living in poverty to participate in decision-making processes on policies affecting them; invited the human rights treaty bodies to monitor the application of human rights instruments and, when considering the reports of states parties, to take into account the question of extreme poverty and human rights; and, appointed an Independent Expert for two years to address the question of human rights and extreme poverty.

There are six components to the mandate of the Independent Expert:

1. evaluate the relationship between the promotion and protection of human rights and extreme poverty, including national and international measures to promote the full enjoyment of human rights by persons living in extreme poverty;
2. take into account, in particular, the obstacles encountered and progress made by women living in extreme poverty in terms of their enjoyment of fundamental rights;
3. make recommendations and, as appropriate, proposals related to technical assistance;
4. report on activities to the 1999 and 2000 sessions of the Commission and make those reports available to the Commission on Social Development and the Commission on the Status of Women;

5. contribute to the General Assembly's evaluation, in the year 2000, of the World Summit on Social Development by making the final report and conclusions available to the preparatory committee for the special session of the General Assembly; and
6. make suggestions to the Commission on Human Rights at its 1999 session on the main points of a possible draft declaration on human rights and extreme poverty so that the Commission can consider initiating a process at the 51st session of the Sub-Commission to draft a text for examination by the Commission and adoption by the General Assembly.

#### **Resolution on human rights and unilateral coercive measures**

The resolution (1998/11) was adopted by roll call vote with 37 in favour, 7 opposed, 8 abstentions. The Commission, *inter alia*: reaffirmed the principles and provisions of the Charter of Economic Rights and Duties of States (GA resolution 3281 [XXIX], 12 December 1974); reaffirmed the right to development as an integral part of all human rights; recalled that the World Conference on Human Rights called on states to refrain from any unilateral measure not in accordance with international law and the UN Charter that creates obstacles to trade relations among states and hinders full realization of all human rights; expressed concern that such measures continue to be promulgated and implemented, thereby creating additional obstacles for the full enjoyment of all human rights by peoples and individuals; called on all states to refrain from adopting or implementing unilateral measures that are not in accordance with international law and the UN Charter, in particular those of a coercive nature with extraterritorial effects; rejected the application of such measures as tools for political or economic pressure against any country and particularly against developing countries; reaffirmed the right of all peoples to self-determination, including free determination of their political status and their economic, social and cultural development; reaffirmed that essential goods such as food and medicines should not be used as tools for political coercion; endorsed and reaffirmed the criteria of the Working Group on the Right to Development according to which unilateral coercive measures are one of the obstacles to the implementation of the Declaration on the Right to Development; and, welcomed and endorsed the recommendation of the Intergovernmental Group of Experts on the right to development according to which states should avoid the unilateral imposition of coercive economic measures and extraterritorial application of domestic laws.

#### **Resolution on the right to food**

The resolution (1998/23) was adopted by consensus. The Commission, *inter alia*: recalled provisions in the Universal Declaration and the Covenant on Economic, Social and Cultural Rights referring to an adequate standard of health and well-being, including food, and freedom from hunger; referred to the Universal Declaration on the Eradication of Hunger and Malnutrition; referred to the Rome Declaration on World Food Security and the Plan

of Action of the World Food Summit of November 1996; recognized that the problems of hunger and food insecurity have global dimensions; reiterated that food should not be used as an instrument of political and economic pressure; reaffirmed that hunger constitutes an outrage and a violation of human dignity and requires the adoption of urgent measures at all levels for its elimination; reaffirmed the right of everyone to have access to safe and nutritious food and the fundamental right of everyone to be free from hunger; characterized as intolerable the fact that 800 million people worldwide, especially women and children, do not have enough food to meet their basic nutritional needs; stressed the need to mobilize and optimize the allocation and use of resources, including external debt relief for developing countries, to reinforce national actions to implement sustainable food security policies; welcomed the High Commissioner's initiative to convene a Consultation on the right to adequate food; endorsed the proposal of the Consultation to have a follow-up meeting in 1998 and invited the High Commissioner to promote and encourage broader participation by experts from states, relevant agencies and programmes of the UN as well as non-governmental organizations; and, invited the Committee on Economic, Social and Cultural Rights to draft and adopt a general comment on the content of the right to food, as set out in article 11 of the Covenant.

#### **Resolution on economic adjustment policies arising from foreign debt**

The resolution (1998/24) was adopted by show of hands with 27 in favour, 16 opposed, 9 abstentions, 1 not participating. The Commission, *inter alia*: reaffirmed the Declaration on the Right to Development and various resolutions and decisions related to the problem of the foreign debt of developing countries; noted that the foreign debt burden continues to be intolerable for a considerable number of developing countries; acknowledged that the problem of the foreign debt burden remains one of the most critical factors adversely affecting economic, social, scientific and technical development and living standards in many developing countries with serious effects of a social nature; stressed that the economic globalization process had created new risks and uncertainties; expressed concern at the continuing decline in levels of official development assistance; noted the relationship between the heavy foreign debt burden and considerable increase in poverty apparent at the world level and especially in Africa; acknowledged that foreign debt constitutes one of the main obstacles to developing countries fully realizing their right to development; stressed the importance of continuing to implement debt relief measures for developing countries with debt problems; affirmed that the permanent solution to the foreign debt problem lies in the establishment of a just and equitable international economic order, including better market access, stabilization of exchange and interest rates, access to financial capital markets and better access to the technology of developed countries; affirmed that the basic rights of people in debtor countries — related to food, housing, clothing, employment, education, health

services and a healthy environment — cannot be subordinated to the implementation of structural adjustment policies and economic reforms arising from foreign debt; emphasized the need for new flows of financial resources to indebted developing countries; recognized the need for more transparency in the activities of international financial institutions; considered that there is a need for a political dialogue between creditor and debtor countries within the UN system; established a three-year mandate for a special rapporteur to address the question of the effects of foreign debt on the full enjoyment of economic, social and cultural rights.

The mandate of the Special Rapporteur has two components, namely to present an analytical report to the Commission each year, focussing on:

1. the negative effects of foreign debt, and the policies adopted to face it, on the full enjoyment of economic, social and cultural rights in developing countries; and
2. measures taken by governments, the private sector and international financial institutions to alleviate such effects in developing countries, especially the poorest and heavily indebted countries.

#### **Decision on the effects of structural adjustment policies on the full enjoyment of human rights**

The decision (1998/102) was adopted by roll call vote with 36 in favour, 14 opposed, 3 abstentions. The text relates to the fact that the Independent Expert, who was appointed to assist the Working Group on structural adjustment programmes and policies, was not able to complete his report in time for the Group to consider it at its second session. The Commission, *inter alia*: authorized the Working Group to meet for one week, at least four weeks before the 1999 session of the Commission; requested the Independent Expert to submit the report for circulation and comment as previously mandated; requested the Secretary-General to circulate the study by the Independent Expert to governments, UN bodies, intergovernmental and non-governmental organizations as well as academic institutions and organizations representing disadvantaged and vulnerable groups, and invite them to submit their comments to the Working Group at its next session; and requested the Secretary-General to invite and encourage non-governmental organizations involved in development and working in the field to participate actively in the Working Group's sessions.

#### **Resolution of the General Assembly**

At the 1998 session, the General Assembly adopted by consensus a resolution on human rights and extreme poverty (A/C.3/53/L.40). The GA, *inter alia*: recognized that eradication of extreme poverty is a major challenge within the process of globalization and requires coordinated and continued policies; welcomed the appointment, for a period of two years, of an independent expert on the question of human rights and extreme poverty; reaffirmed that extreme poverty and exclusion from society constitute a violation of human dignity and that urgent national and international action is required to

eliminate them; also reaffirmed that it is essential for states to foster participation by the poorest people in the decision-making process in the communities in which they live, in the promotion of human rights and in efforts to combat extreme poverty; recognized that surmounting extreme poverty constitutes an essential means to the full enjoyment of political, civil, economic, social and cultural rights and reaffirms the interrelationship among these goals; noted the action taken by UNICEF to mitigate the effects of extreme poverty on children and the efforts of the UNDP to give priority to the search for some means of alleviating poverty; and invited states, UN bodies and others to give appropriate attention to the links between human rights and extreme poverty.

#### **General Comment 10 on the role of national human rights institutions in the protection of economic, social and cultural rights**

In December 1998 the Committee adopted General Comment 10 on the role of national human rights institutions in the protection of economic, social and cultural rights (E/C.12/1998/25). The Committee addressed the issue of the progressive and full realization of the ICESCR rights and noted that one means through which important steps can be taken is the work of national institutions for the promotion and protection of human rights. General Comment 10 states that it is essential for full attention to be given economic, social and cultural rights in all of the relevant activities of these institutions. Such activities were identified as including, *inter alia*:

- ♦ the promotion of educational and informational programmes designed to enhance awareness and understanding of economic, social and cultural rights both within the population at large and among particular groups such as the public service, the judiciary, the private sector and the labour movement;
- ♦ the scrutinizing of existing laws and administrative acts, as well as draft bills and other proposals, to ensure that they are consistent with the requirements of the ICESCR;
- ♦ provision of technical advice, or by undertaking surveys in relation to economic, social and cultural rights, including when requested by the public authorities or other appropriate agencies;
- ♦ the identification of benchmarks at the national level against which the realization of ICESCR obligations can be measured;
- ♦ conducting research and inquiries designed to ascertain the extent to which particular economic, social and cultural rights are being realised, either within the country as a whole or in areas or in relation to communities that are particularly vulnerable;
- ♦ monitoring compliance with specific rights and providing reports to the public authorities and civil society; and

- ♦ examining complaints alleging violations of applicable economic, social and cultural rights standards within the state.

The Committee called upon states parties to ensure that the mandates accorded to all national human rights institutions include appropriate attention to economic, social and cultural rights and requested that details both of the mandates and the principal relevant activities of such institutions be included in reports submitted to the Committee.

### **General Comment on the domestic application of the ICESCR**

In December 1998 the Committee adopted General Comment 9 (E/C.12/1998/24) on the domestic application of the ICESCR, divided into four sections: first, the duty to give effect to the ICESCR in the domestic legal order; second, the status of the ICESCR in the domestic legal order; third, the role of legal remedies; and fourth, the treatment of the ICESCR in domestic courts.

General Comment 9 states that questions relating to the domestic application of the ICESCR must be read in the context of two principles of international law: first, the government may not invoke the provisions of its internal law as justification for its failure to perform a treaty obligation; and second, everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the constitution or by law. With those principles in mind, the Committee stated that a government seeking to justify its failure to provide any domestic legal remedies for violations of economic, social and cultural rights would need to show either that such remedies are not "appropriate means" (article 2(1) of the ICESCR) or that, in view of other means used, they are unnecessary.

With regard to the status of the ICESCR in the domestic legal order, the Committee stated that, in general, legally binding international human rights standards should operate directly and immediately within the domestic legal system, thereby enabling individuals to seek enforcement of their rights before national courts and tribunals. The ICESCR does not stipulate, however, the specific means by which its terms are to be implemented in the national legal order and there is no provision obligating its comprehensive incorporation or requiring it to be accorded any specific type of status in national law. Nonetheless, several principles follow from the duty to give effect to the ICESCR: the means of implementation chosen must be adequate to ensure fulfilment of the obligations under the ICESCR; account should be taken of the means which have proven to be most effective to ensure the protection of other human rights; and while the ICESCR does not formally oblige states to incorporate its provisions into domestic law, such an approach is certainly desirable since direct incorporation avoids problems that might arise in the translation of treaty obligations into national law, and provides a basis for the direct invocation of the ICESCR rights by individuals in national courts.

On the role of legal remedies the Committee stated that the right to an effective remedy need not be interpreted as always requiring a judicial remedy and further, that administrative remedies will, in many cases, be adequate. Such administrative remedies should be accessible, affordable, timely, and effective. An ultimate right of judicial appeal from administrative procedures of this type would also often be appropriate. Whenever a ICESCR right cannot be made fully effective without some role for the judiciary, for example in relation to non-discrimination, judicial remedies are necessary. With regard to justiciability, General Comment 9 notes that, in relation to civil and political rights, it is generally taken for granted that judicial remedies for violations are essential but that the contrary presumption is too often made in relation to economic, social and cultural rights. There is no ICESCR right which could not, in the majority of legal systems, be considered to possess at least some significant justiciable dimensions. The Committee noted: it is sometimes suggested that matters involving the allocation of resources should be left to the political authorities rather than the courts; courts are generally already involved, however, in a considerable range of matters which have important resource implications; the adoption of a rigid classification of economic, social and cultural rights which places them, by definition, beyond the power of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent; and such a rigid classification would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society.

With regard to the treatment of the ICESCR in domestic courts, the Committee noted that some courts have applied the provisions of the ICESCR either directly or as interpretive standards. Other courts are willing to acknowledge, in principle, the relevance of the ICESCR for interpreting domestic law but, in practice, the impact of the ICESCR on the reasoning or outcome of cases is very limited. Still other courts have refused to give any degree of legal effect to the ICESCR in cases in which individuals have sought to rely on it. The Committee stated that courts should take account of ICESCR rights where necessary to ensure that the state's conduct is consistent with its obligations. Neglect by the courts of this responsibility is incompatible with the principle of the rule of law which must always be taken to include respect for international human rights obligations.

General Comment 9 concluded that when a domestic decision-maker is faced with a choice between an interpretation of domestic law that would place the state in breach of the ICESCR and one that would enable the state to comply with the ICESCR, international law requires the choice of the latter. Guarantees of equality and non-discrimination should be interpreted, to the greatest extent possible, in ways which facilitate the full protection of economic, social and cultural rights.



## EXECUTIONS, THE DEATH PENALTY, AND IMPUNITY

### Special Rapporteur on extrajudicial, summary or arbitrary execution (E/CN.4/1998/68; E/CN.4/1998/68/Add.1)

The mandate of the Special Rapporteur (SR) on extrajudicial, summary or arbitrary execution was established in 1982. In 1998, the SR was Mr. Bacré W. Ndiaye. The mandate currently set out the following tasks for the SR: respond effectively to information received; enhance further the dialogue with governments; continue monitoring the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment; apply a gender perspective in the work; and pay special attention to violations of the right to life of children, participants in demonstrations or other public manifestations, persons belonging to ethnic minorities, and individuals carrying out peaceful activities in defence of human rights and fundamental freedoms.

On that basis, the SR's main report to the 1998 Commission (E/CN.4/1998/68) contains information on, *inter alia*: capital punishment, death threats, deaths in custody, deaths due to excessive use of force by law enforcement officials, deaths due to attacks or killings by security forces, paramilitary groups or private forces cooperating with or tolerated by the state, violations of the right to life during armed conflicts, expulsion, refoulement or return of persons to a country or place where their lives are in danger, genocide, deaths due to acts of omission, and the rights of victims; violations of the right to life of women; violations of the right to life of minors; the right to life and mass exoduses; violations of the right to life of individuals carrying out peaceful activities in defence of human rights and fundamental freedoms; violations of the right to life of persons exercising their right to freedom of opinion and expression; the right to life and the administration of justice; violations of the right to life of persons belonging to national, ethnic, religious or linguistic minorities; violations of the right to life and terrorism; violations of the right to life of individuals who have cooperated with representatives of UN human rights bodies (reprisals); and, impunity. The addendum to the main report (E/CN.4/1998/68/Add.1) contains summary comments on individual cases and incidents and any reply or replies received from the governments concerned.

The context in which the issues are considered is set with the note that, since the report is based exclusively on information received by the SR in 1995, 1996 and 1997, it is only approximate in terms of indicating the occurrence of violations of the right to life worldwide. The violations of the right to life upon which action is taken are defined as:

- ♦ the death penalty: when capital punishment is

imposed after an unfair trial or in the case of a breach of the right to appeal or the right to seek pardon or commutation of the sentence; when capital punishment is imposed for crimes which cannot be considered "most serious crimes"; if the convicted person is a minor, mentally retarded or insane, a pregnant woman or a recent mother;

- ♦ death threats and fear of imminent extrajudicial executions by state officials, paramilitary groups, private individuals or groups cooperating with or tolerated by the government, as well as by unidentified persons who may be linked to the one of these categories;
- ♦ deaths in custody as a result of torture, neglect or the use of force, or life-threatening conditions of detention;
- ♦ deaths due to the use of force by law enforcement officials, or persons acting in direct or indirect compliance with the state, when the use of force is inconsistent with the criteria of absolute necessity and proportionality;
- ♦ deaths due to attacks or killings by state security forces or by paramilitary groups, death squads or other private forces cooperating with or tolerated by the state;
- ♦ violations of the right to life during armed conflicts, especially of the civilian population and other non-combatants, contrary to international humanitarian law;
- ♦ expulsion, refoulement or return of persons to a country or a place where their lives are in danger, as well as the prevention of persons seeking asylum from leaving a country where their lives are in danger through the closure of national borders;
- ♦ genocide;
- ♦ deaths due to acts of omission on the part of the authorities, including mob killings; instances in which the state fails to take positive measures of a preventive and protective nature necessary to ensure the right to life of any person under its jurisdiction;
- ♦ breach of the obligation to investigate alleged violations of the right to life and to bring those responsible to justice; and
- ♦ breach of the obligation to provide adequate compensation to victims of violations of the right to life.

The report notes that 122 urgent appeals, on behalf of 3,729 persons — individuals and groups — were transmitted to 44 governments, the Palestinian Authority and the head of the Taliban Council. Under standard communications procedures, additional cases were sent, on behalf of nearly 1,000 individuals, to 48 governments as well as the Palestinian Authority, the head of the Taliban Council and the leader of the Turkish Cypriot community.

A summary on the characteristics and/or causes of concern related to the various kinds of violations taken up by the SR notes:

- ♦ death threats: against individuals and such groups of persons as inhabitants of certain municipalities, witnesses, indigenous groups, persons belonging to certain families and members of opposition parties, also against human rights defenders, human rights activists, trade and union leaders, and persons who have cooperated with UN bodies; threats issued or uttered by state officials, paramilitary groups and private individuals cooperating with or tolerated by the state;
- ♦ deaths in custody: noting that as a general rule — and not only in countries where a pattern of deaths in custody exists — there is very little indication of effective action by the authorities to bring to justice those responsible and to compensate the families of the victims;
- ♦ deaths due to excessive use of force by law enforcement officials: in such instances as against participants in demonstrations, a “shoot to kill” policy, following a warning, against anyone breaking the law, anyone carrying a weapon and any assembly of more than five people; a “shoot to kill” policy against thieves caught in the act;
- ♦ violations of the right to life during armed conflicts: instances and incidents of deaths of civilians and persons *hors de combat*; use of indiscriminate or disproportionate force; and, the utilization of anti-personnel mines or the blockage of goods and services, including relief assistance; and
- ♦ deaths due to acts of omission: such as the failure of authorities to prevent mobs from carrying out so-called “popular justice”; persons lynched or set on fire because they were suspected of theft.

The report notes that the right of victims or their families to receive fair and adequate compensation within a reasonable period of time is a recognition of the state’s responsibility for the acts committed by its personnel and, further, that the absence of compensation to victims’ families seems to be the corollary of impunity. The report then refers to inconsistencies in the international community’s approach to the issue of compensation by noting that neither of the two Security Council resolutions establishing international criminal tribunals for the former Yugoslavia and Rwanda contain provisions concerning compensation for victims or their families while individuals, governments or organizations which suffered losses and damages as a direct result of Iraq’s invasion and occupation of Kuwait may receive compensation from the UN Compensation Commission. In light of such inconsistencies, the SR stated his opinion that the establishment of an international fund for reparation payments should be considered so as to allow for fair and adequate compensation to the victims’ families. The establishment of such a fund would be, in the SR’s view,

consistent with paragraph 20 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions which states that “The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.”

The section of the report dealing with violations of the right to life in relation to women notes that action was taken on behalf of more than 80 identified women, including some girls, in 26 countries and the territory under control of the Palestinian Authority. In most cases, the actions taken were in response to death threats and deaths during attacks or killings by state security forces or paramilitary groups. The report states that the figures do not necessarily show the actual number of women on whose behalf the SR intervened, noting: they reflect only those cases in which it was specifically indicated that the victim was female; and some allegations transmitted by the SR refer to groups of unidentified persons which likely included women. The SR noted the fact that women and children are the main victims of armed conflict and civil unrest.

The cases taken up by the SR involving children related to: death sentences on conviction for murder; threats against children because of their link to an adult; deaths in custody arising from excessive use of force; attacks or killings committed by security forces or paramilitary groups; “social cleansing” operations related to street children; and, deaths in the context of armed conflict and internal strife, in some cases during massacres.

The report notes that urgent appeals and other cases related to the situation of human rights defenders were sent to 12 governments. In terms of violations of the right to life involving those exercising the right to freedom of opinion and expression, the report refers to cases involving journalists, members of political parties and trade unions, and participants in demonstrations. In terms of individuals involved in the administration of justice the report notes that violations were committed against prosecutors, judges, lawyers, plaintiffs and witnesses. With regard to persons belonging to national, ethnic, religious or linguistic minorities, appeals and cases were handled on behalf of, *inter alia*, indigenous persons and members of the Baha’i faith, the Roma minority and the Karen, Shan and Karenni.

On the question of violations of the right to life and terrorism, the SR noted that violent acts committed by terrorist groups do not fall within the purview of the mandate which allows action only when perpetrators are believed to have a link with the state. The SR acknowledged, however, the violence committed by armed opposition groups resorting to terrorism as a tactic of armed struggle against governments and noted that violent acts committed by such groups have led to the killing of many civilians in a number of countries. The SR expressed repugnance at terrorists’ acts which claim the lives of a large number of innocent civilians and, while acknowledging the difficulties that the concerned governments

face in fighting terrorism, noted with concern that in some countries governments have adopted counter-insurgency strategies aimed at targeting those suspected of being members, collaborators or sympathizers of those groups, leading to further violations of the right to life.

The section of the report dealing with capital punishment makes a number of points, including that: the death penalty is an exception to the fundamental right to life and, as an exception, must be interpreted restrictively; the imposition of a capital sentence must fully respect all restrictions imposed by the pertinent international instruments on this question and the application of these restrictions must be guaranteed in each and every case; the desirability of abolition of the death penalty has been strongly reaffirmed on various occasions by UN human rights organs and bodies, including the Commission on Human Rights in resolution 1997/12 (3 April 1997); on a regional level, new members of the Council of Europe are required to sign within one year, and ratify within three years of joining the organization, the Optional Protocol No. 6 to the European Convention, aimed at abolishing the death penalty, and are also required to place an immediate moratorium on executions; and, in several countries where legislation allowing for capital punishment had remained on the books, executions were resumed in 1997 after many years during which death sentences had not been carried out.

Referring to legal proceedings leading to the imposition of capital punishment, the report notes that these proceedings must conform to the highest standards of independence, competence, objectivity and impartiality of judges and juries, that is: all defendants in capital cases must benefit from the services of a competent defence counsel at every stage of the proceedings; defendants must be presumed innocent until their guilt has been proved beyond a reasonable doubt; all mitigating factors must be taken into account; the burden of proof must lie with the state; imposition of the death sentence upon the conclusion of a trial in which the basic fair trial standards were not ensured constitutes a violation of the right to life, should the execution be carried out; proceedings must guarantee the right of review of both the factual and legal aspects of the case by a higher tribunal, composed of judges other than those who dealt with the case at first instance; the defendant's right to seek pardon, commutation of the sentence or clemency must also be guaranteed; and, mandatory appeal of a death sentence should be provided.

The report notes concerns related to the imposition of the death penalty by special jurisdictions, including that: such jurisdictions often involve courts which lack independence; proceedings are subject to time limits that seriously affect a defendant's right to an adequate defence; limitations on the right to appeal are imposed; and, in some cases, death sentences imposed in trials before special courts for the suppression of terrorist activities reportedly do not proceed from the presumption of innocence. Reference is also made to: reports indicating that in some cases foreigners have been sentenced

to death without having been informed of their right under the Vienna Convention to receive assistance from their consulate; in terms of the time spent awaiting execution and exhausting all avenues of appeal, the solution to the problem of the anguish of awaiting execution on death row by executing the person faster is not acceptable; and imposition of the death penalty for economic and/or drug-related offences in a number of countries should be eliminated.

On the issue of impunity, the SR made a number of points, including that: governments have an obligation to carry out exhaustive and impartial investigations into allegations of violations of the right to life, to identify, bring to justice and punish perpetrators, as well as to take effective measures to avoid the recurrence of such violations; in most of the countries where violations of the right to life were committed, perpetrators have not systematically been brought to justice; in those same or other countries there is a climate of impunity which leads to further violations of the right to life; impunity is the principal cause of the perpetuation and encouragement of human rights violations, including extrajudicial, summary or arbitrary executions; the manner in which a government reacts to human rights violations committed by its agents, through action or omission, clearly shows the degree of its willingness to ensure effective protection of human rights; very often, statements and declarations in which governments proclaim their commitment to respect human rights are contradicted by a practice of violations and impunity; and, even if in exceptional cases governments may decide that perpetrators should benefit from measures that would exempt them from or limit the extent of their punishment, the obligation of governments to bring them to justice and hold them formally accountable stands.

In addition to inaction or inadequate action by governments to eradicate impunity, the report notes other factors encouraging its perpetuation including the lack of an independent and impartial judiciary, and prosecution of members of the security forces before military courts, where they may evade punishment because of an ill-conceived *esprit de corps*.

The concluding remarks in the report state that: there is no indication that extrajudicial, summary or arbitrary executions have decreased; one of the most prevalent targets of extrajudicial, summary or arbitrary executions has continued to be persons involved in struggles such as those to prevent or combat racial, ethnic or religious discrimination, and to ensure respect for economic, social, cultural, civil and political rights, including rights to ancestral lands; in situations of internal armed conflict, up to 90 per cent of the victims were reported to be civilians, many of them women and children; UN personnel, humanitarian workers, journalists, members of political parties and trade unions, participants in demonstrations, displaced persons and persons belonging to minorities have been deliberately killed; extrajudicial, summary or arbitrary executions can be prevented only if there is a genuine will on the part of governments and the interna-

tional community not only to enforce the safeguards and guarantees for the protection of the right to life of every person under its jurisdiction, but also to strengthen them further; and if the aim is the protection of the right to life, the emphasis must be on the prevention of violations of this supreme right and the rejection of impunity.

The report recommends, *inter alia*, that:

- ♦ the international community concentrate its efforts on the effective prevention of further human rights crises, including genocide, on the methods of work of the SR, and on the implementation of existing standards for the respect for the right to life;
- ♦ the international community assist in the establishment of a coherent multifaceted system of prevention of conflicts that would embody a rapid intervention component to prevent the degeneration of situations where the threat of massive human rights violations exists;
- ♦ states that have not ratified the ICCPR and, in particular, its Second Optional Protocol, do so and all states bring domestic legislation into conformity with international standards;
- ♦ states that enforce their capital punishment legislation observe all fair trial standards contained in the relevant international legal instruments; governments that continue to enforce such legislation with respect to minors and the mentally ill bring their domestic legislation into conformity with international legal standards; states consider the adoption of special laws to protect the mentally retarded, incorporating existing international standards; states provide in their national legislation a period of at least six months so as to allow a reasonable amount of time for the preparation of appeals to courts of higher jurisdiction and petition for clemency before a death sentence is executed; governments of countries in which the death penalty is still enforced deploy every effort that could lead to the restriction of its use with the aim of its abolition and consider the imposition of a moratorium on executions;
- ♦ state authorities conduct investigations with respect to all instances of death threats or attempts against lives that are brought to their attention, regardless of whether a judicial or other procedure has been activated by the potential victim;
- ♦ governments adopt effective measures to ensure full protection of those who are at risk of extrajudicial, summary or arbitrary execution;
- ♦ in circumstances where certain state authorities or sectors of the civil society perceive political dissent, social protest or the defence of human rights as a threat to their authority, the central government authorities take action to create a climate more favourable to the exercise of those rights and thus reduce the risk of violations of the right to life; governments recognize publicly the legitimacy of and contribution made by human rights defenders;
- ♦ all governments ensure that conditions of detention in their countries conform to the Standard Minimum Rules for the Treatment of Prisoners and other pertinent international instruments and deploy efforts to ensure full respect for international norms and principles prohibiting any form of cruel, inhuman or degrading treatment;
- ♦ prison guards and other law enforcement personnel receive training on the observance of the norms cited above in performing their duties, and state agents take into consideration the right to life of prisoners, especially in the course of controlling prison disturbances and preventing prison escapes;
- ♦ all deaths in custody be investigated by a body that is independent from the police or prison authorities, and governments consider measures such as the obligatory videotaping of post mortem examinations or the taking of pictures of corpses;
- ♦ the Commission on Human Rights consider appointing a special rapporteur on conditions of detention and prison conditions and call for the rapid adoption of an optional protocol to the Convention against Torture with a view to establishing a system of periodic visits to places of detention;
- ♦ all governments ensure that their security personnel receive thorough training in human rights issues, particularly with regard to restrictions on the use of force and firearms in the discharge of their duties and methods of crowd control without resorting to lethal force;
- ♦ states make every effort to combat impunity and provide adequate compensation to victims' families;
- ♦ all states that have not yet done so ratify the four Geneva Conventions of 1949 and their two Additional protocols and include in the training of members of the armed forces and other security forces substantive instruction on the content of these instruments in addition to those dealing with human rights;
- ♦ governments of countries in which terrorist groups are active ensure that counter-insurgency operations are conducted in conformity with human rights standards so as to minimize the loss of lives;
- ♦ states that have not yet ratified the Convention and the Protocol Relating to the Status of Refugees do so and all governments refrain at all times from expelling a person in circumstances where respect for the right to life is not fully guaranteed; refoulement of refugees or of internally displaced persons to countries or areas where respect for their right to life is not fully guaranteed, as well as the closure of borders preventing the escape of persons trying to flee a country, at all times be prohibited; whenever a country is faced

with a massive influx of refugees, the international community provide necessary assistance;

- ♦ all governments ratify the Convention on the Prevention and Punishment of the Crime of Genocide; concerned states, assisted by the international community, take all necessary measures to prevent acts of communal violence from degenerating into large-scale killings that may reach the dimension of genocide; governments, at all times, refrain from any propaganda or incitement to hatred and intolerance that might foment acts of communal violence or condone such acts and bring to justice perpetrators of such acts; a monitoring mechanism to supervise the implementation of the Convention on the Prevention and Punishment of the Crime of Genocide be established;
- ♦ the international community and all concerned states cooperate fully with the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, particularly by arresting and handing over suspects, so as to bring to justice as soon as possible those accused of the crime of genocide;
- ♦ governments fight impunity for common crimes and bring to justice persons committing murder in the name of so-called popular justice, and at no time allow acts of incitement to revenge that might lead to killings;
- ♦ all states conduct exhaustive and impartial investigations into allegations of violations of the right to life, in all its manifestations, identify those responsible, prosecute the alleged perpetrators of such acts and take effective measures to avoid the recurrence of such violations; in accordance with principle 19 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, blanket amnesty laws prohibiting the prosecution of alleged perpetrators and violating the rights of victims not be endorsed;
- ♦ a convention, similar to the Convention against Torture, be adopted to provide domestic courts with international jurisdiction over persons suspected of having committed mass violations of the right to life and contain provisions for the allocation of compensation to victims' families;
- ♦ all states include in their national legislation provisions that allow for adequate compensation and facilitate access to judicial remedies to families of the victims of violations of the right to life; and
- ♦ states endorse the principles set out in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, 29 November 1985) and incorporate them in their national legislation.

### **Extrajudicial, summary or arbitrary execution: Resolution of the Commission on Human Rights (1998/68)**

Under agenda item 10 the Commission adopted one resolution related to the mandate of the SR on extrajudicial, summary or arbitrary execution in which the Commission, *inter alia*: expressed alarm at the persistence, on a large scale, of extrajudicial, summary or arbitrary executions in all parts of the world; expressed dismay that in a number of countries impunity prevails and often is the main cause of such executions in those countries; strongly condemned again such executions; noted that impunity continues to be a major cause of the perpetuation of human rights violations, including such executions; reiterated the obligation of governments to conduct exhaustive and impartial investigations into all suspected cases of such executions, identify those responsible and bring them to justice, grant adequate compensation to the victims or their families and adopt all necessary measures to prevent the recurrence of such executions; called on governments in states where the death penalty has not been abolished to comply with obligations under relevant international human rights instruments; requested the SR to continue work and report annually to the Commission and prepare other reports as deemed necessary to keep the Commission informed about serious situations of such executions, respond to the information provided, enhance further the dialogue with governments and follow up on recommendations made in reports after visits to particular countries, continue to pay special attention to executions of children and allegations related to violations of the right to life in terms of violence against participants in demonstrations and other peaceful public manifestations or against persons belonging to minorities, pay special attention to such executions where the victims are human rights defenders, continue to monitor relevant existing international standards, and apply a gender perspective to the work; urged governments to take all necessary and possible measures to prevent loss of life during situations of public demonstrations, internal and communal violence, disturbances, tension and public emergency or armed conflicts; urged governments to ensure that police and security forces receive thorough training in human rights matters; appealed to all governments to ensure that persons deprived of liberty are treated with humanity and respect for human dignity; strongly urged all governments to cooperate with the SR, including by issuing invitations for in-country visits; expressed concern at the number of governments that did not respond to allegations and reports transmitted by the SR; and, extended the mandate of the SR for a further three years.

### **Executions**

The 1998 session of the General Assembly adopted by consensus a resolution on extrajudicial, summary or arbitrary executions (A/C.3/53/L.41). The GA, *inter alia*: expressed alarm at the persistence, on a large scale, of extrajudicial, summary or arbitrary executions in all

parts of the world and it expressed dismay that in a number of countries impunity prevails and often remains the main cause of the continuing occurrence of such executions; noted provisions in the statute of the International Criminal Court ensuring effective prosecution concerning executions in serious violation of article 3 common to the four Geneva Conventions of 12 August 1949; demanded that all governments ensure that the practice of extrajudicial, summary or arbitrary executions is brought to an end and that effective action is taken to combat and eliminate the phenomenon in all its forms; reiterated the obligation of all governments to conduct exhaustive and impartial investigations into all suspected cases of such executions, to identify and bring to justice those responsible, to grant adequate compensation to the victims or their families and to adopt all necessary measures to prevent the recurrence of such executions; strongly urged all governments to respond to the communications transmitted to them by the Special Rapporteur (SR) of the Commission on Human Rights and where appropriate, invite the SR to visit; encouraged governments and others to organize training programmes in human rights and humanitarian law for military forces, law enforcement officers, government officials, and members of UN peacekeeping or observer missions; called upon states in which the death penalty has not been abolished to comply with their obligations under relevant provisions of international human rights instruments; and again requested the Secretary-General (S-G) to continue to use his best endeavours in cases where the minimum standard of legal safeguards provided for in articles 6, 9, 14 and 15 of the International Covenant on Civil and Political Rights appears not to have been respected; also requested the S-G to continue, in close collaboration with the High Commissioner for Human Rights, to ensure that personnel specialized in human rights and humanitarian law issues form part of UN missions, where appropriate, in order to deal with serious violations of human rights, such as extrajudicial, summary or arbitrary executions; requested the SR to submit an interim report to the 1999 General Assembly.

### **Death Penalty: Report of the Secretary-General (E/CN.4/1998/82)**

The report of the Secretary-General on the question of the death penalty includes information on countries that have, between 1 January 1996 and 31 December 1997, either abolished the death penalty, restricted or limited its scope of use, ratified international instruments that provide for its abolition, reintroduced it, extended the scope of application, or resumed executions. The Annex to the report includes information that was received from states.

The report recalls that the Safeguards guaranteeing protection of the rights of those facing the death penalty include provisions relating to the types of crimes for which the death penalty might be imposed, persons who should be exempt from the death penalty (e.g., children and the mentally disabled), and fair trial guarantees

for those facing a possible sentence of death. The report notes that there are three international instruments in force which commit states parties to abolish the death penalty. They are: the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at abolition of the death penalty; Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty; and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty. Protocol No. 6 concerns the abolition of the death penalty in peacetime, whereas the other two protocols provide for the total abolition of the death penalty but allow states wishing to do so to retain the death penalty in wartime.

Ninety countries are listed as retentionist, meaning that the death penalty is in force and executions do take place, although in many of these countries such executions might be quite rare. There are 61 countries that are totally abolitionist; 14 countries that are abolitionist for ordinary crimes only; and 27 countries that are considered abolitionist *de facto* (retain the death penalty for ordinary crimes but have not executed anyone during the last 10 years or more). The report concludes by noting that the trend towards abolition continues and there is also an increase in the number of countries ratifying international instruments that provide for the abolition of the death penalty.

The Annex reproduces *in extenso* information provided by: Brazil, Cuba, Cyprus, Germany, Italy, Lebanon, Mexico, Philippines, Russia, Sweden, Turkey, the United Kingdom, and the United States. A number of these governments provided detailed information on national law and practice regarding the death penalty.

### **Death Penalty: Resolution of the Commission on Human Rights (1998/8)**

Under agenda item 13, the Commission again adopted by roll call vote a resolution calling for the eventual abolition of the death penalty. The Commission, *inter alia*: recalled provisions in the Universal Declaration, ICCPR and the Convention on the Rights of the Child (CRC) affirming the right to life; recalled various General Assembly, ECOSOC and Commission resolutions related to the question; welcomed exclusion of capital punishment from penalties that can be imposed by the International Tribunals on the former Yugoslavia and Rwanda; welcomed the fact that in some countries in which the death penalty is still on the books a moratorium on executions is in effect; referred to the report of the Special Rapporteur on extrajudicial, summary or arbitrary execution and the Safeguards guaranteeing protection of those facing the death penalty; expressed concern that in some countries the death penalty is imposed in cases exceeding limitations set out in the ICCPR and CRC and failure in some countries to take into account the Safeguards; called on states parties to the ICCPR that have not done so to ratify the Second Optional Protocol; urged all states maintaining the death penalty to comply with

obligations under the ICCPR and CRC related to imposition of the death penalty for only the most serious crimes and observe the Safeguards; called on states in which the death penalty is still imposed to progressively restrict the number of offences for which the penalty may be imposed, establish a moratorium on executions with a view to abolition and make available to the public information related to the imposition of the death penalty; and, requested the Secretary-General to continue to submit a report to the Commission on the changes in law and practice with regard to the death penalty.

The resolution was adopted by a vote of 26 in favour, 13 opposed and 12 abstentions.

### Impunity: Studies of the Sub-Commission

Between 1993 and 1997 two studies were conducted by Special Rapporteurs of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The studies examined the question of impunity for perpetrators of violations of civil and political rights and for perpetrators of violations of economic, social and cultural rights. The final studies (E/CN.4/Sub.2/1997 and E/CN.4/Sub.2/1997/20/Rev.1) were referred to the 1998 session of the Commission. The note by the Secretary-General to the 1998 Commission (E/CN.4/1998/110) simply refers to the study on impunity and economic, social and cultural rights, noting the recommendation that the Commission appoint a Special Rapporteur on those rights (see section on Economic, Social and Cultural Rights).

### Impunity: Resolution of the Commission on Human Rights (1998/53)

Under agenda item 9, for the first time, the Commission adopted by consensus a resolution on the question of impunity. The main focus of the text is impunity and violations of civil and political rights. The Commission, *inter alia*:

- ♦ stated that the expectation of impunity for violations of international human rights and humanitarian law encourages such violations and is one of the fundamental obstacles to the observance of international law and the full implementation of relevant instruments;
- ♦ stated that exposing violations, holding the perpetrators accountable, obtaining justice for the victims and preserving the historical records of such violations are integral to the promotion and implementation of human rights and the prevention of future violations;
- ♦ recognized that accountability of individual perpetrators of grave violations is one of the central elements of any effective remedy for victims and a key factor in ensuring a fair and equitable justice system, reconciliation and stability within a state;
- ♦ welcomed the establishment, by a number of states in which violations have occurred, of such mechanisms

as commissions of inquiry or truth and reconciliation commissions;

- ♦ stressed the importance of establishing a permanent international criminal court;
- ♦ emphasized the importance that combatting impunity has to the prevention of violations of international human rights and humanitarian law;
- ♦ urged all states to give necessary attention to the question of impunity for such violations, including those against women, and take appropriate measures to address this question;
- ♦ recognized that, for victims, public knowledge of their suffering and the truth about perpetrators of human rights violations are essential steps towards rehabilitation and reconciliation;
- ♦ emphasized the importance of taking steps to hold accountable perpetrators of violations; called on states and the High Commissioner for Human Rights to consider providing, on request, concrete and practical assistance to states to address the issue of impunity;
- ♦ referred to the study on impunity for perpetrators of violations of civil and political rights carried out at the Sub-Commission (E/CN.4/Sub.2/1997/20/Rev.1) and the Set of Principles for the protection and promotion of human rights through action to combat impunity appended to that study; and
- ♦ requested the Secretary-General to solicit information from states on legislative, administrative and other steps taken to combat impunity and to submit a report to the 1999 session of the Commission.



## FREEDOM OF OPINION AND EXPRESSION

### Special Rapporteur on freedom of opinion and expression

The mandate on freedom of opinion and expression was established by the Commission on Human Rights at its 1993 session; in 1996, it was renewed for a further three years. Mr. Abid Hussain was the Special Rapporteur (SR) during 1998.

The report to the 1998 session of the Commission (E/CN.4/1998/40) addressed the right to seek and receive information, the media in countries of transition and elections, the impact of new information technologies, national security, and women and freedom of expression. The report also summarized communications with and from some governments related to, *inter alia*: attacks against journalists and others in the media; gen-

eral concerns over government measures and actions affecting those working in and the operations of media; the arrest of and charges against democracy activists; the arrest of individuals expressing opposition to laws enacted; assaults against and beatings and arrests of persons demonstrating peacefully; and, arrest on charges of undermining public order, spreading false information and inciting the people to break the law.

Commentary on the right to seek and receive information makes a number of points, including that: there must be a general right of access to certain types of information related to what may be called "state activity"; there have been a number of instances in which governments have attempted to prosecute civil servants and others who make available public information which has been classified; states in every region and with different structures of government continue to classify far more information than can be considered necessary; in countries where the right to information is most fully realized, access to governmental information is often guaranteed by freedom of information legislation; governments have a responsibility to facilitate access to information which is already in the public domain; one of the best guarantees of respect for the rights to freedom of expression and information lies in the existence of independent media, electronic and print, in which ownership is diversified and there is a maximum of self-regulation and a minimum of state interference; independent and state-owned media contribute most effectively to the realization of the right to information in countries where there is a statutory presumption that journalists are not required to disclose their sources except in the most limited and clearly defined circumstances; there is an important link between the ability of people — both individually and collectively — to participate in the public life of their communities and country, and the rights to freedom of opinion and expression, including freedom to seek and receive information; and, with regard to the right to development, there is a relationship between information, the active participation of the entire population, and sustainable human development through which every individual can and will benefit.

With regard to country in transition, the report notes important factors related to media and the press, including: the need to establish national independent television and radio services with a public broadcasting mandate, ensure the independence of regulatory frameworks for private broadcasting and ensure that licensing procedures are apolitical and relate to administrative matters only; a careful approach aimed at striking the balance between freedom and responsibility; and — in countries where economic policies are intended to follow the logic of the market rather than the state — the need to establish conditions in which balanced information from a variety of sources is not subsumed by the overwhelming influence of foreign media and/or the control of the main mass communications by powerful interest groups.

With regard to the role of the media in elections, the report emphasizes the need to guarantee the population's

right to receive complete and impartial information so that the electorate can form an opinion on candidates' views and qualifications as well as the programmes of political parties. Following on this, the report sets out some principles that should be observed to establish the minimum conditions for a free flow of information, views and opinions during election periods. These principles include, *inter alia*, that, the media: must inform the public about the political parties, candidates, campaign issues and voting processes and provide voter education; should be balanced and impartial in election reporting and provide equal access and air time to all parties and candidates; should not refuse to transmit an election broadcast unless it constitutes a clear and direct incitement to violence or hatred; and should ensure that news and current affairs programmes are accurate, balanced and impartial. The SR stated that no censorship of election programmes may be allowed; election broadcasts should be monitored and regulated by an independent, impartial body.

The narrative on the impact of new information technologies states that the different views on the issue on the part of governments, non-governmental organizations or individuals often merely reflect a particular aspect of the problem. The report notes that there is often a natural tension between what are viewed as competing or mutually exclusive interests or values; the debate often tends to be less about the present and potential benefits of the new technology than it is about restrictions. The report notes, *inter alia*, that: the use of the new technologies has raised serious concerns particularly related to, for example, racism and hate speech, incitement to violence, pornography (especially child pornography and sex tourism), privacy and reputation and cultural or societal values; the current debate over the use of the Internet by individuals and groups to express and disseminate racist and intolerant views is characterized by ambivalence; and, great care must be taken to achieve an appropriate balance between the rights to freedom of opinion and expression and to receive and impart information and the prohibition on speech and/or activities promoting racist views and inciting violence.

The report states that, with regard to new technologies, the range of national models is so extensive as to raise serious doubt about the possibility of adopting one particular approach to tackle the problems and challenges posed by the Internet in the foreseeable future. Following on this, the report notes that: in some cases free speech on the Internet may deserve or has been given constitutional protection; in some other countries, the actual state of the rights to expression, opinion, information, association and assembly are so restricted as to make any consideration of the dangers presumed to be posed by racism on the Internet virtually irrelevant; and in others, where a balance between rights and restrictions has been established in domestic legislation, the focus has been less on enacting further legislation than on enforcing existing law and working with Internet service providers to ensure that those using the technology to express and promote their views are doing so in conformity with law.

The report also notes that there is a difference to be drawn between speech which offends and hurts, and that which exceeds the threshold of tolerance, ceases to be speech and becomes crime under international law. It is vital that, while governments consider the challenges posed by the Internet, attention continue to be given to the incidence of governments cooperating or being directly active in the manipulation of media for the promotion of racist views and incitement to violence. The SR stated, *inter alia*, that the new technologies and, in particular the Internet, are inherently democratic, provide the public and individuals with access to information sources and enable all to participate actively in the communication process.

With regard to national security, the report notes that many governments use national security laws to restrict freedom of opinion and expression and the right to receive and impart information. Further, it notes that state abuse of the powers granted under such laws often leads to both prolonged and short-term arbitrary detention, torture, extrajudicial, summary or arbitrary execution, disappearances, threats and intimidation, the closure of various media outlets, the banning of publications and programming, bans on public gatherings, bans and prohibitions on organizations, groups and associations that are in no way associated with terrorism and violence, strict censorship on all forms of communication, and tolerance of, if not actual support for, the abuses and crimes committed by police and paramilitary groups.

The section of the report addressing the issue of women and freedom of expression refers to comments in the 1997 report (E/CN.4/1997/31), in which the SR: called upon states actively to support women attempting to make their voices heard and to ensure that they are welcomed as active participants in public life; and urged governments to ensure that effective measures are taken to eliminate the atmosphere of fear that often prevents many women from communicating freely on their own behalf or on behalf of other women who have been victims of violence, either in domestic or community settings, or as a result of internal or transborder conflict.

