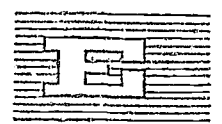


DECLASSIFIED



UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL
E/CN.4/1985/17
12 February 1985
Original: ENGLISH/FRENCH/
SPANISH

COMMISSION ON HUMAN RIGHTS
Forty-first session
Agenda item 12

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

Summary of arbitrary executions

Report by the Special Rapporteur, Mr. S. Amos Wako, appointed
pursuant to resolution 1984/35 of 24 May 1984 of the
Economic and Social Council

DEPARTMENT OF STATE A/CDC/IMR	
REVIEWED BY <u>WC NEAM</u>	DATE <u>1/3/86</u>
RDS <input type="checkbox"/> or XDS <input type="checkbox"/> EXT. DATE _____	
TS AD. H. _____	REASON(S) _____
ENDORSE EXISTING MARKINGS	
DECLASSIFIED <input type="checkbox"/> RELEASABLE <input checked="" type="checkbox"/>	
RELEASE DENIED <input type="checkbox"/>	
PA or FCI EXEMPTIONS _____	

GE.85-10721

DECLASSIFIED



CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
INTRODUCTION	1 - 6	1
I. ACTIVITIES OF THE SPECIAL RAPPORTEUR	7 - 21	2
A. Communications	7 - 17	2
B. Urgent appeals to Governments	18 - 19	5
C. Visit to Suriname	20 - 21	20
II. PROTECTION OF THE RIGHT TO LIFE: REVIEW OF LAWS AND SITUATIONS	22 - 62	21
A. Articles 6, paragraph 2, and 15 of the International Covenant on Civil and Political Rights	31 - 38	22
B. Article 6, paragraph 4, of the International Covenant on Civil and Political Rights	39	23
C. Article 6, paragraph 5, of the International Covenant on Civil and Political Rights	40	23
D. Articles 6, paragraph 2, and 14 of the International Covenant on Civil and Political Rights	41 - 45	24
E. Article 7 of the International Covenant on Civil and Political Rights	46 - 47	24
F. Article 9 of the International Covenant on Civil and Political Rights	48 - 50	25
G. Article 3 of the Code of Conduct for Law Enforcement Officials	51 - 58	25
H. Inquiries and/or investigations of alleged violations of the foregoing provisions	59 - 62	27
III. SITUATIONS AND CASES	63 - 72	28
A. General background	63 - 69	28
B. Situations	70 - 72	28
IV. CONCLUSIONS AND RECOMMENDATIONS	73 - 79	30



DECLASSIFIED

E/CN.4/1985/17
page iii

Annexes

- I. Economic and Social Council resolution 1984/35
- II. General Assembly resolution 39/110
- III. Note verbale dated 25 April 1984 from the Secretary-General to Governments
- IV. Note verbale dated 21 September 1984 from the Secretary-General to Governments
- V. Visit by the Special Rapporteur to Suriname

DECLASSIFIED

INTRODUCTION

1. The right to life was internationally recognized for the first time in 1948 by the Universal Declaration of Human Rights (adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948) as one of the "inalienable rights of all members of the human family". Article 3 of the Declaration states: "Everyone has the right to life, liberty and security of person". Since then protection of the right to life has gradually become a subject of international concern and awareness of it has been growing steadily in the international community.

2. However, it was only a few years ago that the question of summary or arbitrary executions began to draw the attention of various international forums as a separate subject for discussion in the field of human rights. In the United Nations the question has been considered since 1980 and two reports have been submitted to the Commission on Human Rights (E/CN.4/1983/16 and Add.1 and Add.1/Corr.1 and E/CN.4/1984/29) by the Special Rapporteur on summary or arbitrary executions who was first appointed in 1982 pursuant to Economic and Social Council resolution 1982/35.

3. On 14 March 1984, at its fortieth session, the Commission on Human Rights adopted without a vote resolution 1984/50, containing a draft resolution concerning summary or arbitrary executions for adoption by the Economic and Social Council. The draft resolution was adopted by the Economic and Social Council on 24 May 1984 as resolution 1984/35 entitled "Summary or arbitrary executions" (see annex I).

4. The General Assembly at its thirty-ninth session adopted resolution 39/110 entitled "Summary or arbitrary executions" (annex II).

5. In the previous two reports (E/CN.4/1983/16 and Add.1 and Add.1/Corr.1 and E/CN.4/1984/29), international standards relevant to the subject were outlined and national laws and regulations were examined in regard to safeguards for protection of the right to life. In the first report (E/CN.4/1983/16 and Add.1 and Add.1/Corr.1) reference was also made to specific information on various situations in which summary or arbitrary executions allegedly took place. In the second report (E/CN.4/1984/29), situations in which summary or arbitrary executions were reported to have taken place were analysed in general terms on the basis of the type of situations and the factors which could trigger summary or arbitrary executions. In the second report, the activities of the Special Rapporteur during the past year were mentioned, particularly concerning cases in which a summary or arbitrary execution was alleged to be imminent or threatened.