The 1998 report makes a number of points including, *inter alia*, that: violence against women has been one of the most enduring features of war and conflict and terrible atrocities committed against women must find an expression of protest; such protest should come out clearly to the media and no restrictions whatsoever should be maintained which would suppress the voices of women; witness protection programmes are needed, for it is partly through such programmes that women and girls will be able fully to exercise their right to expression without shame and without fear of social exclusion, retribution or reprisals against them or members of their families; fear, shame and exclusion not only have an enormous impact on the ability of women to exercise freely their right to expression but also reflect, in some countries, inadequacies in the legal protections available to women and, in others, continuing attitudes and practices that are justified on the basis of customary prac-

tices, cultural history and social norms; and General Recommendation No. 23 — related to political and public life — issued in 1997 by the Committee on the Elimination of Discrimination against Women (CEDAW), notes that “despite women’s central role in sustaining the family and society and their contribution to development, they have been excluded from political life and the decision-making process, which nonetheless determine the pattern of their daily lives and the future of societies. Particularly in times of crisis, this exclusion has silenced women’s voices and rendered invisible their contribution and experiences.”

The report concludes by stating that the SR has noted no significant changes in the evolution of overall respect for the right to freedom of opinion and expression and that, *inter alia*: long-standing patterns of harassment and oppression of persons whose views and opinions differ from those holding power persist in a number of countries; restrictions on the freedom of opinion and expression limit to a significant extent knowledge about violations and keep investigation of abuses minimal and such trends perpetuate patterns of government corruption and impunity; in a number of countries, the authorities continue to maintain a firm control over the media and individuals’ free speech, often hand in hand with undue restrictions on public protests and demonstrations, as well as restrictions on the activities of independent trade unions or organizations of civil society; action taken by states and their agents against individuals seriously erode the public’s right to know and to receive and impart information; the right of the people to elect their government is compromised in many cases by the lack of access to information about candidates and their respective policies as well as the crucial issues at stake; with regard to the Internet, utmost care must be taken to consider all possible consequences of governmental measures and, as a rule, the best way to fight speech is through more speech; and, human rights for women will exist in name only to the extent that governments — irrespective of region, history and tradition — continue to fail to address such needs as witness protection programmes, the right to effective remedy for violence done against them, and their right to speak freely, publicly and without fear about those issues and difficulties of greatest importance to them.

The report recommends, *inter alia*, that:

- ♦ all states that have not ratified the International Covenants on Human Rights do so;
- ♦ all governments review domestic legal systems with a view to bringing them into line with international standards governing the right to freedom of opinion and expression;
- ♦ with regard to the issue of national security, all governments review not only laws specifically intended to protect national security but also ordinary criminal laws which may be used to infringe the rights to freedom of opinion and expression and information;

- ♦ states take all necessary steps to assure the full realization of the right to access to information;
- ♦ with regard to the impact of new information technology on the right to freedom of opinion and expression, these new technologies be considered in light of the same international standards as other means of communication and no measures be taken which would unduly restrict freedom of expression and information — in case of doubt, decide in favour of free expression and the flow of information;
- ♦ with regard to the Internet, on-line expression be guided by international standards and guaranteed the same protection as is given to other forms of expression;
- ♦ all reasonable steps be taken to promote access to the Internet and that governments promote an economic and regulatory environment which encourages the extension of telecommunication lines to rural and other previously under-serviced areas;
- ♦ wherever possible, government information be made available through the Internet;
- ♦ governments take all necessary steps to remove formal and cultural obstacles so that women may exercise their right to freedom of expression, including to receive information and ultimately give effect to all their rights; and
- ♦ in light of the importance of freedom of expression and how it relates to violence against women, a special effort be made to gather and analyse more information on this subject with a view to the preparation of a joint report with the Special Rapporteur on violence against women.

### Resolution of the Commission on Human Rights

Under agenda item 8 the Commission adopted a resolution by consensus (1998/42) in which the Commission, *inter alia*: noted the Johannesburg Principles on National Security, Freedom of Expression and Access to Information; noted that restrictions on the rights to opinion and expression could indicate a deterioration in the protection, respect for and enjoyment of other human rights and freedoms; reaffirmed that education is an integral component of full and effective participation of people in a free society; expressed concern at the numerous reports of detention, discrimination, threats and acts of violence and harassment against professionals in the field of information; noted the need to raise awareness of all aspects of the relationship between the availability and use of new media of communications and the rights to expression and information; expressed concern that for women there exists a gap between the rights to opinion, expression and information and the effective enjoyment of those rights; expressed concern at violations related to opinion and expression, including short- and long-term detention, extrajudicial killing and abuse

of legal provisions on criminal libel; expressed concern that these and other violations are facilitated and aggravated by such factors as abuse of states of emergency and too vague a definition of offences against state security; called for further progress towards release of persons detained for exercising the rights of opinion, expression, information, assembly, association, thought, conscience, religion and the right to take part in the conduct of public affairs; urged governments to eliminate the atmosphere of fear that often prevents women who have been victims of violence from communicating freely on their own behalf or through intermediaries; appealed to all states to ensure respect for the rights referred to above and that persons seeking to exercise these rights are not victims of discrimination, particularly in such areas as employment, housing and social services; invited the SR to develop further commentary on the right to seek and receive information; and, invited the Special Rapporteur to assess the advantages and challenges of new telecommunications technologies, including the Internet, on the rights to opinion, expression and information, bearing in the mind the work of the Committee on the Elimination of Racial Discrimination related to racism and hate speech.



## GLOBALIZATION

### Actions by the Sub-Commission on Prevention of Discrimination and Protection of Minorities

At its 1998 session the Sub-Commission adopted two resolutions and one decision that relate, in whole or in part, to issues arising from globalization.

The first resolution (1998/8) was on the relationship between the enjoyment of economic, social and cultural rights and the right to development, and the working methods and activities of transnational corporations. The Sub-Commission, *inter alia*: noted that the Working Group on the Right to Development of the Commission on Human Rights identified the concentration of economic and political power as one of the obstacles to the realization of the right to development; also noted that the Working Group recommended the adoption of new international legislation and the creation of effective international institutions to regulate the activities of transnational corporations and banks, and in particular the resumption of multilateral negotiations on a code of conduct for transnational corporations; referred to the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy adopted by the Governing Body of the International Labour Office in November 1977; supported the Declaration on the Right to Development and underlined the multidimensional, integrated and dynamic character of this right; and affirmed that the global and multidimensional approach defined in the Declaration should constitute a basis for

the work undertaken on the relationship between the enjoyment of human rights and the working methods and activities of transnational corporations.

The Sub-Commission established, for a three-year period, a five-member sessional working group to examine the working methods and activities of transnational corporations. The Working Group was given a mandate to:

- ♦ identify and examine the effects of the working methods and activities of transnational corporations on the enjoyment of economic, social and cultural rights and the right to development, as well as civil and political rights;
- ♦ examine, receive and gather information, including any working paper prepared by a member of the Sub-Commission, on the effects of the working methods and activities of transnational corporations on the enjoyment of economic, social and cultural rights and the right to development, as well as of civil and political rights;
- ♦ analyse the compatibility of the various international human rights instruments with the various investment agreements, including, in particular, the Multilateral Agreement on Investment (MAI);
- ♦ make recommendations and proposals relating to the methods of work and activities of transnational corporations in order to ensure that they are in keeping with the economic and social objectives of the countries in which they operate, and to promote the enjoyment of economic, social and cultural rights and the right to development, as well as of civil and political rights;
- ♦ prepare each year a list of countries and transnational corporations, indicating in US dollars, their gross national product or financial turnover, respectively; and
- ♦ consider the scope of the obligation of states to regulate the activities of transnational corporations, where their activities have or are likely to have a significant impact on the enjoyment of economic, social and cultural rights and the right to development, as well as of civil and political rights of all persons within their jurisdiction.

The Working Group was requested to submit its first report to the 1999 session of the Sub-Commission.

The second resolution (1998/12) was on human rights as the primary objective of trade, investment and financial policy. The Sub-Commission, *inter alia*: stressed the need to work towards the realization for all people and communities of the rights, including food, housing, work, health and education, enshrined in the International Covenant on Economic, Social and Cultural Rights; noted with concern the conclusions of the Trade and Development Report 1997 published by the UN Conference on Trade and Development (UNCTAD) that since the early 1980s the world economy has been characterized by

rising inequality, both between and within countries; also noted the conclusions of the Human Development Report 1997 published by the UNDP that although poverty has been dramatically reduced in many parts of the world, a quarter of the world's people remain in severe poverty, that human poverty constitutes a denial of human rights, that unguided globalization had helped to reduce poverty in some of the largest and strongest developing economies but had also produced "a widening gap between winners and losers" among and within countries; noted the continuing negotiations in the OECD on a Multilateral Agreement on Investment, and of the widespread protests by civil society against the Agreement based on concerns about its adverse effects on human rights, the environment and sustainable development; expressed concern about the possible human rights implications of the Multilateral Agreement on Investment (MAI) and particularly about the extent to which the Agreement might limit the capacity of states to take proactive steps to ensure the enjoyment of economic, social and cultural rights by all people; noted the statement on globalization and economic, social and cultural rights, made in May 1998 by the Committee on Economic, Social and Cultural Rights (as above); and noted the need to re-emphasize the centrality and primacy of human rights obligations in all areas of governance and development, including international and regional trade, investment and financial policies, agreements and practices.

The Sub-Commission: emphasized that the realization of the human rights and fundamental freedoms set out in international and regional human rights instruments is the first and most fundamental responsibility and objective of states in all areas of governance and development; urged UN agencies, including the International Monetary Fund and the World Bank, at all times to be conscious of and respect the human rights obligations of the countries with which they work; and urged OECD states to review the draft text of the Multilateral Agreement on Investment to ensure that all its provisions are fully consistent with their human rights obligations, and to keep these obligations in mind during any future negotiations on the Agreement.

The Sub-Commission decided to prepare a working paper on ways and means by which the primacy of human rights norms and standards could be better reflected in, and could better inform, international and regional trade, investment and financial policies, agreements and practices, and how the United Nations human rights bodies and mechanisms could play a central role in this area. The working paper is to include an analysis of the text of the Multilateral Agreement on Investment from a human rights perspective and to consider ways to ensure that future negotiations on the MAI or analogous agreements or measures take place within a human rights framework. The Sub-Commission called on the OHCHR, on an urgent basis, to develop appropriate expertise to address the human rights implications of international and regional trade, investment and financial policies, agreements and practices and requested the

human rights treaty bodies, as appropriate, to include consideration of the human rights impacts of international and regional trade, investment and financial measures in their state reporting procedures.

In the decision it adopted (1998/104) the Sub-Commission decided to have a working paper prepared on the topic of globalization in the context of the increase in incidents of racism, racial discrimination, and xenophobia to be considered at its 1999 session. The working paper is to serve a contribution to the preparation of the World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance.

### **Statement by the Committee on Economic, Social and Cultural Rights (CESCR) on Globalization**

At its May 1998 session, the CESCR held a day of general discussion on the theme "Globalization and its impact on the enjoyment of economic and social rights". On the basis of that discussion, the Committee adopted a statement in which a number of points are set out. The Committee noted that globalization is a phenomenon that has caused fundamental changes within every society, and that globalization is usually defined primarily by reference to developments in technology, communications, and information processing that have made the world smaller and more interdependent. It has also come to be closely associated with a variety of specific trends and policies including: an increasing reliance upon the free market; a significant growth in the influence of international financial markets and institutions in determining the viability of national policy priorities; a diminution in the role of the state and the size of its budget; the privatization of various functions previously considered to be the exclusive domain of the state; the deregulation of a range of activities with a view to facilitating investment and rewarding individual initiative; and a corresponding increase in the role and even responsibilities attributed to private actors, both in the corporate sector, in particular to the transnational corporations, and in civil society.

The Committee stated that no single one of these developments, on its own, is necessarily incompatible with the principles of the International Covenant on Economic, Social and Cultural Rights (ICESCR) or with the obligations of governments under the ICESCR. Taken together, however, the developments which constitute globalization risk downgrading the central place accorded to human rights by the UN Charter and the International Bill of Human Rights, unless they are complemented by appropriate additional policies. This was seen especially to be the case in relation to economic, social and cultural rights. Specific rights seen to be at risk or under threat included the right to work and just and favourable conditions of work, the right to form and join trade unions, and the right to social security. The Committee also stated that, if not supplemented by necessary safeguards, the introduction of user fees or cost recovery policies, when applied to basic health and educational services for the

poor, can easily result in significantly reduced access to services which are essential for the enjoyment of the rights recognized in the ICESCR. Reference is also made to the fact that an insistence upon higher and higher levels of payment for access to artistic, cultural and heritage-related activities risks undermining the right to participate in cultural life for a significant proportion of any community.

The Committee expressed concern that while much energy and many resources have been expended by governments on promoting the trends and policies that are associated with globalization, insufficient efforts are being made to devise new or complementary approaches which could enhance the compatibility of those trends and policies with full respect for economic, social and cultural rights. The Committee stated that competitiveness, efficiency and economic rationalism must not be permitted to become the primary or exclusive criteria against which governmental and inter-governmental policies are evaluated.

In its statement, the Committee called for a renewed commitment to respect economic, social and cultural rights and emphasized that international organizations, as well as the governments that have created and manage them, have a strong and continuous responsibility to take whatever measures they can to assist governments to act in ways which are compatible with their human rights obligations and to seek to devise policies and programmes which promote respect for those rights. The statement emphasized that the realms of trade, finance and investment are in no way exempt from these general principles and that the international organizations with specific responsibilities in those areas should play a positive and constructive role in relation to human rights.

The Committee, *inter alia*: welcomed the increasing importance being accorded to human rights in the activities of the United Nations Development Programme (UNDP), noting the need for an appropriate emphasis to be given to economic, social and cultural rights; welcomed the initiatives taken by the Secretary-General of the UN Conference on Trade and Development (UNCTAD) to explore more fully the linkages between UNCTAD's principal concerns and respect for the full range of human rights; called upon the International Monetary Fund (IMF) and the World Bank to pay enhanced attention in their activities to respect for economic, social and cultural rights, including through encouraging explicit recognition of these rights, assisting in the identification of country-specific benchmarks to facilitate their promotion, and facilitating the development of appropriate remedies for responding to violations; stated that social safety nets should be defined by reference to these rights and enhanced attention should be accorded to such methods to protect the poor and vulnerable in the context of structural adjustment programs; stated that effective social monitoring should be an integral part of the enhanced financial surveillance and monitoring policies accompanying loans and credits for adjustment purposes; called upon the World Trade Organization (WTO) to devise appropriate methods to

facilitate more systematic consideration of the impact upon human rights of particular trade and investment policies; urged the Secretary-General to undertake, if possible in collaboration with the WTO, a careful study of the potential impact upon respect for economic, social and cultural rights of the draft Multilateral Agreement on Investment (MAI) being negotiated within the Organisation for Economic Co-operation and Development (OECD); emphasized the need for the Office of the High Commissioner for Human Rights to develop an enhanced capacity to monitor and analyse trends in relation to these issues; and called for regular briefings to be provided to the Committee to enable it to take full account of the relevant policies and trends in carrying out its responsibility for monitoring states parties compliance with their obligations under the Covenant.



## HIGH COMMISSIONER FOR HUMAN RIGHTS (HCHR)

### Statement to the 1998 session of the Commission on Human Rights

In her statement to the Commission (19 March 1998), Mary Robinson, the new High Commissioner for Human Rights, made a number of observations including that:

- ◆ the Commission on Human Rights has become a body which relies heavily on the contribution of civil society, in the form of a large and vibrant NGO community;
- ◆ the right to development has been recognised as a right which synthesises all others;
- ◆ it is not possible to pretend that the achievements in the field of human rights have led to a significant decrease in the nature, gravity or number of human rights violations, as evidenced by: (a) the two genocides that have occurred in this decade; (b) the use of rape as a systematic weapon of war; (c) the fact that torture, arbitrary executions and disappearances are common; (d) the fact that hundreds of millions of people live in extreme poverty and suffer from malnutrition, disease and lack of hope; (e) the fact that widespread discrimination on the basis of gender, ethnicity, religious belief or sexual orientation continues; and, (f) an increase in obstacles faced in traditional receiving countries by migrants, refugees and asylum seekers who are forced to work and settle in other countries;
- ◆ there has been a failure of implementation "on a scale that shames us all" — the impact of 50 years of human rights mechanisms, 30 years of multi-billion dollar development programmes, and of global rhetoric at numerous world conferences, has been totally and disappointingly disproportionate to the efforts invested;
- ◆ the gap in perceptions of what we mean by human rights needs to be narrowed if the commitment to promote and protect human rights is to become a reality;
- ◆ the High Commissioner has a responsibility to bridge that gap and adopt and foster a rights-based approach across the whole spectrum of civil, cultural, economic, political and social rights, to promote and protect the realisation of the right to development and to ensure the inclusion of human rights for women;
- ◆ the international community must do significantly more to implement the commitments undertaken at the World Conference of Human Rights in June 1993;
- ◆ universal ratification of the Women's Convention is unlikely by the year 2000, barring an increase in the pace of ratification;
- ◆ it is a matter of grave concern that a number of states, including members of the Commission, continue to withhold their full cooperation to special rapporteurs and others mandated by the Commission;
- ◆ the Secretary-General issued a strong moral call for action to end human rights violations, protect democracy and affirm that human rights are essential to meaningful development;
- ◆ the challenges facing governments to respond to that call include to: end violations against women, children, minorities, and migrants, and to end racial discrimination; ratify international human rights treaties; adopt national plans of human rights action and include human rights in national economic priority setting; ensure human rights education for all; establish national human rights institutions; and make progress towards eradicating poverty; and
- ◆ the challenges facing non-governmental organizations and individuals include to: reinforce education and information on human rights; develop wide partnerships and a broad approach for action on human rights; alert governments and UN bodies to dangers of violations; and make human rights and respect for human dignity a part of daily life.

### Reports on activities

The High Commissioner's report to the 1998 Commission (E/CN.4/1998/122) contains information on, *inter alia*: protecting human rights in a complex world; a medium-term plan (1998 - 2001) for the protection of human rights; UN reform; cooperation with specialized agencies and UN programmes; the restructuring of the human rights secretariat; improving the human rights machinery; the right to development; economic, social and cultural rights and the elimination of poverty; strengthening national protection of human rights; equality, tolerance, racism and racial discrimination; gender and human rights for women; protection for such vulnerable groups as indigenous peoples, minorities,

migrant workers and children; human rights education; responding to violations of human rights; civil society and non-governmental organizations; promotion and protection of human rights in Africa; and human rights in conflict prevention, peacemaking and post-conflict society building.

With regard to non-governmental organizations and civil society, the report recalls that historically, non-governmental organizations have been crucial to the human rights programme from the inclusion of the human rights clauses in the Charter to the development of standards and methods of implementation. Following on this, the report notes: (a) the World Conference on Human Rights recommended that NGOs and grass-roots organizations be enabled to play a major role at the international and national levels in the debate, activities and implementation relating to the right to development; (b) the impact of NGOs, even of modest size, can be significant; (c) the International Campaign to Ban Landmines played an irreplaceable role in the conclusion of the recent landmine convention; (d) NGOs nationally and internationally are important in human rights education, in human rights advocacy, in representing and protecting victims, in providing expertise and in collecting and disseminating information; (e) with the help of UNICEF, child rights NGOs have been involved in the discussions relating to the preparation of government reports, have submitted their own information to the Committee on the Rights of the Child, have attended the Committee's discussion of reports and have been associated at the national level with the implementation of the Committee's recommendations; and (f) the role of NGOs must be officially recognized and the basic conditions for their work guaranteed.

The report concludes by stating that the response of the human rights programme to those who look to the UN for leadership and protection of their rights must:

- ♦ be universal in subject — in the sense that every human being no matter where born, and without distinction of any kind, is entitled to the same rights; and universal in rights — in the sense that all human rights are important, civil, cultural, economic, political and social;
- ♦ ensure that respect for human rights is central to the new ethical and moral challenges, based on the basic principles of rule of law, democracy, and national and international solidarity;
- ♦ respond more effectively to emergency situations and violations in order to save lives and protect individuals and populations and assist states in applying international standards and overcoming root causes of violations;
- ♦ involve the mainstreaming of human rights across the UN system, including the Bretton Woods institutions, with each programme and agency having human rights as a central purpose and including

human rights elements in their strategies, programmes and projects; and

- ♦ address and fully respond to a number of cross-cutting themes of major concern, including human rights for women and girls, the elimination of discrimination, protection of vulnerable groups such as indigenous peoples, migrants and minorities, and the need to protect effectively the rights of the child in general and from particular threats such as armed conflict, child labour and sexual exploitation.

The High Commissioner's report to the 1998 General Assembly (A/53/36) contains information on, *inter alia*: the challenge of protecting human rights today; the 50th anniversary of the Universal Declaration of Human Rights; human rights within the United Nations system; improving the human rights machinery; the right to development; combatting trafficking in women and children; the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance; and technical cooperation, national institutions and education.

The commentary on the 50th anniversary of the Universal Declaration notes that the programme of activities was oriented towards the increased and sustained efforts of the international community to make human rights a reality worldwide; prevent human rights violations; build a global partnership for human rights; and make human rights, peace, democracy and development the guiding principles of the twenty-first century. Specific efforts were made to ensure that activities: served as an important vehicle for advancing the role of all human rights in conjunction with peace, democracy and development; were future- and practice-oriented; enhanced the implementation of human rights and the prevention of violations, as well as promoted good practices; focussed on reaching people everywhere, in particular at the grass-roots and local levels; and enhanced the human rights constituency within and outside the UN system by building a global partnership for human rights. One of the basic goals of the 1998 programme was to increase the ratifications of human rights treaties and a special campaign to that end was launched by the Secretary-General and OHCHR in cooperation with other agencies and programmes. The report notes that one of the major targets of the OHCHR programme was to reach people in local communities and a new activity — the "ACT Project" (Assisting Communities Together) — was launched. This project is designed to encourage individuals, local groups and organizations to promote and protect human rights. Within the framework of the ACT Project, OHCHR provides small grants (up to US\$2,000) to support initiatives which, even if small in scale, will have broad exposure and a significant impact in the local community. The pilot phase of the project was supported by voluntary funds and it is hoped that the success of the pilot phase will make it possible for the ACT Project to become an ongoing link between the UN and local human rights efforts around the world.

On gender and human rights for women, the report notes that the OHCHR is finalizing a mission statement which will identify action to be taken at three levels: (a) the integration of a gender perspective into all aspects of OHCHR with particular attention being paid to policy development, strategic planning and the setting of priorities and objectives; (b) the active and broad participation of women in all fields of UN human rights activity; and (c) the initiation of specific programmes, special projects and activities aimed at improving the enjoyment by women and girls of their fundamental human rights.

With regard to technical cooperation, national institutions and education, the report notes that technical cooperation gives priority to reinforcing national human rights capacities and national human rights institutions and infrastructures. This includes the promotion of democratic institutions, development and human rights, human rights support to parliaments, constitutional assistance, human rights training, legislative reform assistance, the administration of justice, establishing or strengthening national human rights institutions, and the training of police and prison officials. Assistance is also provided on specific human rights issues, such as the preparation and implementation of comprehensive national plans of action for the promotion and protection of human rights, popular participation in decision-making and implementation of projects related to economic, social and cultural rights, including the right to development. The High Commissioner stated that the requests received by OHCHR for technical assistance strain the capacity of the Office to deliver effectively. In a period of some ten years the programme has grown from only a few seminars and fellowships per year to some 200 main activities in some 40 countries.

The High Commissioner noted the increased demands on the UN human rights system generally and, with regard to resources, recalled that from 1995 to 1998 there has been no significant growth in the regular budget resources in dollar terms. In terms of staff, the OHCHR staffing table regressed by 18 regular posts between the 1996-1997 and 1998-1999 bienniums. The High Commissioner stated that the reasonable demands on the programme will require a significant new effort from the UN regular budget and, further, that it is no longer acceptable for member states to tell the people of the world that their human rights are worth less than two per cent of UN resources. The High Commissioner called upon Member States to take the necessary steps necessary to put the core activities of the human rights programme on a sound and predictable financial basis through the UN's regular budget.

In 1998, the OHCHR received US\$21.1 million from the UN regular budget; extra-budgetary resources (voluntary funds) were expected to total approximately US\$54.4 million (see the section on "Technical Assistance").

## HIV/AIDS AND HUMAN RIGHTS

In May 1997, at the fourth meeting of the special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures of the Commission on Human Rights (E/CN.4/1998/45, Annex), there was a discussion on how to integrate concerns related to HIV/AIDS into the work of special procedures.

The meeting noted that there are specific forms of human rights abuses which heighten the risk of infection from HIV/AIDS, including: religious intolerance, which sometimes leads to a failure to provide information on how to avoid infection; violation of the rights to receive and impart vital information on the virus; violations of physical integrity, including female genital mutilation and physical torture or corporal punishment; and sale of children and forced prostitution. The meeting also noted that a range of human rights abuses are directed against people living with HIV/AIDS, who are often subjected to discrimination with respect to access to housing, health care and employment. Their freedoms of expression and association can also be violated, and women infected with HIV/AIDS are sometimes perceived as "vectors of the disease" and subjected to punishment and harassment. Prisoners living with HIV/AIDS are frequently segregated from other inmates and subjected to violations of the confidentiality of their health status.

The representative from UNAIDS requested that the special procedures provide assistance to UNAIDS by, *inter alia*: systematically gathering information on marginalized people suffering heightened vulnerability to HIV; identifying and responding to local and regional patterns regarding HIV/AIDS-related human rights abuses; intervening, as appropriate, with governments by, for example, helping states to address the issue of marginalization, tackle practices which had an impact on the vulnerability to infection, and tackle practices which had an impact on people living with HIV/AIDS; including in their reports human rights violations relating to HIV/AIDS; and establishing contact with UNAIDS at its headquarters in Geneva or at the local level where UNAIDS country programme advisers could provide useful information.



## HOUSING

### Resolutions of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

At its 1998 session, the Sub-Commission adopted two resolutions related to the right to housing.

The first resolution (1998/26) was on housing and property restitution in the context of the return of refugees and internally displaced persons. The Sub-Commission, *inter alia*: recognized the right of refugees and internally displaced persons to return freely to their homes and places of habitual residence in safety and security is an indispensable element of national reconciliation and reconstruction; stated that the recognition of such rights should be included within peace agreements ending armed conflicts; also recognized the right of all returnees to the free exercise of their right to freedom of movement and to choose their residence, including the right to be officially registered in their homes and places of habitual residence, their right to privacy and respect for the home, their right to reside peacefully in the security of their own home and their right to enjoy access to all necessary social and economic services, in an environment free of any form of discrimination; noted the widespread constraint imposed on refugees and internally displaced persons in the exercise of their right to return to their homes and places of habitual residence; also noted that the right to freedom of movement and the right to adequate housing include the right of protection for returning refugees and internally displaced persons against being compelled to return to their homes and places of habitual residence and that the right to return to their homes and places of habitual residence must be exercised in a voluntary and dignified manner.

The Sub-Commission: reaffirmed the right of all refugees and internally displaced persons to return to their homes and places of habitual residence in their country and/or place of origin, should they so wish; also reaffirmed the universal applicability of the right to adequate housing, the right to freedom of movement and the right to privacy and respect for the home; confirmed that the adoption or application of laws by states which are designed to or result in the loss or removal of tenancy, use, ownership or other rights connected with housing or property pose serious impediments to the return and reintegration of refugees and internally displaced persons and to reconstruction and reconciliation; urged all states to ensure the free and fair exercise of the right to return to one's home and place of habitual residence by all refugees and internally displaced persons and to develop effective and expeditious legal, administrative and other procedures to ensure the free and fair exercise of this right, including fair and effective mechanisms designed to resolve outstanding housing and property problems; and invited the High Commissioner for Refugees, in consultation with the High Commissioner for Human Rights, to develop policy guidelines to promote and facilitate the right of all

refugees and, if appropriate to the UNHCR mandate, internally displaced persons, to return freely, safely and voluntarily to their homes and places of habitual residence.

The second resolution (1998/15) was on women and the right to land, property and adequate housing. The Sub-Commission, *inter alia*: expressed concern that as a result of the discrimination faced by women with respect to acquiring and securing land, property and housing, the number of women living in poverty is increasing disproportionately to the number of men; noted that existence and perpetuation of gender-biased laws, policies and traditions which deny women credit and loans and keep women from owning and inheriting land, property and housing and which exclude women from fully participating in development processes discriminate against women and create insecure and inadequate housing and living conditions; expressed deep concern that inadequate and insecure housing and living conditions give rise to serious mental and physical health problems for women and contribute to, cause and are often the result of violence against women; stressed that the impact of discrimination and violence against women on women's ability to access and secure land, property and housing is particularly acute for women who are internally displaced as a result of armed conflict situations and development projects; also expressed concern that international and regional trade, finance and investment policies often increase gender inequality in terms of access to land, property, housing and other productive resources and undermine women's capacity to gain and retain these resources; affirmed that the discrimination faced by women with respect to acquiring and securing land, property and housing, as well as financing for land, property and housing, constitutes a violation of women's human rights to equality, protection against discrimination, and to the equal enjoyment of the right to an adequate standard of living, including adequate housing; strongly urged governments to comply fully with all of their international and regional obligations and commitments concerning women's rights to land, property, inheritance, adequate housing, including security of tenure, and an adequate standard of living; also urged governments to take all necessary measures in order to amend and/or repeal laws and policies pertaining to land, property and housing which deny women security of tenure and equal access and rights to land, property and housing; urged governments to encourage the transformation of customs and traditions which deny women security of tenure and equal access and rights to land, property and housing, and to adopt and enforce legislation which protects and promotes women's rights to own, inherit, lease or rent land, property and housing; encouraged governments and others to provide judges, lawyers, political and other public officials, community leaders and other concerned persons with information and human rights education concerning women's rights to land, property and housing; recommended that governments, the international financial institutions (IFIs), local lending agents, housing finance institutions and other credit facilities review their policies and eliminate

those which discriminate against women and keep women from securing financial resources necessary to access and secure land, property and housing and, in this regard, that special consideration be given to single women and households headed by women; called upon the international trade, investment and financial institutions to take fully into account the human rights implications for women of their policies; invited the High Commissioner for Human Rights to undertake initiatives that promote women's rights to land, property and to an adequate standard of living, including adequate housing; invited the Committee on the Elimination of Discrimination against Women to pay special attention to women's rights to land, property and an adequate standard of living, including adequate housing, and to explore the possibility of adopting a general recommendation on this theme; and invited the Committee on Economic, Social and Cultural Rights to undertake a thorough discussion of the critical issue of the relationship between women's rights to land and property and the International Covenant on Economic, Social and Cultural Rights and to include the results of this discussion in its general comment on women.



## HUMAN RIGHTS TREATY BODIES

Since the adoption of resolution 37/44 on 3 December 1982, the General Assembly has continuously kept under review the issue of the effective implementation of international instruments on human rights, including reporting obligations under international instruments. Following adoption of GA resolution 38/117 in December 1983, the Secretary-General convened the first meeting of the persons chairing the treaty bodies; subsequent sessions were convened biannually until 1995 when the meetings were placed on an annual basis.

At its 1997 session, the General Assembly welcomed the proposal that the chairpersons hold an extraordinary three-day meeting early in 1998 to continue the reform process aimed at improving the effective implementation of international instruments on human rights. The report of this additional session, held in February 1998 (A/53/125) reflects discussions on, *inter alia*: universal ratification; reservations to treaties; periodicity of reporting; staff and servicing of the treaty bodies; problems related to complaints procedures; a global plan of action; examination of situations in the absence of state party reports; problems of small states; general comments and the possible use of joint statements; human rights training; the independence of experts; the 50th anniversary of the Universal Declaration; reporting of the Committee on Economic, Social and Cultural Rights; and cooperation with special rapporteurs and other special procedures. The conclusions and recommendations of the meeting included, *inter alia*, that:

- ◆ on the basis that universal ratification of the six core human rights treaties constitutes an essential dimension of a global order committed to the full respect of human rights, the UN system as a whole accord an even higher priority to efforts to encourage and facilitate ratification of each of the six treaties by every state;
- ◆ as a major priority of the technical cooperation programme of the OHCHR, assistance be provided to states, upon request, with the process of ratifying the human rights treaties and, where needed, in the preparation of reports;
- ◆ recalling the emphasis attached in the Vienna Declaration and Programme of Action to the importance of limiting the number and extent of reservations to human rights treaties, the approach taken by the Committee on the Elimination of Discrimination against Women and the Human Rights Committee — of adopting General Comments on the question of reservations — be accepted by the International Law Commission when considering the question of reservations to the human rights treaties;
- ◆ staff available to service all aspects of the activities of the treaty bodies be increased in order to facilitate the adoption and implementation of the type of procedural and other improvements in treaty body functioning which has consistently been endorsed by the General Assembly and the Commission on Human Rights;
- ◆ there be a designated committee secretary servicing each Committee on a full-time basis in order to ensure continuity, efficiency and expertise;
- ◆ servicing of the optional complaints procedure be conducted by staff members with strong legal qualifications, detailed knowledge of the relevant jurisprudence, and relevant experience;
- ◆ the functions performed by the treaty bodies be considered a core function of the UN and be adequately funded from the regular budget and, during the time of budget restraint, voluntary funding for the work of the six treaty bodies be sought;
- ◆ committees faced with a situation of persistent non-reporting explore every available alternative, including the offer of advisory services and technical assistance to the state in the preparation of the overdue report; as a final resort, committees be willing to consider proceeding with a consideration of the situation, on the basis of information provided by the state party to other international bodies, and taking account of all other relevant information;
- ◆ in response to the problems of small states in meeting reporting obligations, the Secretariat prepare an analysis: (a) exploring the different approaches which might be used to define "small States", such as using an arbitrary cut-off of one million persons or alterna-

tive approaches; (b) facilitating a differentiation between small but rich and well-resourced states and others; and (c) suggesting ways in which the reporting burden for such states might be eased;

- ♦ in relation to the possibility of adopting a "focussed report" method, the principal criteria in determining the appropriate focus of more limited reports include the recommendations contained in the previous concluding observations on that state, significant new measures of a legislative, judicial, administrative or policy nature, and any issues identified by a pre-sessional working group as requiring a sustained focus;
- ♦ the Secretariat aim to provide each treaty body, as a minimum, with a structured analysis of the issues raised during the dialogue with states and the responses provided or not provided; this analysis be prepared in such a way as to provide a good foundation for the drafting of the concluding observations according to the approach adopted by each committee;
- ♦ a new genre of "joint statements" be considered to enable the committees to address issues of common concern, and without taking such matters to the level of general comments, and enable different treaty bodies to work together to address issues of current importance;
- ♦ the High Commissioner for Human Rights launch a major new programme to make available adequate human rights training to a wide range of interested parties; such training be undertaken primarily at the national level, rather than on a regional basis, and be made available to all government departments involved in implementation of the treaties, the judiciary, police, etc., and all interested parts of civil society; an inventory of all training programmes in this area be undertaken; and the OHCHR make an effort to coordinate with other institutions providing training in order to maximize the effectiveness of the training provided and to explore the possibility of exploiting electronic means of providing target audiences with training materials and information;
- ♦ human rights training be provided to all UN personnel in the field, particularly those engaged in missions that may have an impact on the enjoyment of human rights in the areas where they are stationed, including peacekeepers; and
- ♦ that, in the future, the Committee on Economic, Social and Cultural Rights not be required to report to the Economic and Social Council through the Commission on Human Rights, but rather that steps be taken to ensure that the report of the Committee is made available to the Commission for its consideration, without altering the formal reporting arrangements now in place.

The report of the September 1998 regular meeting of the chairpersons (A/53/432, Annex) notes that a private meeting with the representatives of states parties was

held to discuss how to improve the work of the treaty bodies and to promote implementation of their concluding observations. Among the issues discussed were: that the success in obtaining ratifications had not been accompanied by an increase in the human resources made available to meet the increased workload; the serious backlog of communications in those committees which have communications procedures; two recent denunciations of the Optional Protocol to the International Covenant on Civil and Political Rights; the backlog of state reports received and not yet examined; the problem of overdue reports; and the problem of giving effect to the recommendations of the expert committees.

The agenda of the meeting covered a number of the points raised in previous sessions. The observations and recommendations of the meeting included some of those noted above as well as, *inter alia*, that:

- ♦ the geographical and gender imbalances reflected in the composition of certain of the treaty bodies was entirely unsatisfactory; states parties should make a concerted effort to remedy the imbalances;
- ♦ the Sub-Commission on Prevention of Discrimination and Protection of Minorities increasingly draw on the expertise of the treaty bodies in general, and the Committee on the Elimination of Racial Discrimination in particular, when preparing studies on such topics as ethnic conflict, education and racial discrimination, globalization in the context of the increase in incidents of racism, racial discrimination and xenophobia, affirmative action, migrant workers and the rights of non-citizens;
- ♦ ways to improve the communication and information flow between the various UN mechanisms be explored; the current practice of special rapporteurs occasionally participating in meetings of treaty bodies be institutionalized;
- ♦ the OHCHR develop a concerted and comprehensive action programme to promote universal ratification in cooperation with specialized agencies and UN funds and programmes, in particular with the UNDP;
- ♦ it was desirable to strive towards focussed periodic reports, taking into account the limited scope of the issues covered by some of the treaties;
- ♦ it would be desirable for the treaty bodies to meet in both Geneva and New York on the basis that: this would enhance the effectiveness and visibility of their work; occasional sessions in New York would enable the four committees that do not presently meet there (CRC, CAT, CESC and CERD) to: establish better contacts with states parties which do not have permanent missions in Geneva, make their work much more widely known to a broader range of interested groups, facilitate contacts with non-governmental organizations and media, and provide an important opportunity for interaction with other international organizations which do not actively follow the work of the treaty bodies in Geneva; such a system would also

provide an opportunity for the Committee on the Elimination of Discrimination against Women to meet in Geneva, enhance its relationship with other human rights mechanisms, and give it access to a range of agencies, non-governmental organizations and other groups not present in New York;

- ♦ many advantages would accrue if the treaty bodies were able to meet on an exceptional and occasional basis at the various UN regional offices; the High Commissioner of Human Rights should approach the relevant offices to explore the conditions under which it might be possible to organize a treaty body session at the regional level;
- ♦ the Department of Public Information (DPI) and the UN Information Service offices at the country level make a concerted effort to provide the local media with documentation and appropriate background briefings whenever a report from the state concerned or from neighbouring states is being considered by any of the treaty bodies; DPI consider providing appropriate training to its field office representatives to enable them to perform this function effectively;
- ♦ appropriate training be provided to staff servicing the treaty bodies in such areas as drafting methods and document research; the specialized secretariat staff servicing the committees be significantly strengthened; the possibility of seeking voluntary funds be further explored, although adequate provision to human rights treaty bodies should be developed within the regular budget allocated to the OHCHR;
- ♦ possibilities be explored to respond adequately to the current backlog of communications in the Human Rights Committee and to similar situations for other committees in the future, for example: (a) an additional week to deal solely with individual communications; (b) an increase in the number of members of the committees, and (c) the creation of small working groups; and
- ♦ a programme of technical briefings for committee experts be developed.



## INDEPENDENCE OF JUDGES AND LAWYERS

### Special Rapporteur on the independence of judges and lawyers

The mandate on the independence of judges and lawyers was established by the Commission at its 1994 session with a focus to: investigate allegations of interference in the judicial process; establish a record of attacks against judges, lawyers and court officers; catalogue the positive measures taken by governments to protect judges and

lawyers and their independence; and make proposals on how to enhance the independence of judges of lawyers. The Special Rapporteur (SR) in 1998 was Param Cumaraswamy.

The report to the 1998 Commission (E/CN.4/1998/39) contains information on, *inter alia*: activities of the SR, such as consultations, missions and visits, communications with governments and cooperation with various intergovernmental and non-governmental organizations; the establishment of the International Criminal Court; and country situations.

The report was prepared some months prior to the June 1998 conference in Rome which concluded agreement on the statute of the International Criminal Court. At that time, the SR stated strong support for the establishment of a court with jurisdiction over serious violations of international human rights and humanitarian law. The SR also referred to elements necessary to ensure the independence and impartiality of such a court, including: a strong independent prosecutor who could initiate investigations; a method of remuneration of judges that is compatible with security of tenure; and a procedure to ensure compliance by states with the court's decisions, either interlocutory or final.

With regard to country situations, the report includes summaries of appeals and cases referred to a number of governments and cautions that problems concerning the independence and impartiality of the judiciary are not confined to these countries. The report emphasizes that the failure to cite a particular country in the report does not state or imply that there are no problems with the judiciary in that country. The cases referred to governments involved, *inter alia*: lack of due process in trials before the state security court; arrest, confession under torture, appearance before a magistrate without legal counsel, and attempts to manipulate legal proceedings; suspension of the Constitutional Court and provisions related to the procedure for appointment of judges to the Court; detention and beating of a lawyer; an attack against a state prosecutor and his assistant who were investigating a murder in which members of the police were allegedly involved; threats against two lawyers investigating the murders of two homosexuals and a transvestite; the failure of the government to convene the Supreme Council of Magistracy and the constitutional mechanism for the appointment of judges; threats against a lawyer by a paramilitary group reported to be linked with the state security forces; threats against and harassment of lawyers accused of being involved with or being members of a liberation movement; and threats against and harassment of the legal representatives of the families and survivors of a massacre.

Other cases transmitted to governments involved: reports indicating that judges were relieved from their posts following decisions by the state judicial council which were alleged to have been motivated more by the national origin or political views of the judges than by their professional competence; dismissal of the President of the Supreme Court; the pre-selection of judicial candi-

dates by the Minister of Justice; failure to ensure security of tenure for judges; difficulties by the courts in implementing their decisions, particularly with respect to cases against members of the army and the police; failure always to respect the right of the accused to have an attorney present during the investigative phase and during an appeal against investigative detention; possible control by the Minister of Justice over disciplinary sanctions on lawyers and the apparent absence in law of a provision for independent judicial review; arrest and detention of lawyers who had publicly criticized a law regulating relations between landowners and tenants; a strike of most the nation's lawyers in order to draw the attention of the government to the lack of human and financial resources of the justice system, resulting in a large backlog of cases in the courts; allegations of interference by the executive in political and criminal trials and politically sensitive trials; reports indicating that judges practised self-restraint in order to retain their jobs; and the practice of sentences in politically sensitive cases being handed down by the Supreme Court acting as a court of first instance with the right of appeal to a higher court denied.

The SR also sent cases and appeals related to: amendments to the Criminal Code which reportedly restrict the rights of lawyers in defending their clients and limit a defence lawyer's access to important documents; frequent allegations of harassment and intimidation of lawyers by the police and security forces; use of a little-invoked provision in the Criminal Procedure Code related to "judicial review" to overturn an acquittal and threats against defence counsel in that case; dismissal of a lawsuit against the government reportedly because judges had received direction from government officials on how such lawsuits should be dismissed on technical grounds; incommunicado detention and the holding of a closed trial as well as denial of choice of legal counsel; under-funding of the judicial system; public comments by the President predicting the outcome of pending cases and the subsequent order by the former Chief Justice to all magistrates to follow the President's directive; allegations that sensitive political cases were not allocated to judges who are regarded as being either pro-human rights or completely independent; harassment of and economic sanctions against lawyers supporting human rights or opposition parties; and, challenges to the constitutionality of a Law Society which defends judicial independence and human rights.

Concerns were also registered with governments with regard to: threats and intimidation against a human rights lawyer; a number of lawsuits for defamation arising from a published article critical of the justice system; harassment and death threats against members of a group of independent lawyers that undertakes cases involving labour and indigenous rights; death threats against a judge; the murder of a retired judge who had acquitted two individuals accused of blasphemy; drive-by shootings and assassination of judges and lawyers who had provided legal aid to people accused of blasphemy;

death threats against a senior advocate of the Supreme Court and the demand that he be tried for high treason and sedition; cases involving lawyers and judges as a result of the states of emergency declared by the government in the context of efforts to combat terrorism; harassment and death threats against judges, human rights lawyers and lawyers working for a legal aid organization; the failure of the authorities to take fully into account provisions in international instruments relating to a fair trial; allegations that statements in the press made by some members of the government could potentially affect the independence of the court; intimidation and harassment of a lawyer engaged in work in defence of victims of torture and other human rights violations; cases in which lawyers were equated with the defendants' cause and, as such, were termed "terrorist lawyers" by the police, the public prosecutors and by the courts; charges against lawyers following the filing of complaints related to the death of a civilian at the hands of police agents; and assault and injury of a lawyer and human rights activist who had spoken out publicly against the authorities' policy of ethnically motivated evictions.

### Resolution of the Commission on Human Rights

Under agenda item 8 the Commission adopted by consensus a resolution (1998/35) in which the Commission, *inter alia*: stated that an independent and impartial judiciary and legal profession are prerequisites for the protection of human rights and the prevention of discrimination in the administration of justice; recalled General Assembly resolution 40/32 endorsing the Basic Principles on the Independence of the Judiciary; recalled General Assembly resolution 45/166 welcoming the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors; recognized the important role of non-governmental organizations, bar associations and professional associations of judges in the defence of the principles of the independence of judges and lawyers; noted with concern the increasingly frequent attacks on the independence of judges, lawyers and court officers and the link between the weakening of safeguards for such individuals and the frequency and gravity of human rights violations; and, invited the High Commissioner to continue to provide technical assistance to train judges and lawyers and to involve the SR in the drafting of a manual on human rights training for judges and lawyers.



## INDIGENOUS ISSUES

Issues of concern to indigenous peoples were addressed by both the Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and Protection of Minorities.

## Commission on Human Rights

The 1998 Commission considered three issues relevant to indigenous peoples: (1) the question of a permanent UN forum for indigenous people; (2) the International Decade of the World's Indigenous People; and (3) a draft declaration on the rights of indigenous peoples.

### Permanent UN forum for indigenous people

The second workshop on a permanent forum was held in Santiago from 30 June to 2 July 1997. The report of the workshop (E/CN.4/1998/11) contains information on: existing UN mechanisms, procedures and programmes concerning indigenous people; the mandate and terms of reference and activities that might be undertaken in the forum; membership and participation of indigenous people; and the UN body to which the proposed forum would report (including financial and secretariat implications). The workshop was attended by 25 governments, several UN bodies and agencies, some 30 organizations representing indigenous peoples, and three NGOs.

The review of existing mechanisms concluded that there are virtually no mechanisms within the UN system which give indigenous peoples an opportunity to take part in decision-making. Points made in discussion included, *inter alia*, that: there are no adequate procedures to ensure the full and effective involvement of indigenous peoples in the planning, implementation and evaluation of processes affecting them; there is a need to improve existing mechanisms as well as to give high priority to considering the establishment of a permanent forum; a permanent forum for indigenous people would contribute to better coordination, avoid duplication, strengthen cooperation and consistency of approach and ensure cost-effectiveness in UN programmes concerning indigenous peoples; there is a need to examine the relationship of a permanent forum to existing UN structures and mandates; the ongoing process of reform of the UN system should be taken into consideration when discussing the establishment of a permanent forum and, transparency and oversight are urgently needed, not only for reasons of efficiency and accountability, but also because indigenous people themselves are, in certain cases, becoming overwhelmed with meetings and information and are losing their capacity to participate fully and meaningfully in all of the international decisions which affect them.

The first addendum to the main report (E/CN.4/1998/11/Add.1) contains the text of a working paper presented by the government of Denmark, as well as the views of the Grand Council of the Crees and the Sammi Council, and the Declaration of the First International Indigenous Conference on a Permanent Forum in the United Nations System, held in Temuco, Chile, from 6 to 9 May 1997. The second addendum (E/CN.4/1998/11/Add.2) is the text of the contribution to the workshop by the Chairperson-Rapporteur of the Sub-Commission's Working Group on Indigenous Populations.

## International Decade of the World's Indigenous People

The Decade was proclaimed by the General Assembly in resolution 48/163 to begin on 10 December 1994. The proposed programme of activities for the Decade emphasized the role of international cooperation for the solution of problems faced by indigenous people in such areas as human rights, the environment, development, education and health. In resolution 1997/32, the Commission on Human Rights recommended that the High Commissioner for Human Rights (HCHR) assume responsibility for coordination of the Decade and requested that a report on developments be submitted to the 1998 Commission.

The report of the HCHR (E/CN.4/1998/107) deals with activities undertaken for the Decade in the last three months of 1997. The report on activities in the first nine months of 1997 is contained in the Secretary-General's report to the 1997 General Assembly (A/52/509). The High Commissioner's report notes that the objectives of the Decade are: the adoption of the draft declaration on the rights of indigenous peoples; the possible establishment of a permanent forum for indigenous people within the UN system; and education as an important means to solve problems faced by indigenous people, as well as the promotion and protection of their human and historical rights.

The activities noted included: the meeting of the Working Group on a draft declaration on the rights of indigenous peoples (October/November 1997); work related to the protection of the heritage of indigenous people, including a study of draft principles and guidelines elaborated by the Special Rapporteur of the Sub-Commission; organization of a workshop of indigenous journalists (see below); a workshop to discuss the implementation of article 8 (j) of the Convention on Biological Diversity in relation to indigenous people; and, the first meeting of the Advisory Group of the World Health Organization (WHO) on the indigenous peoples and substance use project, noting the project's aim is to prevent or minimize the risks of, and damage relating to, psychoactive substance use, mainly among indigenous communities.

Commentary on the Voluntary Fund for the International Decade of the World's Indigenous People recalls that the Fund was established by General Assembly resolution 49/214 for the purpose of financing projects and programmes during the Decade. Between 1 January and 30 November 1997, the Voluntary Fund received contributions from: Canada, Denmark, Fiji, Greece, Japan, and Sweden, and from several non-governmental organizations. Through the Fund, a fellowship programme for indigenous peoples was established under which a number of representatives of indigenous organizations could spend six-months at the offices of the High Commissioner for Human Rights in Geneva, receiving training and doing practical work on human rights and the UN system. The first group of fellows were in Geneva from June to December 1997. The Fund's Advisory Group recommended that the programme be continued

in 1998, and selected representatives from four indigenous organizations — based in the United States, New Zealand, Burkina Faso and Panama — to receive fellowships in 1998.

### **Draft declaration on the rights of indigenous peoples**

Resolution 1995/32, adopted at the 1995 session of the Commission on Human Rights, established an open-ended inter-sessional working group to elaborate a draft declaration on the rights of indigenous peoples. The work was based on a 1994 draft text prepared by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Forty-five governments and 123 indigenous and non-governmental organizations attended the Working Group's meeting in October/November 1997.

The report of the session (E/CN.4/1998/106; E/CN.4/1998/106/Corr.1) contains a record of the general debate and the articles of the draft declaration which were adopted by consensus at first reading. A number of indigenous organizations called for adoption of the draft without changes.

The WG gave first reading to articles related to equality of rights and freedoms for women and men and the right to nationality. The points that emerged during discussions of article 3, self-determination, included: all states recognized and upheld the principle that all peoples had the right of self-determination; a number of governments expressed concern about the implications that an open reference to the right of self-determination might have; it was essential for all, states and indigenous representatives, to have a clear understanding of the precise meaning and implications of draft article 3, as this right underpinned other articles in the draft; indigenous representatives and some states considered that the inclusion of the right of self-determination was indispensable to the declaration; the right must apply on a non-discriminatory basis to all peoples; a number of states, while accepting the principle of self-determination of indigenous peoples, required further clarification on the implications of the exercise of this right within the legal and constitutional frameworks of existing states; other states that supported this principle expressed concern with respect to the implications that a wide recognition of that right might have, since it might be inclusive of the right of secession; still other states took the position that the peoples entitled to self-determination were understood to be the entire peoples of a state or those who could constitute themselves as a sovereign independent state, and not sub-national groups; some indigenous representatives pointed out that the indigenous peoples they were representing were not aspiring to secede from existing states, and that the right of self-determination, as set out in existing instruments, already provided that secession could only be invoked in extreme cases, where the right of self-determination was denied by the state.

Annex I of the report reproduces proposed amendments to articles 15 through 18 for future discussion, related to: indigenous children; diversity of cultures, traditions, histories and aspirations and appropriate reflection of that diversity in education and public information; indigenous media and the use of indigenous languages, access to and reporting by state-owned media; and international labour standards and workers' rights. Annex II of the report reproduces the texts of articles 15 to 18 that were drafted by the Sub-Commission and notes that indigenous delegations supported adoption of these texts without amendment. Annex III reproduces text for articles 15, 17 and 18, proposed by the Movimiento Indio "Tupaj Amaru".

### **Resolutions and decisions of the Commission on Human Rights**

The Commission adopted by consensus three resolutions and one decision related to indigenous issues.

#### **Resolution on the Working Group on Indigenous Populations and the International Decade of the World's Indigenous People**

In the first resolution (1998/13), the Commission, *inter alia*: affirmed its recognition of the value and diversity of the cultures and forms of social organization of indigenous peoples, and noted that the development of indigenous peoples within their countries will contribute to the socio-economic, cultural and environmental advancement of all the countries of the world; recalled that the goal of the International Decade is to strengthen international cooperation for the solution of problems faced by indigenous people in such areas as human rights, the environment, development, education and health; recognized the importance of consultation and cooperation with indigenous peoples in planning and implementing the programme of activities for the Decade, as well as the need for adequate financial support from the international community.

With respect to the report of the Working Group (WG), the Commission, *inter alia*: urged the WG to continue its comprehensive review of developments and of the diverse situations and aspirations of the world's indigenous peoples; welcomed the WG's proposal to give priority to the theme of education and language; recommended that the WG be authorized to meet for five working days prior to the 1998 session of the Sub-Commission; invited the WG to continue its consideration of ways in which the expertise of indigenous peoples can contribute to its work; encouraged initiatives by governments, organizations of indigenous peoples and non-governmental organizations to ensure the full participation of indigenous peoples in the activities related to the tasks of the Working Group.

With respect to the International Decade, the Commission, *inter alia*: welcomed the affirmation by the General Assembly that a major objective of the Decade is the adoption of a declaration on the rights of indigenous people and its recognition that among the important objectives of the Decade is the consideration of the possible establishment of a permanent forum for indigenous people in the UN system; requested the High Commissioner to consider organizing a workshop for research and higher education institutions focussing on indigenous issues in education, to improve exchange of information between such institutions and to encourage future cooperation, in consultation with indigenous peoples and in collaboration with UNESCO and other relevant UN bodies; emphasized the important role of international cooperation in promoting the goals and activities of the Decade and the rights, well-being and sustainable development of indigenous peoples; encouraged governments to support the Decade by contributing to the Voluntary Fund for the Decade; encouraged governments, in consultation with indigenous peoples, to: (a) prepare relevant programmes, plans and reports in relation to the Decade and establish national committees or other mechanisms involving indigenous peoples to ensure that the objectives and activities of the Decade are planned and implemented on the basis of full partnership with indigenous peoples; (b) seek means of giving indigenous peoples greater responsibility for their own affairs and an effective voice in decisions which affect them; and (c) identify resources for activities designed to implement the goals of the Decade; recommended that the High Commissioner give due regard to the development of human rights training for indigenous peoples; invited UN financial and development institutions, operational programmes and specialized agencies to: (a) give increased priority and resources to improving the conditions of indigenous peoples, with particular emphasis on the needs of these peoples in developing countries; (b) launch special projects, through appropriate channels and in collaboration with indigenous peoples, for strengthening their community-level initiatives, and to facilitate the exchange of information and expertise among indigenous peoples and other relevant experts; and (c) designate focal points or other mechanisms for coordination with the High Commissioner of activities relating to the Decade.

### **Resolution on the Working Group of the Commission on Human Rights to elaborate a draft declaration**

The second resolution (1998/14), *inter alia*: reaffirmed resolution 1995/32 establishing an open-ended inter-sessional working group (WG) with the sole purpose of elaborating a draft declaration and noted that the invitation contained in that resolution was addressed to organizations of indigenous peoples seeking authorization to participate in the WG; recognized that organizations of indigenous peoples have special knowledge and understanding of the current situation of the world's indige-

nous peoples and their human rights needs; welcomed the progress made in the process of drafting a declaration and emphasized the importance and special nature of such a draft declaration in promoting the rights of indigenous peoples; recalled the need for the WG to consider all aspects of the draft declaration, including its scope of application; welcomed the continuation and positive nature of the deliberations of the WG, particularly the measures taken to ensure effective input by organizations of indigenous people; welcomed the decisions of ECOSOC approving the participation of organizations of indigenous peoples in the work of the WG, and urged the Council to process all pending applications as soon as possible; recommended that the WG meet for ten working days prior to the 1999 Commission; and, encouraged organizations of indigenous peoples that are not already registered to participate in the WG to apply for authorization in accordance with the procedures set out in the annex to Commission on Human Rights resolution 1995/32.

### **Resolution related to a permanent forum for indigenous people in the United Nations system**

The third resolution (1998/20), *inter alia*: recalled the recommendation of the World Conference on Human Rights that the establishment of a permanent forum for indigenous people in the UN system should be considered in the framework of the International Decade of the World's Indigenous People; acknowledged the growing interest and concern for indigenous issues in organizations and departments of the UN system and the need to ensure coordination and regular exchange of information on an ongoing basis; noted the General Assembly's reaffirmation that the establishment of a permanent forum is among the objectives of the Decade; established an open-ended inter-sessional ad hoc working group (WG) to elaborate and consider further proposals for the possible establishment of a permanent forum for indigenous people within the UN system; decided that non-governmental organizations in consultative status with ECOSOC and other relevant organizations of indigenous peoples will automatically be granted the right to participate in the ad hoc WG; and, requested the ad hoc WG to meet for five working days prior to the 1999 session of the Commission.

### **Decision related to the protection of the heritage of indigenous people**

The Decision (1998/103) endorsed the recommendation of the Sub-Commission that the High Commissioner for Human Rights organize a seminar on the draft principles and guidelines for the protection of the heritage of indigenous people; and that the Sub-Commission's Special Rapporteur, as well as representatives of governments, UN bodies and organizations, specialized agencies, organizations of indigenous people and competent indigenous persons participate in the seminar.

## Sub-Commission on the Prevention of Discrimination and Protection of Minorities

### Working Group on Indigenous Populations

The Sub-Commission's Working Group (WG) on Indigenous Populations was established in 1982 with a mandate to review developments related to the promotion and protection of human rights and fundamental freedoms of indigenous peoples and the evolution of standards concerning the rights of indigenous peoples, taking account of both the similarities and differences in the situations and aspirations of indigenous peoples throughout the world. The WG meets annually just prior to the session of the Sub-Commission.

The WG's report of its July 1998 session (E/CN.4/Sub.2/1998/16) contains information on, *inter alia*: education and language, health, the evolution of standards concerning the rights of indigenous peoples, treaties and agreements between states and indigenous peoples, the relationship to land, the permanent forum, and the International Decade.

With regard to the work of the Sub-Commission's Special Rapporteur (SR) on treaties, agreements and other constructive arrangements between states and indigenous populations, the WG's report notes that the study took nine years to complete and that the SR's report was not issued as an official document for technical reasons (*viz.*, it had not been edited and was only available in English). Points raised in the oral presentation of the report, however, noted, *inter alia*, that: land rights was the core issue to indigenous peoples regardless of where they lived; very little or no progress could be made on this without tackling, solving and redressing — in a way acceptable to the indigenous peoples concerned — the question of the uninterrupted dispossession of indigenous resources (land, in particular) vital to the lives and survival of indigenous peoples; indigenous peoples, like all other peoples, had the right to self-determination, and states had the duty to promote and protect this right. The SR's report is scheduled to be formally considered at the 1999 session of the Sub-Commission, pending resolution of the technical problems.

Within the context of the Working Group's programme, several reports were prepared on diverse subjects. These included:

- ♦ human genome diversity: research and indigenous peoples (E/CN.4/Sub.2/AC.4/1998/4, prepared by the Secretariat);
- ♦ the collection, study and commercialization of human genomes (E/CN.4/Sub.2/AC.4/1998/4/Add.1), prepared by the International Indian Treaty Council;
- ♦ indigenous peoples — education and language (E/CN.4/Sub.2/AC.4/1998/3, prepared by the Secretariat);

- ♦ linguistic reform to promote indigenous languages (E/CN.4/Sub.2/AC.4/1998/2, prepared by UNESCO);
- ♦ self-determination (E/CN.4/Sub.2/AC.4/1998/9, prepared by the Tupac Amaru Movement); and
- ♦ cultural policies for development (E/CN.4/Sub.2/AC.4/1998/8, prepared by the Saami Council).

### Working Paper on indigenous people and their relationship to land

Decision 1997/114 adopted at the 1997 session of the Commission on Human Rights approved the appointment of a Special Rapporteur (SR) of the Sub-Commission to prepare a working paper on indigenous people and their relationship to land. A preliminary working paper was completed (E/CN.4/Sub.2/1997/17, 20 June 1997 and Corr.1) and transmitted to governments, indigenous people, and to intergovernmental and non-governmental organizations for comments and suggestions. The Special Rapporteur was requested to prepare a final working paper on the basis of comments and information received. The report to the 1998 Sub-Commission (E/CN.4/Sub.2/1998/15) noted that few responses had been received, making it impossible to complete the work. A summary of information provided by Canada, Australia and New Zealand is included. In general, the information referred to: court decisions, progress in land claim negotiations, constitutional reform and legislation, land settlements and the issue of extinguishment of indigenous land rights. Information provided by indigenous and non-governmental organizations referred to, for example: the integral relationship that can exist between an indigenous land tenure system and indigenous culture or people, the apparent failure to recognize or acknowledge the existence of indigenous people, the absence of the rule of law in some situations in relation to lands of indigenous people and, often, the failure to demarcate indigenous lands.

Reference is also made to the first friendly settlement in the Inter-American human rights system which restored legitimate land rights to an indigenous community. The case involved Paraguay and the indigenous communities of Lamexay and Riachito. The report also notes a case before the Inter-American Court of Human Rights that concerns the failure of the government of Nicaragua to demarcate or otherwise secure the land rights of the Indian community of Awas Tingni and the granting by the government of a logging concession on Awas Tingni lands without consultation with, and without the consent of, the community. A third case followed by the SR involves the United States and two Western Shoshone Indian women and a challenge by the women of government actions to prevent them from using lands that are claimed as the aboriginal lands of the Western Shoshone Nation.

### Workshop of indigenous journalists

A workshop of indigenous journalists was first proposed by the Sub-Commission in 1996. Consultations had indicated a need for such a gathering on the basis that: indigenous issues were not well covered in the mainstream press; sometimes the pictures of indigenous peoples' cultures were distorted; indigenous journalists stated that they often lacked the technical knowledge and the financial means to establish their own media; and indigenous journalists had an important role to play as intermediaries between the UN and indigenous communities.

The Workshop of Indigenous Journalists was prepared by the OHCHR and held in Madrid from 26 to 28 January 1998. Among the points made in the workshop report (E/CN.4/Sub.2/AC.4/1998/6) were that: mainstream media tended to write about indigenous peoples only when there was conflict or tragedy and that otherwise articles often focussed on folkloric or stereotypical aspects; media in some countries reflected the dominant groups and this reality had to be borne in mind when considering the difficulties of access faced by indigenous peoples; the press plays a role in homogenizing cultures to the detriment of the unique way of life of the indigenous peoples; among the shortcomings of indigenous journalism was the failure to take into account the marketplace in which the mainstream press was working; and more indigenous women should be encouraged to enter the profession of journalism.

The report summarizes discussions that were held around three main themes: indigenous issues in the mainstream press; strengthening the indigenous media; indigenous journalists and the United Nations. The Workshop recommended, *inter alia*, that: training and educational activities be developed to enable indigenous media workers to improve their professional and technical skills in the communication media and to gain knowledge and experience of the United Nations and the specialized agencies; relevant UN agencies and bodies be requested to develop further national and regional projects to provide training and assist indigenous organizations to establish and upgrade their media; the support of OHCHR be sought to establish and develop a network of indigenous media on the Internet; within the concept of the right to an ethnic language, greater and more professional use be made of communication media and new technologies to preserve oral traditions, languages written in non-Latin scripts and various forms of indigenous cultural manifestations; OHCHR be requested to organize a second workshop of indigenous media workers, in cooperation with indigenous journalists, to further explore the issues raised in Madrid; and the Working Group on Indigenous Populations consider the theme of media information and communications at its 1999 session.

### Resolutions and Decisions of the Sub-Commission

The Sub-Commission adopted by consensus three resolutions and one decision related to issues affecting indigenous peoples.

#### Resolution related to the study on indigenous land rights

The resolution (1998/21), *inter alia*: acknowledged that many of the human rights problems faced by indigenous peoples are linked to the historical and continuing deprivation of ancestral rights over lands, territories and resources; recognized the profound spiritual, cultural, social and economic relationship that indigenous people have to their total environment and the urgent need to respect and recognize the rights of indigenous people to their lands, territories and resources; acknowledged that, *inter alia*, lack of secure land rights, in addition to continued instability of state land tenure systems, imperil the survival of indigenous peoples; recognized that some states have enacted legal measures that uphold indigenous land rights or have established procedures for arriving at legally binding agreements on indigenous land-related issues; referred to the working paper on indigenous land rights and requested the Special Rapporteur to prepare the final working paper on the basis of the comments and information received from governments, indigenous peoples and others, and to submit it to the Working Group on Indigenous Populations and to the Sub-Commission at their 1999 sessions.

#### Resolution related to the International Decade

The resolution (1998/22), *inter alia*: recalled that the goal of the Decade is the strengthening of international cooperation for the solution of problems faced by indigenous people in such areas as human rights, the environment, development, education and health; welcomed the observance of the International Day of the World's Indigenous People on 9 August; recommended that the celebration of this day be held on the first day of the 1999 session of the Working Group on Indigenous Populations in order to ensure as great a participation of indigenous people as possible; welcomed the decision of the General Assembly, in 1997, to appoint the High Commissioner for Human Rights as Coordinator for the International Decade of the World's Indigenous People; recommended that consideration be given to holding a special fund-raising meeting to encourage financial contributions to the Voluntary Fund for the Decade and the UN Voluntary Fund for Indigenous Populations, as well as the appointment of qualified staff, including indigenous persons, to assist with the work of the OHCHR relating to the indigenous programme; recommended that attention continue to be given to improving the extent of the participation of indigenous peoples in planning and implementing the activities of the Decade; recommended that the draft declaration on the rights of indigenous peoples be adopted as early as possible during the International Decade;

also welcomed the 1998 decision of the Commission on Human Rights to establish an open-ended inter-sessional ad hoc working group on the permanent forum for indigenous people in the UN system; recommended that the permanent forum be established as soon as possible in the course of the Decade, financed through the UN regular budget; and, encouraged the High Commissioner for Human Rights to consider organizing a follow-up workshop to put into practice the recommendations arising from the Madrid Workshop for indigenous journalists.

#### **Resolution related to the Working Group on Indigenous Populations**

The resolution (1998/23), *inter alia*: reaffirmed the urgent need to recognize, promote and protect more effectively the human rights and fundamental freedoms of indigenous peoples; welcomed the decision of the Working Group (WG) to highlight the specific theme of "Indigenous peoples - education and language" during its 1998 session, and the fruitful discussions on this and others themes; recommended that the WG cooperate as a body of experts in any conceptual clarifications or analysis, which might assist the working group elaborating the draft declaration; welcomed the invitation from the Director-General of the UNESCO to host the 1999 session of the WG at the organization's headquarters in Paris; endorsed the WG's decision, in view of the concerns expressed by a number of indigenous organizations, not to take a final decision on the invitation until it receives information at its 1999 session on the results of the consultations with their communities on this issue; recommended that the WG adopt as the principal theme "indigenous peoples and their relationship to land" for the 1999 session; noted the WG's decision to request, for its session in 2000, a preliminary working paper on possible principles and guidelines for private sector energy and mining concerns that may affect indigenous lands; and, requested the High Commissioner to encourage studies and to call for an international workshop on the rights to food and adequate nutrition of indigenous peoples as they relate to their access to land, cultural heritage and health.

#### **Decision related to the study on treaties and agreements**

The Decision (1998/107), *inter alia*: noted that the late submission of the study allowed only limited discussion of it by the Working Group on Indigenous Populations and the Sub-Commission; requested the Special Rapporteur to submit, not later than 31 March 1999, a new version of the final report, including any revisions that might be introduced to the present unedited English version of that document in the light of the debates held at the 1998 sessions; requested the Secretary-General to give the Special Rapporteur all necessary facilities to secure the completion of this task, in particular the distribution of his final report in all working languages, to the Working Group and the Sub-Commission in time for their respective 1999 sessions.

## **Resolutions of the General Assembly**

### **International Decade of the World's Indigenous People**

At the 1998 session the General Assembly (GA) adopted by consensus a resolution on the International Decade (A/C.3/53/L.19). The GA, *inter alia*: recalled that the goal of the Decade is to strengthen international cooperation for the solution of problems faced by indigenous people in such areas as human rights, the environment, development, education and health; affirmed its conviction of the value and diversity of the cultures and forms of social organization of indigenous peoples; also affirmed that the development of indigenous peoples within their countries will contribute to the socio-economic, cultural and environmental advancement of all the countries of the world; emphasized the importance of strengthening the human and institutional capacity of indigenous peoples to develop their own solutions to their problems; and requested the High Commissioner for Human Rights, as coordinator for the International Decade of the World's Indigenous People, to: (a) continue to promote the objectives of the Decade, taking into account the special concerns of indigenous people; (b) proceed with the organization of the workshop for research and higher education institutions focussing on indigenous issues in education; (c) give due regard to the dissemination of information on the situation, cultures, languages, rights and aspirations of indigenous peoples; and (d) submit, through the Secretary-General, an annual report to the General Assembly on the implementation of the programme of activities of the Decade. The GA also reaffirmed that the adoption of a declaration on the rights of indigenous peoples was a major objective of the Decade; and that among the objectives of the Decade is consideration of the establishment of a permanent forum for indigenous people within the United Nations system. It encouraged governments to support the Decade by: (a) preparing relevant programmes, plans and reports in relation to the Decade, in consultation with indigenous peoples; (b) seeking means, in consultation with indigenous peoples, of giving indigenous peoples greater responsibility for their own affairs and an effective voice in decisions on matters that affect them; (c) establishing national committees or other mechanisms involving indigenous peoples to ensure that the objectives and activities of the Decade are planned and implemented on the basis of full partnership with indigenous peoples; (d) contributing to the UN Trust Fund for the International Decade; (e) contributing to the UN Voluntary Fund for Indigenous Populations; (f) considering contributing to the Fund for the Development of Indigenous Peoples in Latin America and the Caribbean, in support of the goals of the Decade; and (g) identifying resources for activities designed to implement the goals of the Decade, in cooperation with indigenous peoples and intergovernmental and non-governmental organizations. Finally, the GA invited UN institutions, programmes and specialized agencies to: (a) give increased priority and resources to improving the conditions of

indigenous peoples; (b) launch special projects to strengthen their community-level initiatives and facilitate the exchange of information and expertise among indigenous peoples and other relevant experts; and (c) designate focal points for coordination of activities related to the Decade with the OHCHR.

#### UN Voluntary Fund for Indigenous Populations

The General Assembly adopted by consensus a resolution on the UN Voluntary Fund (A/C.3/53/L.20) in which the GA, *inter alia*: recalled that the Fund was established to assist representatives of indigenous communities and organizations to participate in the deliberations related to the draft declaration on the rights of indigenous peoples; noted the decision of the Commission on Human Rights to establish an open-ended inter-sessional ad hoc working group to meet prior to the 1999 Commission to elaborate and consider further proposals for the possible establishment of a permanent forum for indigenous people within the UN system; recognized the desirability of assisting organizations of indigenous peoples in participating in the ad hoc working group; and decided that the Voluntary Fund should also be used to assist representatives of indigenous communities and organizations to participate in the deliberations of the open-ended inter-sessional ad hoc working group.



## INTERNALLY DISPLACED PERSONS

### Representative of the Secretary-General

The Representative of the Secretary-General on internally displaced persons was appointed in 1992. The emphasis in the mandate was and remains to establish a better understanding of the general problems faced by internally displaced persons and their possible long-term solutions including, where required, recommendations on the ways and means of improving protection. For 1998, the Representative was Mr. Francis Deng. At its 1998 session, the Commission had before it three reports: the Representative's general report, a compilation and analysis of legal norms, and a report on guiding principles.

### General report

The general report (E/CN.4/1998/53) contains information on, *inter alia*: a right not to be arbitrarily displaced, guiding principles on internal displacement, the institutional framework for dealing with the internally displaced, and strengthening the capacity of the mandate. The context for the report is set with the observation that internal displacement continues to constitute one of the greatest and most pressing challenges facing the international community. In part, this is due to the magnitude of

the problem, which currently affects at least 25 million people, as well as to the severity of their needs for protection and assistance. The report notes that the fact that the internally displaced have not crossed a border and, moreover, most often are found in situations of armed conflict, poses additional challenges to international efforts to meet these needs. Further, that as a sure symptom of a society in serious crisis, internal displacement often is only the precursor of situations with much wider international ramifications, including not only the massive outflows of refugees but the political and economic destabilization of entire countries, if not regions. The Representative stated that addressing the problem of internal displacement therefore is as much an imperative of regional and international peace and security as it is a matter of responding to the needs of the individuals affected for humanitarian assistance and human rights protection.

On the question of a right not to be arbitrarily displaced, the report notes a number of points including that:

- ◆ while there are a number of international legal standards which, if respected, would reduce arbitrary displacement, the legal basis for providing protection against displacement could be strengthened significantly by establishing a right not to be arbitrarily displaced; establishing such a right would serve the purpose of defining explicitly what is now only implicit in international law;
- ◆ in humanitarian law and in the law relating to indigenous peoples there is an express prohibition of arbitrary displacement;
- ◆ in human rights law, the prohibition is only implicit in certain provisions, in particular those pertaining to freedom of movement and choice of residence, freedom from arbitrary interference in one's home, and the right to housing; these rights jointly point to a general rule according to which forced displacement may be undertaken only exceptionally and, even then, may not be effected in a discriminatory manner nor arbitrarily imposed, but they do not spell out the circumstances under which displacement is permissible and are subject to restrictions and derogation;
- ◆ under international law limitations on permissibility stipulate that forced displacement: (a) may be undertaken only in the specific circumstances provided for, with due regard for the principles of necessity and proportionality; (b) should last no longer than the exigencies of the situation; and (c) must not occur on a discriminatory basis caused by, or which can be reasonably expected to result in, genocide, "ethnic cleansing", apartheid and other systematic forms of discrimination;
- ◆ in cases of relocations, the provision of proper accommodation and satisfactory conditions of hygiene should be guaranteed and families should not be separated;

- ♦ persons to be displaced should have access to adequate information regarding their displacement, the procedures of compensation and relocation, effective remedies and, where appropriate, compensation for loss of land or other assets, and efforts should be made to obtain the free and informed consent of those to be displaced; and
- ♦ establishment of a right not to be arbitrarily displaced should specify the impermissible grounds and conditions of displacement and the minimum procedural guarantees which must be met should displacement occur.

The report notes that the development of Guiding Principles (E/CN.4/1998/53/Add.2) was intended to address internal displacement in all phases, including prevention, provision of protection and assistance during displacement, and promotion of durable solutions. The Principles, in draft form:

- ♦ revise the definition of internally displaced persons: eliminating temporal and quantitative criteria, for example, "suddenly or unexpectedly in large numbers"; continuing to cite specific causes of internal displacement but not in such a way that the list compiled is exhaustive;
- ♦ explicitly define and detail the right to be protected against arbitrary displacement from one's home or place of habitual residence;
- ♦ enumerate the guarantees to be met when authorities undertake displacement after having ensured that no alternative courses of action exist;
- ♦ stipulate that displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty or security of those affected;
- ♦ underline that states have a particular obligation to provide protection against displacement to indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands;
- ♦ seek to address the specific needs of internally displaced women and children as well as those of particularly vulnerable categories of persons among them, such as expectant mothers, mothers with young children, female heads of households and unaccompanied minors;
- ♦ call for special efforts to ensure the full participation of women in the planning and distribution of relief supplies;
- ♦ explicitly protect women and children against rape, gender-specific violence, forced prostitution, contemporary forms of slavery — such as sale into marriage, sexual exploitation and forced child labour — and the forcible recruitment of children;
- ♦ specify that for internally displaced persons the right to respect of family life includes that family members

should be allowed to remain together during the course of displacement and that families separated by displacement should be reunited as quickly as possible, particularly when children are involved; and

- ♦ are intended to apply both to governments and non-state actors and provide a benchmark against which to monitor and measure the treatment of the internally displaced.

The commentary on the institutional framework to address the needs of internally displaced persons notes that there are serious gaps in existing arrangements, including: the lack of one international organization mandated to assume responsibility for the internally displaced; the ad hoc nature and constraints arising from problems of coordination and neglect of protection in the current collaborative approach based on inter-agency coordination; and the fact that the provision of protection and assistance to internally displaced persons remains one of the humanitarian issues that falls in the gaps of the existing mandates of various agencies. The report then states that, in the absence of a comprehensive, systematic and effective response on the part of the UN system to situations of internal displacement, one of the key features to the mandate of the Representative will be, in future, to ensure that developments in the normative and institutional frameworks are translated into effective action on the ground.

On that basis, a number of activities are proposed for the mandate, including: dissemination of the normative standards on internal displacement and promoting their use by governments, international organizations and non-governmental organizations; assisting in the development and delivery of the UN Complex Emergency Training Initiative (CETI) training module on internally displaced persons so that UN staff can become better informed about how to address situations of internal displacement; fostering more collaborative institutional arrangements, both at headquarters and in the field, with respect to the internally displaced; bringing cases of internal displacement to inter-agency meetings and closely monitoring the more than 35 countries with serious problems of internal displacement; promoting more effective responses to situations of internal displacement by national, regional and international actors, in particular by developing closer relationships with regional organizations; undertaking missions to countries where the situation of internal displacement is particularly severe; conducting follow-up activities to these missions; devoting specific attention to the needs of women and children; and preparing periodic reports to the Commission and the General Assembly detailing developments in all of these areas of activity.

### **Legal Aspects to the protection against arbitrary displacement**

This report (E/CN.4/1998/53/Add.1) is the second part of the Representative's compilation and analysis of legal norms related to internally displaced persons (see

E/CN.4/1996/52/Add.2 for the first part) and contains information on, *inter alia*: violence and threats affecting life and personal security, discrimination, implantation of settlers, evictions and loss of land and housing, the negative impact of development projects, damage to the environment, the obligations of non-state actors, freedom of movement and choice of residence, protection from interference with one's home, the right to housing, prohibition of forced movement in emergencies, including situations of armed conflict, prohibition of religious and racial discrimination, prohibition of genocide, and laws relating to indigenous peoples. The context within which these subjects are addressed is based in part on:

- forced displacement being understood to involve policies that have the purpose or the effect of compelling people to leave their home and place of habitual residence, including in some cases relocating them to another area of the country against their will;
- the understanding that the absence of such will or consent implies coercion and the question of whether such coercion is lawful to the extent that forced removal may be based on legitimate grounds and undertaken in accordance with international and domestic law; and
- the fact that unlawful eviction or displacement occurs when: it is based on grounds not permissible under international law; minimum procedural guarantees are not met; the manner in which an eviction is carried out violates other human rights such as personal liberty, freedom from torture and ill treatment or the right to life; or the effects of evictions and displacement have a negative impact on the enjoyment of other human rights, in which case the state is required to take measures to respond to the concerns that arise.

Consideration of the causes of displacement notes that: violence and threats affecting life and personal security are frequently used to induce displacement and, in such cases, may amount to genocide, including "ethnic cleansing", or to inhuman and degrading treatment; systematic patterns of discriminatory treatment in the enjoyment of civil, cultural, economic, political and social rights, discrimination against persons belonging to minorities or indigenous peoples and discriminatory economic or social policies are often responsible for forced movements of persons; "discrimination" is commonly understood to imply any distinction, exclusion, restriction or preference which is based on any specified ground, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms; however, not every distinction constitutes discrimination — only those that are not based on reasonable and objective criteria. The report also notes that the implantation or establishment of settlers is a particularly serious form of discrimination: it may occur in order to transfer a more "compliant" population, for such military objectives as maintaining better control or discouraging insur-

gent activity, and for non-military objectives such as demographic manipulation or future annexation. Settlers may themselves be internally displaced if they are settled in an area other than their own against their will. The implantation of settlers will violate the principle of non-discrimination where the settlers receive preferential treatment vis-à-vis the population into whose territory they move and where this results in institutionalized discrimination against the affected population.

Additional commentary on causes notes that displacement may occur as a result of the confiscation or expropriation of land or other real property as a result of, for example, military attacks, conflicts over land, poorly planned and executed development projects that render an area uninhabitable, or the failure of the state's legal system to recognize traditional forms of ownership and use of land. Restrictions on the state's power to expropriate and confiscate land or other real property may apply in the case of persons greatly affected by loss of their land, such as peasants or indigenous peoples; and, where subsistence and cultural values are threatened, persons at risk of displacement are entitled to additional human rights protections. Development projects and their impact on land tenure and on the natural environment may have negative consequences on the enjoyment of human rights, for example in cases of evictions and relocation or resettlement undertaken to facilitate development projects, such as the building of dams, roads and airports. Significant damage to the environment — for example, as a result of scorched-earth tactics, nuclear tests, unsafe industrial projects, submergence caused by the building of dams, chemical or radiation leaks or the movement of hazardous waste — often causes or compounds forced movements of persons.

The report states that few express international legal norms exist which protect people against individual or collective eviction and displacement or transfer from one region to another within their own country. Taken together, however, a number of norms establish a general rule according to which forced displacement may not be effected in a discriminatory way or arbitrarily imposed. These norms, both international and regional, are noted as relating to: freedom of movement and choice of residence; protection from interference with one's home (privacy); the right to housing; the prohibition on population movements during genuine public emergencies which have the effect of violating non-derogable human rights; the prohibition of religious and racial discrimination, for example as an element in policies of ethnic separation or homogenization as well as "ethnic cleansing"; and, the prohibition of genocide, within which "ethnic cleansing" and extreme suppression of ethnic or indigenous peoples (e.g., apartheid) may be included.

The report provides a summary of provisions in ILO Convention No. 169, concerning Indigenous and Tribal Peoples in Independent Countries and notes that article 16 stipulates that these peoples "shall not be removed from the lands which they occupy." The article also stipulates that: in cases where relocation is necessary as an excep-

tional measure, the relocation shall take place only with the people's free and informed consent or, in the absence of consent, only on the basis of appropriate procedures established by national laws and regulations, including public inquiries where appropriate to provide the opportunity for effective representation of the peoples concerned; and when possible, these peoples shall have the right to return to their traditional lands, as soon as the bases for relocation cease to exist. The report notes that article 16 of the Convention sets out conditions and terms related to alternative resettlement and compensation and observes that the Convention requires the establishment by law of penalties for unauthorized intrusion upon or use of the lands of the peoples concerned, and measures by governments to prevent such offences. The report also refers to the draft Declaration on the Rights of Indigenous Peoples (see Sub-Commission report E/CN.4/Sub.2/1994/2/Add.1) in which article 10 stipulates that "Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return."

The report concludes by stating that the rights set out in general human rights law which are relevant to the issue of arbitrary displacement do not provide adequate and comprehensive coverage for all instances because they do not spell out the circumstances under which displacement is permissible and are subject to restrictions and derogation. Following on this, the report states that the lack of a comprehensive *de lege lata* rule in international human rights law on the forced movement of persons has resulted in an unclear understanding as to its status in international law and the infrequency with which the issue appears in the deliberations of the UN human rights treaty bodies. Following on this, the report states that there is a need to define explicitly what is now inherent in international law — a right to be protected against arbitrary displacement — and, in particular, to specify the impermissible grounds and conditions of displacement, and the minimum procedural guarantees (requirements of substantive and procedural due process) needed should displacement occur.

### Resolution of the Commission on Human Rights

Under agenda item 9 the Commission adopted by consensus a resolution on internally displaced persons (1998/50) in which the Commission, *inter alia*: expressed alarm at the high numbers of internally displaced persons who receive inadequate protection and assistance; recalled the need to develop global strategies to address the problem of internal displacement; recognized that the protection of internally displaced persons would be strengthened by identifying, reaffirming and consolidating specific rights for their protection; welcomed the cooperation established between the Representative, OHCHR, UNCHR, UNDP, UNICEF and

others; noted the decision of the Inter-Agency Standing Committee welcoming the guiding principles; welcomed the attention paid by the Representative to the assistance, protection and development needs of internally displaced women and children; urged relevant agencies and organizations to continue to focus on the problem related to protection, assistance and solutions for internally displaced persons; welcomed initiatives undertaken by regional organizations (e.g., OSCE, OAU) to address problems related to internally displaced persons; and extended the mandate of the Representative for a further three years.



## MASS EXODUSES

Since 1987, the Commission and the General Assembly have maintained a parallel interest in the question of human rights and mass exoduses. In April 1991, the UN Administrative Committee on Coordination (ACC) reflected that interest in its decision to establish an ad hoc working group on early-warning and assigned the working group the task of developing an effective early-warning system related to possible flows of refugees and displaced persons. This working group now functions as the ACC Ad Hoc Working Group on Early Warning regarding New Flows of Refugees and Displaced Persons.

### Report of the High Commissioner for Human Rights

The High Commissioner's report to the 1998 Commission (E/CN.4/1998/51) contains information related to: human rights dimensions of mass exoduses — main causes of mass exoduses, human rights situations affecting refugees and displaced persons, and problems impeding voluntary return home; early warning, prevention, preparedness and response; return and durable solutions; and, states parties to selected human rights instruments.

The section of the report dealing with the human rights dimensions of mass exoduses notes information received from a number of governments and others. The information indicated, *inter alia*, that:

- ◆ mass displacements are usually rooted in human rights violations — internal conflicts, external aggression, internal and international social and economic injustices, economic disruption, emergence of ethnic tensions and environmental degradation;
- ◆ in areas affected by armed conflict, available reports and information indicate that all parties are responsible for violations of human rights, including the right to life, liberty and personal security of civilians, especially with regard to women, children and the elderly;

- ♦ large-scale human rights violations, including violations of the right to life, have led to massive displacement of populations;
- ♦ extensive recruitment for compulsory labour is documented as one of the main reasons for mass exoduses; forced relocation, violations of the rights of persons belonging to minorities and starvation also contribute to mass population displacements; and
- ♦ internal displacement is also caused by deliberate policies to change the demography of given areas or regions.

Human rights situations affecting refugees in camps and other locations are noted as including a decline in nutritional status because of a general lack of food, an absence of nutritionally balanced diets, the need to sell and trade food items to buy other necessities and the practice among some refugees of sharing the already insufficient rations with new arrivals in camps. Other problems mentioned were, for example: lack of vocational training for women in camps; lack of equipment for blood screening; problems related to chronic diseases; interruptions or cessation of primary education for children; house searches and identification checks; arrest for such reasons as lack of a valid passport; and exposure of women and adolescents to risks of sexual exploitation, abuse and violence. Referring to the situation of internally displaced persons the report notes: the threat posed by land mines; feelings of fear and anxiety associated with loss of work, social role and home, price increases which make available food too expensive to buy for most people, and poor living conditions in facilities such as "regroupment camps", including lack of adequate sanitation facilities, inadequate food supplies and lack of medical care.

The problems impeding voluntary return home are identified as including: continued fighting between government and oppositional forces and inter-factional fighting; economic hardship; the absence of educational opportunities for children, particularly girls; administrative obstacles such as illegal requests for visas, customs duties and road taxes; excessive retroactive taxation of people who left their municipalities during war or conflict; legal regulations affecting occupancy rights and the right to private property as well as destruction of housing during the conflict and/or in the post-conflict period; and incidents in return areas entailing looting, harassment, discrimination and killings, sometimes by explosive devices.

On early warning and prevention, the report summarizes comments received from the Committee on the Elimination of Racial Discrimination and notes several points, including: that many mass exoduses result from actions which entail disproportionate harshness upon particular ethnic or national groups; key indicators in early warning are a lack of an adequate legislative basis for defining and criminalizing all forms of racial discrimination, including the lack of recourse procedures; a pattern of escalating racial hatred and violence, or racist propaganda; a significant pattern of racial discrimination evidenced in social

and economic indicators; and significant flows of refugees or displaced persons resulting from a pattern of racial discrimination or encroachment on the lands of minority communities.

The report notes various measures taken within the UN to operationalize early warning including three projects by the Department of Humanitarian Affairs — ReliefWeb, Humanitarian Early Warning System (HEWS) and the Integrated Regional Information Networks (IRINs). The report also sketches out the work that has been done in the OHCHR to create an integrated human rights information network and the Human Rights Computerized Analysis Environment (HURICANE). The latter is intended, over time, to achieve efficient information management through: (a) improvement of horizontal and vertical communication; (b) provision of a more transparent and usable human rights information archive, complemented by a pool of relevant links to NGOs; (c) facilitation of the collection, verification and analysis of information, thereby enhancing research and promoting efficiency in the work within the OHCHR; (d) provision of the necessary factual and analytical information for decision-making; and (e) improvements in the system's capacity to process information more quickly in order to take the necessary action in a more timely manner.

On the question of prevention, reference is made to information provided by the UNHCR in which it is stated that internal displacements and cross-border refugee mass movements often have the same causes. Efforts by the UNHCR to minimize and eventually eliminate the causes have included, in collaboration with other offices and often with the OHCHR: training for government officials in human rights and humanitarian principles, promoting the development of strong civil and non-governmental institutions, encouraging governments to recognize human rights and minority rights in their legal systems and constitutional arrangements as well as to accede to the conventions on statelessness. The UNHCR emphasized that an essential condition for the prevention of involuntary mass movements is adequate political will on the part of the states directly concerned and by the international community as a whole. The UNHCR also referred to the need to create clearly formulated and agreed guidelines for humanitarian action, governed by the international rule of law and including principles of refugee law and human rights.

Commentary on "preparedness and response" notes, *inter alia*:

- ♦ the emphasis given by World Food Programme to integrated multi-sectoral contingency planning and preparedness activities, implementation of sustainable food security policies and programmes to meet the humanitarian needs of persons affected by complex emergencies;
- ♦ the priority given by United Nations Population Fund to the provision of reproductive health and family planning counselling and services, and funding for

equipment, supplies and drugs needed for delivery of services such as the prevention and treatment of reproductive tract infections, including sexually transmitted diseases, prevention of HIV/AIDS, and technical assistance, training and salary support for health personnel; and

- ♦ the suggestions and recommendations of the Committee on the Rights of the Child related to: incorporation of human rights education on child rights in training curricula of police and immigration officials; provision in their own language of information on children's rights to all refugee children; introduction of legislation for the protection of the rights of refugees, in line with the relevant international standards; review of existing legislation and procedures with regard to their compatibility with the Convention; and, comprehensive review of policies in relation to children seeking asylum.

The report concludes with a number of observations related to the creation of an effective early warning system and sets the context for those remarks by stating that the multiplicity of causes and problems associated with mass exoduses calls for corresponding multifaceted and comprehensive responses. Specific points then made include that:

- ♦ early warning has been recognized as an essential tool for undertaking preventive action and mobilizing a response at the earliest stage possible in order to mitigate and/or avoid factors which force people to flee their homes;
- ♦ progress has been made in early warning activities at the conceptual level and in terms of methodology; the remaining challenges relate, on the one hand, to the collection, verification and analysis of relevant information and, on the other, to the effective sharing of the results, with a view to formulating appropriate responses in a timely manner;
- ♦ since a multitude of factors may lead to crisis, there is a corresponding need to monitor a wide range of indicators to accommodate the reality that emergencies often result from a combination of factors, none of which would in themselves be sufficiently grave to signal clearly an imminent crisis but which, in combination with other factors, form an overall picture justifying this conclusion, bearing in mind that there may be signs of a worsening situation in some sectors of society, while in others there may be improvements;
- ♦ in order to improve analysis, it is important that all actors possessing the different types of required expertise provide information on a regular basis, and that they are represented in fora where situations are being reviewed;
- ♦ the dissemination of early warning information through electronic means, such as ReliefWeb, should be further expanded;

- ♦ bearing in mind the assumption that early warning is a cost-effective way of minimizing human suffering, it may be questioned whether adequate attention and resources have been allocated for this purpose; and
- ♦ it should be noted that it is difficult to demonstrate the achievements of an early warning exercise, but easy to demonstrate its failures.

### Statement by the High Commissioner for Refugees

As in previous years the UN High Commissioner for Refugees (UNHCR), Mrs. Sadako Ogata, addressed the Commission at its 1998 session. The statement focussed on the human rights aspect of mass exodus and displacement and noted, *inter alia*, that: the root causes of refugee displacement are inextricably linked to persecution and the denial of human rights; acute poverty and the effects of cumulative discrimination often reflect a society's unequal distribution of wealth and privileges which may lead to the civil and political instability that lies at the root of forced displacement; the physical safety and human dignity of those forced to flee across borders is preserved through the principle of asylum, a principle that has been eroded in recent years with refugees having been prevented from seeking effective protection and returned to countries where their lives are in danger; there is a need to engage governments in a serious debate about humanitarian principles and standards for the treatment of refugees and displaced persons; and, human rights standards are of great importance in the search for, and implementation of, lasting solutions for refugees and other forcibly displaced persons.

The High Commissioner for Refugees also noted: the only legacy of violence is further violence and only a careful measure of justice, forgiveness and reconciliation can break the cycle of violence and displacement; the process of accountability should not be limited to states but should also extend to individual perpetrators of serious human rights violations; accountability through justice (national and international, for example, at the International Criminal Court) is imperative within any comprehensive approach directed at peace and reconciliation; and, human rights are owned by the people, not by states or governments, thus the focus in the search for solutions must be on the people. Expanding on the need to focus on the people, the High Commissioner stated that the focus must include: support for local efforts to rebuild confidence and respect for due process of law; a community-based approach which can often circumvent or alleviate the worst effects of political obstruction at the national level; support for projects that "add value" to efforts already underway, viz. supplement and complement rehabilitation and reconciliation initiatives that may already exist in the community; and, support for special initiatives for women returnees, including income-generation and economic empowerment programmes since women are often the primary breadwinners and caretakers of the family.

The High Commissioner for Refugees concluded her remarks by stating that unless protagonists to conflict renounce violence and embrace a common vision of peace and reconciliation, the effective implementation of human rights will never be possible.

### Resolution of the Commission on Human Rights

Under agenda item 9 the Commission adopted a resolution by consensus (1998/49). The Commission, *inter alia*: expressed concern over the scale and magnitude of exoduses and displacement and by the human suffering of refugees and displaced persons, a high proportion of whom are women and children; recognized again that violations of human rights, persecution, political and ethnic conflicts, famine and economic insecurity, poverty and generalized violence are among the root causes of mass exodus and displacement; noted the complementarity between the systems for the protection of human rights and humanitarian action and that cooperation between them contributes to the promotion and protection of the human rights of persons forced into mass exodus or displacement; reaffirmed the need for all governments and others to intensify cooperation and assistance worldwide aimed at addressing human rights situations that lead to, and the serious problems that result from, mass exoduses and displacement; recalled article 14 of the Universal Declaration which states that everyone has the right to seek and enjoy in other countries asylum from persecution; encouraged states that have not done so to consider acceding to the 1951 Convention on the Status of Refugees and its 1967 Protocol, as well as relevant regional and international human rights instruments; recognized that, in addition to problems faced by all refugees and displaced persons, women and girls are vulnerable to gender-based discrimination and gender-specific violations of human rights; requested the High Commissioner for Human Rights, in cooperation with the UNHCR, to pay particular attention to human rights situations which cause or threaten to cause mass exoduses or displacements and contribute to efforts to address such situations effectively; welcomed OHCHR initiatives aimed at the creation of viable and sustainable return in post-conflict societies in such areas as the rehabilitation of the justice system, creation of independent national institutions to defend human rights, broad-based programmes of human rights education and the strengthening of local non-governmental organizations; invited the High Commissioner for Refugees annually to address the Commission; and decided next to consider the question of mass exoduses at its session in the year 2000.



## MERCENARIES

### Report of the Special Rapporteur

The Special Rapporteur (SR) on the use of mercenaries has been reporting to the Commission since 1988. The SR in 1998 was Mr. E. Bernales-Ballesteros. One of the basic aims of the Commission in establishing this mechanism was to encourage states to ratify the International Convention Against the Recruitment, Use, Financing and Training of Mercenaries. As of 27 January 1998 only 14 states had either ratified or acceded to the Convention; and an additional 10 had signed. Twenty-two ratifications and/or accessions are required for the Convention to enter into force.

The SR's report to the 1998 Commission (E/CN.4/1998/31) provides commentary on a number of issues and areas, including: correspondence regarding mercenary activities in several countries, including Cuba; mercenary activities in Africa, including Sierra Leone, DR Congo and Congo; private security companies and mercenary activities and the presence of mercenaries in Papua New Guinea.

The report notes that in June 1997 the SR requested information from governments on: the possible existence of any recent mercenary activities (recruitment, financing, training, assembly, transit or use of mercenaries); participation by nationals of their country as mercenaries in committing acts against the sovereignty of other states, against the exercise of the right of other peoples to self-determination, and in human rights violations; the possible existence of mercenary activities in the territory of another country from which actions were carried out that affected or potentially affected the sovereignty of their country, the exercise of the right of their people to self-determination, and the enjoyment of human rights by their population; the possible participation of mercenaries in committing internationally wrongful acts such as terrorist attacks, forming and supporting death squads, trafficking in and abduction of persons, drug trafficking, the arms traffic and contraband; domestic legislation currently in force and international treaties to which their country is a party, outlawing mercenary activities and the use of mercenaries, together with observations on the government's position regarding the International Convention on the use of mercenaries; approaches that may be taken to enhance the international treatment of the topic of the prohibition of the use of mercenaries; and the existence of security service (sic), consultancy and military training companies offering their services to governments in order to intervene in internal armed conflicts with the assistance of mercenary [sic] military professionals. In general, very few governments responded to this request for information.

The commentary on mercenary activities in African countries deals with a number of general aspects including, *inter alia*:

- ♦ the constant danger of intervention by mercenary forces, which take advantage of armed conflicts, inter-ethnic confrontations and power struggles, as has been evident in most of the cases where violence has jeopardized the right of African peoples to peace, security and political stability;
  - ♦ the fact that in recent years, the usual means of recruiting mercenaries — hiring them directly through an agent who tends to be a former mercenary or a recruiting office operating from a third country — have been supplemented by the establishment of firms providing consulting services, military training and private security; and, these firms engage in activities which are apparently legal, but in fact they work with mercenaries and represent a danger to the economies, democracy and self-determination of peoples;
  - ♦ political instability — situations of successive, virtually endemic crises in which the struggle for power among factions reveals reluctance towards, and misunderstanding of, the rules of democracy on the part of political leaders who do not hesitate to engage in militarism and create armed groups around themselves;
  - ♦ the weak institutional structure of the armed forces, which as a result assume in practice the role of deliberative bodies, with the capacity to arbitrate internal political disputes and resolve them by military means;
  - ♦ the fact that many internal armed conflicts, some of them due to ethnic mistrust and resistance, embrace whole regions and the belligerents hire mercenaries to boost their military potential;
  - ♦ the prolongation of armed conflicts which is fuelled by the lucrative business for organizations which hire and supply mercenaries and for arms dealers;
  - ♦ the fact that the insecurity of rulers has caused them not to hesitate to organize militias or military apparatuses for their personal protection, in which the training and visible presence of foreign mercenaries has exacerbated rivalries and contributed to armed confrontations; and, recruitment of these paramilitary corps of bodyguards from members of the ethnic group to which the ruler belongs leads to the recruitment by other political leaders of their own armed militias;
  - ♦ poverty, insecurity and lack of prospects that foster in some young people a marked tendency towards violent behaviour, leading to the emergence of armed gangs which engage in extortion and usury vis-à-vis the population;
  - ♦ the fact that a significant number of young people, driven by hunger and unemployment and skilled in the handling of weapons, find that the mercenary life offers lucrative employment and a lifestyle very similar to that of the putative heroes of a number of television series;
  - ♦ the presence in the region of transnational conglomerates engaged in promoting their own interests, leading to the exploitation of natural and energy resources;
  - ♦ the fact that interference by such transnational conglomerates in internal affairs and encouragement of armed conflicts in pursuit of their own interests are not inconsistent with the presence of mercenaries, either to protect their facilities on territories that were literally abstracted from the authority of states which were prevented by the conflicts from exercising that authority, or to lend military support to the faction associated with the interests of the multinationals; and
  - ♦ the fact that there are the modern private security companies which provide many different kinds of services, economic advice and sophisticated military training; these services are covers for former professional soldiers and mercenaries who, in exchange for large sums of money, offer themselves as a solution to countries experiencing instability and armed conflicts and the consequent impossibility of developing their enormous natural resources.
- The section of the report providing a critical analysis of the present situation notes, *inter alia*, that:
- ♦ in general, mercenaries are usually present in situations of domestic or international armed conflicts because the parties to a conflict have specific military needs which entail the assistance and hiring of professional soldiers;
  - ♦ mercenaries are used as a means of violating human rights and jeopardizing the self-determination of peoples or the stability of legitimate governments;
  - ♦ armed conflicts, terrorism, arms trafficking, covert operations relating to the interest of a third power acting to harm one or more parties to an armed conflict, a government's inability to ensure security within its own territory, and violence linked to extremist intolerance foster or create the market for mercenaries, defined as foreign experts acting individually or through companies whose "skilled" services are sought because of their proven experience in military matters;
  - ♦ there is no legal system that authorizes or tolerates mercenaries and the fact that a government hires mercenaries or turns to "qualified" companies that provide mercenary services for its own defence and to strengthen positions during armed conflicts should not be invoked in claiming that its action is legal;
  - ♦ with these points in mind, the use of mercenaries may be explained by the following reasons: military professionalism; experience in warfare; concealment of the real mastermind; greater safety in acting without

directly having to assume the consequences; comparatively low cost, in terms both of money and of endangering the lives of one's own military personnel; knowledge of strategic planning; and

- ♦ two circumstances usually determine the actual use of mercenaries: (a) the existence of an organization, state or party to a conflict which, in order to carry out operations, resorts to hiring mercenaries as a way of achieving its goals; and (b) recruiting organizations and enterprises and people who, for high pay, will agree to serve as mercenaries knowing that they will be performing acts prohibited by national laws and international treaties protecting human rights, state sovereignty and the right of peoples to self-determination.

Commenting on current international law and its limitations, the report states that the increasing tendency of mercenaries to hide behind modern private security companies may be due to the fact that existing international law does not offer the best means of anticipating and resolving situations such as those posed by the presence of mercenaries.

The narrative on private security companies sets the context by stating that such firms are taking upon themselves responsibilities and functions reserved to states and associating their activities with a profit motive that is proper to any private firm producing goods and services on a free market, but which has limits when such sensitive issues as the self-determination of a people, the national security of a state or human rights are involved. With regard to these private firms, the report notes that: seeking to assume responsibility for the security of entire countries, they consider security to be a commodity like any other, subject to the law of supply and demand; if a state facing problems wishes to purchase security, they will sell it, replacing a country's armed forces and police and supposedly performing their role more efficiently — in respect of everything to do with "order"; and, for this purpose, such companies are generally part of holdings and are therefore able, through other companies, to take part in various services which complement and enhance their offer, for example, transport, communications, economic and financial consultancy, health, sanitation services.

The report notes that those who defend the involvement and activities of such firms do so on the basis that they: offer a more rational solution for states beset by crises that render them incapable of performing the law-enforcement and security functions for which they are responsible; may participate in internal armed conflicts on the side of the law, although with greater freedom and efficiency; and, are cheaper, that is, it is cheaper to hire them than to resort to other means.

Countering the claim that these security companies are operating legally since they sign contracts with governments that lawfully and legitimately represent the state, the report asserts that no government is authorized to

exercise the attributes of authority against the sovereignty of the state itself and, further, responsibility for internal order and security in a sovereign country is an obligation which may not be renounced or transferred and which the state discharges through its police and armed forces.

The report suggests a non-exhaustive list of topics requiring further and more detailed investigation, including: (a) possible changes in the nature of mercenaries, as defined since the establishment and organization of national armies, on the basis that large numbers of them have been joining private companies which provide security and military advice and training internationally; and (b) the international lawfulness of allowing the free market to include completely unrestricted competition from companies selling security services and the risk of interference in internal affairs by agents who, claiming to be experts, might actually be mercenaries, intelligence agents from third states, saboteurs or other elements whose assignment is to dominate, dissociate and weaken the receiving state.

The report recommends, *inter alia*, that:

- ♦ the Commission on Human Rights reaffirm its condemnation of mercenary activities and suggest to all states that they incorporate practical measures in their national legislation to prohibit the use of their territory for the recruitment, training, assembly, transit and financing and use of mercenaries;
- ♦ mercenary activity be treated in every respect as an unlawful and prosecutable act and a continuing offence;
- ♦ the Commission on Human Rights propose that states consider adopting legislation to prohibit mercenary activity and the use of national territory for such unlawful acts;
- ♦ the Commission on Human Rights appeal to states for understanding so that they will decide to ratify or accede to the Convention on the use of mercenaries and bring it rapidly into force;
- ♦ the evolution of private security companies, the relevant legislation of states and the conditions under which states agree to conclude contracts with such companies be monitored closely in order to assess whether the security and internal order of a state, which has lost part or all of its capacity to keep order, have been left to the action of specialized companies which will take charge of the state's security;
- ♦ further investigation be carried out to determine the impact of the relationship between private security companies and the countries using their services, particularly from the standpoint of the exercise of authority by the state, self-determination, political stability, the protection of natural resources and conditions for the maintenance of peace and respect for human rights;

- ♦ the Commission on Human Rights call for a study on ways of reinforcing international prevention, action and intervention machinery in order to strengthen the exercise of human rights and promote the rule of law in countries threatened or weakened by armed conflicts, thereby ensuring that the purpose of hiring private companies of this nature, if indispensable, is solely to obtain technical and professional advice on military matters or police protection, within the legal framework expressly laid down; and
- ♦ the Commission on Human Rights consider keeping this subject under review as a matter of priority with a view to formulating proposals for a better legal definition of private companies that offer security services, precluding the presence of mercenaries, and safeguarding the sovereignty of states and their non-transferable responsibility of matters of law enforcement and internal security.

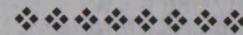
### Resolution of the Commission on Human Rights

Under agenda item 7, dealing with self-determination, the Commission adopted by roll call vote a resolution (1998/6) in which the Commission, *inter alia*: recalled resolutions condemning any state that allowed or tolerated activities related to mercenaries (e.g. recruitment and training) with the objective of overthrowing the governments of UN member states and especially those of developing countries or those that are fighting against national liberation movements; reaffirmed that all peoples have the right, without external interference, to determine their political status and pursue their economic, social and cultural development; expressed alarm and concern at the danger posed by the activities of mercenaries to peace and security in developing countries, particularly in Africa and small states; acknowledged the need for states to ratify the Convention on the recruitment, training, use and financing of mercenaries; stated that irrespective of the way in which mercenaries or related activities are used or the form they take to acquire some semblance of legitimacy they are a threat to peace, security and self-determination; urged all states to take the necessary measures to ensure that their territories are not used for activities related to mercenaries; called on states that have not done so to consider ratifying the Convention; welcomed the cooperation of countries that invited the Special Rapporteur (SR) to conduct field missions; welcomed the adoption by some states of national legislation that restricts the use of mercenaries; extended the mandate of the SR for a further three years; urged all states to cooperate fully with the SR; and, requested the Secretary-General to invite governments to make proposals aimed at a clearer legal definition of mercenaries. The resolution was adopted by a vote of 35 in favour, 9 opposed, with 8 abstentions.

### Resolution of the General Assembly

At its 1998 session the General Assembly adopted by recorded vote a resolution on the use of mercenaries

(A/C.3/53/L.17), with 93 in favour of the resolution, 17 opposed, and 28 abstentions. The GA, *inter alia*: expressed concern about the danger that the activities of mercenaries constitute to peace and security in developing countries, particularly in Africa and in small states; reaffirmed that the recruitment, use, financing and training of mercenaries are causes for grave concern to all states and violate the purposes and principles of the UN Charter; urged all states to take necessary legislative measures to ensure that their territories and other territories under their control, as well as their nationals, are not used in mercenary activities; called on all states that have not yet done so to consider signing or ratifying the International Convention against the Recruitment, Use, Financing and Training of Mercenaries; welcomed the adoption by some states of national legislation that restricts the recruitment, assembly, financing, training and transit of mercenaries; invited states to investigate the possibility of mercenary involvement whenever criminal acts of a terrorist nature occur on their territories; and requested the Secretary-General to invite governments to make proposals towards a clearer legal definition of mercenaries.



## MIGRANT WORKERS

### Working Group of Experts

The five-member Working Group (WG) of intergovernmental experts was established by the Commission at its 1997 session and given a mandate to: (a) gather all relevant information from governments, non-governmental organizations and other sources on the existing obstacles to the effective and full protection of the human rights of migrants; and (b) elaborate recommendations to strengthen the promotion, protection and implementation of the human rights of migrants.

The WG met twice prior to the 1998 Commission. The consolidated report of those two sessions (E/CN.4/1998/76) contains information on, *inter alia*: information gathering, regional developments, the definition of migrants, and their vulnerability. The report also contains analysis of the responses received to a questionnaire that was sent to governments as well as to intergovernmental and non-governmental organizations. The report notes that the questionnaire was prepared with four goals in mind: to obtain a general picture of demographic data related to migration; to obtain statistics and qualitative information on measures taken by states to promote and protect the human rights of migrants; to obtain some indicators of the level of awareness of states about the human rights problems faced by migrants; and to ascertain the level of importance given by states to the existing normative means for combatting violation of migrants' human rights.

The review of recent developments covers a number of points and is divided geographically.

With regard to Africa, the report notes that migration is a recent phenomenon that can roughly be divided into three types: migration within traditional geographical areas which sometimes straddled frontiers; organized migration with the approval of the state, for example, for economic policy reasons such as the need to undertake large public works which may require the assistance of foreign labour; and spontaneous migration resulting from an attractor phenomenon, for example, migration towards industrial areas. In each of these situations there were xenophobic reactions and risks of confrontation and there remained a need for states to cope with globalization and its impact on migration.

In Asia, a major element was labour migration, predominantly from one country to another within the region. The report notes: there was a perceived need for developing agreements between sending and receiving states and for the labour laws in receiving countries to cover vulnerable workers, such as housemaids; trafficking, especially of women and children, posed major problems, especially in light of the fact that women had been subjected to various types of abuse, including detention en route, lack of means to return home, loss of the prospect of employment that had been promised to them, vulnerability for women in irregular employment to punishment or deportation; and, there was a need for a place for labour migration on the global trade agenda, bearing in mind the exigencies of the market and the needs of states.

In terms of Eastern Europe, the report notes that the characteristics and patterns of migration had changed to reflect: major geopolitical transformations; the process of transition from totalitarian political systems and centrally planned economies to those based on democratic principles and oriented towards the market; and liberalization of exit and entry procedures and adoption of new border control regimes. Labour migration, or migration for employment, was emerging as an important factor affecting the migration situation in the region and required the adequate protection of migrant workers through the development of the appropriate internal legislation, as well as elaboration of the relevant bilateral and multilateral arrangements. The report notes that irregular migrants were being brought illicitly into the region by international gangs of traffickers and, in the process of trafficking, violations of human rights were committed, often against women as reflected in, for example, forced prostitution. The WG noted the need to prevent the spread of xenophobic attitudes raised by migration.

With regard to the Americas, the report noted that obstacles to the promotion and protection of human rights of migrants include legislation that refers to possibly illegal migrants in terms of their ethnic characteristics, in some cases leading to the institutionalization of racism and xenophobia. Reference was also made to the structural vulnerability of migrants to serious violations of labour rights and human rights.

In terms of Western Europe, the WG referred to the continuing problem of clandestine migration in which there is a complete lack of protection for "migrants". The WG stated that questions could be raised in connection with the expulsion of people who, in some circumstances, had committed minor offences.

The WG interpreted the concept of migrants broadly and adopted as a working tool the definition and interpretation of the term suggested by the International Organization for Migration (IOM). Thus, the term "migrant" was understood to cover all cases where the decision to migrate is taken freely by the individual concerned, for reasons of "personal convenience" and without intervention of an external compelling factor. Irregular or undocumented migrants were also recognized on the basis that irregular migration is a phenomenon that is becoming a global crisis. "Migrant" was not understood to refer to refugees, exiles or others forced or compelled to leave their homes, while the term "migration" was understood to describe the process of the movement of persons, including the movement of refugees, displaced persons, uprooted people and/or economic migrants.

On the issue of vulnerability, the report notes that one of its essential elements was powerlessness which, more often than not, characterized migrants and their relationship with a state and societal forces. The report also notes that powerlessness was not an inherent condition but rather was created and imposed on migrants within the confines of a specific country. Specific problems associated with the vulnerability of migrants are identified as including: exploitation in the labour market — a pattern of wages well below established minimum standards and dangerous working conditions, racist-based hostility and violence, and xenophobia expressed through stereotyping and discrimination based on biased public opinion.

On the basis of responses received to a questionnaire sent to governments and others by the WG, general points were derived, including that:

- ♦ in dealing with measures to strengthen the promotion, protection and implementation of the human rights of migrants, the basic issue in this regard was national policy;
- ♦ while the political authority of the state is central to a national policy, non-governmental organizations played a major role, usually either in the form of assisting migrants on a day-by-day basis, or in terms of input into a state's legislation; but, the particular ideology espoused by some NGOs might not always be supportive of migrants or their rights and, consequently, it was impossible to make any general statements to the effect that NGOs necessarily supported the migrant cause;
- ♦ there was a need to make a distinction between legal/judicial measures and other measures;

- ♦ most legislation relating to migrants was recent or still in the process of being drafted, and that legislation tended to be framed in general terms and was compartmentalized; some states were very open to incorporating international law into domestic legislation while others remained committed to a focus on their own domestic legislation;
- ♦ 15 of the responding governments openly acknowledged the incidence of racism and xenophobia towards migrants;
- ♦ the core of the problem of racism and xenophobia lay in day-to-day practices where the primary manifestations occurred and where they proved to be the most tenacious; manifestations of racism, xenophobia and discrimination could not be changed through the adoption of legislation alone and other measures, including the proper implementation of legislation, integration policies, information and education were needed; the awareness of governments of problems faced by migrants with regard to racist-based hostility did not necessarily reflect an understanding of migrants' vulnerability but might indicate instead the government's awareness of only the social repercussions; and
- ♦ with regard to manifestations of discrimination and hostility, the responses raised the question of whether society was governed by a culture of rule by law — enforcement of deficient laws, or rule of law — legislation for the benefit of the wider community, free of protection gaps and discrimination.

The concluding commentary on the complexity of the issue refers to aspects that could or should be incorporated into future work, including: a review of international instruments relevant to the problems identified in various forums, including the Commission on Human Rights; a review of existing statistical information and data on those problems; the promotion of the ratification of relevant UN and ILO conventions and, in particular, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the need to expand the gathering of information through a follow-up questionnaire; the need to introduce a gender perspective as well as a "children dimension" when addressing the problems of migrants; the need to promote full compliance with the relevant articles of the Vienna Convention on Consular Relations to ensure that migrants may communicate with their respective consular representatives in the countries in which they find themselves; the need to ensure the promotion and protection by all governments of the human rights of undocumented or irregular migrants; and the need for a permanent UN mechanism to serve as a clearing-house for information on questions relevant to the full protection of the human rights of migrants.

With these and other points in mind the WG set out a programme of work for future sessions, incorporating: an in-depth examination of information, statistics and normative sources currently available, including inputs from

relevant intergovernmental and non-governmental organizations; consultations and interaction with UN treaty bodies and special mechanisms, in order to compile information on the human rights of migrants and to avoid duplication of activities; a follow-up to the questionnaire; organization of expert meetings on specific issues — e.g., vulnerability of migrants, gender perspectives, trafficking of migrants, xenophobia, gaps in the protection of human rights of migrants; and elaboration of recommendations to strengthen the promotion, protection and implementation of the human rights of migrants.

The report of the Secretary-General on the status of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and efforts to promote the Convention (E/CN.4/1998/75) simply notes that as at 1 December 1997, the Convention had been ratified or acceded to by Bosnia and Herzegovina, Cape Verde, Colombia, Egypt, Morocco, the Philippines, Seychelles, Sri Lanka and Uganda and signed by Chile and Mexico. Twenty ratifications are needed before the Convention can enter into force.

### Resolutions of the Commission on Human Rights

Under agenda item 11, the Commission adopted three resolutions related to migrant workers. [The resolution on violence against women migrant workers is discussed under the section on "Women".]

#### Resolution on the International Convention

The resolution (1998/15) was adopted by consensus. The Commission, *inter alia*: expressed concern at the situation of migrant workers and family members and the marked increase in migratory movements, especially in certain parts of the world; underlined the importance of the creation of conditions to foster greater harmony and tolerance between migrant workers and the rest of the society in the state in which they reside, with the aim of eliminating the growing manifestations of racism and xenophobia; expressed deep concern at the growing manifestations of racism, xenophobia, discrimination and ill treatment against migrant workers; urged countries of destination to review and adopt, as appropriate, measures to prevent excessive use of force by police and migration authorities and to organize training courses on human rights for them; called on states to consider signing and ratifying the Convention as a matter of a priority; and welcomed the launch of a global campaign for entry into force of the Convention.

#### Resolution on migrants and human rights

The resolution (1998/16) was adopted by consensus. The Commission, *inter alia*: expressed deep concern at the increasing manifestations of racism, xenophobia, discrimination and ill treatment against migrants; noted the vulnerability in which migrants frequently find themselves, in part because of differences of language, customs and culture in the countries in which they reside;

affirmed the need to make further efforts to improve the situation and ensure the human rights and dignity of migrants; acknowledged that the principles and standards of the Universal Declaration apply to everyone, including migrants; requested states, in accordance with their obligations under relevant international human rights instruments, to promote and protect the human rights of all migrants; and, reconvened the Working Group of intergovernmental experts for two five-day sessions prior to the 1999 Commission.



## MINIMUM HUMANITARIAN STANDARDS

### Report of the Secretary-General

The issue of minimum humanitarian standards has been taken up because of the vastness of the scale of abuses perpetrated in situations of internal violence, and the apparent lack of clear rules concerning fundamental standards of humanity. This situation was highlighted in 1990, in Turku/Åbo, Finland, where a group of non-governmental experts met and drafted a Declaration on Minimum Humanitarian Standards. The preamble to that document states: "International law relating to human rights and humanitarian norms applicable in armed conflicts do not adequately protect human beings in situations of internal violence, disturbances, tensions and public emergency." In 1994, the Sub-Commission transmitted the Declaration to the 1995 session of the Commission with a view to its further elaboration and eventual adoption (Sub-Commission resolution 1994/26). The Commission on Human Rights took note of the Sub-Commission's resolution and recognized the need to address principles applicable to situations of internal and related violence, disturbance, tension and public emergency in a manner consistent with international law and the UN Charter. As well, the Commission requested that the Declaration on Minimum Humanitarian Standards be sent for comment to governments, intergovernmental organizations and non-governmental organizations. At its 1996 session the CHR made no specific reference to the Declaration, but again recognized the need to address principles applicable to situations of internal violence. It also welcomed the offer by the Nordic countries, in cooperation with the ICRC, to organize a workshop to consider the issue. This workshop was held in South Africa, in September 1996, and a report of the workshop (E/CN.4/1997/77/Add.1) was made available to the 1997 session of the CHR. At that session, the Commission adopted resolution 1997/21 in which it requested the Secretary-General to prepare an analytical report on the issue of fundamental standards of humanity, identifying, *inter alia*, common rules of human rights and humanitarian law that are applicable in all circumstances.

The purpose of the Secretary-General's report to the 1998 Commission (E/CN.4/1998/87) was not to reach firm conclusions but to set the framework for future discussions on the issue of fundamental standards of humanity. To that end, a number of issues were considered including, *inter alia*: common characteristics and patterns of human rights abuses in situations of internal violence; provisions covering derogation in international human rights law; non-state armed groups and human rights law; the lack of specificity of existing human rights rules; the scope of application of international humanitarian law to situations of internal violence and conflict; customary international humanitarian law; the advantages and disadvantages of identifying fundamental standards of humanity; and the nature of the fundamental standards of humanity.

The report notes that: the need for identifying fundamental standards of humanity arises from the fact that it is often situations of internal violence that pose the greatest threat to human dignity and freedom; the reports prepared by or for UN human rights bodies repeatedly draw attention to the link between human rights abuses and ongoing violence and confrontation; although such situations frequently lead to the most gross human rights abuses, there are disagreements and doubts regarding the applicable norms of both human rights and humanitarian law; the rules of international humanitarian law are different depending on the nature and intensity of the conflict; there are disagreements concerning the point at which internal violence reaches a level where the rules of humanitarian law regulating internal armed conflicts become operable; and, even when these rules manifestly do apply, it is generally acknowledged that they provide only the bare minimum of protection.

The report further notes that, until now, the rules of international human rights law have generally been interpreted as only creating legal obligations for governments whereas, in situations of internal violence, it is important also to address the behaviour of non-state armed groups. It further notes that some human rights norms lack the specificity required to be effective in situations of violent conflict. Finally, it draws attention to concerns expressed that, in such situations, it is possible that governments will derogate from obligations under human rights law.

Against this background, the report states that measures aimed at reducing human rights abuses in situations of internal violence: must not detract from efforts to prevent or end such violence; must not lend weight to the argument that such efforts are doomed to failure; and must include a special emphasis on ensuring the protection of minorities, strengthening democracy and democratic institutions, overcoming obstacles to the realization of the right to development, and securing respect for human rights generally.

Consideration is then given to three issues of terminology. The first examines the relative advantages of the

terms "minimum humanitarian standards" and "fundamental standards of humanity". The report states that the term "standards of humanity is preferable". The second looks at problems related to the terms used to describe fighting and violence inside countries — i.e., "armed conflicts", "internal armed conflict", "internal conflict" or "internal violence" — for the purposes of applying international humanitarian law. To avoid misunderstandings, the term "internal violence" is generally used in the report to describe situations where fighting and conflict, of whatever intensity, is taking place inside countries. Finally, the third issue concerns how to describe groups who have taken up arms against the government — which have been variously called terrorist groups, guerrillas, resistance movements, freedom fighters and so on, with each term carrying different connotations — as against the more neutral terms, "armed group" or "non-state armed group". The report uses the term "armed group" without implying any legitimacy for the group or its cause and while recognizing that such groups can, and frequently do, engage in acts of terrorism.

With respect to the common characteristics of situations of internal violence in the post-cold war period, the report notes, *inter alia*, that: the decrease in the number of international armed conflicts has been offset by an increase in the number of civil wars and other situations of violence inside countries; these situations are characterized by an armed challenge to the government arising from any one or a combination of political objectives; in situations where an existing government collapses or is unable or unwilling to intervene, armed groups fight among themselves over, for example, the right to establish a new government or ensure the supremacy or continuation of their own particular political programme. The report also notes that the degree of organization of these armed groups vary from one situation to the next: some groups have effective control of territory, resemble *de facto* governments and provide public services; others operate only sporadically, or in an entirely clandestine manner, and exercise no direct control over territory; some operate under clear lines of command and control; others are loosely organized with various units not under effective central command.

Additional common characteristics are noted, namely that: in many situations of internal violence there will be a breakdown in the operation of public institutions; functions of government often become increasingly militarized; depending on the degree and scope of the violence, there is likely to be an impact on the livelihood of the civilian population, particularly in rural areas where the fighting usually takes place and where farmers and others dependent on the land are particularly vulnerable; the ready availability of weapons is a predominant characteristic of these situations; a majority of civilian casualties result from the use of weapons other than land mines; the indiscriminate use of weapons other than land mines attracts little international condemnation; there is a link between criminal and "political" violence; some armed groups limit themselves to military activities but others are more akin to criminal gangs; government

forces also engage in criminal activities; the collapse in civil institutions creates a climate of general lawlessness in which preying on the civilian population is common and corruption rampant; and banditry and extortion are used to fund and supply the continuation of the fighting.

The narrative on patterns of abuse notes that children, women, minority ethnic populations, refugees, displaced persons, and those detained in connection with the violence, are at greatest risk of experiencing "unregulated terror and violence". The most serious abuses are noted as involving or including attacks by armed forces and armed groups, massacres, summary executions, death by starvation or disease, torture and/or ill treatment. There are also violations of freedom of movement — related not only to displacement as people flee affected areas but also forced displacement. There are also: violations of children's rights to education, health, and general well-being and development; recruitment of children into the armed forces and ordering them into combat; use of children as a ready supply of forced labour for armed forces; sexual abuse; and violence against women and girls, including rape, abduction and forced prostitution. There are also the arbitrary deprivation of liberty, violations of due process, failures to protect civilians, denial of access to relief supplies or interference in the distribution of such supplies, disregard for the protections owed to medical and religious personnel, and interference in the operations of recognized humanitarian agencies.

The report states that, in the overwhelming majority of cases, the victims, or their families, find no justice. Those who kill, torture, rape, or attack do so with virtual impunity, apparently confident that they will never be called to account for their misdeeds. Also common to all these abuses is the difficulty, in some situations, of attributing responsibility for the violence. On this point, the report notes that the existence of a situation of internal violence usually means that at least two — and often more — opposing forces or groups have resorted to the use of force; the hostility and distrust between them gives ample scope for the dissemination of misinformation and propaganda. The report further notes that: allegations that one side might commit abuses in such a manner as to make the other side appear responsible cannot always be dismissed; when abuses take place in remote areas, identifying the perpetrators can be very difficult; these difficulties are further increased when the authorities place restrictions on the free flow of information and the operation of news media; and UN investigators and human rights monitors are denied access to places where abuses are alleged to have taken place.

Following this consideration of the context in which the issue of fundamental standards of humanity must be considered, the report addresses notes that it has been argued that existing standards, of both human rights and humanitarian law, do not adequately address situations of internal violence. Five questions are posed:

- ♦ To what extent do existing standards fail to address adequately situations of internal violence?

- ♦ What are the advantages to identifying fundamental standards of humanity and are there significant disadvantages? For example, in the case of disadvantages, would a statement of such standards undermine existing ones?
- ♦ What are the “fundamental standards of humanity”?
- ♦ What would be the nature of a statement of fundamental standards of humanity?
- ♦ Assuming the desirability of identifying and setting out fundamental standards of humanity, by which means should this be done?

With regard to supposed gaps in international human rights law the report notes that there is an impressive body of such law which establishes that human rights are “inalienable” and individuals are “born free and equal in dignity and rights”. The argument about the inadequacies of human rights law essentially rests on three points: the possibility of derogation; the position of non-state armed groups vis-à-vis human rights obligations; and, the lack of specificity of existing standards.

On the issue of derogation, the report notes a number of rights from which states may derogate in times of public emergency, including the rights related to freedom of movement, equality, protection of minorities, fair trial, freedom of expression and protection from arbitrary detention or imprisonment. With that in mind, the report states that the possibility that a situation of fighting inside a country might allow for the legitimate restriction of certain rights does not necessarily support the conclusion that there is a gap in the protection offered by international law.

Following on this, a number of points are made, including that: rights which are subject to derogation are not automatically subject to outright suspension at the state’s discretion; there are concrete limits on a state’s use of derogation clauses; derogations must not be inconsistent with a state’s other obligations under international law; some human rights treaties contain no derogation clauses, and many states that have ratified the International Covenant on Civil and Political Rights, in which derogation is set out, are also parties to these treaties; and, only the most serious internal situations justify invoking the derogation clauses, viz. the mere existence of violence inside a country does not *ipso facto* justify derogation. The report concludes by stating that these constraints on the application of derogation clauses appear to provide a solid basis in international law for ensuring these clauses are not abused. The report further states that, on its own, the derogation argument does not provide a clear justification for developing fundamental standards of humanity. The report then notes that further analysis would be needed to identify the extent to which the human rights abuses which are most prevalent in situations of internal violence can be attributed to the proper and faithful application of derogation clauses set out in international treaties.

On the issue of non-state armed groups and human rights law the report acknowledges that: armed groups are often responsible for the most grave human rights abuses; and these groups are not, strictly speaking, legally bound to respect the provisions of international human rights treaties. The report also acknowledges that the supervisory mechanisms established by these treaties are not empowered to monitor or take action on reports on the activities of armed groups. Reference is then made to the fact that armed groups are bound by international humanitarian law in situations where such law applies but that in situations where it does not apply the international legal accountability of such groups for human rights abuses is unclear although subject to penalty under domestic criminal law.

The report states it seems beyond doubt that when an armed group kills civilians, arbitrarily expels people from their homes, or otherwise engages in acts of terror or indiscriminate violence, it raises an issue of potential international concern, especially in countries where the government has lost the ability to apprehend and punish those who commit such acts. The report cautions, however, that very serious consequences could follow from a rushed effort to address such acts through the vehicle of existing international human rights law, not least because it might serve to legitimize actions taken against members of such groups in a manner that violates human rights. It is affirmed that the development of international human rights law as a means of holding governments accountable to a common standard has been one of the major achievements of the UN. The report states that the challenge is to sustain that achievement and at the same time ensure that the conception of human rights remains relevant to the world and actual events.

The report reviews provisions in common article 3 to the Geneva Conventions and notes that it sets out in clear terms a number of important protections that all parties to a conflict must respect, and applies to any armed conflict “not of an international character”. Bearing in mind that common article 3 is now considered to be part of customary international law, two of its shortcomings are noted: (a) it provides only a minimum of protection by, for example, remaining silent on issues relating to freedom of movement, not explicitly prohibiting rape, and not explicitly addressing matters related to the methods and means of warfare; and (b) it does not define “armed conflicts not of an international character”, thereby leaving room for governments to contest its applicability to situations of internal violence inside their countries.

The report recalls that efforts to address these shortcomings are reflected in Protocol II (the Protection of Victims of Non-International Armed Conflicts). The Protocol expands the protection offered by common article 3 but the protections it offers only apply in internal conflicts that meet a certain threshold of intensity and nature. The Protocol omits such situations of disturbances and tensions as riots, isolated and sporadic acts of violence and other acts of a similar nature. The report then states: the

application of Protocol II would appear to be limited to situations at or near the level of a full-scale civil war; few governments are prepared to admit the application of the Protocol to situations of lesser intensity; since neither the Protocol nor any other agreement allows for an impartial outside body to decide on whether the criteria are met to apply the Protocol, it is largely left to the goodwill of the government concerned; this goodwill is often lacking — admitting the application of the Protocol is seen as conferring international legitimacy on the opposition forces, even though such an interpretation is specifically ruled out by another provision of the Protocol, and/or an implicit admission on the government's part of its lack of effective control in the country. Following on this, the report states that the result is one in which there are many situations of internal violence — including ones leading to thousands of deaths — where there are no clear treaty rules in place to regulate important aspects of the behaviour of the armed forces and armed groups involved.

Commentary on customary international humanitarian law stresses that separate from treaty stipulations internal armed conflicts are still regulated by the rules of customary international law that have been established for decades. The report notes that the problem has not been to establish the applicability of customary law but rather to determine, both in general and as regards any specific case, what is prohibited by the “principles of humanity and the dictates of the public conscience”.

The report states that the rulings by the criminal tribunals for the former Yugoslavia and Rwanda may assist in the development of greater detail regarding rules that apply in internal conflicts which form part of customary law. Reference is also made to the fact that the International Criminal Court, once operative, is also likely to result in relevant developments.

On the question of potential advantages and disadvantages to a statement of fundamental standards of humanity, the report notes that apart from legal considerations a key issue is what impact such a statement will or may have on actually reducing or preventing abuses. The report cautions against viewing such a statement as an end in itself. In response to the question “What are the fundamental standards of humanity?” the report does not attempt to establish a conclusive and authoritative list but rather highlights a number of points including, *inter alia*, that standards would need to: at a minimum, deal with such abuses as deprivation of the right to life, torture and ill treatment, freedom of movement, the rights of the child, human rights for women, arbitrary deprivation of liberty and due process, and protection of the civilian population; be stated in a way that was specific enough to be meaningful in actual situations, while at the same time be clear and understandable; build a common framework of protection, that is, find rules common to both branches of relevant law and consider a fusion of the rules established in human rights and humanitarian law.

In the concluding section, the report suggests that further study might focus on, *inter alia*:

- ♦ the international legal accountability of non-state armed groups for abuses and whether a statement of fundamental standards of humanity would be an appropriate means of holding these groups accountable;
- ♦ how relevant provisions of human rights law could be made more specific so as to ensure respect for them in situations of internal violence, and whether this can be accomplished through a statement of fundamental standards of humanity; and
- ♦ developments related to the identification of crimes against humanity and customary rules of international humanitarian law relevant to the protection of human dignity in situations of internal violence, and how these developments relate to the identification of fundamental standards of humanity.

The addendum to the Secretary-General's main analytical report (E/CN.4/1998/87/Add.1) summarizes the views of: Botswana, Canada, Colombia, Croatia, Cuba, Ecuador, Finland, Jordan, Norway, the Philippines, Switzerland, Turkey, the Food and Agriculture Organization and the UN High Commissioner for Refugees.

### Resolution of the Commission on Human Rights

Under agenda item 15 the Commission adopted by consensus a resolution (1998/29) in which the Commission *inter alia*: expressed grave concern at the large number of situations in which internal violence causes extensive suffering, breaches the principles of humanity and undermines the protection of human rights; emphasized the need to identify and implement measures to prevent violations and abuses of human rights and fundamental freedoms, in particular the right to life and integrity of the individual; acknowledged the desirability of identifying fundamental standards of humanity applicable in all situations in a manner consistent with international law, including the UN Charter; recognized the importance of establishing appropriate national legislation in each country to deal with such situations in a manner consistent with rule of law; requested the Secretary-General, in coordination with the International Committee of the Red Cross, to continue to study and consult on the issues identified in the 1998 analytical study and to submit a report entitled “Fundamental standards of humanity” to the 1999 session of the Commission.



## NON-GOVERNMENTAL ORGANIZATIONS (NGOs) AND ACCESS TO THE UN

At its 1997 session, the General Assembly adopted resolution 52/453 in which the Secretary-General was requested to prepare a report on: (a) existing arrangements and practices for the interaction of NGOs in all activities of the UN system; (b) the legal and financial implications of modifications in the current arrangements for NGO participation with a view to enhancing their participation; and (c) the question of the participation of NGOs from all regions, in particular from developing countries. The report of the Secretary-General to the 1998 General Assembly (A/53/170) contains information on, *inter alia*: institutional arrangements, a growing operational partnership, building bridges between civil society and the UN, participation of NGOs from all regions, and enhancing the participation of NGOs in all areas of the UN system.

The report recalls that in 1948 there were 41 NGOs in consultative status; in 1968 there were 377 and at present some 1,350 NGOs have consultative status. In 1968 there were 200 NGOs associated with the Department of Public Information and, at present there are more than 1,500 such organizations. The report also notes that NGOs collectively constitute the second largest source of development assistance and recalls that, in December 1997, the Nobel Academy recognized the role of NGOs in the Ottawa process which led to the adoption of the Convention banning anti-personnel landmines. The report cited these facts to illustrate the universal movement towards greater citizen action, sometimes described as the "global associational revolution", which has characterized the past few years. The report then states that the growing influence and role of non-state actors has been both a hallmark and a cause of the changing international environment and that NGOs are the clearest manifestation of what is referred to as "civil society" — i.e., the sphere in which social movements organize themselves around objectives, constituencies and thematic interests. Other actors in the process are noted as including local authorities, mass media, business and industry leaders and the research community, including academia and think-tanks.

Commentary on the relationship and institutional arrangements between the UN and NGOs refers to the review that was conducted in the early 1990s and resolution 1996/31 of the Economic and Social Council in which three categories of status for NGOs was established: general consultative status for large, international NGOs whose area of work covers most of the issues on the Council's agenda; special consultative status for NGOs that have special competence in a few fields of the Council's activity; and the Roster, for NGOs whose competence enables them to make occasional and useful contributions to the UN's work and which are available for consultation upon request. The report notes that NGOs

have been particularly involved in the work of some of ECOSOC's subsidiary bodies, including the Commission on Human Rights, the Commission on Sustainable Development, the Commission on the Status of Women and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. It notes that, while there are no formal arrangements for NGOs to participate in the work of the General Assembly, practice has evolved to allow a certain degree of informal participation in the work of the Assembly's Main Committees and several of its subsidiary bodies.

The UN's relationship with NGOs is managed by the NGO Section of the Department of Economic and Social Affairs and the NGO Section of the Department of Public Information. Over the years, most substantive departments have appointed one or several NGO liaison officers to facilitate access by NGOs to the UN and improve communications between officials in these departments and NGO experts in the relevant fields. The report refers to the Secretary-General's 1997 report, "Renewing the United Nations: a programme for reform" (A/51/950), in which the Secretary-General called for all departments that had not yet done so to designate an NGO liaison officer. As well, the majority of UN funds, agencies and programmes have received a clear mandate from their governing bodies to work with NGOs and have developed a wide range of mechanisms to do so.

Consideration of the operational partnership between the UN and NGOs notes the strengths and assets brought to the work by NGOs, including, *inter alia*: local accountability; independent assessment of issues and problems; expertise and advice; important constituencies; provision and dissemination of information; and awareness-raising. The constraints or potential difficulties which limit the scope of UN collaboration with NGOs are noted as including: the sheer number of organizations and their diversity; their occasional organizational weaknesses; the fragility of certain grass-roots organizations; and the sometimes divergent positions among NGOs and between NGOs and governments. The report also notes that over-dependence on external financing can sometimes undermine the sustainability and even independence of NGOs. Despite these constraints or difficulties, the report states that the balance remains overwhelmingly favourable to a strengthened cooperation between the UN system and NGOs in operational matters, at Headquarters and in the field.

The report notes that the range of operational collaboration with NGOs actually goes beyond fund-raising and programme delivery to cover activities such as research and information outreach, policy dialogue and advocacy. The report states that through policy dialogue and advocacy NGOs have played a very significant and helpful role by establishing bridges between the UN and civil society at large. Referring to the world summits and conferences hosted by the UN in the 1990s, the report notes that while NGOs neither hosted nor organized these gatherings, their involvement in the process of collective analysis of the economic and social fields on these occasions reached

unprecedented levels and led to an important breakthrough in the perception by UN officials and states alike of the role of NGOs, which are no longer seen only as disseminators of information, but as shapers of policy and indispensable bridges between the general public and the intergovernmental processes. NGOs participating in the conferences also provided: technical input and expertise on the issues under consideration; a linkage between the national and international deliberations on the issues, thereby enlarging the transparency of the process and the accountability of actors involved; an interested and informed constituency, at both the international and national level, for the implementation and monitoring of the results of the conferences; and ongoing work with national governments towards the implementation of the agreements reached and decisions taken at the conferences.

In the section dealing with the participation of NGOs from all regions, the report notes that the collaboration between NGOs and UN agencies and programmes, in particular in operational matters, involves a great number of organizations based in developing countries. These NGOs participate either as beneficiaries of projects or as full partners. As UN activities continue to be decentralized and programmes, funds and agencies are increasingly defined at the country level, the participation of local and national NGOs is likely to expand further in the years to come. The report states that efforts to promote the role and participation of NGOs from developing countries must first concentrate on facilitating the emergence of such organizations and on building their capacity to work effectively with the UN. Other points noted included: the NGO Unit of the World Bank has developed a programme to give best practice advice on NGO law, aimed at assisting governments and other parties to analyse the weaknesses of existing laws and to draft more appropriate ones; other UN programmes engaged in capacity-building for national NGOs provide technical assistance to strengthen technical, legal, training and managerial capacities of NGOs; lack of financial means and inadequate access to relevant information have also prevented southern-based NGOs from contributing as much as northern-based NGOs to the policy dialogue conducted in UN forums; national NGOs now account for the majority of applications for consultative status; and the need will soon arise, as an increasing number of organizations from developing countries seek consultative status with ECOSOC and other UN bodies, for specific arrangements and mechanisms to assist them in making proper use of this status.

On the question of enhancing the participation of non-governmental organizations in all areas of the UN system, the report states that the NGO sector constitutes a very diverse institutional category with significant variations with respect to size, resources, impact, methodology, objectives and approach to international organizations. In order for the UN to interact better with these

organizations and to continue to cooperate with them in a mutually beneficial relationship, it needs to learn more about this complex and expanding universe. Points made on this question include: efforts must be made to harmonize existing databases on NGOs so as to facilitate the exchange and compilation of information on NGOs across the UN system; the UN must attempt not only to draw a composite picture of the NGO community but also to provide its staff with the tools to deal with their fast-growing number; staff assigned to work with NGOs must be the primary recipients of any training programmes specifically dedicated to cooperation with civil society; the procedures and policies governing relations with NGOs (currently set out in the Secretary-General's Bulletin ST/SGB/209, 21 December 1984) will be updated and also serve to improve consistency in the Secretariat's relations with NGOs; it is imperative that all officials concerned share their experiences and best practices so as to promote coherence and efficiency in dealings with civil society while ensuring a proper implementation of existing mandates and rules; it is crucial that NGO access to information and documentation be secured in a timely and appropriate manner; bearing in mind the financial and legal constraints under which the UN operates, and the fact that NGO demands for prompt and comprehensive information cannot always be adequately satisfied, states may wish to consider a number of measures which could remedy, at least partially, this situation.

Some measures states could take to secure access and information for NGOs were outlined, including: setting aside a number of seats in an appropriately designated area of the General Assembly Hall during public debates on items in the social or economic fields; facilitating access to the Assembly's official documentation without any additional financial expense on the part of the Secretariat; reviewing the current "charge-back" funding of the UN's Optical Disk System (ODS) in order to allow for wider dissemination of the information and products available through it; and establishing a trust fund to facilitate the participation of NGOs from developing and least developed countries, and countries in transition, in UN activities.

At the 1998 session, the General Assembly adopted by consensus a resolution on the question of the NGO access (A/53/L.68). The Assembly recalled previous resolutions and requested the Secretary-General to: (a) seek the views of Member States, members of the specialized agencies, observers and intergovernmental organizations, as well as the views of non-governmental organizations from all regions, on his report (A/53/170); and (b) submit a further report to the General Assembly, at its 1999 session, taking into account the submissions received. The GA decided to continue consideration of the question at its 1999 session.



## RACISM AND RACIAL DISCRIMINATION

There were five reports related to racism and racial discrimination prepared for the 1998 session of the Commission on Human Rights: one by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, two by the Secretary-General, one related to a seminar on the subject of migration, racism and racial discrimination and one from an expert seminar on the subject of the role of the Internet within the context of provisions in the Convention on the Elimination of All Forms of Racial Discrimination.

With regard to the reports of the Secretary-General, the first (E/CN.4/1998/77) summarizes information provided by governments and others related to activities to combat racism and racial discrimination and in connection with the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination. The second report (E/CN.4/1998/78) was prepared, as requested by Commission resolution 1997/74, and contains a summary of information provided by states and others on measures taken to implement the 1997 resolution.

### Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

The mandate of the Special Rapporteur (SR) of the Commission on Human Rights was created in 1993 and renewed for a further three years by the Commission at its 1996 session. The SR during 1998 was Mr. Glélé-Ahanhanzo.

The 1998 report (E/CN.4/1998/79) contains information on, *inter alia*: various activities of the SR; missions under consideration; the UN seminar on immigration, racism and racial discrimination; the seminar on the Internet and racism; discrimination against Blacks (negrophobia); racism and discrimination against Arabs and Muslims; anti-Semitism; discrimination against the Roma, Gypsies or travellers; migrant workers and discrimination; and incitement to racial hatred on the Internet.

In addition to information related to the two seminars hosted by the Office of the High Commissioner for Human Rights (see below) the report refers briefly to a seminar held in Cotonou (Benin) in June 1997 as part of the activities of the Institute for Human Rights and the Promotion of Democracy. The meeting focussed on: problem areas related to discrimination in all its forms in Black Africa [sic]; relations between ethnic groups in the Sahel countries; the problems of ethnicity, nationalities and relations between ethnic groups in Central Africa, particularly in the Great Lakes region; discrimination against women and children: the case of Benin (Vidomégons); and relations between the peoples of the Gulf of

Benin and members of the non-African communities (Europeans, Lebanese, Syrians, Indians, Pakistanis, etc.). The report states that in light of the World Conference on Racism and Xenophobia, likely to be held in the year 2001, similar meetings should be organized at the sub-regional and regional levels in other parts of the world.

The SR repeated recommendations made in previous years, including that:

- ♦ the possibility be considered at the international level of immediately beginning studies, research and consultations on the use of the Internet to incite hatred, racist propaganda and xenophobia, and drawing up a programme of human rights education and exchanges over the Internet;
- ♦ states which have not already done so ratify the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- ♦ states, which do not yet have such institutions, establish human rights commissions with responsibility, in particular, for studying the question of racism and racial discrimination and for securing adoption of appropriate measures; and
- ♦ the governments of the countries visited by the SR regularly provide information on the steps taken to follow up on the recommendations arising from the field mission.

The SR's interim report to the 1998 General Assembly (A/53/269) includes information on, *inter alia*: the resurgence of neo-fascism and neo-Nazism; discrimination against immigrants and migrant workers; anti-Semitism; exploitation and manipulation of ethnicity for political purposes; the Internet and racism.

The report states that neo-fascism and neo-Nazism are gaining ground in many countries, especially in Europe, as reflected by the electoral victories of extreme right parties advocating xenophobia, attacks on ethnic, national and religious minorities, and racial or ethnic purity in the countries where they are active. The report notes: these parties are exploiting an economic and social climate characterized by fear and despair; they have re-styled themselves to look like radical right wing democratic parties, softening their image while enabling them to conceal an unchanged preference for racism and xenophobia; for purely electoral motives, classic right wing parties are increasingly embracing the slogans of extreme right wing parties; and this growing increase in the power of extreme right wing parties is a cause for concern.

On discrimination against immigrants and migrant workers, the report refers to the situation in Africa and notes that some countries have organized charters for the large-scale deportation of undocumented aliens or have detained such aliens in holding camps prior to their repatriation.

With regard to anti-Semitism the SR stated that the phenomenon continues to develop on the Internet and the resurgence of the extreme right in Europe has so intensified the spread of classic ideas on anti-Semitism that there is a marked increase in violent anti-Semitic acts, such as vandalization.

Referring to the exploitation and manipulation of ethnicity for political purposes, the report notes that, in some sub-Saharan African countries, the criteria for defining ethnic groups (territory, language, race) can either be factors for integration and unification or factors for differentiating between different ethnic groups within given geographical areas on the basis of deep-rooted historical and cultural stereotypes. The SR then stated, generally: politics in many countries seems to be based essentially on ethnic and/or regional considerations; the ethnic group is therefore a political instrument and pawn (gaining and maintaining power/building the electoral base); the ethnic group and/or region are fully taken into account in carrying out a skilful distribution of political posts as part of what is described as a broad-based government of national unity, which is really more the result of attempts to achieve a balance between the regions or ethnic groups; such a balance is perceived as a means of strengthening a nation's cohesion, solidarity and unity; this concern for regional or ethnic balance is also a factor in appointments to key state managerial positions; and, as a result, ethnic groups are exploited and manipulated to a great extent for political purposes. The SR also noted that, in sub-Saharan Africa, ethnic areas have always constituted, and still constitute, the electoral base of leaders and politicians; such leaders often make speeches with heavy ethnic undertones, paying occasional lip-service to national unity or integration; and it is still difficult for liberal democracy based on individual rights and human dignity to take root, although some progress has been noted.

On the Internet and racism, the report simply notes that the use of the Internet to incite racial hatred is continuing and there are over 200 sites worldwide disseminating racist propaganda.

The SR recommended that:

- ♦ as part of the preparations for the World Conference against Racism and Racial Discrimination, Xenophobia and Related Intolerance, regional and sub-regional meetings of experts (in Africa, Asia and the Americas) be encouraged and promoted with the assistance of the specialized agencies in the UN system; and
- ♦ a body on neo-fascism, neo-Nazism and ethno-nationalism be established to study such phenomena, in close cooperation with the SR, and states be invited to communicate relevant information to this body.

### The seminar on immigration, racism and racial discrimination

The seminar was held in Geneva from 5 to 9 May 1997 and addressed: contemporary forms and manifestations of racism and racial discrimination, globalization and immigration, national and international protection of immigrants, protection of immigrants against discrimination in access to employment (activities of the ILO), and integration and/or preservation of immigrants' cultural identities in host countries. The report of the Secretary-General (E/CN.4/1998/77/Add.1) notes that participants included experts from both international and national bodies and institutions, experts appointed by a number of governments who participated in their personal capacity, and representatives of intergovernmental and non-governmental organizations.

Six background papers were prepared for the seminar: (a) "National protection of immigrants" (HR/GVA/DR/1997/SEM.2/BP.1); (b) "International protection of immigrants" (HR/GVA/DR/1997/SEM.2/BP.2); (c) "Combating discrimination against migrant workers: international standards, national legislation and voluntary measures - the need for a multi-pronged strategy" (HR/GVA/DR/1997/SEM.2/BP.3); (d) "Integration and/or preservation of immigrants' identity in host countries: between goodwill and discrimination" (HR/GVA/DR/1997/SEM.2/BP.4); (e) "Contemporary forms of racism and racial discrimination against immigrants" (HR/GVA/DR/1997/SEM.2/BP.5); and (f) "Globalization and immigration" (HR/GVA/DR/1997/SEM.2/BP.6).

Discussions of contemporary forms of racism and racial discrimination against immigrants were based on a number of points including, *inter alia*, that: (a) there has been an alarming upsurge of racism, xenophobia and intolerance, particularly in so-called democratic societies; (b) any form of racism involves discrimination and the new forms are predominantly economic; and (c) the "minority" of foreign workers are the new victims, while concealed discrimination is being committed against women.

Within this context a number of points were made including, *inter alia*: there is a need to establish an individual remedy procedure designed to enforce the principle of non-discrimination at the social level; regulation of the global marketplace has become an acutely political issue; one means of controlling access to the labour market is by allowing different rights to different categories of workers; it is an open question whether a policy in which the rich countries would invest so as to improve employment prospects in the poor countries is practical, bearing in mind that the high population growth rates in poor countries are an obstacle to such policies; there is a need to find ways of reaching public opinion in countries experiencing immigration and boosting support in the general public for international norms; the social effects of immigration will depend on whether the labour supplied by immigrants is perceived as competitive with, or

complementary to, native labour; there is a conflict of interest between the nationalistic conception of the state, in which the people who have come together as a nation believe that they are also the legitimate owners of their state, and the concept of the state as the protector of the rights of all its citizens, including immigrants; and while most states now have legislation criminalizing incitement to racial hostility, punitive measures are not always the most appropriate ones, compensation from the state being another alternative.

The question of integration and/or preservation of immigrants' cultural identities in host countries raised a number of points including, *inter alia*: migration has ceased to be a domestic issue and become one of national security because of the volume of migration in recent years; past policies on immigration and the hiring of temporary workers no longer work; in general, the jobs taken by immigrants are rarely those sought by workers from the receiving country since they are considered dirty, dangerous and degrading; migrants move not only towards the developed countries, but increasingly among developing countries, consequently some receiving states may not have sufficient legal mechanisms to guarantee migrants a minimum of rights and violations of their legal rights may occur; in developed countries, attempts are now frequently made to restrict immigrants' access to public services financed by national taxpayers, particularly education, health and social security services; on the question of integration or preservation of migrants' cultural identity in receiver countries, it is necessary to take account of the asymmetrical relationships arising from the encounter between a minority culture and a very different one in the receiving country; assimilation implies erosion of a group's original culture and its replacement by the symbols of the culture it encounters, while preservation implies resistance and adaptation in order to preserve the original culture; integration lies between these two points; a number of factors favour integration, including the existence of upward social mobility, the way in which the migrant minority entered the receiver society and the degree of similarity between migrants' and the receiver population's racial and cultural characteristics; and a change in terminology, from "legal" and "illegal" migrants to "documented" and "undocumented" migrants, would make it possible to take a more human view of the phenomenon of migration.

Annex I of the report contains the conclusions and recommendations of the seminar. A number of recommendations were developed, including that:

- ♦ the right to be different, as proclaimed in the 1978 UNESCO Declaration on Race and Racial Prejudice, be respected by all and that policies in host states, aimed at integration, guarantee the preservation of migrants' cultural identity, subject to the legislation of the host country;
- ♦ governments invest in formal and non-formal educational programmes as an effective way to promote cultural understanding;

- ♦ states which have not done so ratify and implement the 1990 Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families, as well as relevant ILO Conventions, including Conventions Nos. 97 and 143;
- ♦ all states ensure that both officials and immigrants are made aware of the rights set out in human rights instruments and relevant conventions on the rights of migrant workers and their families;
- ♦ governments establish suitable, efficient, accessible recourse procedures for victims of racism, racial discrimination and xenophobia, including protection, to enable undocumented migrants to denounce crimes and violations of rights to police authorities and to serve as witnesses in prosecutions;
- ♦ all governments consider and keep under review the introduction of measures enabling immigrants to participate fully in local elections and guarantee the right to organize for migrants in all receiving countries in conformity with the legislation; all governments consider and keep under review the recognition of dual nationality for immigrants;
- ♦ governments grant migrants the same rights as minorities under the relevant national legislation;
- ♦ policies be devised, in consultation with representatives of immigrant associations, to avoid enforced dispersal of immigrant families and the negative consequences of the formation of immigrant ghettos be taken into account;
- ♦ all states declare illegal and prohibit any transmission by audio-visual or electronic media, including the Internet, which incites to racial hatred or racial violence;
- ♦ bearing in mind the particularly disturbing situation of female migrants, the Committee on the Elimination of Racial Discrimination pay greater attention to a gender perspective in its work; the Sub-Commission's Working Group on Minorities take up the question of migrants; and
- ♦ further legal study be encouraged on the relationship between freedom of expression and the responsibility of limiting expressions of racial hatred harmful to a society; the mass media play an active part in the UN Decade for Human Rights Education, informing migrants of their rights and bringing to public attention any situation involving discrimination or violations of human rights law; and the OHCHR give priority to consideration of preparing a seminar on the role of the mass media in combatting racism.

### The seminar on the role of the Internet

The expert seminar on the Internet in relationship to provisions in the Convention on the Elimination of All Forms of Racial Discrimination was held in Geneva from 10 to 14 November 1997. The report of the Secretary-

General (E/CN.4/1998/77/Add.2) notes that participants included invited experts and representatives from governments, intergovernmental bodies and non-governmental organizations.

Seven background papers were prepared for the seminar: (a) "Racisms and racial discrimination on the Internet" (HR/GVA/DRI/SEM/1997/BP.6); (b) "Prohibition of racist propaganda on the Internet: juridical aspects, national measures" (HR/GVA/DRI/SEM/1997/BP.5); (c) "Technical aspects of screening racist propaganda on the Internet: national measures" (HR/GVA/DRI/SEM/1997/BP.2; HR/GVA/DRI/SEM/1997/BP.7); (d) "Prohibition of racist propaganda on the Internet: juridical aspects, international measures" (HR/GVA/DRI/SEM/1997/BP.3); (e) "Elements relating to conduct and good practice for Internet-based materials" (HR/GVA/DRI/SEM/1997/BP.1; HR/GVA/DRI/SEM/1997/BP.4).

The report includes summaries of points raised during discussion of these subjects as well comments on regional and national approaches to the issue, technical solutions, education, self-regulation and a code of conduct, financial implications and, finally, the effects of excessive control.

On the issue of racism and racial discrimination on the Internet, the report notes that there is a general consensus among computer communications leaders and on-line activists worldwide that there should be no regulation. Commentary on juridical aspects and national measures related to the prohibition of racist propaganda on the Internet was mainly focussed on legal protections of speech in the United States. In a larger context, however, the report notes that the Internet had undeniably had positive implications for human rights and freedom and offered a means both of bridging cultural divides and promoting cultural diversity. Following on this, the report notes the assertion that the challenge was to decide how best to respond to racist propaganda.

Discussion of the technical aspects of national measures to screen racist propaganda on the Internet noted that the elimination of electronic racism required affirmative actions to assure de facto racial equality in the enjoyment of the Internet as well as the prevention of explicit abuses, especially for young people, indigenous peoples and migrant workers. The report then notes, *inter alia*: the industrialized countries of the North have been the primary beneficiaries of the Internet with ownership and control of 80 per cent of all related resources; there is a danger that if this increasing racial imbalance is not reversed, the peoples of the South will become the victims of the Internet rather than its beneficiaries; the Internet has an alarming potential to create and reinforce an electronically disenfranchised underclass, which will prevent the improvement of racial equality in a growing range of human and social needs and transactions; in order to stop and prevent the trend towards an electronic form of economic and cultural imperialism, massive efforts are required to train, equip and connect disadvantaged people and societies to the Internet, with a special

emphasis on youth; through equal access to the Internet, all people will be able to tell their own stories to a worldwide audience in their own words, sounds and images; with intelligent social engineering, the Internet has the capacity to be a cultural and racial bridge instead of a wedge or barrier; and means must be found to lower the costs for hardware, software and carrier services to enable those with minimal resources and understanding to gain Internet access without the need for expensive personal computer and telephone line ownership.

Points raised during consideration of international measures related to the technical aspects of screening racist propaganda on the Internet included that: an understanding of the basic underlying technology of the Internet was essential, since its limitations and possibilities shaped potential public policy options; at a minimum such policies must be balanced between rights and legal obligations, technologically feasible, economically reasonable and technologically effective; it was desirable and appropriate for the UN and the international community to examine several related questions, one of the most important of which was whether additional restrictions were being considered for the Internet compared to other media and why the Internet should be singled out; and dealing with racist and hate content also set a precedent for other forms of online content, such as discrimination on the basis of gender, religion, national origin, sexual orientation, and political content.

Consideration of the juridical aspects and international measures related to the prohibition of racist propaganda referred to article 4 of the Convention on the Elimination of All Forms of Racial Discrimination and its stipulations that states are required to punish dissemination of ideas based upon racial superiority or hatred, incitement to racial hatred, acts of violence against any race or group of persons of another colour or ethnic origin, and incitement to such acts. The report also notes that article 4 penalizes the financing of racist activities, a provision that has been interpreted by the Committee on the Elimination of Racial Discrimination (CERD) to include activities deriving from ethnic as well as racial differences. The point was made that article 4 is mandatory in its provisions, aims at prevention rather than cure, requires states to declare illegal and prohibit all organizations as well as organized and other propaganda activities and to punish participation in them, outlines the obligations of public authorities at all administrative levels, imposes an obligation on states to pay "due regard" to the principles set out in the Universal Declaration and article 5 of the Convention, and is as much applicable to the dissemination on the Internet of racist ideas as it is to such offences and illegal acts in the press, radio, television or any other media. The report then notes that CERD has consistently rejected any construction of "due regard" for freedom of expression as neutralizing the obligation to prohibit and punish dissemination of ideas based on racial superiority or hatred or incitement to racial discrimination or acts of violence.

The report notes some key issues that must be addressed in order to build the capacity of user communities who are marginalized by mainstream Internet developments, including, *inter alia*: the need for policy makers at the national and international levels to address the lack and underdevelopment of basic infrastructure in many regions, especially in Africa; the prevalence of gender inequality in terms of access to and control of the Internet; the need to see the issues of race, racism and racial discrimination on the Internet in a broader social context; the resources that would be required to monitor and regulate the Internet should instead be channelled into building capacity in those regions which are lagging behind in information technology infrastructure; states must address the imbalance in the access to information technology between the North and the South; and the Internet should be used as a tool to combat racism, which will only be eradicated through education and the empowerment of disenfranchised communities.

The benefits of the Internet were identified as being that it: is fast, cheap and simple to use; has potential for new kinds of electronic commerce and consumption; is a unique mechanism providing access to information and blurring the distinction between information providers and receivers; is a vehicle for the promotion of and respect for cultural diversity; enables people from all over the world to communicate instantaneously; has great potential for long-term benefits in education, health care, job creation and other areas; and, is seen by some as the "equalizer" since it allows individuals, small businesses and NGOs to operate on the same level as larger entities.

In its conclusion, the report notes that participants agreed to a statement expressing deep regret and strongly condemning the use of the Internet by some groups and persons to promote racist and hate speech in violation of international law. The seminar recommended, *inter alia*, that:

- ♦ an open-ended intergovernmental working group be established to draft guidelines for the ethical use of the Internet, leading to the establishment, by the Commission on Human Rights, of an intergovernmental group of experts that would use the working group's findings as the basis for establishing a set of guidelines for the Internet;
- ♦ bearing in mind the complexity of the role of Internet, the Commission on Human Rights consider the creation of a consultative group, working in consultation with non-governmental organizations, to prepare a report for the World Conference on Racism and Racial Discrimination, Xenophobia and Related Intolerance;
- ♦ with regard to a code of conduct, a number of points be clarified, including who would establish the code (e.g., private industry, a drafting committee under the auspices of the UN and with representatives of states as members) and how the code itself would be established;

- ♦ the UN Websites, particularly that of the OHCHR, be used as a vehicle for aiding under-resourced populations (usually non-white populations) through education in human rights, bearing in mind the need for funding for additional activities;
- ♦ all Internet communications indicate their source so that users cannot anonymously distribute racist propaganda, bearing in mind the potential risks posed with regard to privacy, free expression and human rights activity;
- ♦ CERD, in examining states parties' reports, include references to the Internet;
- ♦ the Internet be used as an educative tool to combat racist propaganda, prevent racist doctrines and practices and promote mutual understanding;
- ♦ existing national criminal laws established to fight racism and racial discrimination be amended where necessary so as to apply to the Internet and include, where possible, provisions for the prosecution of Internet service providers; and
- ♦ states cooperatively establish international juridical measures in compliance with their obligations under international law to prohibit racism on the Internet while respecting individual rights such as freedom of expression.

### Resolutions of the Commission on Human Rights

Under agenda item 12 the Commission adopted by consensus an omnibus resolution (1998/26) dealing with a range of issues related to racism and racial discrimination.

**In general observations**, the Commission, *inter alia*: unequivocally condemned all forms of racism and racial discrimination, including racially motivated violence and propaganda activities and organizations; declared that racism and racial discrimination must be combatted by all available means; expressed deep concern at and condemned acts and manifestations against migrant workers and members of their families and members of other vulnerable groups; called on states to review and revise where necessary immigration policies in order to eliminate all discriminatory policies and practices against migrants; condemned all forms of discrimination and xenophobia in such areas as housing, employment, vocational training, education, health and access to social services; categorically condemned any role played by some print, audio-visual or electronic media in inciting acts of violence based on racial hatred; encouraged the mass media to promote ideas of tolerance and understanding among peoples and between different cultures; and noted general recommendation XV of March 1993 by CERD related to freedom of opinion and expression and the prohibition on dissemination of ideas based on racial superiority or racial hatred.

**With regard to the Third Decade to Combat Racism**, the Commission, *inter alia*: regretted the continued lack of interest, support and financial resources for the Decade; reiterated its request to the General Assembly to consider providing the necessary resources for implementation of the Programme of Action of the Third Decade; called upon governments and others to contribute to effective implementation of the Programme; reiterated its request to the High Commissioner for Human Rights to take account of appeals by the General Assembly and ECOSOC for the establishment of a focal point within the OHCHR to coordinate all activities of the Third Decade; affirmed its determination to combat violence arising from intolerance on the basis of ethnicity; and recommended that states give priority to education as a principal means of preventing and eradicating racism and racial discrimination.

**Referring to follow-up activities**, the Commission, *inter alia*: welcomed the convening of the two seminars (as above); and also welcomed the Cotonou seminar of June 1997 and the work of the Council of Europe in combatting racism, racial discrimination and related intolerance.

**On the work and mandate of the Special Rapporteur**, the Commission, *inter alia*: expressed its full support for the SR's work; urged all governments to cooperate fully with the SR and commended those states that had, to date, hosted visits; noted the increase in the use of new technologies, in particular the Internet, to disseminate racist ideas and incite racial hatred; noted that the use of the same technologies can contribute to combatting racism, racial discrimination, xenophobia and related intolerance; and requested the High Commissioner to undertake research and consultations on the use of the Internet to incite racial hatred, racist propaganda and xenophobia and develop a programme of human rights education and exchanges over the Internet related to the struggle against racism, xenophobia and anti-Semitism.

**With regard to the Convention on the Elimination of All Forms of Racial Discrimination**, the Commission, *inter alia*: appealed to states that have not done so to consider ratifying the Convention; recommended that the issue of universal ratification, the effect of reservations and recognition of the competence of CERD to receive individual complaints be considered at the World Conference; called on states parties to the Convention to submit their periodic reports as required and on time; urged states to limit the extent of any reservations to the Convention and formulate them as narrowly as possible; and called on states parties to adopt immediately positive measures aimed at the elimination of all forms of racial discrimination, xenophobia and related intolerance.

**With regard to the World Conference**, the Commission, *inter alia*: noted the decision of the Fifth Committee that the preparatory process for the Conference will include pre-sessional five-day meetings prior to the 2000 and 2001 sessions of the Commission on Human

Rights; created an open-ended working group to meet during the 1999 session of the Commission to review and formulate proposals related to the World Conference for review by the Commission and possible referral to the Preparatory Committee; recommended that the General Assembly request the Secretary-General to designate the High Commissioner for Human Rights as Secretary-General of the World Conference, with main responsibility for preparations for the Conference; invited the High Commissioner, in cooperation with the Department of Public Information, to devise and implement a world information campaign on the importance and objectives of the Conference; invited non-governmental organizations to participate fully in the preparatory process; invited CERD to give high priority to the preparatory process and present to the 1999 Commission its contribution on the objectives of the Conference; invited the High Commissioner to submit to the 1999 session a preliminary study on the objectives of the Conference as identified by the General Assembly; recommended that the General Assembly declare the year 2001 a year of mobilization against racism, racial discrimination, xenophobia and related intolerance; recommended that the Conference result in a declaration and a programme of action to combat racism and racial discrimination; and, stressed the importance of systematically taking into account a gender perspective throughout the preparations for and the outcome of the World Conference.

## Resolutions of the General Assembly

### The Third Decade and the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

The General Assembly adopted by consensus a resolution on the Third Decade and the World Conference (A/C.3/53/L.24). The GA, *inter alia*, reaffirmed its firm determination and its commitment to eradicate racism in all its forms, totally and unconditionally, as well as racial discrimination; noted with concern that racism and racial discrimination may be aggravated by, *inter alia*, inequitable distribution of wealth, marginalization and social exclusion; noted with concern that the dissemination of racist and xenophobic propaganda is also being channelled through new communication technologies, including the Internet; expressed concern that the phenomenon of racism and racial discrimination against migrant workers continues to increase; and acknowledged that indigenous peoples are at times victims of particular forms of racism and racial discrimination.

With regard to implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination: the GA, *inter alia*, declared that racism and racial discrimination are among the most serious violations of human rights in the contemporary world; urged all governments to take all necessary measures to combat new forms of racism; requested the Secretary-General to continue to accord special attention to the situation of migrant workers and members of their families and to include regularly in his reports all infor-

mation on such workers; called on all states to consider signing and ratifying or acceding to the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as a matter of priority; encouraged the mass media to promote ideas of non-discrimination, respect, tolerance and understanding among peoples and between different cultures; affirmed its determination to combat violence stemming from intolerance on the basis of ethnicity; requested the Secretary-General to continue to study the effects of racial discrimination on the children of minorities and those of migrant workers; expressed regret over the continued lack of interest, support and financial resources shown for the Third Decade and its related Programme of Action; welcomed the seminar on the role of the Internet and invited the Commission on Human Rights to consider its recommendations for responsible use of the Internet; recalled repeated appeals for the establishment of a mechanism within the OHCHR to serve as a focal point for coordinating all the activities of the Third Decade; welcomed the formation of a Racism Project Team in the OHCHR; urged that particular attention be paid to the situation of indigenous peoples; and underlined the importance of education as a significant means of preventing and eradicating racism and racial discrimination.

With regard to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the GA requested the Secretary-General to, *inter alia*: (a) present a comprehensive report to both the 1999 and 2000 sessions of the General Assembly on the progress achieved in the preparatory process of the World Conference; (b) submit to the 2001 session a report encompassing the final outcome of the World Conference; (c) designate the High Commissioner for Human Rights as Secretary-General of the World Conference; and (d) consider providing necessary financial and technical assistance for the convening of regional preparatory meetings. The GA requested the High Commissioner for Human Rights to, *inter alia*: (a) carry out consultations with states aimed at determining the date and venue for the Conference and to report on this to the 1999 session of Commission on Human Rights; and (b) with the Department of Public Information, continue to devise and implement a world information campaign aimed at sensitizing world public opinion to the importance and objectives of the World Conference. The GA also, *inter alia*: invited states and regional organizations to set up at the national or regional level a coordination structure responsible for launching and promoting preparations for the World Conference; requested the regional preparatory meetings to present concrete and pragmatic recommendations aimed at combatting racism, racial discrimination, xenophobia and related intolerance; and stressed the importance of systematically taking a gender perspective into account throughout the preparations for, and in the outcome of, the World Conference.

The GA also proclaimed the year 2001 as the International Year of Mobilization against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

#### **Measures to combat contemporary forms of racism and racial discrimination**

The General Assembly adopted by consensus a resolution on measures to combat racism, racial discrimination, xenophobia and related intolerance (A/C.3/53/L.25). The GA, *inter alia*: stated that racism is one of the exclusionist phenomena plaguing many societies and requires resolute action and cooperation for its eradication; expressed concern over tendencies to establish policies based on racial, religious, ethnic, cultural and national superiority or exclusivity; also expressed concern that those advocating racism and racial discrimination misuse new communication technologies, including the Internet, to disseminate their views; noted that the use of such technologies can also contribute to combatting racism and racial discrimination; reaffirmed the responsibility of governments for safeguarding and protecting individuals against racist or xenophobic crimes perpetrated by individuals or groups; noted that the Committee on the Elimination of Racial Discrimination holds that the prohibition of the dissemination of ideas based on racial superiority or racial hatred is compatible with the right to freedom of opinion and expression as set out in the Universal Declaration and in article 5 of the Convention; acknowledged that impunity for crimes motivated by racist and xenophobic attitudes plays a role in weakening the rule of law and tends to encourage the recurrence of such crimes; expressed particular alarm at the rise of racist and xenophobic ideas in political circles, in the sphere of public opinion and in society at large; affirmed that acts of racist violence against others stemming from racism do not comprise expressions of opinion but rather are offences; declared that racism and racial discrimination are among the most serious violations of human rights in the contemporary world and must be combatted by all available means; unequivocally condemned all forms of racism and racial discrimination based on doctrines of superiority of one race or group of persons; condemned manifestations of racism, racial discrimination, xenophobia and related intolerance against migrant workers and members of their families, persons belonging to minorities and members of vulnerable groups in many societies; encouraged all states to include in their educational curricula and social programmes at all levels, as appropriate, knowledge of, and tolerance and respect for, foreign cultures, peoples and countries; called upon states to review and, where necessary, revise immigration policies with a view to eliminating all discriminatory policies and practices against migrants; and categorically deplored the misuse of print, audio-visual and electronic media and new communication technologies, including the Internet, to incite violence motivated by racial hatred.



## RELIGIOUS INTOLERANCE

### Special Rapporteur on religious intolerance

The mandate of the Special Rapporteur (SR) on religious intolerance was created by the Commission in 1986 and given the specific purpose of identifying incidents and government actions that are inconsistent with provisions in the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief. The SR was also requested to make recommendations on remedial measures that should be taken to ensure compliance by states with the provisions of the Declaration. The SR in 1998 was Abdelfattah Amor.

The report to the 1998 Commission (E/CN.4/1998/6) contains information on, *inter alia*: legislation on tolerance and non-discrimination related to religion or belief, visits undertaken by the SR, development of a culture of tolerance, and communications sent to and received from governments.

In the section on national legislation, the report recalls that resolutions adopted at both the 1997 sessions of the Commission (1997/18) and General Assembly (52/122) urged states to ensure that their constitutional and legal systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all without discrimination, including the provision of effective remedies in cases where the right is violated. The report recalls that the SR's 1995 report (E/CN.4/1995/91, and Add.1) contained a summary of information provided by governments in terms of constitutional, legal and regulatory mechanisms aimed at combatting religious intolerance and discrimination. In an effort to update that information and solicit responses from governments that had not previously replied to a request for information, the SR again requested information related to constitutions in force or any equivalent instrument, legislation and regulations.

In terms of country visits, the report recalls that the objectives of such visits are to gather opinions and comments on all alleged incidents and government action incompatible with the Declaration, in order to analyse them and prepare conclusions and recommendations and to report on the experience and positive initiatives of states. Such visits are noted as having been undertaken, as follows: China (1994), Pakistan (1995), Iran (1995), Greece (1995), Sudan (1996), India (1996), Australia (1997), Germany (1997) and the United States (1998). The report also notes that requests for an invitation to visit were sent to Turkey, Viet Nam, Indonesia, Israel and Mauritius.

The commentary on the development of a culture of peace focusses on the role of schools and education in the promotion of religious tolerance and combatting intolerance and discrimination. The SR solicited information on religious education and received replies from 77 governments. On the basis of these replies, several general observations were made, including that: it seems that the majority of states attach prime importance to education

as the principal means of preventing discrimination and intolerance, with the school system being the essential element in the effort; most states indicated clearly that school curricula and textbooks should be centred on tolerance and non-discrimination in general, particularly where religion and belief are concerned, and human rights; in the context of measures intended to promote tolerance, many states stressed the importance of education conveying a culture of tolerance, respectful of diversity of religions and beliefs, and imbued with human rights values; some states referred to the need for school textbooks designed to teach values common to all religions; and in light of the risks of religious and political indoctrination, several states described measures of a preventive nature, including constitutional and other legal guarantees, state supervision and information campaigns.

The SR stated that, admittedly, interpretations of the role of education and religious instruction in particular, and of the principles of tolerance and non-discrimination vary according to the state concerned. The report notes that there is a very marked difference between states based on or advocating secular principles and theocratic states or, in some cases, states having an official or state religion. In addition, even within these two groups, there are many variables: on the one hand, states generally opt either for total rejection of religion, which is confined to and concealed in the private sphere, or for a relationship of cooperation and partnership with religions; on the other hand, states which are or claim to be based on religion may be either exclusive — for the benefit of the predominant religion alone — or open and respectful vis-à-vis other religions.

The SR stated that the replies to the questionnaire in some cases raised questions in relation to the principles of tolerance and non-discrimination and, further, that the compulsory nature of religious instruction raises the question of respect for belief, in particular of non-believers, when there is no provision for exemption or alternative measure, such as civic or moral education. Problems were also seen to arise with imposing a particular kind of religious instruction on members of another faith without giving them the right to be excused from that instruction and when members of a religion other than the majority religion have no private religious institutions. The report notes that some states replied that their population was completely homogenous from the religious standpoint, which raised the question whether consideration should be given to several reliable sources of information which report the existence of religious minorities. The SR noted that, generally speaking, the teaching of comparative religion is limited and simply does not exist in many states.

Three points emerged on the basis of the responses received from government:

- ♦ there are two problems related to textbooks and curricula: (a) the production of textbooks and curricula by state authorities without any consultation of the various religious communities and faiths, and (b) the

establishment of such textbooks and curricula in isolation from any state intervention, notably control of their compatibility with national and international legislation;

- ♦ in connection with the content of textbooks and curricula, questions arise concerning the situation in two kinds of states, first those which pay absolutely no heed to questions of religion and belief, and secondly those which focus exclusively on a particular religion or belief; and
- ♦ referring to teachers, questions sometimes arise concerning the adequacy of their training for the purpose of giving religious instruction and teaching the values of tolerance and non-discrimination.

On individual or group cases and incidents, the report notes that, during the period under review, communications were sent to 51 governments and referred to: violations of religious freedom and belief against Christianity, Judaism, Islam, Buddhism, Ahmadis, Baha'is, Jehovah's Witnesses, Hare Krishna, Scientology; violations of freedom of religion and belief affecting either "all religions, all religious groups and communities except the official or state religion or the predominant religion" or "all religions, all religious groups and communities"; violations of the principle of non-discrimination, related to discriminatory policies and/or legislation in the field of religion and belief; violations of the principle of tolerance in matters of religion and belief; violations of freedom of thought, conscience and religion or belief, with conscientious objection being a particularly important issue; violations of the freedom to change one's religion; violations of the freedom to manifest one's religion or belief; violations of the freedom to dispose of religious property; and violations of physical integrity and health, and the right to life.

The report notes the preference of the SR to have the title of the mandate changed from "Special Rapporteur on religious intolerance" to "Special Rapporteur on freedom of religion and belief" on the basis that the new title: (a) would encompass not only freedom of religion but also freedom of belief, viz. agnosticism, freethinking, atheism and rationalism; (b) would not carry the negative connotations of intolerance and discrimination and would therefore be neutral; and (c) would be easy to use.

Recommendations address four main areas: the interdependence of human rights, religious extremism, "sects" and "new religious movements", and women. The report recommends that:

- ♦ the necessary resources to undertake a study on "proselytism, freedom of religion and poverty" be provided to the SR, on the basis that action to promote religious freedom, tolerance and non-discrimination is closely linked to action to promote democracy and development; and extreme poverty in particular can render all rights and freedoms illusory and encourage extremism and violence;
- ♦ a study be made of religious extremism and that a "minimum set of standard rules and principles of conduct and behaviour in respect of religious extremism" be defined and adopted by the international community, on the basis that religious extremism: can produce situations which are difficult to control and can imperil the human right to peace; constitutes an assault on both freedom and religion; is not limited to any society or religion; and, when tolerated, is tolerance of the intolerable and must be condemned unequivocally and combatted;
- ♦ the necessary resources be made available to enable the SR to initiate studies of the problem of "sects and new religious movements", on the basis that: the issue of "sects" or "new religious movements" is complicated by the fact that international human rights instruments provide no definition of the concept of religion and do not mention the concepts of "sect" and "new religious movement"; although the idea of a sect was originally a neutral one — and meant a community of individuals constituting a minority within a religion and having split from it — the term often now has a pejorative connotation and is frequently regarded as synonymous with danger, and sometimes a non-religious dimension when it is identified as a commercial enterprise; and the term "sect" therefore needs further clarification, as do the terms "religions", "new religious movements" and "commercial enterprise"; and
- ♦ a study of discrimination against women attributable specifically to their status as women within churches and religions be undertaken.

### Resolution of the Commission on Human Rights

Under agenda item 18 the Commission adopted by consensus one resolution (1998/18). The Commission, *inter alia*: emphasized that the right to freedom of thought, conscience, religion and belief encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others; condemned all forms of intolerance and discrimination based on religion or belief; urged states to ensure that their constitutional and legal systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all without discrimination, including provision for effective remedy; urged states to ensure that no one in their jurisdiction is deprived of the rights to life, liberty or security of person because of religion or belief; urged states to take all necessary actions to combat hatred, intolerance, violence, intimidation and coercion motivated by intolerance based on religion or belief, including practices which violate human rights for women and discriminate against women; urged states to recognize the right of all persons to worship or assemble, ensure that relevant authorities respect different religions and beliefs, ensure that religious places, sites and shrines are fully respected and protected, and promote

and encourage, through the educational system and other means, religious tolerance and respect; emphasized that restrictions on the freedom to manifest religion or belief are permitted only as prescribed by law, necessary on the bases set out in relevant international human rights instruments (e.g., public safety, public morals) and are applied in such a way as not to vitiate the right itself; stressed the need for the SR to apply a gender perspective, *inter alia*, through the identification of gender-specific abuses; extended the mandate of the SR for a further three years; stated the desirability of enhancing the UN's promotional and public information activities related to freedom of religion or belief and ensure the widest possible dissemination of the Declaration by UN information centres and others.



## SPECIAL PROCEDURES OF THE COMMISSION ON HUMAN RIGHTS

During the preparatory process leading up to the 1993 World Conference on Human Rights, an informal meeting of special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures of the Commission on Human Rights was held in Geneva, and a second informal meeting was held in Vienna during the conference. The Vienna Declaration and Programme of Action, in its section entitled "Implementation and monitoring methods", underlined "the importance of preserving and strengthening the system of special procedures" and specified that "the procedures and mechanisms should be enabled to harmonize and rationalize their work through periodic meetings" (Part II, para. 95). Following the World Conference a system of annual meetings was established. The first meeting was held in May 1994 (E/CN.4/1995/5, Annex), the second in May 1995 (E/CN.4/1996/50, Annex) and the third in May 1996 (E/CN.4/1997/3).

In May 1997 the special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures again met in Geneva. The report of the fourth meeting (E/CN.4/1998/45, Annex) contains a summary of discussions on, *inter alia*: cooperation with the Commission on Human Rights; the independence, impartiality and coordination of the special procedures system; cooperation with the High Commissioner for Human Rights (HCHR); coordination with the treaty bodies; integrating HIV/AIDS; cooperation with the Secretary-General, including coordination between the special procedures system and the Security Council and General Assembly; and the draft manual for special rapporteurs/representatives, experts and working groups. There are six appendices to the report among which one refers to the mandates of the special procedures and another to the terms of reference for fact-finding missions by special rapporteurs and representatives.

On the question of coordination of the special procedures system, it was recalled that the third meeting had recommended the appointment of a focal point within the Office of the High Commissioner for Human Rights (OHCHR) (then, the Centre for Human Rights) who would act as a clearing-house regarding the *in situ* visits of special rapporteurs and the HCHR. The focal point was also suggested as a means to stimulate a dialogue between the special rapporteurs and the High Commissioner so that the special rapporteurs were able to contribute to the preparation of missions. The question of improved coordination among the procedures was also discussed. The meeting noted the need to develop techniques for ensuring that there was effective coordination among the various special procedures and advisory services mechanisms, and between them and the field operations.

In discussion on coordination with the human rights treaty bodies a number of points were made, including: the lack of support given to special rapporteurs by states; the need for a more organic cooperation between the treaty bodies and the special rapporteurs; a need to change the policy at UN Headquarters which suggested that political and humanitarian interests superseded human rights; a need to integrate economic, social and cultural rights more fully into the work of the special rapporteurs; and a need to integrate concerns related to HIV/AIDS into the work of special procedures.

The meeting also addressed administrative and budgetary issues, including: insurance while performing tasks related to the mandates; financial resources related to various areas of work and activities, including missions and consultations; staff assistance while on mission; absence of contract security for staff of the OHCHR, the associated lack of continuity in staffing and the multi-tasking of staff to several mandates; and failure to provide those on mission with the UN "*laissez-passer*" which, in some cases, hindered access to and movement within countries while on mission.

On the issue of independence and impartiality, the meeting recalled, *inter alia*, that: the World Conference on Human Rights had requested all states "to cooperate fully" with the special procedures and related mechanisms (A/CONF.157/24 (Part I), sect. II, para. 95); the procedures, owing to the public nature of their reports, had increased general awareness of respect for human rights and had won wide recognition among defenders of human rights, non-governmental organizations and individuals; and the special rapporteurs and working groups were guided by, and tried to reflect in their working methods, the principles of neutrality, non-selectivity and objectivity. Following on these and other points, the meeting reaffirmed general principles and criteria, including: the special rapporteurs are independent experts, as reflected in both the form and the substance of their communications; the special rapporteurs and working groups perform their tasks with strict impartiality and objectivity, the only guidelines or yardsticks for analysing the situations covered by their mandates being the Universal Declaration of Human Rights, the

international human rights instruments to which the states concerned are party, and other extra-conventional instruments adopted within the UN system; the special rapporteurs' investigations are not judicial inquiries; the special rapporteurs are agents not of confidential but of public procedures and their relations with the press are governed by the basic principle of transparency; and the special rapporteurs are organs of the Commission on Human Rights and as such benefit throughout their mandates and beyond, in respect of matters connected with their mandates, from the privileges and immunities, *inter alia* from search, seizure, prosecution and arrest, enjoyed by the UN.

The meeting recommended, *inter alia*, that:

- ♦ the Activities and Programmes Branch of the OHCHR develop systems for effective coordination among various special rapporteurs/representatives, experts and working groups of the special procedures of the Commission on Human Rights and of the advisory services programme, and between them and the field operations of the High Commissioner for Human Rights, in particular to facilitate a regular flow of information on their activities, to transmit information from one mandate to other relevant mandates, and to encourage joint activities;
- ♦ thematic rapporteurs and working groups consult with the country-specific rapporteurs prior to undertaking or seeking a field mission;
- ♦ the Secretariat devise modalities to improve cooperation between the special procedures system and the treaty bodies;
- ♦ a representatives of the special procedures participate in the annual meetings of the persons chairing the human rights treaty bodies;
- ♦ consideration be given to issuing laissez-passers to special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures and the advisory services programme of the Commission on Human Rights when they undertake field missions;
- ♦ the limited human resources presently available to the holders of special procedures mandates not be further diminished under the new structure of the OHCHR; and
- ♦ technical cooperation continue to function as a separate entity and not be merged or amalgamated with the special procedures owing to the different nature of the respective activities.

The meeting also reiterated several recommendations made at the conclusion of the third meeting, including, *inter alia*, that:

- ♦ a study be carried out on the conditions under which the HCHR could intervene with a given country to facilitate the follow-up of recommendations by the holders of human rights mandates; and

- ♦ the HCHR convey suggestions concerning a follow-up procedure to the special rapporteurs/representatives, experts and working groups before their fifth meeting is convened.

Appendix V of the report sets out the terms of reference for fact-finding missions. These terms include that the government guarantee:

- ♦ freedom of movement in the whole country, including facilitation of transport, in particular to restricted areas;
- ♦ freedom of inquiry, in particular as regards: (a) access to all prisons, detention centres and places of interrogation; (b) contacts with central and local authorities of all branches of government; (c) contacts with representatives of non-governmental organizations, other private institutions and the media; (d) confidential and unsupervised contact with witnesses and other private persons, including persons deprived of their liberty; and (e) full access to all documentary material relevant to the mandate;
- ♦ assurance that no persons, official or private individuals who have been in contact with the special rapporteur/representative in relation to the mandate will for this reason suffer threats, harassment or punishment or be subjected to judicial proceedings;
- ♦ appropriate security arrangements without, however, restricting the freedom of movement and inquiry referred to above; and
- ♦ extension of these same guarantees and facilities to the appropriate UN staff who will assist the special rapporteur/representative before, during and after the visit.



## TECHNICAL COOPERATION AND ASSISTANCE

### Report of the Secretary-General

The report of the Secretary-General on technical cooperation in the field of human rights (E/CN.4/1998/92) provides an overview of the programme and budget and information on, *inter alia*: new developments in technical cooperation, new approaches to cooperation within the UN system, assistance to national human rights institutions, support to the Voluntary Fund, a global assistance strategy, and activities carried out in 1997. (More detailed information, including the specific types of assistance available under the programme, is available in Human Rights Fact Sheet No. 3, Rev. 1).

According to its mission statement, the technical cooperation programme in the field of human rights is a UN programme implemented under the leadership of the

High Commissioner for Human Rights aimed at assisting governments, at their request, in promoting and protecting human rights at the national and regional levels. In particular, assistance is provided on incorporating international human rights standards in national laws, policies and practices and building national capacity and regional structures for the promotion and protection of all human rights, democracy and the rule of law. All assistance provided by the Office of the High Commissioner for Human Rights (OHCHR) under the technical cooperation programme is based on the international standards contained in the human rights instruments adopted by the UN and on international practice in applying those standards in all regions of the world. Programme activities are carried out within the context of national development objectives and coordinated UN system assistance in support of those objectives.

The programme offers a wide range of human rights assistance including: the creation and strengthening of national human rights institutions; human rights training and support to parliament, the judiciary, and police, military and prison officials; constitutional assistance; legislative reform and the administration of justice; the establishment and strengthening of national human rights institutions; the human rights aspects of free and fair elections; the promotion of human rights education, including curriculum development; and support to non-governmental organizations (NGOs) and civil society institutions. Expert advice and assistance is also available for specific human rights issues, such as the formulation and implementation of comprehensive human rights national plans of action; compensating victims of human rights abuses; and assisting with projects relating to economic, social and cultural rights and the right to development. Assistance may take the form of expertise, advisory services, training courses, workshops and seminars, fellowships, grants and the provision of information and documentation. In carrying out technical cooperation activities, OHCHR draws upon a roster of experts having specialized knowledge and experience in key areas addressed under the programme. The expertise developed among staff members is also used to implement technical cooperation activities.

The report notes that the High Commissioner has established that the programme should focus on countries or regions in transition to democracy. Priority is also given to technical cooperation projects responding to the needs of less developed countries. Other important factors determining possible programmes of technical cooperation are: specific recommendations made by the UN human rights treaty bodies; recommendations by the Commission on Human Rights and its mechanisms, including the representatives of the Secretary-General, the special rapporteurs on thematic or country situations and the various working groups; the recommendations adopted by the Board of Trustees of the Voluntary Fund for Technical Cooperation in the Field of Human Rights (established by Commission resolution 1987/38); and the views expressed by national human rights institutions and national and international NGOs. The report

also notes that it is the policy of the High Commissioner that all assistance provided under the technical cooperation programme must be carried out in close coordination with other UN bodies and agencies. In every case, the focus is on coordinated national capacity building, aimed at sustained development progress and the eventual obsolescence of external assistance.

The total expenditure for technical cooperation in 1997 was US\$7.8 million, of which US\$2.2 million was financed through the UN regular budget and US\$5.6 million was financed through the Voluntary Fund. As of 31 December 1997, a total of 53 projects were either being implemented or had been approved and were scheduled to begin in 1998.

Under the new structure of the OHCHR, which became effective as of 1 February 1998, the Advisory Services and Field Activities Methodology Team has overall responsibility for the technical cooperation programme in the Activities and Programmes Branch. The team has responsibility for ensuring: the effective management of the Voluntary Fund; staff capacity for managing the technical cooperation project cycle for all ongoing and pipeline projects in a timely manner; the application of effective policy and procedures for technical cooperation; that policy based on transparent criteria is applied in the consideration of new requests for technical cooperation assistance; and the implementation of the Human Rights Fellowship Programme and all global and interregional projects. The team also has overall responsibility for effective support for human rights field presences, including guidance and support for technical cooperation activities which are implemented by OHCHR field offices.

The report recalls that both the General Assembly and the Commission on Human Rights have recently requested the High Commissioner to accord priority to the establishment and strengthening of national human rights institutions. The post of Special Adviser on National Institutions, Regional Arrangements and Preventive Strategies to the High Commissioner for Human Rights has been established and OHCHR activities in support of national institutions can be broadly divided into two areas: the provision of practical advice and assistance to those involved in the establishment of new national institutions or the strengthening of existing ones; and facilitating international and regional meetings of national institutions.

The report notes that, in most cases, the OHCHR responds to a government's request for assistance by conducting an assessment of the country's particular needs, priorities and capacities in the field of human rights. The subsequent report provides the framework for developing possible future technical cooperation activities to strengthen national efforts in identified areas and contribute to the achievement of national objectives, ensures coordination with existing or planned assistance from other donors and sometimes facilitates additional support from other international sources. In 1997: (a) needs assessment missions were undertaken in

Gabon, Mali and Panama; (b) project formulation missions were undertaken in Gabon, Lesotho, FYR Macedonia, Madagascar, Russia, Uganda, Tanzania and Yugoslavia (for a global project); (c) project monitoring missions were undertaken in Armenia, El Salvador, Moldova, Palestine, Panama (regional project), Papua New Guinea, Paraguay and Togo; and (d) independent evaluations were carried out in connection with projects in Benin, Equatorial Guinea, Mongolia, Poland and Yugoslavia (global project).

Training materials prepared by the OHCHR, as part of its efforts to tailor training of trainers' courses for specialized audiences, are focussed on the training needs for: the police; prison officers; primary and secondary schoolteachers; legal professionals (judges, magistrates, prosecutors and lawyers); national and local NGOs; the media; and human rights monitors. In addition, three human rights handbooks, on constitutions, parliament and conflict resolution, and a publication for children are to be prepared under the human rights education project currently being implemented.

In 1997, 21 projects were approved by the High Commissioner for Human Rights. The national projects were to be undertaken in: Burundi, a one-year follow-up project to support efforts to fight impunity and promote reconciliation; Ecuador, a nine-month project to assist the government in meeting its reporting obligations under international human rights treaties; Georgia, a three-year project aimed at providing public access to UN human rights information and documentation, strengthening respect for human rights in the administration of justice and developing the human rights capacity of NGOs, the media and civil society; Guinea, a one-year project to provide assistance aimed at building national training capacity in the administration of justice, particularly the police and the prison service; Honduras, a short-term project focussed on assisting the government in reporting under the International Covenant on Economic, Social and Cultural Rights (ICESCR); Namibia, a two-year project to strengthen national human rights capacities through support to the human rights documentation centre and justice training centre at the University of Namibia and by providing human rights training and assistance to various state bodies and civil society organizations; Moldova, the second phase of a multi-year joint project with UNDP for the establishment of a national human rights commission; Morocco, a two-and-a-half year project to assist in implementing a plan of action to introduce human rights into the national education system at the secondary level; Panama, a one-year project to assist the police in integrating human rights concerns into their daily work; Papua New Guinea, a seven-month follow-up project to facilitate the establishment of a human rights commission; Paraguay, a one-year project to assist the government in developing a human rights national plan of action; and South Africa, a two-year project to strengthen national human rights capacities in government as well as in the Human Rights Commission and Justice College. Regional and interregional projects were also approved.

The report notes that during 1997, requests for assistance were received from: Chad (strengthening national human rights commission), Cape Verde (reporting obligations), China (human rights documentation), Ethiopia (needs assessment), Guyana (reporting obligations), Niger (strengthening human rights structures), Sudan (technical assistance) and Zambia (administration of justice). As of 31 December 1997, country specific projects were at an advanced stage of preparation or approval for Azerbaijan, Belarus, Bolivia, Chile, FYR Macedonia, Gabon, Lesotho, Madagascar, Philippines, Russia, Sierra Leone, Tanzania and Uganda.

The UN Technical Cooperation Programme is funded from the regular UN budget and the Voluntary Fund for Technical Cooperation in the Field of Human Rights, which became operational in 1988. The Fund receives an average of US\$3 million annually. As of 30 September, contributions for 1998 had totalled US\$5.6 million. The main contributors to the Fund have been the European Union, Switzerland, Australia, Japan, New Zealand, Canada and the United States. In recent years a number of developing countries have also contributed to the Voluntary Fund, including India, Lebanon, Latvia, Mauritius, Mexico, the Philippines and South Africa. Figures as of 31 October 1997 indicate that the main beneficiaries of the Fund include: Africa (26 per cent), Arab states, mainly Palestine (11 per cent), Asia and the Pacific (10 per cent) and Latin America (22 per cent).

As of 31 December 1997, it was estimated that approximately US\$11.6 million would be needed to fund both ongoing and pipeline projects.

### Resolution of the Commission on Human Rights

Under agenda item 17, the Commission adopted by consensus a resolution on advisory services, technical cooperation and the UN Voluntary Fund for Technical Cooperation in the Field of Human Rights (1998/57). The Commission, *inter alia*: recalled that the World Conference on Human Rights called for an enhanced programme of advisory services, as well as for a more efficient and transparent management of the programme; declared that advisory services and technical cooperation provided at the request of governments, with a view to developing national capacities in the field of human rights, constitute one of the most efficient and effective means of promoting and protecting all human rights and democracy; welcomed the increasing number of requests for advisory services and technical cooperation as an expression of the growing commitment of states to promote and protect human rights; encouraged all states in need of assistance to consider making use of advisory services and technical cooperation in order to achieve the full enjoyment of all human rights; encouraged the High Commissioner for Human Rights to continue to develop the potential for the provision of advisory services and technical cooperation; reaffirmed that the provision of advisory services and technical cooperation does not exempt any country from the monitoring activities of the

human rights programme, and noted that, in order to help produce lasting results, monitoring and preventive activities may need to be accompanied by promotional activities through advisory services and technical cooperation; welcomed efforts to integrate economic, social and cultural rights as well as a gender perspective into the technical cooperation programme; welcomed the enhanced cooperation between the OHCHR and the UNDP; invited relevant UN treaty bodies, special rapporteurs and special representatives, as well as working groups, to continue to include in their recommendations, whenever appropriate, proposals for specific projects to be realized under the programme of advisory services and technical cooperation in the field of human rights; requested the Secretary-General to, *inter alia*: (a) ensure efficient management of the Voluntary Fund, strict and transparent project management rules, periodic evaluations of the programme and projects, and the dissemination of evaluation results, as well as to arrange for the holding of information meetings open to all states and organizations directly involved in the advisory services and technical cooperation programme; and (b) submit an analytical report to the Commission's session in the year 2000 on the progress and concrete achievements made as well as obstacles encountered in the implementation of the programme of advisory services and technical cooperation and on the operation and administration of the Voluntary Fund for Technical Cooperation in the Field of Human Rights.



## TORTURE

### Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

The Commission on Human Rights established the mandate on the question of torture at its 1985 session and has renewed it as required since then. The focus of the work is primarily torture but there is scope within the mandate to consider cases within a "grey zone" related to other forms of cruel, inhuman and degrading treatment, such as corporal punishment. The Special Rapporteur (SR) in 1998 was Nigel S. Rodley.

Taken together, the reports to the 1998 Commission (E/CN.4/1998/38; E/CN.4/1998/38/Add.1) are generally a summary of cases taken up by the SR, with a more detailed narrative provided in the addendum to the main report. Regular communications were sent to 45 governments on behalf of 380 individuals and 24 groups involving about 655 persons. Of these, about 74 were known to be women and about 56 were known to be minors. In addition, 119 urgent appeals were transmitted to 45 governments on behalf of some 563 individuals (at least 19 known to be women and 9 known to be minors), as well as 22 groups (one involving about 780 children). Allegations of a general nature regarding torture prac-

tices were also sent to some governments. The report notes that 28 governments provided replies on approximately 345 of the cases submitted during the period under review and 19 responded to some 290 cases from previous years.

Features and characteristics of the individual cases and general concerns handled by the SR included, *inter alia*:

- ◆ amputation as a form of punishment and extreme forms of corporal punishment often specifically inflicted on women who were considered to have been involved in "offences of a moral nature"; the use of stoning, lashing or flogging, sometimes for offences of a moral nature;
- ◆ torture and ill treatment during periods of incommunicado detention in police and gendarmerie stations, military security centres and secret detention centres, reportedly to extract information and force the signing of confessions in the form of written statements and as a form of punishment; with the methods used including a cloth stuffed in a detainee's mouth followed by large quantities of dirty water and chemicals, burns inflicted with a torch, electric shocks to sensitive parts of the body; tying a rope around the penis and/or testicles or placing the genitals between drawers, burnings by cigarettes, insertion of objects or glue into the anus, suspension, rape, pumping of salt water into the stomach, and the boring of holes in limbs or breaking of them;
- ◆ denial of independent medical supervision during incommunicado detention and thereafter or delays in medical examinations which were then carried out by government-appointed doctors;
- ◆ legal provisions by which forensic medicine services are subordinate to the security forces, stipulating that only a medical examination authorized by a police authority was valid in court, the latter causing some victims of possible acts of torture or ill treatment to be reluctant to seek such authorization for fear of reprisals;
- ◆ a substantial incidence of torture or other ill treatment inflicted by members of the police against street children at both the time of arrest and during detention at police stations, including beatings with fists, boots, electric shock batons, clubs, chains, rubber hosing, boxing gloves or a metal rod with a ball attached and beatings on the soles of the feet, sometimes with electric batons, detention in places in which there were no beds or blankets, and sometimes no food, and refusal of permission to use the toilets;
- ◆ the widespread use of torture against persons arrested for political reasons with reports indicating that some prisoners were stuffed into burlap sacks and thrown into a river;
- ◆ poor prison conditions, including the use of torture and ill treatment as a means of discipline and punishment, a prevalence of contagious diseases such as

tuberculosis, lack of adequate medical care for prisoners, bans on visits from relatives and lawyers, provision of insufficient quantities of food and the practice of serving the food provided from filthy buckets which were often infested with insects;

- ♦ the use of disproportionate or unnecessary force by police officers while trying to restrain or arrest individuals and ill treatment in police custody directed mainly against foreigners, including asylum seekers, or members of ethnic minorities;
- ♦ court approved use of “moderate physical pressure” under certain circumstances, including violent shaking, tying the victim in painful positions, forcing the victim to sit or stand in painful positions, hooding — often with malodorous sacks, sleep deprivation, enforced squatting, exposure to loud music, and threats, including death threats;
- ♦ torture and ill treatment against persons forced to perform portering duties or unpaid labour, including such punishments as repeated beatings with bamboo sticks or rifle butts and deprivation of food, water, rest and medical treatment; excessive use of force by police in response to student and other kinds of popular demonstrations;
- ♦ contributing factors to torture and ill treatment, including facilitation of such practices through legislation, impunity and collusion of government officials with non-state actors; and
- ♦ use of chain gangs to perform heavy manual labour such as rock-breaking or clearing rubbish from the highway, while shackled together (or with their own legs chained together) with metal chains, exposed to the public, guarded by armed officers and dogs; handcuffing prisoners to a rail in the hot sun as punishment for refusal to work, causing numbness, dizziness and pain; abusive use of electro-shock stun belts and stun guns which incapacitate an inmate by transmitting electric shocks, reportedly causing high levels of pain and possibly resulting in serious injuries and even death in certain circumstances.

In setting the context for recommendations in the 1998 report, the SR stated that, in the past, the focus was on measures that could be taken by the countries where the torture took place. The SR reiterated that impunity of the perpetrators is at the heart of the problem, whether by leaving detainees at the unsupervised mercy of their captors and interrogators without access to the outside world (incommunicado detention) — thus ensuring that evidence of the crime of torture will not emerge — or by other means of manipulating the criminal justice system so as to prevent torturers from being brought to justice. This may be done by passing laws aimed at relieving the perpetrators from criminal responsibility (amnesties, acts of indemnity and so on), that is, *de jure* impunity, or by procedural means of blocking the workings of justice, that is, *de facto* impunity.

Bearing in mind that the 1998 report was prepared prior to the June 1998 Rome meeting which adopted the statute for the International Criminal Court (ICC), attention was given to measures that can be taken by the international community, within the context of the ICC, to help end impunity for human rights violations such as torture. The report refers to proposals under which nationally granted amnesties could have been introduced as a bar to the proposed court’s jurisdiction and characterizes any such move as subversive not only to the project at hand, but of international legality in general. The SR stated that the granting of such an exception would gravely undermine the purpose of the proposed court, by permitting states to legislate their nationals out of its jurisdiction as well as international legality, because it is axiomatic that states may not invoke their own law to avoid their obligations under international law. The SR stated that since international law requires states to penalize the types of crime contemplated in the draft statute of the court in general, and torture in particular, and to bring perpetrators to justice, the amnesties in question are, ipso facto, violations of the concerned states’ obligations to bring violators to justice. The SR also stated: the proposed court will not offer a panacea to problems of impunity at the national level; it will take time for the institution to come into existence and be applicable to all states; it cannot be expected to have the resources to try all offenders; in many cases, the court will not have the suspects in its hands. On that basis, the SR asserted: it is necessary to look to national criminal jurisdictions to play a major role in imposing justice; national jurisdictions do not need to be territorial, that is, of the state where the crime was committed; in fact, it is the failure of territorial jurisdiction that is the problem; and, in respect of the crimes under consideration, such as torture, universal jurisdiction is applicable, that is, jurisdiction exercised on the basis simply of custody.

The report notes, *inter alia*, that:

- ♦ under the Geneva Conventions of 12 August 1949 and the Convention against Torture states are required to bring to justice any perpetrators of torture they find within their jurisdiction, regardless of their nationality or that of their victim(s) or of where they committed the crime, if states do not extradite such perpetrators to another country wishing to exercise jurisdiction;
- ♦ states are permitted to exercise such jurisdiction and, therefore, the problem is that, all too often, they have not amended their national legislation to permit their law enforcement authorities and institutions for the administration of justice to act accordingly, meaning that the perpetrators may escape justice completely; and
- ♦ impunity arising from states failing to exercise jurisdiction is especially unfortunate when the state having custody of the individual can neither return the person to the country of origin for fear of the person being tortured or otherwise persecuted, nor send him or her to another country because of similar fears.

The SR urged all states to review their legislation with a view to ensuring that they can exercise criminal jurisdiction over any person in their hands suspected of torture or, indeed, of any crime falling within the notions of war crimes or crimes against humanity. The SR further recommended that states should refrain from granting or acquiescing in impunity for human rights violations at the national level, since such impunity is, itself, a violation of international law.

### **General Comment on article 3 of the Convention by the Committee Against Torture**

Article 22 of the Convention against Torture establishes a complaint procedure through which the Committee may, if the government concerned has made a declaration, "receive and consider communications from or on behalf of individuals ... who claim to be victims of a violation ...". In May 1996, the Committee decided to establish a working group to examine questions relating to articles 3 and 22 of the CAT. This decision was taken in response to the fact that most of the individual communications received under article 22 concerned cases of persons under an order of expulsion, return or extradition who alleged that they would be in danger of being subjected to torture were they expelled, returned or extradited. The Committee felt that some guidance should be given to states parties and to those submitting communications so as to enable them to correctly apply the provisions of article 3 in the context of the procedure set out in article 22. On 21 November 1997, the Committee adopted a general comment on this issue (A/53/44, Chapter V and Annex IX).

The General Comment established: article 3 is confined in its application to cases where there are substantial grounds for believing that the person concerned would be in danger of being subjected to torture as defined in article 1 of the Convention; the phrase "another State" in article 3 refers to the state to which the individual concerned is being expelled, returned or extradited, as well as to any state to which the person may subsequently be expelled, returned or extradited; and the criterion of "a consistent pattern or gross, flagrant or mass violations of human rights" refers only to violations by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. Concerning admissibility, the Committee stated that it is the responsibility of the author of the communication to establish a *prima facie* case.

In terms of merits, the Committee decided: the burden is upon the author to present an arguable case and there must be a factual basis for the author's position sufficient to require a response from the state party; the risk of torture must be assessed on grounds that go beyond mere theory or suspicion but the risk does not have to meet the test of being highly probable; and the author must establish the danger of being tortured, that the grounds for so believing are substantial, and that such danger is personal and present.

Pertinent information to substantiate the claim was seen to include, but not be limited to: evidence of a consistent pattern of gross, flagrant or mass violations of human rights in the state concerned; past or recently past instance(s) of torture or maltreatment against the person by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity; medical or other independent evidence to support a claim of torture or maltreatment in the past; whether or not the torture had after-effects; an indication of whether or not the situation had changed, including the internal situation in respect of human rights; whether or not the author engaged in political or other activity within or outside the country which would increase the risk of being placed in danger of torture were expulsion, return or extradition to the country in question carried out; evidence as to the credibility of the author; and whether or not there are there factual inconsistencies in the claim of the author and, if so, their relevance.

The Committee noted that it is not an appellate, a quasi-judicial or an administrative body, but rather a monitoring body with declaratory powers only. On that basis, it was decided: considerable weight will be given to findings of fact that are made by organs of the state party concerned; and the Committee is not bound by such findings and instead has the power of free assessment of the facts based upon the full set of circumstances in every case.

### **Optional Protocol to the Convention against Torture**

At its 1992 session, the Commission adopted resolution 1992/43 by which it established an open-ended working group to elaborate a draft optional protocol to the Convention against Torture. The Commission agreed to use a draft text proposed by Costa Rica (E/CN.4/1991/66) as a basis for discussions. When completed and adopted the optional protocol will allow the Committee against Torture to travel to any country at any time to visit detention centres, meet with police officials and prison staff, interview detainees and generally observe how the Convention is being implemented. The intention is to prevent torture rather than to react once it has taken place.

The open-ended working group elaborating the draft optional protocol has reported to the Commission each year since 1993. Annex I of the report to the 1998 session (E/CN.4/1998/42; E/CN.4/1998/42/Corr.1) contains the text of the articles adopted, to date, for the optional protocol. In general terms these articles relate to: the establishment of a Sub-Committee of the Committee against Torture and its mandate; cooperation between the Sub-Committee and the government concerned; the guiding principles under which the Sub-Committee's work will be taken; the composition of and election process for the Subcommittee; stipulations regarding the scheduling of missions by the Sub-Committee; modalities for conducting missions — membership and composition; establishment of a roster of experts to assist the Sub-Committee; financial resources and the establishment of a

Special Fund; the process for signature, ratification and accession; the scope of application of the protocol; denunciation by a state party to the protocol; acceptance by states of amendments; privileges and immunities of Sub-Committee members and mission personnel; and responsibilities of personnel while on mission. Annex II contains draft text for a number of articles that will be considered at future sessions of the Working Group. These texts generally related to: state responsibility to allow visits; the objects of a visit; the establishment of a regular programme of missions to each state party and other missions as required; and, notification of intent to visit.

### Voluntary Fund for Victims of Torture

The UN Voluntary Fund for Victims of Torture was established in 1981 to receive voluntary contributions from governments, private organizations, institutions and individuals, for distribution to persons who have been tortured and to members of their families. The Fund is administered by the Secretary-General with the assistance of a Board of Trustees composed of a chairman and four members with wide experience in the field of human rights.

The Fund began to operate in 1983 and by the end of 1988, 131 subsidies, totaling more than \$3.6 million, were granted for 67 projects in 32 countries on four continents. Most of the subsidies were used to finance therapy and rehabilitation projects, which accounted for 90 per cent of the subsidies recommended in 1987, with the balance allotted to training projects. The purpose of these projects is to enable victims and their families once again to lead productive, normal lives within their community. The training component of the Fund's activities makes it possible to finance training for specialists from the medical professions in the special techniques needed to treat the victims of torture.

The reports of the Secretary-General on the status of the Voluntary Fund (E/CN.4/1998/37; E/CN.4/1998/37/Add.1; E/CN.4/1998/37/Add.2) note that as of 10 December 1997 a total amount of US\$1,170,499 was available for disbursement. Contributions were pledged by Algeria, Andorra, Argentina, Austria, Belgium, Brazil, Canada, Chile, Cyprus, Denmark, Finland, France, Germany, Greece, the Holy See, Iceland, Israel, Italy, Japan, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, the Philippines, Portugal, Senegal, Spain, Sri Lanka, Switzerland, Tunisia, the United Kingdom, the United States, and Venezuela.

In order to meet all the requests for assistance in May 1997, the Fund would have needed more than US\$6.8 million, whereas it had only US\$3 million. As of 10 December 1997, only US\$1,170,499 from voluntary contributions had been received. Provided that the amount of grant requests stays at the same level as in 1997, the Fund needed an additional amount of US\$5,629,501 by 30 April 1998 in order to satisfy the requests. If all contributions pledged for 1997 were paid

by 30 April 1998, a total of US\$4,213,719 would be available. An additional amount of US\$2.6 million would, however, still be needed.

### Resolutions of the Commission on Human Rights

Under agenda item 8 the Commission adopted by consensus two resolutions related to torture.

The first included references to the UN Voluntary Fund (1998/38). The Commission, *inter alia*: recalled that freedom from torture and ill treatment is a non-derogable right under international human rights instruments; found the widespread occurrence of torture and ill treatment appalling; called on governments to implement fully the prohibition on torture and ill treatment; urged all governments to abrogate legislation leading to impunity for those responsible for grave violations of human rights, including torture; reminded governments that corporal punishment can amount to cruel, inhuman or degrading punishment or even torture; stressed that allegations of torture and ill treatment should be promptly and impartially examined by the competent national authority; stressed that those who encourage, order, tolerate or perpetrate such treatment must be held responsible and severely punished; stressed that national legal systems should ensure that victims of such acts obtain redress, are awarded fair and adequate compensation and receive appropriate socio-medical rehabilitation; and reminded all states that prolonged incommunicado detention may facilitate torture and can itself constitute a form of cruel, inhuman or degrading treatment. The Commission also: called on states and the international community to commemorate the UN International Day in Support of Victims of Torture (26 June); urged all states to become parties to the Convention against Torture; stressed that article 4 of the Convention requires states to make torture an offence under domestic criminal law; stressed that torture during armed conflict is a violation of the Geneva Conventions; called on the High Commissioner for Human Rights to provide, on request, advisory services related to the training and education of personnel who may be involved in custody, interrogation or treatment of individuals under arrest or in detention or prison; stressed that personnel not obeying orders to commit torture should not be punished; extended the mandate of the Special Rapporteur (SR) for a further three years; invited the SR to continue consideration of questions related to the torture of children and make appropriate recommendations; invited the SR to present an oral interim report to the 1998 General Assembly and submit a full report to the 1999 Commission; appealed to all governments and others to contribute annually to the Voluntary Fund for Victims of Torture; and, stressed the need for contributions to the Fund on a regular basis and assistance to rehabilitation services for victims of torture.

The second resolution related to the draft optional protocol (1998/34). The Commission, *inter alia*: recalled that the World Conference on Human Rights firmly declared that efforts to eradicate torture should, first and

foremost, be concentrated on prevention and called for the early adoption of an optional protocol to the Convention against Torture; noted that the optional protocol is intended to establish a preventive system of regular visits to places of detention; stated that a final text of a draft optional protocol could be completed in one more session of the open-ended working group; and requested the open-ended working group to meet prior to the 1999 session of the Commission for two, and possibly three, weeks with a view to completing a final and substantive text.

### Resolution of the General Assembly

At its 1998 session the General Assembly adopted a resolution on torture and other cruel, inhuman or degrading treatment or punishment (A/C.3/53/L.23). The General Assembly, *inter alia*: recalled that the World Conference on Human Rights firmly declared that efforts to eradicate torture should, first and foremost, be concentrated on prevention, and called for the early adoption of an optional protocol to the Convention against Torture; urged all governments to abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture, and prosecute such violations; recalled GA resolution 36/151 of 16 December 1981 establishing the UN Voluntary Fund for Victims of Torture; noted the existence of an international network of centres for the rehabilitation of torture victims; recalled GA resolution 52/149 of 12 December 1997 proclaiming 26 June as UN International Day in Support of Victims of Torture; welcomed the report of the Committee against Torture; noted 106 states have become parties to the Convention; urged states that have not yet done so to become parties to the Convention as a matter of priority; invited state parties that have not done so to make the declarations provided for in articles 21 and 22 of the Convention and consider the possibility of withdrawing their reservations to article 20; urged states parties to comply strictly with their obligations under the Convention, including their obligation to submit periodic reports; invited states parties to incorporate a gender perspective when submitting reports to the Committee; urged governments to take fully into account the conclusions and recommendations made by the Committee after consideration of their reports; noted the efforts made to elaborate an optional protocol; called on all governments to cooperate with and to assist the Special Rapporteur of the Commission on Human Rights, in particular by supplying all necessary information, responding appropriately and expeditiously to urgent appeals, giving serious consideration to requests to visit their countries and following up on the SR's recommendations; approved the methods of work employed by the SR; stressed the need for regular exchanges of views between the Committee, the SR and other relevant UN mechanisms and bodies, as well as efforts aimed at cooperation with relevant programmes, notably the programme on crime prevention and criminal justice; expressed its gratitude and appreciation to the governments and others that have already contributed to the Voluntary Fund for Victims of Torture;

appealed to governments and others to respond favourably to requests for contributions to the Fund, if possible on a regular basis and with a substantial increase in the level of contributions; and invited donor and recipient countries to consider emphasizing the protection of human rights and the prevention of torture in their bilateral programmes and projects relating to the training of armed forces, security forces, and prison, police and health-care personnel, and to keep in mind a gender perspective.



## TOXIC AND DANGEROUS PRODUCTS AND WASTES

### Special Rapporteur on the illicit movement and dumping of toxic and dangerous products and wastes

The mandate of the Special Rapporteur (SR) on the illicit movement and dumping of toxic and dangerous products and wastes was established by a 1995 resolution of the Commission on Human Rights (1995/81). The mandate of the SR has four components: investigation and examination of the effects of illicit dumping of toxic wastes and products in African and other developing countries, with particular attention paid to effects on the rights to life and health; receipt of information on the illicit traffic and dumping of such wastes and products in African and other developing countries; recommendations and/or proposals for measures to control, reduce and eradicate this illicit traffic in, transfer to and dumping of such products in African and other developing countries; and production annually of a list of countries and transnational corporations engaged in the illicit dumping of toxic wastes and products in African and other developing countries, as well as production of a census of persons killed, maimed or otherwise injured in developing countries through this practice. In 1998 the Special Rapporteur (SR) was Fatima Z. Ksentini.

With the mandate up for renewal at the 1998 session, the SR prepared three reports for the Commission: the main or general report; a compilation of the replies of governments to information and criticisms contained in the 1997 report; and a report of a mission undertaken to Africa. The mission to Africa reflects the SR's intention, over time, to visit each of the UN's five geopolitical regions — Africa, Asia, Eastern Europe, Latin America and the Caribbean, and Western Europe and Other.

### Main report (E/CN.4/1998/10)

The main report of the Special Rapporteur summarizes replies received from governments and non-governmental organizations. The report also includes a review of cases and incidents referred to the SR involving specific countries [see country profiles for summaries of rel-

evant information]. The narrative on general factors and considerations notes, *inter alia*, that: a range of interrelated factors — legal, economic, social and political — contribute to the emergence and development of the movement of toxic wastes and dangerous products between industrialized and developing countries; during the 1970s increasing public awareness of the harmful effects of expanding production of toxic wastes led a number of industrialized countries to introduce more stringent legislation in that area; despite stronger legislation, waste production has continued to increase. With regard to countries of the Organization for Economic Cooperation and Development (OECD) the SR highlighted several points including that during the 1980s the combined annual production of waste in OECD countries was on the order of 300 million tons; the same OECD countries produce more than 95 per cent of all dangerous wastes and the biggest waste exporters are Germany, the Netherlands, the United States, the United Kingdom and Australia.

Other points covered in the report included: in response to the increasing difficulties and expense associated with the disposal of toxic wastes and dangerous products for industrialized countries, companies sought outlets in the poorest countries, where neither appropriate regulations, an adequate infrastructure nor the human or financial resources existed to allow them to determine the nature of the imported products; in some cases the products were brought into the country, dumped and stored in contravention of the national legislation, either through the use of falsified documents or by bribing officials in the country of origin, the transit country or the country of final destination; during the 1980s Africa was the most frequently targeted continent; in 1995, an amendment to the Basel Convention instituted a prohibition on the export of hazardous wastes, including those destined for recycling, from OECD to non-OECD countries; and, in 1991, the African countries adopted the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement of Hazardous Wastes within Africa but, as of the end of 1997, the Convention had not yet entered into force.

Information received by the SR indicated that despite the prohibitions imposed by the majority of the developing countries on the import of toxic wastes and dangerous products, exports from the industrialized countries have increased, leading to a proliferation of “legal” exporting of wastes for “recycling”. The SR stated that the “legal” transboundary movement of wastes conceals operations to dump hazardous wastes for disposal or permanent storage, the wastes are sent to poor countries lacking the infrastructure for appropriate treatment, and are usually dumped in overpopulated areas in poor regions or near towns. A sharp increase in the trade in wastes for recycling or reuse was noted. In some cases, the recycling operations are fictitious and a pretext for the illicit transport of hazardous wastes that enter a country as “goods” or “products” for reuse to generate energy, for construction or as fertilizer. The report notes that waste traders frequently sell incineration plants to the poorest coun-

tries on the basis that these plants produce free energy from wastes, even though in the industrialized countries they are subject to stringent regulations and even moratoria on their operation, prior to phasing-out.

In terms of other concerns and practices, reference is also made to: increasing quantities of lead battery scrap reportedly being exported to developing countries for recycling as stricter regulations to safeguard the environment and worker health and safety are introduced in the industrialized countries; the fact that a number of products that have been withdrawn from sale or strictly regulated in industrialized countries continue to be freely exported to developing countries, e.g. certain pesticides and pharmaceuticals, asbestos and plastic materials containing dangerous substances; and, the fact that the liberalization and deregulation of international markets, including financial markets, have aided the movement of toxic wastes from the developed to the developing countries by facilitating access to credit and removing licensing conditions and other restrictions previously imposed on waste exporters.

The report notes: at the international level, there are no effective regulatory or monitoring mechanisms; illicit practices benefit from the vague language and ambiguous provisions of the international conventions; the lack of any monitoring or control mechanism, in conjunction with the loopholes in the conventions, allow arrangements to be made at the very fringes of the law and recourse to fraudulent practices is assured of impunity in the absence of administrative sanctions and/or civil or criminal proceedings. Commentary on conditions at the national level noted: the promulgation of legislation at the national level and the international conventions notwithstanding, trade in dangerous wastes is continually developing, assuming ever more elaborate forms as states acquire appropriate legislation; there has been a shift towards economically weak countries and towards areas of tension and conflict where the government, judicial authorities and administrative structures are unable to control the trade and prosecute offenders; in at least one case, humanitarian assistance was used as a cover for dumping toxic products in a country in difficulties; in other cases the traffic in toxic products was reportedly to be closely linked to arms, nuclear materials and drugs trafficking; and the dumping of toxic wastes and dangerous products is becoming an internal problem in particular countries as companies, aided by the complicity or negligence of the central, federal or regional authorities, tended to store wastes in areas and towns inhabited by poor or economically disadvantaged populations or groups that are subject to discrimination in its various forms.

With these and other points in mind, the SR stated that the facts and incidents relating to the illicit movement and clandestine dumping of toxic wastes and products, generally in developing countries or in regions settled by poor or disadvantaged populations or groups suffering from discrimination, were underpinned by fraudulent practices and accompanied by violations of various cate-

gories of rights under the international human rights instruments, not only collective rights but also individual political, civil, social and economic or cultural rights. The rights affected are noted as including the right to life and security of person, health, an adequate standard of living, adequate food and housing, work and non-discrimination, association and freedom of access to information. On the issue of access to information, the report notes that violations of the right hampered action by individuals or groups to prevent the dumping of toxic wastes, to exercise their rights and to mobilize the human and financial resources necessary to deal with the problem. The SR stated that, generally speaking, in the absence of information, the root problem goes unnoticed until an incident occurs with serious consequences for the life and health of individuals as well as irreversible damage to the environment. After the incident, information vital to the victims and their protection is either withheld, falsified, or supplied late or in an incomplete, piecemeal or unusable state. Obstacles are also placed in the way of the exercise of the right to disseminate information, with government authorities citing reasons of national security and transnational corporations claiming commercial confidentiality.

Referring to the practices of transnational corporations, the report refers to information indicating that under these practices other rights are also affected, including peoples' right to self-determination and to dispose freely of their natural resources, the right to development, the right to work, the right to the enjoyment of just and favourable conditions of work and the right to form and join trade unions, the right to strike and participate in collective bargaining, the right to social security and the right to enjoy the benefits of scientific progress and its applications.

The recommendations in the report include, *inter alia*, that:

- ♦ the ability of countries to detect and suppress any attempt to import toxic and dangerous products into their territory be reinforced;
- ♦ international judicial cooperation and exchanges of information be facilitated in order to mount an effective defence against fraud and corruption in the countries of origin, the importing countries and the transit countries and to combat organized trafficking networks;
- ♦ databases be established to facilitate the collection of information on illicit trafficking to assist developing countries, identifying the nature of dangerous products and toxic wastes, the companies that indulge in illicit practices and any organized networks that may be uncovered;
- ♦ the capabilities of the secretariat of the Basel Convention and, at an opportune moment, those of the secretariat of the Bamako Convention, be strengthened;
- ♦ states be encouraged to ratify the Basel and Bamako Conventions and to cooperate fully in the implemen-

tation of their provisions, including those prohibiting the export of dangerous goods, even for recycling, from the industrialized countries to the developing countries;

- ♦ the capacity of developing countries to detect the true nature of products entering their territory be strengthened through, for example, financial assistance, transfer of appropriate technology, provision of analytical laboratories, assistance in setting up domestic databases, the establishment of regional and international centres for the exchange of data and information, and provision of assistance in education for the wider public and training for professionals in health, environment, business, customs, the police, anti-fraud services and the judicial system;
- ♦ governments promulgate specific domestic legislation related to the issue and take measures — including administrative, civil and penal sanctions — to deter individuals, companies and transnational corporations involved in illicit trafficking;
- ♦ bearing in mind that under the Basel Convention and the Bamako Convention, illicit trafficking in toxic wastes and dangerous products is a crime, states take appropriate steps to classify offences relating to illicit movement of such wastes and products as criminal offences under their own domestic law and consider recognizing the criminal responsibility of legal persons;
- ♦ independent national commissions of inquiry with judicial or quasi-judicial powers be instituted in cases of alleged illicit movement or attempted dumping of toxic wastes or dangerous products to: (a) clarify the circumstances surrounding the events; (b) expose any fraud or bribery; (c) prosecute the alleged perpetrators; (d) assess the impact on the environment and on the rights of the persons or communities affected; (e) guarantee effective means of redress so that victims can obtain adequate compensation or reparation; and (f) propose remedies to rectify the situation and to prevent the recurrence of illicit practices;
- ♦ environmental defence organizations, local associations and non-governmental organizations be strengthened to facilitate public education, encourage implementation of preventive measures and assistance to victims; and more states adopt domestic measures to strengthen the judicial remedies exercised by such associations on victims' behalf, if necessary through the courts of the country of origin of the transnational corporation concerned.

#### **Report on the mission to Africa (E/CN.4/1998/10/Add.2)**

The SR visited Pretoria, Johannesburg and Cape Town from 10 to 16 August 1997, Nairobi from 16 to 19 August 1997 — mainly to hold consultations with the secretariat of the United Nations Environmental Programme (UNEP), and Addis Ababa from 19 to 21 August 1997.

During the visit to Ethiopia consultations on the Bamako Convention were held with the secretariat of the Organization of African Unity (OAU) as were meetings with Ethiopian authorities as well as UNDP representatives.

Points arising from meetings with UNEP officials are noted as including: UNEP's lead in negotiations leading to the Basel Convention, in response to pressing complaints about movements of toxic waste; the maintenance by UNEP of a register of potentially toxic chemicals as a tool to enable developing countries to handle them; a joint programme with WHO on chemical safety, further stressing the principle of prior informed consent; and as a result of consultations with both governments and civil society, recognition that training and capacity-building are the most urgent needs of African countries wishing to monitor the products entering their borders.

Discussions with representatives of the Organization of African Unity (OAU) recalled that one more signature is needed for the Bamako Convention to come into force and, further, established that the Bamako and Basel Conventions are complementary. The SR stated that the OAU confirmed that the main problem faced by African countries was the lack of information since they were still not being provided with databases from which to retrieve information. African legislation on toxic waste was also scarce and rarely coherent. The SR emphasized that it is extremely important for the Bamako Convention to enter into force, thus creating a regional, homogeneous response to the issue of toxic waste.

Referring to consultations held with NGOs, the report notes a number of points including, *inter alia*, that: problems pertaining to hazardous waste management in Africa arise partly from a fragmented and uncoordinated approach; weak coordination resulted from the fact that environmental matters and, in particular, the power to regulate hazardous waste, fell within the jurisdiction of several governmental departments; fragmentation of competences also affected access to information, leading to situations in which, at times, no information was available; NGOs expressed the feeling that the environment was still perceived as "the troublemaker" vis-à-vis investments and development although there had been a general improvement in the relationship with environmental NGOs which remains to be formalized and placed within an institutionalized framework. The report notes that, in the countries visited, environmental NGOs focussed on issues related to desertification, the urban environment, biodiversity, women and the environment, maintained programmes on unsafe pesticides, and had as their main focus the provision of better information in different fields, including illegal dumping.

The SR concluded that the main problems, as observed during the field mission, remain: the lack of reliable information on the movements of toxic wastes within countries and across borders; the lack of a database; the absence of adequate legislation both to prevent the import of toxic wastes and deal with fraudulent and other inadmissible practices used by brokers; the means to

implement such legislation; the need for infrastructure, laboratories and testing facilities to determine the nature and characteristics of the wastes. Citing the international implications of the illicit traffic and dumping of toxic and dangerous products and wastes, and the close link to the problem of security, the report notes that dumping of waste frequently occurred in countries where circumstances were such that no central government could take action, with the result that neighbouring countries might be affected as well.

The report recommended that:

- ♦ common action and a clear stand be taken by the international community in cases arising from dumping in countries where security remains a problem and there is no central government;
- ♦ specific projects be developed to be undertaken jointly by the OHCHR, the secretariat for the Basel Convention, OAU, UNEP and interested governments;
- ♦ states that have not done so ratify the Basel Convention and its amendment regarding the ban on exports;
- ♦ efforts be directed to ensure the entry into force of the Bamako Convention;
- ♦ a continuous exchange of information be maintained, aimed at the creation of a regional database;
- ♦ a regional strategy be developed in which the roles of non-governmental organizations, local communities and associations, trade unions, workers and victims are consolidated; and
- ♦ due consideration be given to the potential for freedom of expression, freedom of association and access to effective means of redress contributing — in conjunction with the efforts made by authorities — to effectively combatting the phenomenon of illicit dumping of toxic wastes and its adverse consequences.

#### **Responses from governments to the 1997 report (E/CN.4/1998/10/Add.1)**

The SR's report to the 1997 session of the Commission was criticized by a number of governments, partly on the basis that the information was out-of-date, irrelevant and/or inaccurate or that the cases cited had not been referred to the governments for comment prior to publication. The first addendum to the 1998 main report summarizes the responses of governments to the 1997 report (E/CN.4/1997/19). Comments and responses were received from: Australia, Burma (Myanmar), France, Germany, Indonesia, Japan, Malaysia, New Zealand, Nigeria, the Philippines, South Africa, Turkey, the United Kingdom and the United States. (Summaries of the responses are included in the appropriate country profiles.)

## Resolutions of the Commission on Human Rights

Under the agenda item on economic, social and cultural rights the Commission adopted by roll call vote a resolution on toxic wastes and products (1998/12). The Commission, *inter alia*: affirmed that the illicit movement and dumping of toxic wastes and products constitutes a serious threat to the human rights to life and health, particularly in developing countries that do not have the technologies to process them; noted the increasing rate of illicit movement and dumping by transnational corporations and other enterprises from industrialized countries in African and other developing countries; acknowledged that many developing countries do not have the national capacities and technologies to process such wastes to minimize their adverse effects; condemned the increasing rate of dumping in developing countries; urged all governments to take legislative and other appropriate measures to prevent illegal international trafficking in such wastes and products; invited UNEP and other international agencies and organs to intensify their coordination and cooperation in the area of environmentally sound management of toxic chemicals and hazardous wastes, including the question of transboundary movement; renewed the mandate of the Special Rapporteur for a further three years; and, repeated its request to the Special Rapporteur to include in the next report comprehensive information on persons killed, maimed or otherwise injured in developing countries as a result of such movement and dumping of wastes.

The resolution was adopted by a vote of 33 in favour, 14 opposed, 6 abstentions.



## WOMEN

### Violence against women

The mandate of the Special Rapporteur on violence against women, its causes and consequences was established by the Commission at its 1994 session and renewed in 1997. The Special Rapporteur (SR) in 1997 was Radhika Coomaraswamy.

The report to the 1998 Commission (E/CN.4/1998/54) analyses various forms of violence against women as perpetrated and/or condoned by the state and includes information on, *inter alia*: violence against women in times of armed conflict; custodial violence against women; and violence against refugee and internally displaced women.

In setting the context for consideration of violence against women in times of armed conflict the report states that such violence has been a widespread and persistent practice over the centuries. The SR also points out that: it has been posited that the military establishment is inherently masculine and misogynist; masculinity cults

that pervade military institutions are intrinsically anti-female and therefore create a hostile environment for women; laws drafted in the past few centuries have provided some measure of protection for women during armed conflict and play a significant part in the training of military personnel throughout the world; until recently, violence against women in armed conflict has been couched in terms of "protection" and "honour", reinforcing stereotypical concepts of femininity; and the nature of rape and the silence that tends to surround it makes it a particularly difficult human rights violation to investigate. The SR also noted: the perceived honour of the enemy is targeted in the perpetration of sexual violence against women; rape during warfare has also been used to terrorize populations and to induce civilians to flee their homes and villages; rape is often seen as a "perk" for soldiers and an inducement to display courage on the battlefield, viz. rape is accepted as a natural consequence of war; the alleged endemic nature of rape in war has been institutionalized by military establishments through forced prostitution and military sexual slavery; and, in some situations, forced impregnation has been used as a weapon of war to further humiliate the rape victim by forcing her to bear the child of the perpetrator.

The SR also noted that, increasingly, women are entering the ranks of the combatants and, for the first time, are being charged with war crimes; as a consequence, the standards set out in the Geneva Conventions need to be reformulated to take into account the needs of women prisoners of war and the challenges of women war criminals.

The section of the report dealing with the economic and social consequences on women of armed conflict notes that women experience armed conflict as direct victims, as refugees, and as widows whose husbands have been killed in the conflict. They emerge as the primary breadwinners. Yet without the necessary skills for this task, they become further disempowered. As well, they face special problems associated with the periods of conflict and post-conflict, *inter alia*: areas affected by armed conflict often do not have electricity, water or appropriate housing or medical services; food supply to these areas is also affected; and, as a result of a "brain drain", there is a shortage of qualified medical, psychological and legal professionals. The SR noted that the international community must address the economic empowerment of women, especially war widows and women heads of household, as one aspect of economic reconstruction. Further, the process of reconstruction and reconciliation must take into account the problem of psychological healing and trauma. Centres that employ a victim-centred methodology should be established as an aspect of the reconstruction and rehabilitation process.

The recommendations related to violence against women in times of armed conflict include, *inter alia*, that:

- existing humanitarian legal standards be evaluated and practices revised to incorporate developing norms on violence against women during armed conflict;

- ♦ UN peacekeepers be given necessary training in gender issues before they are sent to troubled areas, and offences committed by peacekeepers be considered international crimes and tried accordingly;
- ♦ the international legal responsibility of non-state actors be clarified under international human rights and humanitarian law so that violations by non-state actors do not meet with impunity;
- ♦ states make every effort to: end impunity for criminal acts under international humanitarian law that occur within their borders and committed by their security forces, including crimes of sexual violence; provide redress for victims, including compensation for injuries and costs, within national mechanisms; and provide economic, social and psychological assistance to victim-survivors of sexual violence during times of armed conflict;
- ♦ every state ensure that evidentiary procedures do not discriminate against women and that they provide protective mechanisms for victims and witnesses in cases of sexual assault;
- ♦ every state ensure that all military and law enforcement personnel undergo systematic gender sensitization training; similar and other training on how to address problems of sexual violence be provided to individuals working in the criminal justice system;
- ♦ non-governmental organizations work towards increasing awareness of the actual situation of women during times of armed conflict through education and training, provide support services for women victims of armed conflict, assist women to become aware of their legal rights and help these women to come forward as victims so that they may end the cycle of impunity; and
- ♦ gender-sensitive documentation methodologies be further refined to protect against retraumatizing or placing at risk victim-survivors of violence against women during the fact-finding process.

The report also included a number of recommendations related to the International Criminal Court. [These recommendations were drafted prior to the Rome conference in June 1998 at which the statute for the ICC was agreed and in which rape and sexual violence were included as punishable offences and within the jurisdiction of the ICC.]

The section of the report dealing with custodial violence against women sets the context by stating that custodial violence against women is a particularly egregious violation of a woman's human rights. The SR acknowledged that violence against women by the state occurs in situations of state psychiatric custody, medical custody, educational custody, and police or penal custody, but focussed on the last form — violence against women which occurs at the hands of the police or military for criminal justice or pseudo-criminal justice purposes.

The report notes that forms of police custody include arrest, detention, preventive detention, pre-trial detention and penal custody. Referring to other forms of custody, the report notes that actions by police or military — such as searches, questioning, intimidation and/or harassment in homes — generally include either an unspoken presumption or direct order that those within the home cannot leave, thereby placing them in de facto, although in many cases unofficial, custody of the state. The report also comments on “psychological confinement”, that is, the fear that was instilled during time in custody which carries over into private lives. The report states that psychological custody must be recognized as a distinct form of custody, for which the state maintains the responsibility for remedy and redress.

On the question of custodial violence against women the report recommends, *inter alia*, that:

- ♦ states abolish “protective custody” and assist non-governmental organizations, in particular by providing financial resources, to create alternatives for women in need of shelter;
- ♦ states work towards the abolition of laws and emergency regulations that curtail the rights of suspects and grant state authorities wide discretionary powers of detention and interrogation, thereby creating a situation conducive to custodial violence;
- ♦ states develop mechanisms of redress for custodial violence and hold perpetrators of custodial violence accountable under national laws;
- ♦ states provide ongoing gender-sensitization training for police and prison personnel; states abolish discriminatory laws and evidentiary rules that lead to disproportionate levels of incarceration of women for crimes like adultery; states provide legal literacy training for women; upon arrest or detention by a state authority, states immediately provide attorneys or advocates for women; and
- ♦ traditional human rights mechanisms make an effort to investigate violence against women in custody, giving such violations the same priority as violence against men in custody, and, in their reporting, consistently incorporate a gender analysis.

The section of the report dealing with violence against refugee and internally displaced women approaches the question from two aspects: first, the persecution such women fear or have suffered which has caused them to leave their home; and second, the risk of the violence they face after having become refugees. The report notes, *inter alia*: gender-based violence serves not only as a basis for flight, but also as a consequence of flight within countries of asylum and/or refugee camps; harmful traditional practices affecting the health of women and girls, especially female genital mutilation; the risk of being killed by their own family members as a result of what is known as “crimes against honour”; and the failure of authorities to protect women from physical abuse,

including domestic violence and rape, inflicted as punishment for failing to conform to the social or cultural norms advocated by their attackers.

On the issue of violence against refugee and internally displaced women, the report recommends, *inter alia*, that:

- ♦ states parties to the 1951 Convention on the Status of Refugees adopt guidelines with respect to gender-related asylum claims;
- ♦ training be provided to health professionals to make them aware of the particular problems faced by women, particularly in relation to gender-based violence; confidential medical and legal assistance, and culturally appropriate, community-based psychosocial counselling for victims and their families be provided to prevent rejection of, and attachment of social stigma to, the victims;
- ♦ as a measure of protection against rape in refugee camps, special accommodations for unaccompanied women and girls be provided and, where practical, women and girls be able to lock their sleeping and washing facilities;
- ♦ women be allowed to make an individual decision regarding repatriation or resettlement;
- ♦ bearing in mind that refugee women almost always require legal assistance, they be given some legal literacy training to improve their knowledge of their legal rights; any such training highlight the interrelationship between protection and social services in the camp and address such issues as child marriage, child labour, adult marriage and abortion;
- ♦ interview procedures be designed to facilitate the detection of gender-based violence; female refugees be interviewed by female officers who have expertise in international human rights law as well as international and national refugee law and who have been trained and are aware of the circumstances and problems faced by women in particular countries; and
- ♦ governments seek to remove legal and administrative barriers to women seeking asylum on the basis of gender-based persecution.

### Violence against women migrant workers

In May 1996, the Secretary-General convened an expert group meeting in Manila on the subject of violence against women migrant workers. The purpose of the meeting was to identify indicators related to violence against these women and to make recommendations on how to improve coordination among UN organizations in order to address the problem more consistently (see A/51/325).

The indicators of violence against women migrant workers were identified as including: economic exploitation, social/psychological violence, physical/sexual vio-

lence and failings in legal systems. The indicators of the vulnerability of women migrant workers were identified as including: invalid documentation, recruitment of under-age women/girls, unauthorized agents who are not subject to government control, inadequate preparation, inadequate sources of support, inadequate reintegration services, violence in the country of origin, and inadequate regulation. The resolution adopted at the 1997 session of the Commission (1997/13) corresponded to a number of points raised at the seminar and requested the Secretary-General to report to the 1998 Commission on the steps taken by states and others to implement the resolution.

The report of the Secretary-General to the 1998 Commission (E/CN.4/1998/74) summarizes information provided by and responses from Cyprus, Finland, Haiti, Jordan, Mauritius, Mexico, Morocco, the Philippines and Russia as well as the UN Department of Public Information, the International Organization for Migration (IOM), UNICEF and UNESCO. The addendum to the Secretary-General's main report (E/CN.4/1998/74/Add.1) contains information and comments received from two non-governmental organizations, Human Rights Advocates and World Young Women's Christian Association.

### Integration of human rights of women

The report of the Secretary-General to the 1998 Commission (E/CN.4/1998/49) recalls key aspects in the resolution adopted at the 1997 session (1997/43), including the Commission's call for: an intensified effort at the international level to integrate women's equal status and human rights of women into the mainstream of UN system-wide activity; and the further strengthening of cooperation and coordination between the Commission on Human Rights and the Commission on the Status of Women and between the Division for the Advancement of Women and the OHCHR. The 1997 resolution also drew attention to the need to develop practical strategies to implement the recommendations contained in the report of the expert group meeting on the development of guidelines for the integration of gender perspectives into human rights activities and programmes (E/CN.4/1996/105, Annex).

The report to the 1998 Commission states that the aim of mainstreaming women's rights is to ensure that the inevitable social construction of men's and women's respective roles does not permit a discriminatory bias which subordinates women to men or places women in any kind of inferior position.

The report provides an overview of activities undertaken by the OHCHR related to mainstreaming gender perspective. Among the points noted are: production of a second information kit for the 50th anniversary of the UDHR, entitled "Women's Rights, the Responsibility of All"; a campaign for the universal ratification of the Women's Convention and the removal of substantive reservations; provision of assistance to the Commission on the Status of Women in the elaboration of an optional

protocol to the Convention; elaboration of a gender mission statement and strategies for effectively implementing the agreed conclusions; agreement, with the Division for the Advancement of Women (DAW), of a joint work plan aimed at facilitating the mainstreaming of human rights of women (E/CN.6/1998/2/Add.1); and development of a policy on gender and a strategy for its effective implementation, with the objective to ensure that the UN human rights system has the capacity and the commitment to integrate a genuine gender perspective into all aspects of its work.

In addition to the review of initiatives taken by the OHCHR, the report also notes steps taken by the human rights treaty bodies, mechanisms and procedures. The report also refers to the resolutions on the subject of human rights of women (violence, trafficking, women migrant workers, integration) that were adopted by the Commission at previous sessions as well as references to women in both country-specific and thematic texts.

With regard to the human rights treaty bodies, the report recommends, *inter alia*, that they:

- ♦ continue efforts to develop a gender analysis of each article of each treaty, cross-referenced to the Women's Convention, including the development of gender-sensitive model questions to be used in the review of states parties' reports;
- ♦ be encouraged to develop a common strategy towards mainstreaming human rights of women into their work, including through cooperation in the drafting of general comments and/or recommendations which reflect a gender perspective; be encouraged to incorporate a gender perspective into their concluding observations that delineate the strengths and weaknesses of each state party insofar as enjoyment by women of the rights guaranteed by a particular treaty is concerned; and
- ♦ incorporate a gender dimension into future revision of general comments and/or recommendations and guidelines previously adopted, with the assistance of the OHCHR in this area.

The report also drew on the recommendations contained in the report of the 1995 expert group meeting.

### Women living in extreme poverty

A report on mainstreaming human rights of women was prepared for the 42nd session of the Commission on the Status of Women (2 to 13 March 1998) under the agenda item dealing with follow-up to the Fourth World Conference on Women. This report, prepared jointly by the OHCHR and DAW was distributed as an official document of the Commission on Human Rights (E/CN.4/1998/22) and contains information on, *inter alia*: ensuring women's real enjoyment of their human rights; the context for women's enjoyment of human rights and the consequences of the denial of rights to women; factors and obstacles affecting women's real

enjoyment of their human rights; progress in ensuring women's real enjoyment of their human rights; international human rights instruments; the Vienna Declaration and Programme of Action; the Beijing Declaration and Platform for Action; gender equality in the Platform for Action; human rights of women as a critical area of concern and as an integral component of the Platform for Action; and, the actors responsible for implementing actions in the Platform for Action concerning women's enjoyment of economic and social rights.

The report: examines the impact of women's unequal enjoyment of rights on their socio-economic status; assesses how the denial of rights — particularly those relating to economic development and economic resources — creates obstacles to women's equality and thus their enjoyment of human rights; pays particular attention to gender factors that perpetuate women's unequal access and treatment with regard to economic and social rights and opportunities; and assesses the progress made in intergovernmental and expert bodies in addressing women's enjoyment of human rights, particularly those related to economic development, economic resources and the elimination of poverty.

The report notes, *inter alia*: notwithstanding efforts at the non-discriminatory application of human rights, the vision of human rights, and the mechanisms to concretize it, have profited women less than men; the majority of the world's 1.3 billion people living in poverty are women; access to, and control of, productive resources, particularly land, are key to addressing women's poverty; education and training for women and girls yields high social and economic returns and is a precondition for the empowerment of women; women's participation in various aspects of economic and community life has increased, but remains lower than that of men; women's work is in low-paid or unpaid occupations limiting the possibility for savings, credit or investment, and security; and the denial to women of economic power and economic independence is a major cause of violence against women because it prolongs their vulnerability and dependence.

The report concludes by stating that women's full enjoyment of their human rights, including those relating to economic development and resources, is essential to any strategy aimed at poverty eradication and sustainable development.

### Commission on the Status of Women

At its 1998 session the Commission on the Status of Women (CSW) considered a number of issues related directly to human rights of women. Chapter IV of the report of the 1998 CSW session (E/CN.6/1998/12) refers to critical areas of concern set out in the Beijing Platform for Action and action to be taken by governments, the international community, the UN, non-governmental organizations and the public and private sector to improve the situation of, and conditions for, women. The areas considered are violence against women, women

and armed conflict, human rights of women, and the situation of girls.

Annex I of the report contains summaries of the panel discussions that were held related to these four areas of concern.

### Optional protocol to the Convention

By resolution 1995/29 (24 July 1995) the Economic and Social Council established an open-ended Working Group, to meet in parallel session to the CSW, to elaborate an optional protocol to the Women's Convention. Annex II of the report of the CSW 1998 session summarizes discussions of the draft protocol. Appendix I of the Annex contains the draft text in which some provisions were agreed and in which remaining points on which there was no agreement are bracketed. Appendix II of the Annex contains a summary of discussions prepared by the Chairperson of the Working Group. The points noted, included, *inter alia*: the Preamble would reaffirm the determination of states to ensure the full and equal enjoyment by women of all human rights and fundamental freedoms and to take effective action to prevent violations of these rights and freedoms; the optional protocol should entitle individuals and groups of individuals to submit communications to the Committee on the Elimination of Discrimination against Women (CEDAW); the protocol would be subject to ratification separate from the Convention; the doctrine of exhaustion of domestic remedies would be included and other grounds of admissibility would be stipulated; a reference to "interim measures" would be included; consideration of the confidentiality of the complainant; the time limit in which the state concerned would have to reply; consideration of whether only written information could be considered by the Committee; provisions related to follow-up to the Committee's views and recommendations; the advisability of including a provision on an "inquiry procedure"; language related to states' responsibilities and obligations, particularly with regard to protection for persons or groups using the protocol; formulations related to securing the widest possible dissemination of the protocol and its procedures; stipulations related to adoption and entry into force of the protocol; and the permissibility of reservations to the protocol.

### Sub-Commission on Prevention of Discrimination and Protection of Minorities

#### Systematic rape and sexual slavery during armed conflict

At its session in 1993 the Sub-Commission appointed a special rapporteur to undertake an in-depth study into the question of systematic rape, sexual slavery and slavery-like practices during armed conflict. The final report (E/CN.4/Sub.2/1998/13) was submitted to the 1998 session of the Sub-Commission and contains information on, *inter alia*: definitions of sexual violence and slavery; the legal framework for prosecuting sexual slavery, including rape, under international law; holding

individuals responsible; obligations to search for and prosecute war criminals; the right to effective remedy and the duty to compensate; and prosecutions at the national level.

On the basis of the study conducted, the report concludes that, *inter alia*: a new attitude is evolving with respect to the prosecution of sexual violence committed during armed conflict as serious international crimes; increased efforts have been made to end the cycle of impunity for these crimes (e.g. the International Tribunals for Rwanda and the former Yugoslavia and the International Criminal Court); the existing international legal framework of humanitarian law, human rights law and criminal law clearly prohibits and criminalizes sexual violence and sexual slavery and provides universal jurisdiction in most cases; and the lack of political will poses the greatest obstacle to the effective prosecution and redress of sexual slavery and sexual violence during armed conflict.

The report states that concrete steps must be taken immediately, including in those countries currently experiencing internal armed conflict or violence, to ensure: (a) sexual violence and sexual slavery are identified and documented; (b) legal frameworks are applied to ensure that the perpetrators of such abuses are brought to justice; and (c) victims of such abuses receive full redress under both criminal and civil laws, including compensation where appropriate. The report further states that the international crime of slavery, including sexual slavery, is a particularly important and useful basis for addressing egregious acts of violence committed against women in armed conflict, given that its prohibition is a *jus cogens* norm which gives rise to pure universal jurisdiction.

The recommendations in the report address general areas within which more specific recommendations are made. These general areas are: legislation at the national level, removal of gender bias in municipal law and procedure, adequate protection for victims and witnesses, appropriate support services for victims, matters related to the International Criminal Court, documentation with a view to eventual prosecution, action at the cessation of hostilities, and the need for an effective, gender-sensitive response.

### Resolutions of the Commission on Human Rights

Under agenda item 9 the Commission adopted by consensus a resolution on **integrating the human rights of women throughout the UN system** (1998/51). The Commission, *inter alia*, reaffirmed the normative framework related to equal rights of women; noted that the Fourth World Conference on Women called on states and others to give full, equal and sustained attention to human rights of women; emphasized the major role played by the Commission on the Status of Women in promoting equality between women and men; encouraged the High Commissioner, in collaboration with the Division for the Advancement of Women, to elaborate a gender mission statement and strategies for effectively

implementing agreed conclusions related to mainstreaming; requested all human rights treaty bodies, special procedures and other human rights mechanisms of the Commission and Sub-Commission regularly and systematically to take into account a gender perspective; drew attention to the need to develop practical strategies to implement the recommendations made by the 1995 meeting of the expert group looking at the integration of a gender perspective; urged states to limit the extent of any reservations to the Women's Convention, formulate such reservations as precisely and narrowly as possible, regularly review those reservations and withdraw reservations that are contrary to the object and purpose of the Convention; and, urged all relevant organs, bodies and agencies of the UN to bear in mind, *inter alia*, the need for expertise in human rights issues affecting women in the recruitment of staff.

Also under agenda item 9, the Commission adopted by consensus a resolution on **the elimination of violence against women** (1998/52) in which the Commission, *inter alia*, noted General Assembly resolution 52/99 (12 December 1997) reaffirming that traditional or customary practices affecting the health of women and girls are a form of violence against women and girls and a violation of human rights; reiterated that acts of sexual violence in times of armed conflict are grave breaches of international humanitarian law; condemned all acts of gender-based violence against women and called for its elimination in the family, the general community and where perpetrated and/or condoned by the state; emphasized the duty of governments to refrain from engaging in violence against women and to exercise due diligence to prevent, investigate and punish acts of violence against women; emphasized the duty of governments to provide access to just and effective remedies and specialized assistance, including medical care; condemned all human rights violations affecting women in situations of armed conflict and recognized them to be violations of international human rights and humanitarian law; requested governments to cooperate with and assist the Special Rapporteur; called on states to work actively to ratify and/or implement international human rights norms and instruments as they relate to violence against women; and called on states to condemn violence against women and not invoke custom, tradition or practices in the name of religion to avoid their obligations to eliminate such violence. The Commission called on states to: (a) enact, amend or repeal laws to maximize an effective response to cases of violence against women and girls; (b) protect children and especially girls in situations of armed conflict against participation, recruitment, rape and sexual exploitation and abuse; (c) improve, create or develop training programmes for authorities in order to avoid the abuse of power leading to violence against women, mainstream a gender perspective into national immigration and asylum policies, and reaffirm that rape, systematic rape and sexual slavery in armed conflict constitute war crimes and may constitute crimes against humanity and an act of genocide; (d) take account of the impact of armed conflict on the health of all women and introduce measures to address the full range of issues

related to women's health needs; (e) eradicate traditional or customary practices, particularly female genital mutilation, that are harmful to or discriminatory against women and are violations of human rights affecting women; and (f) develop and implement national legislation and policies prohibiting such practices, prosecute the perpetrators and introduce awareness-raising programmes, education and training.

Under agenda item 11, the Commission adopted by consensus a resolution on **violence against women migrant workers** (1998/17). The Commission, *inter alia*: noted the large number of women from developing countries and some countries with economies in transition who become migrant workers as a consequence of, *inter alia*, poverty and unemployment in their home countries; acknowledged the duty of sending states to work for conditions that provide employment and security to their citizens; encouraged CEDAW to consider developing a general recommendation on the situation of women migrant workers; called on concerned governments, particularly those of sending and receiving countries, to put in place penal and criminal sanctions to punish perpetrators of violence against women migrant workers and, to the extent possible, provide victims with the full range of immediate assistance; invited states, specifically sending and receiving states, to consider adopting appropriate legal measures against intermediaries who deliberately encourage the clandestine movement of workers and who exploit women migrant workers; and, encouraged states to consider ratifying the Convention on the rights of migrant workers and their families as well as the 1926 Slavery Convention.

Under agenda item 15 the Commission adopted by consensus a resolution on **trafficking in women and girls** (1998/30). The Commission, *inter alia*: noted with concern the increasing number of women and girls who are being victimized by traffickers; acknowledged that trafficking also victimized boys; stressed the urgent need to eliminate all forms of sexual violence and trafficking, including trafficking for prostitution; welcomed efforts to implement the recommendations of the World Congress Against Commercial Sexual Exploitation of Children; and called on governments to criminalize trafficking in women and girls in all its forms and penalize all the offenders involved. The Commission called on governments of countries of origin, transit and destination to: (a) consider the ratification and enforcement of international conventions on trafficking in persons and slavery; (b) take appropriate measures to address root factors that encourage trafficking in women and girls for prostitution and other forms of commercial sex; (c) allocate resources to provide comprehensive programmes designed to heal and rehabilitate victims of trafficking, including through job training, legal assistance and health care; and (d) consider enacting legislation aimed at preventing sex tourism and trafficking, with special emphasis on the protection of young women and children. The Commission invited the Special Rapporteurs on violence against women and the sale of children, child prostitution and child pornography, as well as the

Working Group on Contemporary Forms of Slavery, to continue addressing the problem of trafficking in women and girls and recommend measures to combat such phenomena.

### Resolutions of the Commission on the Status of Women

The CSW adopted a resolution on human rights and **land rights discrimination** (42/1) in which the CSW, *inter alia*: expressed grave concern that in many countries the treatment accorded to women reflects the inequality between women and men; noted that, in situations of poverty, women are disproportionately affected and have the least access to productive resources, food, health, education, training and opportunities for employment and other needs; recognized that secure land rights are key rights for the economic empowerment of women; called upon states to: (a) set goals and develop and implement gender-sensitive strategies for addressing the rights and needs of women; (b) generate social support to change the social and cultural patterns of conduct of women and men; (c) develop innovative activities at all levels, including human rights education, to increase women's awareness of their human rights and the mechanisms that are available to protect and enforce women's full enjoyment of them; and (d) ensure women's equal rights with men in the areas of education, health and nutrition, and provide equal access to programmes of continuing education, including adult and functional literacy programmes. The CSW urged states to: (a) design and revise laws to ensure that women are accorded full and equal rights to own land and other property, including through the right to inheritance; and (b) undertake administrative reforms and other necessary measures to give women the same rights as men to credit, capital, appropriate technologies, access to markets and information. The CSW also: called upon the High Commissioner for Human Rights to increase awareness that land rights discrimination is a violation of human rights and that, in addressing the right to development, secure land tenure for women should be taken into account; and requested the Secretary-General to ensure that all organizations and bodies of the UN system, individually and collectively, in particular the UNDP, take into account land rights discrimination and its negative impact on women in all poverty eradication programmes and policies.

The CSW also adopted a resolution (42/4) on **older women and support systems: gender and caregiving**. The Commission, *inter alia*: noted that gender difference in life expectancy rises with age and that two-thirds of the very old are women; noted that, traditionally, women are relied upon as caregivers at all ages and that they make an essential but often unrecognized and unremunerated contribution to society and the economy; referred to the Expert Group Meeting on Caregiving and Older Persons: Gender Dimensions, (Malta, 30 November to 2 December 1997); invited states to consider implementing, at the national level, as appropriate, the recommendations contained in the annex to the res-

olution, which are based on the report of the Secretary-General of the meeting in Malta and the views expressed in the CSW by states; and requested the Secretary-General to take into account these recommendations when preparing the 1999 report on key global issues regarding the differential impact of population ageing on men and women.

The recommendations contained in the Annex to the resolution touched on a number of areas, including: research needs relative to support systems for older persons; economic security; education and empowerment; and the well-being of caregivers.

The CSW also adopted a resolution on violence against women migrant workers (42/3) that essentially mirrors the main points in the resolution adopted by the Commission on Human Rights.

### Resolutions of the General Assembly

#### Traffic in women and girls

The General Assembly adopted by consensus a resolution on the traffic in women and girls (A/C.3/53/L.10) in which it referred to a number of points included in the resolution adopted by the Commission on Human Rights. The GA also, *inter alia*: welcomed the inclusion of gender-related crimes in the Rome Statute of the International Criminal Court; expressed deep concern about the unabated use of new information technologies, including the Internet, for purposes of prostitution, child pornography, paedophilia, trafficking in women as brides, and sex tourism; stressed again the need for governments to provide standard humanitarian treatment to trafficked persons consistent with human rights standards; invited governments to take steps, including witness protection programmes, to enable women who are victims of trafficking to make complaints to the police and be available when required by the criminal justice system, and to ensure that during this time women have access to social, medical, financial and legal assistance, and protection, as appropriate; invited governments to encourage Internet service providers to adopt or strengthen self-regulatory measures to promote the responsible use of the Internet with a view to eliminating trafficking in women and girls; and again invited governments, with the support of the UN, to formulate training manuals for law enforcement and medical personnel and judicial officers who handle cases of trafficked women and girls with a view to sensitizing them to the special needs of victims.

#### Traditional or customary practices

The 1998 GA adopted by consensus a resolution on traditional or customary practices affecting the health of women and girls (A/C.3/53/L.11) in which it, *inter alia*: reaffirmed that some traditional or customary practices constitute a form of violence against women and girls and a serious violation of their human rights; expressed concern at the continuing large-scale existence of such practices; and welcomed, *inter alia*, the work carried out by the Special Ambassador for the Elimination of Female

Genital Mutilation of the UNPF, the work carried out by the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children, and the fact that the Commission on the Status of Women addressed the issue of harmful traditional or customary practices at its session in 1998. The GA called upon all states, *inter alia*, to: (a) ratify, if they have not yet done so, the relevant human rights treaties and respect and fully implement their obligations under those treaties; (b) implement their international commitments in this field; (c) develop and implement national legislation and policies prohibiting such practices; (d) establish, if they have not done so, a concrete national mechanism for the implementation and monitoring of legislation, law enforcement and national policies; (e) intensify efforts to raise awareness of and mobilize international and national public opinion concerning the harmful effects of such practices; (f) promote the inclusion of discussion of the empowerment of women and their human rights in primary and secondary education curricula; (g) specifically address traditional or customary practices in such curricula and in the training of health personnel; (h) promote a collective and individual awareness of the human rights of women and girls and of how harmful traditional or customary practices violate those rights; (i) explore alternatives to harmful traditional or customary practices, in particular where those practices form part of a ritual ceremony or rite of passage; and (j) address the issue of traditional or customary practices in their national evaluations of the implementation of the Beijing Platform for Action.

#### **Convention on the Elimination of All Forms of Discrimination against Women**

The General Assembly adopted by consensus a resolution on the Women's Convention (A/C.3/53/L.12/Rev.1) in which it address such areas as universal ratification, the impact of reservations, CEDAW's adoption of general recommendation 23 on women in public life, states' cooperation with CEDAW, the draft optional protocol, and increased coordination among the human rights treaty bodies on issues affecting women and their enjoyment of all human rights.

#### **Improvement of the status of women in the Secretariat**

The General Assembly adopted by consensus a resolution on the status of women in the UN Secretariat (A/C.3/53/L.13) in which it, *inter alia*: noted some improvements in the hiring of, and practices towards, women, reaffirmed the goal of 50/50 gender distribution by the year 2000 in all categories of posts within the UN system, encouraged the Secretary-General to appoint more women as special representatives and envoys and to pursue good offices especially in matters related to peacekeeping, peace-building, preventive diplomacy and economic and social development; encouraged the Secretary-General to appoint more women to other high-level positions; requested the Secretary-General to continue the work to create a gender-sensitive work environment supportive of the needs of staff, both women and men,

including through the development of policies for flexible working time, flexible workplace arrangements, child-care and elder care needs, as well as through the expansion of gender-sensitivity training in all departments and offices; requested the Secretary-General to develop further the policy against harassment, including sexual harassment, and to issue detailed guidelines; strongly encouraged states to support the efforts to achieve the goal of 50/50 gender distribution. to identify women candidates for assignment to peacekeeping missions, and to improve the representation of women in military and civilian police contingents.



## **WORLD CONFERENCE ON HUMAN RIGHTS, REVIEW OF THE IMPLEMENTATION OF THE VIENNA DECLARATION AND PROGRAM OF ACTION (VDPA)**

### **Interim Report of the Office of the High Commissioner on Follow-Up to the World Conference on Human Rights (E/CN.4/ 1998/104)**

The Office of the High Commissioner for Human Rights prepares an annual report on follow-up to the World Conference on Human Rights. The interim report to the 1998 Commission contains information on, *inter alia*: the framework of the review, the impact of the World Conference, universality and human rights, the right to development, non-discrimination, international cooperation, mainstreaming human rights in UN activities, target-oriented protection, UN human rights machinery, human rights education, and standard-setting and ratification of human rights treaties.

In setting the context, the report recalls that the five-year review of the Vienna Declaration and Programme of Action (VDPA) was intended to: (a) focus on the fundamental task of the international community today — implementing human rights worldwide; (b) promote positive developments and give due credit to achievements in implementing the VDPA; (c) identify major obstacles to full implementation of the VDPA and offer practical ideas for addressing these issues in the years ahead; (d) like the World Conference on Human Rights, be comprehensive and thematically oriented; (e) assist in identifying the goals and tasks ahead; and (f) envisage methods of achieving a concerted UN system-wide approach to human rights, including interaction between the implementation of the recommendations adopted by the

World Conference on Human Rights and other UN conferences and summits.

In terms of initiatives aimed at mainstreaming issues related to the status of women into UN activities, the report notes that cooperative and coordinated efforts between UN organs and bodies have focussed on: (a) prevention of and response to discrimination and violence against women; (b) creation of new frameworks for developing policy and programmatic initiatives to improve the status of women and support women's participation in political, economic, professional, social and cultural life; and (c) initiatives on the development and empowerment of women, for example in support of increasing rural women's access to and control of productive resources and services as well as their role in decision-making, labour, finance, and education.

With regard to children, the report notes that a number of governments have adopted plans of action aimed at protecting children, particularly those who have a disability, are orphans or are living without adequate housing or supervision. Health issues affecting children, including AIDS and female genital mutilation, have also been addressed by national programmes as well as by UN agencies and programmes.

The report recalls that the World Conference identified a strong programme of advisory services and technical cooperation as a major contribution to building national capacities and improving respect for human rights and notes that since 1993 the number of activities carried out annually under the programme has more than tripled, involving 25 countries as of 20 February 1998. Key elements in the programme include: the promotion of democratic institutions, advice on development and human rights; human rights training and support to parliament, the judiciary, the police, the military and prison officials; assistance in establishing a constitutional framework; legislative reform and the administration of justice; the establishment and strengthening of national human rights institutions; the human rights aspects of free and fair elections; the promotion of human rights education; and support to non-governmental organizations and other civil society institutions.

Parallel to the OHCHR programme of technical assistance and advisory services, a number of UN agencies and programmes are also responding to the growing demand from governments for assistance in human rights-related areas, including: implementation of specific human rights standards (e.g., ILO); drafting and implementing national legislation; assistance in governance, rule of law and the strengthening of civil society; and eliminating developmental obstacles to the full enjoyment of human rights, as, for example, poverty or food shortages.

### **Resolutions of the Commission on Human Rights**

Under agenda item 21, the Commission adopted by consensus a resolution on comprehensive implementation of

and follow-up to the Vienna Declaration and Programme of Action (1998/78). The Commission, *inter alia*: stated that the promotion of universal respect for and observance of all human rights and fundamental freedoms is a main priority of the UN; stated that in the review of the implementation of the Vienna Declaration and Programme of Action special attention should be paid to assessing the progress towards the goal of universal ratification of international human rights treaties and protocols; recognized that the interdependence of democracy, development and respect for human rights requires a comprehensive and integrated approach to the promotion and protection of human rights; reaffirmed the importance of the promotion of universal respect for and observance and protection of all human rights and fundamental freedoms in accordance with the UN Charter; recognized that the international community should devise ways and means to remove current obstacles and meet the challenges to the full realization of all human rights and to prevent the continuation of human rights violations resulting from those obstacles; underlined the need to give particular attention to human rights for women and girls in the five-year review of the VDPA and to take into account that gender mainstreaming is a key strategy for achieving equality between women and men and the full enjoyment of all human rights by women; and urged all states and the UN system to give widespread publicity to the VDPA, in particular in the context of the public information and human rights education activities for the 50th anniversary of the Universal Declaration.

### **Report of the High Commissioner for Human Rights**

The High Commissioner's final report on follow-up to the World Conference on Human Rights (A/53/372) contains information on, *inter alia*: the universality of human rights; international cooperation and coordination of human rights activities; democracy, development and human rights, and the right to development; racism, racial discrimination, xenophobia and other forms of intolerance; equal status and human rights of women; rights of the child; special protection; response to acute human rights violations; advisory services and technical assistance; education and public information; and implementation of human rights. Statistical data are also provided on: increases in ratifications of the human rights treaties since the World Conference on Human Rights; ratification of optional communications procedures; voluntary and trust funds in the field of human rights; technical cooperation programmes and budgets; the number of communications received by the extra-conventional mechanisms established by the Commission on Human Rights; individual communications to conventional procedures (treaty bodies); the growth in extra-conventional mechanisms (special rapporteurs, representatives, independent experts and working groups, 1995-1998); and OHCHR presences in the field, 1991-1998.

Based on information received from governments related to implementation of the VDPA, the report notes a

number of positive developments, including: human rights-oriented changes in national legislation; enlargement of national human rights capacities, including the establishment or strengthening of national human rights institutions; special protection extended to women, children and vulnerable groups; development of human rights education programmes; and adoption of national plans of action.

On the universality of human rights, the report recalls that the World Conference on Human Rights not only reaffirmed universality and the related commitments of states but also unanimously endorsed the universality of all the basic principles that should guide the promotion and protection of human rights worldwide. The universal ratification of relevant international instruments called for by the World Conference would provide the most stable and effective foundation for ensuring respect for and observance of human rights in all countries. On this point, the report notes that since the World Conference there has been an increase of nearly 28 per cent in new ratifications. Despite this increase, the number of countries which have not ratified the core human rights treaties remains distressing. Declarations announcing withdrawals from treaty obligations have also been received. Although isolated, these declarations are particularly disappointing since they oppose the general understanding of the World Conference that countries should take bold steps to strengthen their commitments under international human rights law. The report also notes that the call of the World Conference to avoid, as far as possible, the resort to reservations to international human rights instruments remains another area in which results have been less than satisfactory.

On international cooperation and coordination of human rights activities, the report recalls that the VDPA emphasized, *inter alia*: (a) the primary responsibility for the promotion and protection of human rights rests with governments; (b) the promotion and protection of all human rights is a legitimate concern of the international community; (c) the international community should cooperate towards a better implementation of human rights, prevention of human rights abuses, and eradication of the gravest human rights violations; (d) the international protection and promotion of human rights is effective only if based on the principle of the indivisibility and equal value of all human rights, including the right to development; (e) the interdependence between democracy, development and respect for human rights offers a fundamental framework for progress in the field of human rights; (f) the international and regional systems of human rights protection are complementary, and should support each other; and (g) non-governmental organizations should be fully recognized as partners in international cooperation for human rights.

The report refers to the VDPA reaffirmation of the right to development and the steps taken since 1993 to promote the realization of this right noting that governments have taken such actions as: adoption of national developmental programmes, special projects targeting poverty

alleviation in specific areas or with regard to specific groups, adopting a human rights approach to developmental activities; cancellation of the accumulated interest on debts owed by developing countries; and professional training for foreign citizens. The report notes that the High Commissioner for Human Rights has proposed that the General Assembly's Second and Third Committees work jointly to implement the right to development by focussing on the elimination of poverty, with particular emphasis placed on basic security, which is necessary to enable individuals and families to enjoy fundamental rights and assume basic responsibilities.

The Vienna Conference made it clear that it is not enough to condemn racism, racial discrimination, xenophobia and other forms of intolerance. Governments have taken steps to address this question, including through: prohibition of the incitement of racial hatred; combatting racist organizations; steps to halt the proliferation of hate propaganda on the Internet; penal regulation to punish discriminatory behaviour, hate crimes, and racial violence; and regionally based monitoring centres to combat racism and xenophobia. Special attention has been paid to education for tolerance and against discrimination. In many countries, special institutions have been created to develop programmes against bigotry and racism and in some countries special programmes have been implemented to demonstrate the value of capitalizing on linguistic and cross-cultural skills in the market and workplace. The report states that measures undertaken at international and national levels to combat racial and other forms of discrimination have not, however, produced satisfactory results to date and, further, that penal measures are not sufficient to effectively act against racial and other forms of discrimination and violence. Educational programmes to promote racial and religious harmony, community programmes to overcome mutual distrust, youth exchange programmes, technical cooperation to assist in law reforms and establishing appropriate institutions and procedures are examples of activities that should be developed worldwide. New manifestations of racism and other forms of intolerance require further research and elaboration of appropriate policies. Early warning should be followed by early action to prevent the outbreak of conflicts. The High Commissioner also noted the need to reinvigorate the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination.

With regard to the equal status and human rights for women, the report notes that many states have strengthened the ability of women to exercise their rights through, for example: withdrawing reservations to the Convention on the Elimination of Discrimination against Women; development of national plans of action that espouse the goal of gender equality by the year 2000; changes in constitutional and penal laws prohibiting domestic violence, sexual assault and female genital mutilation; enactment of emancipation policies; the establishment of governmental structures responsible for the management of gender-oriented policies; adoption of new laws to promote the political advancement of women

and support the employment of women in public service; changes in family law establishing additional protection for women against economic discrimination in cases of divorce; and creation of various female education programmes. The report states, however, that despite such examples of progress, women continue to be disproportionately subjected to violations of human rights — domestic violence, brutalization in war, harmful traditional practices, female infanticide, unequal access and discrimination in the allocation of economic and social resources, and denial of access to paid work.

On the situation of children, the report notes, *inter alia*: increased attention is paid in many countries to children and their status as human beings with full rights; extraterritorial laws have been adopted to punish those who engage in the sexual exploitation of children abroad; some states have enacted a prohibition of practices that harm girls; there have been changes in the treatment of child refugee claimants; legal reforms have been made to protect the child's welfare in situations of divorce; institutions have been created specifically for the protection of children, such as ombudspersons for children; improvements have been made in expanding access to health care and education; steps have been taken to cut infant and maternal mortality; and there has also been a great increase in the proportion of girls enrolled in schools in developing countries. Movement from commitment to action remains crucial, however, to address: the negative effects of poverty and structural adjustment; high infant mortality rates; malnutrition; child trafficking, sexual exploitation and bonded labour; inadequate health services and poor school attendance; persistent discrimination and cultural practices that harm girls; insufficient supplies, access to or services for children in war zones; and a lack of recourse for the complaints of children. The report also states that slavery continues to mark its scourge in the form of millions of child labourers, who are often themselves trafficked and sold into the most deplorable conditions. Reference is also made to the recruitment of child soldiers.

In the section dealing with special protection, the report provides commentary on the rights of: indigenous peoples, persons belonging to minorities, internally displaced persons, migrant workers, and persons with disabilities.

With regard to responses to acute human rights violations, the report notes the progress made in abolishing the use of capital punishment and recalls the VDPA's appeal to states to abrogate legislation leading to impunity for those responsible for grave violations of human rights. The adoption of the Statute for the International Criminal Court is cited as one example of international community's determination to hold all individuals, regardless of official rank or capacity, responsible for committing such horrific crimes as genocide, war crimes and crimes against humanity.

The review of advisory services and technical assistance notes that the programme is now active in more than

50 countries on five continents; programme areas include a broad range of institutional entry points for human rights, democracy and the rule of law, such as advisory services, training, fellowships and grants directed to constitutional assistance; legislative reform; free and fair elections; independent judiciaries; fair prosecutions; humane policing; decent penal institutions; effective parliaments; independent national institutions ("Paris Principles"); and strong and capable national non-governmental organizations. The failure of resources to keep pace with ever-increasing demands on the programme (the shortfall as of 31 August 1998: US\$5.2 million) is noted.

Referring to the UN Decade for Human Rights Education (1995-2004), the report recalls that the international Plan of Action for the Decade sets out detailed objectives for the international community: the building and strengthening of programmes and capacities for human rights education at the international, regional, national and local levels; the coordinated development of effective materials; the strengthening of the role and capacity of the mass media; and the global dissemination of the Universal Declaration of Human Rights. Within that framework, initiatives taken at the national level have included: sponsoring human rights training programmes for government officials and law enforcement officials, as well as representatives of civil society and providing overall policy guidance through the publication of training and resource materials; addition of human rights-related courses to school curricula at all levels of instruction; development of new methods of human rights instruction; and adoption of comprehensive plans of action for human rights education and establishment of national committees to coordinate activities in this area.

On implementation, the report notes that making human rights a reality was the overarching idea that guided the World Conference on Human Rights and states that the "post-Vienna" period does not offer a consistent picture with regard to the implementation of human rights. Resolutions of the Commission on Human Rights and the General Assembly, reports of special rapporteurs and working groups, as well as comments by the treaty-based bodies, provide evidence of positive developments in many countries. This optimistic picture is distorted, however, by national laws remaining in force, or even newly adopted, that are inconsistent with the letter or spirit of international human rights obligations. The report states that it is unquestionable that grave and large-scale human rights violations are both the source and result of conflicts that are currently predominantly of an internal nature and inflict severe damage on civilian populations. Referring to the Secretary-General's call for declaring the next century "the age of prevention", the High Commissioner noted that in the vast majority of cases, this is equated with addressing human rights problems as the root causes of conflicts.

The report concludes by suggesting that the General Assembly may wish to examine the response of govern-

ments and others to the following issues, with the context of implementation of the VDPA, *inter alia*:

- ♦ strengthening the implementation of human rights at the national level, including through the development of an international climate conducive to the promotion and protection of human rights and by addressing matters of concern for different countries and regions in a balanced and cooperative way;
- ♦ making the system of international human rights instruments more effective: ratification of treaties, withdrawal of reservations, development of indicators and benchmarks for marking progress in the realization of rights and increasing the impact of treaty-based bodies;
- ♦ giving effect to the principle that human rights are universal, indivisible and interdependent, based on an understanding that human rights must be understood, promoted and implemented by the international community also from the perspectives of development, peace and security;
- ♦ creating a favourable environment for human rights and human development by the eradication of, *inter alia*, extreme poverty, famine and illiteracy;
- ♦ preventing human rights violations by adoption of a comprehensive approach, including both addressing the economic, social, ethnic and other root causes of conflict from a human rights perspective, maintenance of the rule of law and strengthening of democratic institutions, and making the eradication of racism and mass and gross human rights violations the ultimate end of efforts at international and national levels to ensure respect for human dignity;
- ♦ enhancing national capacities, including national human rights institutions, to effectively promote and protect human rights by establishing and/or strengthening national human rights structures and institutions, as well as utilizing existing programmes of technical assistance to support this process, noting the need for the international community to provide appropriate resources and ensure their optimal use at the national, regional and international levels;
- ♦ taking effective action to address the phenomena that render large groups of people vulnerable;
- ♦ ensuring the equal status and the implementation of human rights of women by, for example, mainstreaming human rights for women into all relevant policies and activities of governments;
- ♦ developing a culture of human rights through human rights education by making human rights education the core of educational systems in all countries worldwide; and

- ♦ strengthening the role of non-governmental organizations and civil society at large by, *inter alia*, ensuring greater participation of civil society in decision-making.

### Resolution of the General Assembly

At its 1998 session the General Assembly considered the question of comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action (A/53/625/Add.4). The GA adopted by consensus a resolution (A/C.3/53/L.65) in which it, *inter alia*: recalled resolution 48/121 of 20 December 1993, in which the GA endorsed the Vienna Declaration and Programme of Action (VDPA) adopted by the World Conference on Human Rights (1993); recalled paragraph 100 of part II of the VDPA concerning the five-year review of progress made in the implementation of the Vienna Declaration and Programme of Action, including the need to pay special attention to assessing the progress towards the goal of universal ratification of international human rights treaties and protocols adopted within the framework of the United Nations; reaffirmed that human rights and fundamental freedoms are the birthright of all human beings, that their protection and promotion is the first responsibility of governments, and that all human rights are universal, indivisible, interdependent and interrelated; stated that the VDPA has to be translated into effective action by states, and by the competent UN organs and organizations and other organizations concerned, including non-governmental organizations; welcomed the significant steps taken over the past five years at both national and international levels to implement the recommendations made by the World Conference on Human Rights; expressed deep concern about the wide gap that continues to exist between the promise of human rights and their promotion and protection worldwide, as well as denials and violations of human rights, including the right to development; reaffirmed the important role of non-governmental organizations in the promotion of all human rights and in humanitarian activities at the national, regional and international levels; noted the report of the High Commissioner for Human Rights on the implementation of the VDPA; solemnly declared its commitment to the fulfilment of the VDPA; welcomed the agreed conclusions 1998/2 of the Economic and Social Council on the coordinated follow-up to and implementation of the VDPA and called for their full implementation; reaffirmed that the VDPA continues to constitute a solid foundation for further action and initiatives by states, the UN and other relevant intergovernmental bodies and organizations, as well as concerned national institutions and non-governmental organizations; called upon all states to take further action with a view to the full realization of all human rights for all in the light of the recommendations of the World Conference; and decided to continue consideration of this question at its 1999 session.

# ADDITIONAL THEMATIC APPROACHES

## REPORTS OF THE SECRETARY-GENERAL

The Secretary-General produces a number of reports prepared at the request of either the Commission on Human Rights or the General Assembly. In general, these reports summarize comments received from governments and others. In 1998 the Secretary-General produced reports on the following subjects.

### Secretary-General's reports to the 1998 Commission on Human Rights

Realization of economic, social and cultural rights

Realization of the right to development

Human rights and forensic science

The security of UN personnel

The draft basic principles and guidelines on the right to reparation for victims of gross violations of human rights and international humanitarian law

Children and juveniles in detention

The status of the Convention against Torture

The UN Voluntary Fund for Victims of Torture

National institutions for the promotion and protection of human rights

The question of integrating the human rights of women throughout the UN system

Regional arrangements for the promotion and protection of human rights in the Asian-Pacific region

Cooperation with representatives of UN human rights bodies

Violence against women migrant workers

The status of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Racism, racial discrimination, xenophobia and related intolerance

The death penalty

The status of the International Covenants on human rights

The draft optional protocol to the Covenant on Economic, Social and Cultural Rights

Effective functioning of the human rights treaty bodies

Minimum humanitarian standards

UN Voluntary Trust Fund on Contemporary Forms of Slavery

The rights of persons belonging to national or ethnic, religious or linguistic minorities

Advisory services and technical cooperation and the Voluntary Fund on Technical Cooperation

### Secretary-General's reports to the 1998 General Assembly

Preparations for the 10th UN Congress on the Prevention of Crime and the Treatment of Offenders

The UN African Institute for the Prevention of Crime and the Treatment of Offenders

Strengthening the UN Crime Prevention and Criminal Justice Programme

The status of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

Implementation of the UN System-wide Action Plan on Drug Abuse Control

Implementation of the Global Programme of Action related to drug control

The status of the Convention on the Elimination of All Forms of Discrimination against Women

The status of women in the UN Secretariat

Traditional or customary practices affecting the health of women and girls

Implementation of the outcome of the Fourth World Conference on Women

The financial situation of the Committee on the Elimination of Racial Discrimination

Proposals to supplement the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination

The universal realization of the right of peoples of self-determination

The Voluntary Fund for Indigenous Populations

Implementation of the programme of activities for the International Decade of the World's Indigenous People

The status of the Convention against Torture

Operations of the UN Voluntary Fund for Victims of Torture

The Status of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Enforced or involuntary disappearances

Regional arrangements for the promotion and protection of human rights

Strengthening UN action in the field of human rights through the promotion of international cooperation and the importance of non-selectivity, impartiality and objectivity

Human rights and unilateral coercive measures

Strengthening the rule of law

The UN Decade for Human Rights Education and public information activities in the field of human rights

The right to development

The safety and security of all humanitarian personnel; the privileges and immunities of officials of the UN

The new international humanitarian order



## STUDIES OF THE SUB-COMMISSION

The Sub-Commission on Prevention of Discrimination and Protection of Minorities maintains a roster of thematic studies, reports and working papers. (Date in square brackets indicates the expected date of completion; name indicates the author of the study or report).

### A. Studies and Reports Completed at the 49th Session of the Sub-Commission

Impunity (economic, social and cultural rights), [Mr. Guissé, 1997] (E/CN.4/Sub.2/1993/6, E/CN.4/Sub.2/1994/11 and Corr.1, E/CN.4/Sub.2/1995/19, E/CN.4/Sub.2/1996/15 and E/CN.4/Sub.2/1997/8)

Impunity (civil and political rights), [Mr. Joinet, 1997] (E/CN.4/Sub.2/1993/6, E/CN.4/Sub.2/1994/11 and Corr.1, E/CN.4/Sub.2/1995/18 and E/CN.4/Sub.2/1997/20)

Human rights dimensions of population transfer, [Mr. Al-Khasawneh, 1997] (E/CN.4/Sub.2/1993/17 and Corr.1, E/CN.4/Sub.2/1994/18 and Corr. 1, E/CN.4/Sub.2/1997/23)

### B. Ongoing Studies and Reports Entrusted to Special Rapporteurs in Accordance with Existing Legislative Authority

Human rights and income distribution, [Mr. Bengoa, 1998] (CHR decision 1995/105; Sub-Commission decision 1997/107)

Traditional practices affecting the health of women and the girl child, [Ms. Warzazi, 1998] (CHR decision 1997/108)

Systematic rape and sexual slavery during armed conflict, [Ms. McDougall, 1998] (CHR decision 1996/107; Sub-Commission decision 1997/114)

Treaties, agreements and other constructive arrangements between States and indigenous populations, [Mr. Alfonso Martínez, 1998] (CHR decision 1997/13; Sub-Commission decision 1997/110)

Indigenous peoples and their relationship to land, [Ms. Daes, 1998] (CHR decision 1997/114; Sub-Commission resolution 1997/12)

### C. Annual Reports Entrusted to Special Rapporteurs in Accordance with Existing Legislative Authority

Question of human rights and states of emergency, [Mr. Maxim, Annually] (Sub-Commission resolution 1997/27)

### D. Working Papers and Other Documents without Financial Implications Entrusted to Members of the Sub-Commission in Accordance with Existing Legislative Authority

Methods of work of the Sub-Commission, [Mr. Hatano, 1998] (Sub-Commission resolution 1997/16)

The concept of affirmative action, [Mr. Bossuyt, 1998] (Decision 1997/118)

Article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination, [Mr. Bengoa/Mr. Mehedi, 1998] (Sub-Commission decision 1996/120)

The right to education, [Mr. Mehedi, 1998] (Sub-Commission resolution 1997/7)

The relationship between the enjoyment of human rights and the working methods and activities of transnational corporations, [Mr. Guissé, 1998] (Sub-Commission resolution 1997/11)

The right of access to drinking water supply and sanitation services, [Mr. Guissé, 1998] (Sub-Commission resolution 1997/18)

The right to adequate food as a human right-update, [Mr. Eide, 1998] (Sub-Commission decision 1997/108)

Juvenile justice, [Ms. Gwanmesia, 1998] (Sub-Commission resolution 1997/25)

Weapons of mass destruction or with indiscriminate effect; illicit transfer of arms, [Ms. Forero Ucros, 1998] (Sub-Commission resolutions 1997/36 and 1997/37)

### **E. Studies and Reports Recommended to the Commission on Human Rights for Approval**

Privatization of prisons, [Mr. Ali Khan, 1998] (Sub-Commission resolution 1997/26)

Freedom of movement, [Mr. Boutkevitch, 1998] (Sub-Commission resolution 1997/30)

Terrorism and human rights, [Ms. Koufa, 1998] (Sub-Commission resolution 1997/39)

Scientific progress and human rights, [Mr. El-Hajjé, 1998] (Sub-Commission resolution 1997/42)



## **DRAFT DECLARATIONS AND DRAFT OPTIONAL PROTOCOLS**

There are, at present, initiatives in progress focussed on the elaboration of either draft declarations on human rights or optional protocols to the human rights treaties. These groups are as follows:

The Committee on Economic, Social and Cultural Rights, optional protocol to the Covenant, (E/CN.4/1998/84 and E/CN.4/1998/84/Add.1).

Working Group on an optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women, (E/CN.6/1998/12, Annex II).

Working Group on an optional protocol to the Convention against Torture, (E/CN.3/1998/42 and E/CN.3/1998/42/Corr.1).

Working Group on an optional protocol to the Convention on the Rights of the Child, related to children in armed conflict, (E/CN.4/1998/102 and E/CN.4/1998/102/Add.1).

The 4th session of the WG met from 2 -10 February and 19 March 1998.

Working Group on an optional protocol to the Convention on the Rights of the Child, related to the sale of children, (E/CN.4/1998/103).

The 4th session of the WG met from 19 - 30 January and 19 March 1998.

Working Group on indigenous issues, related to the drafting of a declaration on the rights of indigenous peoples, (E/CN.4/1998/106 and E/CN.4/1998/106/Corr.1).

# APPENDIX I: METHODOLOGICAL AND TECHNICAL ISSUES

Section A of this Appendix discusses the format of this report and the methodology used to compile the information. Section B contains descriptions of bodies, procedures and terminology used but not defined in *For the Record 1998*.

## SECTION A. FORMAT AND METHODOLOGY

### I. Presentation of the Material

The time-period covered by *For the Record 1998* is the calendar year, from 1 January to 31 December, 1998. This means that any documents which were not available to us by the end of the year are not summarized in this report and/or are not hyperlinked on the website. If these documents become available later, they will be dealt with either by adding them to *For the Record 1998* on the website, or treating them in the context of *For the Record 1999*, whichever seems most appropriate.

The focus is on the main bodies that take action in the area of human rights. Thus, the report covers the work of the Commission on Human Rights (March/April), the Sub-Commission (August), ECOSOC (July), the Third Committee of the General Assembly (November) and other relevant resolutions, decisions or reports of the GA, the sessions of the treaty-bodies whenever they meet throughout the year, actions or decisions of the Security Council when relevant, and UN field presences when reports are issued.

The report has been produced in three formats in both English and French: in hardcopy (six volumes in each language); on the World Wide Web at <<http://www.hri.ca/fortherecord1998>>, with full hyperlinks to almost all the original documentation in both languages; and as a CD-ROM of the Website.

### 2. The Geographic Volumes

In preparing the main section of this report (volumes 2-6), we divided the world into five broad regions which, with one exception, follow geographic lines: Africa (53 entries), Asia (55), Latin America and the Caribbean (34) and Central and Eastern Europe (21). The fifth grouping, Western Europe and Other (30), includes the countries of Western Europe, Canada, the United States, Australia and New Zealand. In the geographic volumes, we include not only States, but also territories which have ratified at least one of the six major international human

rights conventions, and one area (Palestine) which has its own political authority and is the subject of several UN reports and resolutions.

For every geographic entry, the following format was used, although not every entry has information under each heading or sub-heading:

#### Date of admission to the United Nations

#### Treaties: Ratifications and Reservations

- (a) **Land and People:** The report indicates whether or not the country/territory has submitted a "core document" (intended to provide general background information for all the treaty bodies) to the UN. If so, a brief summary of document is provided which focuses on how the government describes its national institutions and procedures for the protection of human rights.
- (b) **Ratifications, Reservations and Reports Due:** The reports indicate when a country signed, ratified, or acceded or succeeded to one of the six main human rights treaties and their optional protocols; whether they have made any reservations or declarations to the treaties; and the due dates of their next reports to the treaty-bodies, as well as a listing of overdue reports not yet received.

The six treaties covered in the report are the following:

1. International Covenant on Economic, Social and Cultural Rights, which entered into force 3 January 1976.
2. International Covenant on Civil and Political Rights (ICCPR), which entered into force on 23 March 1976.
  - (i) Optional Protocol to the ICCPR, entered into force 23 March 1976
  - (ii) Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, entered into force 11 July 1991.
3. International Convention on the Elimination of All Forms of Racial Discrimination, which entered into force 4 January 1969.
4. Convention on the Elimination of All Forms of Discrimination against Women, which entered into force 3 September 1981.
5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, entered into force 26 June 1987.

6. Convention on the Rights of the Child, entered into force 2 September 1990.

### Reports to Treaty Bodies

Where a State party report to a treaty-body is reviewed in calendar year 1998, there is a summary of the subjects which the governments addressed in their report and a summary of the concerns, comments and recommendations of the treaty-body.

### Commission on Human Rights (CHR)

- (a) **Rapporteurs:** If there is a Special Rapporteur, Special Representative or Expert for the country in question, the report of that mechanism is the first to be discussed.
- (b) **Resolutions of the Commission on Human Rights:** If the CHR has adopted a country resolution, or if there is a Chairman's Statement on that country, that resolution/statement is summarized.

### Sub-Commission on Prevention of Discrimination and Protection of Minorities

If the Sub-Commission has adopted a country-specific resolution, that resolution is summarized.

### Thematic Reports, organized under three sub-headings:

- (a) **Mechanisms of the Commission on Human Rights:** here, we summarize any substantive comments made by the thematic rapporteurs or working groups of the CHR concerning that country; the thematic mechanisms are listed in alphabetical order.
- (b) **Mechanisms and Reports of the Sub-Commission:** here we summarize any substantive comments made by Sub-Commission Rapporteurs or special reports of the Sub-Commission.
- (c) **Other Thematic Reports:** summarizes additional thematic reports including those of the Secretary-General and the High Commissioner on Human Rights to the CHR.

### General Assembly (GA)

This section summarizes any reports to the GA including those of Special Rapporteurs, Representatives or Working Group, as well as any resolutions adopted by the GA.

### Security Council (SC)

This section summarizes any relevant reports to the SC including reports of the Secretary-General or statements by the President of the SC, and relevant resolutions.

### Field Operations

This section summarizes any relevant reports emanating from UN field offices and/or operations.

### Other Reports

This section contains any other reports — for example, the eminent persons report on Algeria, which do not fit into the above categories.

### Appendix

Each geographic volume also contains, as an appendix, the reporting schedule of the treaty-bodies, to the extent that it has been established, for all countries in the region.

## 3. The Thematic Volume

Volume 1 is devoted primarily to summarizing the work of the thematic mechanisms and related reports presented to the CHR, Sub-Commission, ECOSOC, GA and SC, as well as resolutions of these bodies. Also included, where relevant, are General Comments or General Recommendations of the treaty-bodies on specific issues. The subjects are alphabetically ordered.

Since it has not been possible to be totally comprehensive in the discussion of thematics, we include — under the heading "Additional Thematic Approaches" — information under three sub-headings:

- (a) Reports of the Secretary-General;
- (b) Studies of the Sub-Commission, both those concluded in 1998 and those ongoing; and
- (c) Draft Declarations and Draft Optional Protocols which are currently being elaborated.

## SECTION B. BODIES, PROCEDURES AND TERMINOLOGY

This section is intended to provide very brief descriptions of bodies, procedures and terminology used throughout this report. As well, each volume contains a glossary of acronyms commonly used throughout the report.

**1503 Procedure:** ECOSOC Resolution 1503 (1970) authorized the Sub-Commission on Discrimination and Protection of Minorities to appoint a working group (i.e., the Working Group on Communications) to consider all communications received by the United Nations "with a view to bringing to the attention of the Sub-Commission those communications, together with replies of Governments, if any, which appear to reveal a consistent pattern of gross and reliably-attested violations of human rights and fundamental freedoms." Under the 1503 pro-

cedure, the deliberations of the WG which makes recommendations to the Sub-Commission, the deliberations of the Sub-Commission which makes recommendations to the Commission, and the deliberations of the CHR, which makes recommendations to ECOSOC are all confidential. However, the Commission publicly announces the names of the countries which it is considering under 1503, as well as countries dropped from this list. Governments often go to great lengths to avoid being put on this "black list" of gross violators.

**Accession:** see *Ratification*.

**Commission on Human Rights (CHR):** a functional commission of the Economic and Social Council (ECOSOC), established in 1945 in accordance with article 68 of the United Nations Charter. The CHR, currently comprising 53 member States, meets annually for a six-week session (in March/April) in Geneva. The CHR has played a major role in setting international human rights standards by drafting the International Bill of Human Rights, and many other seminal UN conventions and declarations. The Commission also monitors the implementation of human rights standards and, for this purpose, it has developed a complex system of thematic and country-specific mechanisms, including special rapporteurs and representatives, working groups, and independent experts. In recent years, it has also set up several funds to assist victims of human rights abuses. Non-governmental organizations in consultative status with ECOSOC may attend sessions of the CHR and make written or oral interventions.

**Committee Against Torture (CAT):** see *Treaty Bodies*.

**Committee on Economic, Social and Cultural Rights (CESCR):** see *Treaty Bodies*.

**Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW):** see *Treaty Bodies*.

**Committee on the Elimination of Racial Discrimination (CERD):** see *Treaty Bodies*.

**Committee on the Rights of the Child (CRC):** see *Treaty Bodies*.

**Core document:** see *Land and People*.

**Declaration:** A declaration is a statement made upon becoming a State party to an agreement. In certain treaties, States parties can make declarations whereby they recognize the competence of a committee to hear and review complaints.

**Declaration under Article 21 of the Convention Against Torture** means that the State party recognizes the competence of the Committee Against Torture (CAT) to receive and consider communications by a State party claiming that another State party is not fulfilling its obligations under the Convention. The Committee will only consider complaints if they are: (a) made by States parties that

have made declarations under Article 21, and (b) made about States parties which have made declarations under Article 21.

**Declaration under Article 22 of the Convention Against Torture** means that the State party recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals who claim that a State party has violated their rights under the Convention. The Committee only considers complaints against States parties which have made a declaration under Article 22.

**Declaration under Article 41 of the International Covenant on Civil and Political Rights (ICCPR):** When a State party makes a declaration under Article 41 of the ICCPR, it recognizes the competence of the Human Rights Committee to receive and consider communications by States parties claiming that another State party is not fulfilling its obligations under the Covenant. The Committee will only consider a complaint if: (a) it is submitted by a State party which has made a declaration under Article 41; and (b) the complaint concerns a State party which has made a declaration under Article 41.

**Declaration under Article 14 of the Convention on the Elimination of All Forms of Racial Discrimination:** When a State party makes such a declaration under Article 14, it means that the State Party recognizes the competence of the Committee on the Elimination of Racial Discrimination (CERD) to receive and consider communications from individuals or groups within its jurisdiction who claim that a State party has violated their rights under the Convention. The Committee will only consider complaints against those States parties that have made declarations under Article 14.

**General Assembly (GA) and its Third Committee:** The General Assembly is the main deliberative organ of the United Nations. It is composed of representatives of all Member States, each of which has one vote. Because of the large number of questions it is called on to consider, the Assembly allocates most questions to its six Main Committees. These Committees then draft resolutions and submit them to the General Assembly for approval. The Third Committee of the General Assembly, also called the Social, Humanitarian and Cultural Committee, is the Committee which most often addresses human rights questions.

**High Commissioner for Human Rights (HCHR):** see *Office of the High Commissioner for Human Rights (OHCHR)*.

**Human Rights Committee (HRC):** see *Treaty Bodies*.

**International Bill of Human Rights:** The term is used to refer to articles in the United Nations Charter which make reference to human rights, the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights, and

the International Covenant on Civil and Political Rights and its Optional Protocols.

**Land and People or the core document:** To facilitate the reporting process for States parties to international human rights instruments, the treaty-bodies have prepared consolidated guidelines for the development of a “core document” or country profile. The document is also referred to as “Land and people”, the title of the first section of the core document.

**Office of the High Commissioner for Human Rights (OHCHR):** The OHCHR is the UN office with principal responsibility for UN human rights activities under the direction and authority of the Secretary-General. The post of High Commissioner for Human Rights (HCHR) was established by General Assembly resolution 48/141 of 20 December 1993, after the idea was strongly endorsed in the Vienna Declaration and Programme of Action (VDPA) of the World Conference on Human Rights (Vienna, June 1993). In September 1997, in the context of the programme for reform of the United Nations, the OHCHR and the Centre for Human Rights (formerly the Geneva secretariat for the UN’s human rights procedures and machinery) were consolidated into a single Office. The mandate of the OHCHR is to: (a) promote universal enjoyment of all human rights by giving practical effect to the will and resolve of the world community as expressed by the United Nations; (b) play the leading role on human rights issues and emphasize the importance of human rights at the international and national levels; (c) promote international cooperation for human rights; (d) stimulate and coordinate action for human rights throughout the United Nations system; (e) promote universal ratification and implementation of international standards; (f) assist in the development of new norms; (g) support human rights organs and treaty monitoring bodies; (h) respond to serious violations of human rights; (i) undertake preventive human rights action; (j) promote the establishment of national human rights infrastructures; (k) undertake human rights field activities and operations; and (l) provide education, information advisory services and technical assistance in the field of human rights.

**Optional Protocol (OP):** An optional protocol to a treaty is a multilateral agreement that States parties can ratify or accede to, intended to further a specific purpose of the treaty or to assist in the implementation of its provisions. There are two optional protocols to the International Covenant on Civil and Political Rights. The first permits individuals who live in a State that has ratified the OP to submit a complaint to the Human Rights Committee (which monitors the Convention) when they believe their rights have been violated and they have exhausted all domestic remedies. The second seeks the abolition of death penalty. There are also working groups currently drafting optional protocols to permit individual complaint procedures under the Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination Against Women, and two optional protocols to the Convention on

the Rights of the Child – one related to the sale of children, and one related to children in armed conflict.

**Ratification, accession and succession** are all terms that indicate that a State has formally become a State party to a treaty. The primary difference in these three terms has to do with the way that the treaty has been approved. **Ratification** indicates that the treaty has been approved by a State’s governing bodies. A State is not bound by a convention that it has signed but not ratified. **Accession** means simply that a State has agreed to be bound by the terms of the treaty. **Succession** means that a newly-formed State has agreed to inherit the treaty obligations of its predecessor. For example, when Czechoslovakia ceased to exist, its successor States, the Czech Republic and Slovakia, each succeeded to the human rights treaties that Czechoslovakia had ratified earlier.

**Reservation:** A reservation is a unilateral statement formally made by a State upon signing, ratifying or acceding to an agreement. A State makes a reservation when it intends to modify or limit the effect of certain treaty provisions on that particular State. For example, a State may ratify a treaty but also say that it refuses to be bound by a specific provision in that treaty.

**Security Council (SC):** one of the six major organs of the UN, with the primary function of maintaining international peace and security. Currently, membership in the SC comprises 15 member States, five of which (China, France, Russia, United Kingdom and United States) are permanent members and have veto power. In recent years, as the link between human rights violations and violent conflict has been unequivocally established, the SC has become increasingly concerned with matters of human rights. For example, it was the Security Council which established the ad hoc International Criminal Tribunals on former Yugoslavia and Rwanda.

**Special Mechanisms:** The Commission on Human Rights has established a number of extra-conventional procedures and mechanisms – working groups, special rapporteurs, special representatives, independent experts – either to examine, monitor and publicly report on human rights situations in specific countries or territories (country mechanisms or mandates) or on major phenomena of human rights violations worldwide (thematic mechanisms or mandates). The system of special procedures is on the frontline of international monitoring of universal human rights standards and addresses many of the most serious violations in the most critical situations. Each procedure has its own specific mandate and has developed its own methods of work although certain basic principles and criteria are common to all. They have as a central objective to render international human rights norms more operative through, *inter alia*: entering into constructive dialogues with governments and seeking the cooperation of governments with regard to concrete situations, incidents and individual cases. Urgent action procedures are used on a regular basis when there remains the hope of pre-

venting possible violations of the rights to life, physical and mental integrity and security of person.

**State Party:** A State party to a treaty is a State which has formally consented to be bound by the terms of the treaty.

**Sub-Commission on the Prevention of Discrimination and Protection of Minorities:** The Sub-Commission was established in 1946 as a subsidiary body of the Commission on Human Rights. It is currently comprised of 26 independent experts nominated by Member States and elected by the Commission for a period of four years. The Sub-Commission meets annually for four weeks in August in Geneva. Its mandate permits the Sub-Commission to consider country situations, propose standards and conduct studies on human rights issues. The Sub-Commission presently has four Working Groups; each meets, generally for a week, before the annual session of the Sub-Commission. The Working Group on Communications meets in closed session to make recommendations to the Sub-Commission on the confidential 1503 procedure. The other three Working Groups are on Indigenous Populations, Contemporary Forms of Slavery, and Minorities. The Sub-Commission and the latter three Working Groups are open to NGOs in consultative status with ECOSOC, whose representatives may attend meetings and make oral or written statements.

**Succession:** see *Ratification*.

**Third Committee:** see *General Assembly*.

**Treaty Bodies:** Each of the six major human rights treaties reviewed in this report have established a committee of independent experts (i.e., a treaty body) mandated to receive and review reports from States parties concerning their efforts to implement their treaty obligations under the convention.

(a) **Committee Against Torture (CAT)** (\*\*Fact Sheet No. 17)

CAT oversees the implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force on 26 June 1987. The Committee met for the first time in April 1988 and is made up of 10 experts who must be nationals of states parties. Members are elected by the states parties for a term of four years and are eligible for re-election. The Committee normally holds two regular sessions each year (May and November); special sessions may be convened by the Committee at the request of a majority of the states parties. The tasks of the Committee include: examining the reports of states parties, which are required to report to CAT every four years on the measures they have taken towards implementing the Convention; receiving information and instituting inquiries concerning allegations of systematic practice of torture in states parties, subject to a declaration by states under article 20 of the Convention; responding to inter-state complaints under article 21,

as necessary; under article 22, receiving and considering complaints from or on behalf of individuals; and cooperating with the Special Rapporteur on the question of torture, appointed by the Commission on Human Rights. The Committee may make confidential inquiries into reliably-attested practices of torture in States, and it has developed an urgent action procedure to respond to cases where individuals are under threat of torture. There is also the possibility of cooperating on a limited basis with the European Committee for the Prevention of Torture, established under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

(b) **Committee on Economic, Social and Cultural Rights (CESCR)** (\*\*Fact Sheet No. 16, Rev.1)

CESCR was established in 1985 by a resolution of ECOSOC to monitor the effective implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which entered into force on 3 January 1976. CESCR met for the first time in 1987. The Committee meets twice a year (April and November) in three week sessions in Geneva. It is comprised of 18 independent experts elected by States parties for a four-year term; members may be re-elected. Under its reporting guidelines, the Committee has identified seven key objectives related to States' reporting obligations: ensuring a comprehensive review of national legislation, administrative rules and procedures, and practices; ensuring regular monitoring of the actual situation with respect to the Covenant rights; provision of a basis for government policies for implementation of the ICESCR; facilitation of public scrutiny of government policies with respect to implementation; provision of a basis on which both the government and the Committee can effectively evaluate progress; enabling governments to develop a better understanding of problems and shortcomings impeding realization of Covenant rights; and facilitation of the exchange of information among states parties in terms of both common problems and possible solutions in the realization of Covenant rights. In cases where states' reports are long overdue, the Committee may decide to consider the situation in the country concerned without a report and informs the government of that decision.

From time to time the Committee prepares "general comments" on the rights and provisions contained in the Covenant with the aim of assisting states parties in fulfilling their reporting obligations and providing greater interpretative clarity as to the intent, meaning and content of the Covenant. At each of its sessions, the Committee holds a day of general discussion on particular provisions of the Covenant, particular human rights themes or other themes of direct relevance. Such discussions have focussed on: the right to food, the right to housing, economic and social indicators, the right to take part in cultural life, the rights of the aging and the elderly, the right to health, the

role of social safety nets as a means of protecting economic, social and cultural rights, human rights education, the interpretation and practice application of obligations on states parties, and a draft optional protocol to the Covenant. The Committee seeks written information from non-governmental organizations and at each of its sessions sets aside one meeting to receive oral information from NGOs.

(c) **Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW)** (\*\*Fact Sheet No. 22)

CEDAW was created to monitor implementation of the Convention on the Elimination of All Forms of Discrimination Against Women which was adopted 1979 by the General Assembly and entered into force on 3 September 1981. The Committee comprises 23 members who are elected to four-year terms by states parties. States parties are required to submit reports to CEDAW every four years on the legal, judicial and policy measures they have taken and on the actual situation of the process of fully integrating women into the political, economic, social and cultural areas of their society. Article 20 of the Convention stipulates that the Committee meets once yearly for a period of two weeks. In 1995, however, the Committee received the approval of states parties to meet twice yearly in three-week sessions (January and June) in order to facilitate clearance of the backlog of state reports. States parties have been requested to amend article 20 in order to regularize the present temporary arrangement of twice yearly session. From time to time the Committee adopts general recommendations which are intended to assist states parties in terms of the steps to be taken to fulfil their obligations under the Convention. Recently, CERD also began issuing General Comments interpreting the content of articles of the Convention. Information to assist the Committee in its work is not only sought from various of the UN specialized agencies but also from non-governmental human rights and women's organizations as well as independent agencies.

(d) **Committee on the Elimination of Racial Discrimination (CERD)** (\*\*Fact Sheet No. 12)

CERD monitors the implementation of the International Convention on the Elimination of All Forms of Discrimination, which entered into force on 4 January 1969. CERD, composed of 18 experts elected by States parties for a term of four years, meets twice a year (in March and August) in three week sessions. CERD members examine the periodic reports State parties are required to make — comprehensive reports every four years, with brief updates at intervening two-year periods — and issue comments and recommendations on the basis of their dialogue with government representatives. In cases where a State's reports are seriously overdue, the Committee may review the situation in that country without a report.

In addition, the Committee may receive and act on a state-to-state complaint as well as communications received from individuals or groups claiming to be victims of a violation of the Convention. CERD is also designated to monitor the aim of the Convention regarding Trust and Non-Self-Governing Territories.

(e) **Committee on the Rights of the Child (CRC)** (\*\*Fact Sheet No. 10, Rev.1)

CRC monitors the effective implementation by States parties of the rights set out in the Convention on the Rights of the Child. The Convention was adopted unanimously by the General Assembly on 20 November 1989 and entered into force on 2 September 1990. This convention is the one which has the largest number of ratifications; only two States (USA and Somalia) have not yet ratified. CRC is composed of 10 experts who are nominated and elected to a term of four years by states parties. Members may be re-elected. The Committee meets three times each year (January, May, September). States parties must submit their initial report within two years of ratification or accession and thereafter every five years. The Committee seeks close cooperation not only with relevant UN bodies and agencies but also others, including non-governmental organizations. The Committee's discussions with states parties are normally open to the public and the Committee encourages governments to make the national reporting procedure open and transparent. The Committee's reporting guidelines for states emphasize concrete implementation measures to make a reality of the principles and provisions of the Convention.

In addition to reviewing State parties reports, the CRC interprets substantive articles of the Convention. In January 1993 the Committee initiated a procedure under which general discussions may be held on a specific theme or question. Since then, discussions have been held on the issues of the protection of children in armed conflicts, the economic exploitation of children, the rights of the child in the family context, the rights of girls, juvenile justice, and children living in a world with HIV/AIDS.

(f) **Human Rights Committee (HRC)** (\*\*Fact Sheet No. 15)

HRC was established to monitor the implementation of the International Covenant on Civil and Political Rights (ICCPR), which was adopted by the General Assembly on 16 December 1966 and entered into force 23 March 1976. It also monitors the implementation of the two Protocols to the ICCPR. The First Protocol, which was adopted and entered into force at the same time as the Covenant, allows individuals to submit complaints against a State party alleging violations of human rights or fundamental freedoms protected by the Covenant. The Second Protocol, which was adopted on 15 December 1989 and entered into force on 11 July 1991, seeks the abolition of death penalty.

HRC is composed of 18 independent experts and meets three times a year (in New York in March, and in Geneva in July and November). The Committee has two pre-sessional working groups which meet prior to each session. The first is entrusted with the task of making recommendations regarding communications received under the Optional Protocol; the second is mandated to prepare concise lists of issues concerning the state reports to be examined by the Committee at the upcoming session.

States parties must submit reports to the Committee every five years on the measures they have adopted to give effect to the rights set out in the Covenant and on the progress made in the enjoyment of those rights.

The reports are examined by the Committee in public meetings and, on the final day of the session, the Committee adopts concluding observations and comments summarizing its main concerns and making appropriate suggestions and recommendations to the government concerned. The Committee encourages non-governmental organizations to submit written information and reports for its consideration when examining state reports.

**Vienna Declaration and Programme of Action (VDPA):** These were the documents adopted by consensus at the World Conference on Human Rights, Vienna, June 1993.

## APPENDIX 2: HUMAN RIGHTS MANDATES

As of 16 September 1998, the thematic and country specific procedures mandated by the Commission on Human Rights were as follows:

### COUNTRIES

#### Renewed on an annual basis

Afghanistan (Special Rapporteur)  
 Burundi (Special Rapporteur)  
 Cambodia (Special Representative)  
 Democratic Republic of the Congo (Special Rapporteur)  
 Equatorial Guinea (Special Rapporteur)  
 Former Yugoslavia (Special Rapporteur)  
 Iraq (Special Rapporteur)  
 Iran (Special Representative)

Myanmar (Special Rapporteur)  
 Nigeria (Special Rapporteur)  
 Rwanda (Special Representative)  
 Sudan (Special Rapporteur)

#### Technical Assistance

Haiti (Independent Expert)  
 Somalia (Independent Expert)

#### Not requiring annual renewal

Palestinian territories occupied since 1967 (Special Rapporteur); appointed until such time as the Commission decides the mandate is no longer needed.

#### 1503 procedure

Chad (Independent Expert)

## THEMATIC MANDATES

#### Working Groups

	Mandate Ends
Arbitrary Detention (5 independent experts) . . . . .	2000
Enforced or Involuntary Disappearances (5 independent experts) . . . . .	2001

#### Special Rapporteurs, Special Representatives or Independent Experts

	Mandate Ends
Education . . . . .	2001
Effects of Foreign Debt . . . . .	2001
Extrajudicial, Summary of Arbitrary Execution . . . . .	2001
Extreme Poverty . . . . .	2000
Freedom of Opinion and Expression . . . . .	1999
Illicit Movement and Dumping of Toxic Waste . . . . .	2001
Impact of Armed Conflict on Children . . . . .	2001
Independence of Judges and Lawyers . . . . .	2000
Internally Displaced Persons . . . . .	2001
Racism, Racial Discrimination and Xenophobia . . . . .	1999
Religious Intolerance . . . . .	2001
Restitution, Compensation and Rehabilitation for Victims of Grave Human Rights Violations . . . . .	1999
Right to Development . . . . .	2001
Sale of Children, Child Prostitution, Child Pornography . . . . .	2001
Structural Adjustment . . . . .	1999
Torture and Other Cruel, Inhuman or Degrading Treatment . . . . .	2001
Use of Mercenaries . . . . .	2001
Violence against Women, Its Causes and Consequences . . . . .	2000

#### Inter-governmental bodies

	Mandate Ends
Working Group on the Right to Development . . . . .	2001
Working Group on Migrant Workers . . . . .	1999
Working Group on Structural Adjustment Policies and Programmes . . . . .	1999

## APPENDIX 3: TREATY BODIES

### DRAFT SCHEDULES FOR CONSIDERATION OF STATE REPORTS

#### COMMITTEE AGAINST TORTURE

The Committee against Torture (Fact Sheet No. 17) met for the first time in April 1988 and is made up of 10 experts who must be nationals of states parties. Members are elected by the states parties for a term of four years and are eligible for re-election. The Committee normally holds two regular sessions each year (May and November); special sessions may be convened by the Committee at the request of a majority of the states parties.

The tasks of the Committee include: examination of the reports of states parties; to receive information and institute inquiries concerning allegations of systematic practice of torture in states parties, subject to a declaration by states under article 20 of the Convention; respond to inter-state complaints under article 21, as necessary; under article 22, to receive and consider complaints from or on behalf of individuals; and cooperation with the Special Rapporteur on the question of torture, appointed by the Commission on Human Rights. There is limited scope for the Committee actively to cooperate with the European Committee for the Prevention of Torture, established under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The provisional schedule of reports to be considered at the Committee's May 1999 session is:

Bulgaria	2nd periodic report	CAT/C/17/Add.19
Italy	3rd periodic report	CAT/C/44/Add.2
Libya	3rd periodic report	CAT/C/44/Add.3
Liechtenstein	2nd periodic report	CAT/C/29/Add.5
Luxembourg	2nd periodic report	CAT/C/17/Add.20
Malta	2nd periodic report	CAT/C/29/Add.6
Mauritius	2nd periodic report	CAT/C/43/Add.1
Morocco	2nd periodic report	CAT/C/43/Add.2
Netherlands	3rd periodic report	CAT/C/44/Add.4 (Antilles and Aruba)
The FYR Macedonia	initial report	CAT/C/28/Add.4
Venezuela	initial report	CAT/C/16/Add.8

#### COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (CERD)

CERD (Fact Sheet No. 12) monitors the implementation of the International Convention on the Elimination of All Forms of Discrimination, which entered into force on 4 January 1969. CERD, composed of 18 experts elected by States parties for a term of four years, meets twice a year (in March and August) three week sessions. CERD members examine the periodic reports State parties are required to make -- comprehensive reports every four years, with brief updates at intervening two-year periods -- and issue comments and recommendations on the basis of their dialogue with government representatives. In cases where a State's reports are seriously overdue, the Committee may review the situation in that country without a report. In addition, the Committee may receive and act on a state-to-state complaint as well as communications received from individuals or groups claiming to be victims of a violation of the Convention. CERD is also designated to monitor the aim of the Convention regarding Trust and Non-Self-Governing Territories.

The provisional schedule of reports and/or situations to be considered by the Committee for 1999 is:

##### March 1999

Austria	11th -- 13th periodic reports	CERD/C/319/Add.5
Australia	Re: Native Title Act	***
Bangladesh	***	***
Bahrain	***	***
Congo	12th- 14th periodic reports	***

Costa Rica . . . . .	4th periodic report . . . . .	CERD/C/338/Add.4
Czech Republic . . . . .	13th and 14th periodic reports . . . . .	***
DR Congo . . . . .	10th and 11th periodic reports . . . . .	***
Finland . . . . .	13th and 14th periodic reports . . . . .	CERD/C/320/Add.2
Italy . . . . .	10th and 11th periodic reports . . . . .	CERD/C/317/Add.1
Kuwait . . . . .	13th and 14th periodic reports . . . . .	CERD/C/299/Add.16
Lesotho . . . . .	7th -- 14th periodic reports . . . . .	CERD/C/337/Add.1
Mongolia . . . . .	11th -- 15th periodic reports . . . . .	CERD/C/338/Add.3
Peru . . . . .	12th and 13th periodic reports . . . . .	CERD/C/298/Add.5
Portugal . . . . .	5th-8th periodic reports . . . . .	CERD/C/314/Add.1
Republic of Korea . . . . .	9th and 10th periodic reports . . . . .	CERD/C/333/Add.1
Rwanda . . . . .	*** . . . . .	***
Slovenia . . . . .	*** . . . . .	***
Sudan . . . . .	*** . . . . .	***
Syria . . . . .	12th -- 15th periodic reports . . . . .	CERD/C/338/Add.1/Rev.1
Yugoslavia . . . . .	*** . . . . .	***

## COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (CESCR)

CESCR (Fact Sheet No. 16, Rev.1) was established in 1985 by a resolution of ECOSOC to monitor the effective implementation of the International Covenant on Economic, Social and Cultural Rights, which entered into force on 3 January 1976. CESCR met for the first time in 1987. The Committee meets twice a year (April and November) in three week sessions in Geneva. It is comprised of 18 independent experts elected by States parties for a four-year term; members may be re-elected. Under its reporting guidelines, the Committee has identified seven key objectives related to States' reporting obligations: ensuring a comprehensive review of national legislation, administrative rules and procedures, and practices; ensuring regular monitoring of the actual situation with respect to the Covenant rights; provision of a basis for government policies for implementation of the ICESCR; facilitation of public scrutiny of government policies with respect to implementation; provision of a basis on which both the government and the Committee can effectively evaluate progress; enabling the government to develop a better understanding of problems and shortcomings impeding realization of Covenant rights; and facilitation of the exchange of information among states parties in terms of both common problems and possible solutions in the realization of Covenant rights. In cases where states' reports are long overdue, the Committee may decide to consider the situation in the country concerned without a report and informs the government of that decision.

From time to time the Committee prepares "general comments" on the rights and provisions contained in the Covenant with the aim of assisting states parties in fulfilling their reporting obligations and to provide greater interpretative clarity as to the intent, meaning and content of the Covenant. At each of its sessions, the Committee holds a day of general discussion on particular provisions of the Covenant, particular human rights themes or other themes of direct relevant. Such discussions have focussed on: the right to food, the right to housing, economic and social indicators, the right to take part in cultural life, the rights of the aging and the elderly, the right to health, the role of social safety nets as a means of protecting economic, social and cultural rights, human rights education, the interpretation and practice application of obligations on states parties, and a draft optional protocol to the Covenant. The Committee seeks written information from non-governmental organizations and at each of its sessions sets aside one meeting to receive oral information from NGOs.

The provisional schedule of reports to be considered by the Committee is:

### April 1999

Bulgaria . . . . .	3rd periodic report . . . . .	E/1994/104/Add.16
Denmark . . . . .	3rd periodic report . . . . .	E/1994/104/Add.15
Iceland . . . . .	2nd periodic report . . . . .	E/1990/6/Add.15
Ireland . . . . .	Initial report . . . . .	E/1990/5/Add.34
Solomon Island . . . . .	*** . . . . .	***
Tunisia . . . . .	2nd periodic report . . . . .	E/1990/6/Add.14

**November 1999**

Argentina	2nd periodic report	E/1990/6/Add.16
Armenia	Initial report	E/1990/5/Add.36
Cameroon	Initial report	E/1990/5/Add.35
Georgia	Initial report	E/1990/5/Add.37
Mexico	3rd periodic report	E/1994/104/Add.18

**April 2000**

Belgium	2nd periodic report	E/1990/6/Add.18
Egypt	Initial report	E/1990/6/Add.38
Italy	3rd periodic report	E/1994/104/Add.19
Jordan	2nd periodic report	E/1990/6/Add.17
Portugal	3rd periodic report	E/1994/104/Add.20

**November 2000**

Australia	3rd periodic report	E/1994/104/Add.22
Honduras	Initial report	E/1990/5/Add.40
Kyrgyzstan	Initial report	E/1990/5/Add.42
Mongolia	3rd periodic report	E/1994/104/Add.21
Sudan	Initial report	E/1990/5/Add.41

**April 2001**

Japan	2nd periodic report	E/1990/6/Add.21
Morocco	2nd periodic report	E/1990/6/Add.20
Venezuela	2nd periodic report	E/1990/6/Add.19

**COMMITTEE ON THE RIGHTS OF THE CHILD**

The Committee on the Rights of the Child (Fact Sheet No. 10, Rev.1) is composed of 10 experts who are nominated and elected to a term of four years by states parties. Members may be re-elected. The Committee meets three times each year (January, May, September). States parties must submit their initial report within two years of ratification or accession and thereafter every five years. The Committee seeks close cooperation not only with relevant UN bodies and agencies but also others, including non-governmental organizations. In January 1993 the Committee initiated a procedure under which general discussions may be held on a specific theme or question. Since then, discussions have been held on the issues of the protection of children in armed conflicts, the economic exploitation of children, the rights of the child in the family context, the rights of girls, juvenile justice, and children living in a world with HIV/AIDS.

The Committee's discussions with states parties are normally open to the public and the Committee encourages governments to make the national reporting procedure open and transparent. The Committee's reporting guidelines for states emphasize concrete implementation measures to make a reality of the principles and provisions of the Convention.

The provisional schedule of state reports to be considered by the Committee is:

**January 1999**

Austria	Initial report	CRC/C/11/Add.14
Barbados	Initial report	CRC/C/3/Add.45
Belize	Initial report	CRC/C/3/Add.46
Guinea	Initial report	CRC/C/3/Add.48
Sweden	2nd periodic report	CRC/C/65/Add.3
Yemen	2nd periodic report	CRC/C/70/Add.1

**May 1999**

Benin .....	Initial report .....	CRC/C/3/Add.52
Chad .....	Initial report .....	CRC/C/3/Add.50
Honduras .....	2nd periodic report .....	CRC/C/65/Add.2
Nicaragua .....	2nd periodic report .....	CRC/C/65/Add.4
Saint Kitts and Nevis .....	Initial report .....	CRC/C/3/Add.51
Sierra Leone .....	Initial report .....	CRC/C/3/Add.43

**September 1999**

Armenia .....	Initial report .....	CRC/C/28/Add.9
India .....	Initial report .....	CRC/C/28/Add.10
Mali .....	Initial report .....	CRC/C/3/Add.53
Netherlands .....	Initial report .....	CRC/C/51/Add.1
Russia .....	2nd periodic report .....	CRC/C/65/Add.5
Vanuatu .....	Initial report .....	CRC/C/28/Add.8

**January 2000**

Costa Rica .....	2nd periodic report .....	CRC/C/65/Add.7
Grenada .....	Initial report .....	CRC/C/3/Add.55
The FYR Macedonia .....	Initial report .....	CRC/C/8/Add.36
Mexico .....	2nd periodic report .....	CRC/C/65/Add.6
South Africa .....	Initial report .....	CRC/C/51/Add.2
Venezuela .....	Initial report .....	CRC/C/3/Add.54

**May 2000**

Cambodia .....	Initial report .....	CRC/C/11/Add.16
Georgia .....	Initial report .....	CRC/C/41/Add.4/Rev.1
Iran .....	Initial report .....	CRC/C/41/Add.5
Malta .....	Initial report .....	CRC/C/3/Add.56
Norway .....	2nd periodic report .....	CRC/C/70/Add.2
Peru .....	2nd periodic report .....	CRC/C/65/Add.8

**September 2000**

DR Congo .....	Initial report .....	CRC/C/3/Add.57
Djibouti .....	Initial report .....	CRC/C/8/Add.39
Finland .....	2nd periodic report .....	CRC/C/70/Add.3
Jordan .....	2nd periodic report .....	CRC/C/70/Add.4
Kyrgyzstan .....	Initial report .....	CRC/C/41/Add.6
Surinam .....	Initial report .....	CRC/C/28/Add.11

**January 2001**

Burundi .....	Initial report .....	CRC/C/3/Add.58
Colombia .....	2nd periodic report .....	CRC/C/70/Add.5
Comoros .....	Initial report .....	CRC/C/28/Add.13
Denmark .....	2nd periodic report .....	CRC/C/70/Add.6
Marshall Islands .....	Initial report .....	CRC/C/28/Add.12
Slovakia .....	Initial report .....	CRC/C/11/Add.17
Tajikistan .....	Initial report .....	CRC/C/28/Add.14

**May 2001**

Central African Republic	Initial report	CRC/C/11/Add.18
Lesotho	Initial report	CRC/C/11/Add.20
Lithuania	Initial report	CRC/C/11/Add.21
Egypt	2nd periodic report	CRC/C/65/Add.9
Liechtenstein	Initial report	CRC/C/61/Add.1
Guatemala	2nd periodic report	CRC/C/65/Add.10
United Kingdom	Initial report	CRC/C/11/Add.19 (Isle of Man)

**September 2001**

Ethiopia	2nd periodic report	CRC/C/70/Add.7
Latvia	Initial report	CRC/C/11/Add.22
Portugal	2nd periodic report	CRC/C/65/Add.11
Paraguay	2nd periodic report	CRC/C/65/Add.12
Saudi Arabia	Initial report	CRC/C/61/Add.2

**COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN**

The Committee on the Elimination of Discrimination against Women (Fact Sheet No. 12) is comprised of 23 members who are elected to four-year terms by states parties. Article 20 of the Convention stipulates that the Committee once yearly for a period of two weeks. In 1995, however, the Committee received the approval of states parties to meet twice yearly in three-week sessions (January and June) in order to facilitate clearance of the backlog of state reports. States parties have been requested to amend article 20 in order to regularize the present temporary arrangement of twice yearly session. From time to time the Committee adopts general recommendations which are intended to assist states parties in terms of the steps to be taken to fulfil their obligations under the Convention.

Information to assist the Committee in its work is not only sought from various of the UN specialized agencies but also from non-governmental human rights and women's organizations as well as independent agencies.

The provisional schedule of reports to be considered by the Committee is:

**January 1999**

Algeria	***	***
Austria	3rd and 4th periodic reports	CEDAW/C/AUT/3-4
Chile	2nd periodic report	CEDAW/C/CHI/2
China (Hong Kong)	***	***
Colombia	4th periodic report	CEDAW/C/COL/4
Greece	2nd and 3rd periodic reports	CEDAW/C/GRC/2-3
Jordan	Initial report	CEDAW/C/JOR/1
Thailand	2nd and 3rd periodic reports	CEDAW/C/THA/2-3
United Kingdom	3rd periodic report	CEDAW/C/UK/3; CEDAW/C/UK/3/Add.1; CEDAW/C/UK/3/Add.2

**June 1999**

Belize	Initial and 2nd periodic reports	CEDAW/C/BLZ/1-2
DR Congo	2nd and 3rd periodic reports	CEDAW/C/ZAR/2; CEDAW/C/COD/3
Egypt	3rd periodic report	CEDAW/C/EGY/3
Georgia	Initial report	CEDAW/C/GEO/1
Germany	2nd and 3rd periodic reports	CEDAW/C/DEU/2-3
Ireland	2nd and 3rd periodic reports	CEDAW/C/IRL/2-3
Spain	3rd periodic report	CEDAW/C/ESP/3

## HUMAN RIGHTS COMMITTEE

The Human Rights Committee (Fact Sheet No. 15) was established to monitor the implementation of the International Covenant on Civil and Political Rights and the two Protocols to the ICCPR. The Committee is composed of 18 independent experts and meets three times a year (March -- New York, and July and November -- Geneva). The Committee has two pre-sessional working groups which meet prior to each session. The first is entrusted with the task of making recommendations regarding communications received under the Optional Protocol; the second is mandated to prepare concise lists of issues concerning the state reports to be examined by the Committee at the upcoming session.

States parties must submit reports to the Committee every five years on the measures they have adopted to give effect to the rights set out in the Covenant and on the progress made in the enjoyment of those rights. The reports are examined by the Committee in public meetings and, on the final day of the session, the Committee adopts concluding observations and comments summarizing its main concerns and making appropriate suggestions and recommendations to the government concerned. The Committee encourages non-governmental organizations to submit written information and reports for its consideration when examining state reports.

The provisional schedule of reports to be considered by the Committee at March and July 1999 sessions is:

### March 1999

Cambodia	Initial report	CCPR/C/81/Add.12
Cameroon	3rd periodic report	CCPR/C/102/Add.2
Canada	4th periodic report	CCPR/C/103/Add.5
Chile	4th periodic report	CCPR/C/95/Add.11
Costa Rica	4th periodic report	CCPR/C/103/Add.6
Lesotho	Initial report	CCPR/C/81/Add.14

### July 1999

Kuwait	Initial report	CCPR/C/120/Add.1
Korea (South)	2nd periodic report	CCPR/C/114/Add.1
Poland	4th periodic report	CCPR/C/95/Add.8
Romania	4th periodic report	CCPR/C/95/Add.7
Mexico	4th periodic report	CCPR/C/123/Add.1

For the record ... : the UN  
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