6. The present report is submitted pursuant to Economic and Social Council resolution 1984/35 and is intended to update the information contained in previous reports and to inform the Commission of the Activities of the Special Rapporteur during the past year, including examination of situations in which summary or arbitrary executions allegedly took place, and which have been brought to his attention since his last report. In accordance with the resolution renewing his mandate, the Special Rapporteur also paid special attention to cases in which summary or arbitrary execution was allegedly imminent or threatened.

0371001000

E/CN.4/1985/17
page 2

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Communications

7. Since the Economic and Social Council decided in resolution 1984/35 to continue the mandate of the Special Rapporteur for another year, he has engaged himself in activities that fall within the sphere of his mandate, as described below.
8. The Special Rapporteur visited the Centre for Human Rights at the United Nations Office at Geneva from 18 to 19 July and on 29 August for consultations. He visited Geneva again from 9 to 18 January 1985 to finalize the report.
9. On 25 April 1984, a note verbale was sent to Governments with a copy of General Assembly resolution 38/96 of 16 December, entitled "Summary or arbitrary executions" (annex III). On 21 September 1984, a note verbale was sent to Governments seeking information concerning the question of summary or arbitrary executions (annex IV).
10. On 31 October 1984 letters were sent to 19 Governments concerning allegations of summary or arbitrary executions in their countries. On 25 January 1985 letters were sent to two more Governments.
11. In the course of his present mandate, the Special Rapporteur received communications from the following Governments:
- Argentina, Austria, Bangladesh, Belize, Cape Verde, China, Colombia, Cyprus, Denmark, El Salvador, Gambia, Guatemala, Honduras, India, Indonesia, Iraq, Italy, Jordan, Kenya, Kiribati, Liberia, Netherlands, Pakistan, Panama, Peru, Portugal, Philippines, Qatar, Somalia, Spain, Saint Vincent and the Grenadines, Swaziland, Thailand.
12. The Special Rapporteur also received communications from the following non-governmental organizations in consultative status with the Economic and Social Council:
- Amnesty International, Baha'i International Community, Commission of the Churches on International Affairs, International Commission of Jurists, Pax Romana.
13. In his last report (E/CN.4/1984/29, paragraph 31), the Special Rapporteur refrained from mentioning the names of States in which summary or arbitrary executions were alleged to have taken place, either because the representatives of those countries had requested more time to investigate, or because the Special Rapporteur was of the opinion that the time given to investigate was too short. The Special Rapporteur is pleased to report that a number of those Governments have communicated their replies to the allegations and that a dialogue is continuing between him and some of the countries concerned.
14. However, the Special Rapporteur is disappointed to note that, despite the reminders sent on 24 October 1984, some Governments have not replied to his request for information concerning the allegations of summary or arbitrary executions. The text of the letter of 24 October 1984 reads as follows:

0371001000

"I have the honour to refer to Economic and Social Council resolution 1984/35 of 24 May 1984 by which my mandate as Special Rapporteur of the Commission on Human Rights on Summary or Arbitrary Executions was renewed.

I should like to refer also to my letter of 1 November 1983 and attachment, copies of which are attached hereto. The letter and attachment concerned allegations of inadequate safeguards for protection of the right to life and requested information thereon from Your Excellency's Government.

Although I received replies from a number of Governments concerning allegations communicated to them by my letter of 1 November 1983, I felt that other Governments might require more time in order to look into the allegations addressed to them and had so stated in my report to the Commission on Human Rights at its fortieth session (E/CN.4/1984/29, paragraph 31, attached). To date, no reply appears to have been received to my letter of 1 November 1983 and attachment addressed to Your Excellency's Government.

I am now in the process of preparing my report to the forty-first session of the Commission on Human Rights. My report will refer to the information forwarded to Your Excellency's Government by my letter of 1 November 1983. In order to make my report as complete as possible, I should be grateful to receive any information that Your Excellency's Government may wish to furnish on the allegations mentioned in the above-mentioned letter."

15. The Special Rapporteur had not received replies from three Governments, namely, the Islamic Republic of Iran, Libya and Malawi by the date on which the report was completed. The allegations communicated to those Governments by the Special Rapporteur's letter of 1 November 1983 are reproduced below.

(a) Islamic Republic of Iran

"According to this information, in February 1983, 22 Baha'is were sentenced to death in Shiraz, of whom 16 were executed on 16 and 18 June 1983.

The names of those executed on 16 June 1983 were given as follows:

Bahram Afnan, aged 48;
Bahram Yalda'i, aged 23;
Jamshid Siyavushi, aged 39;
'Inayatu'llah Ishraqi, aged 60;
Kurush Haqbin, aged 27;
'Abdu'l-Husayn Azadi, aged 60.

The names of those executed on 18 June 1983 were given as follows:

Nusrat Yalda'i, aged 54;
'Izzat Janami Ishraqi, aged 50;
Ruya Ishraqi, in her early 20s;
Tahirih Siyavushi, aged 32;
Muna Mahmudnizhad, aged 18;
Zarrin Muqini, in her early 20s;
Shirin Darvand, in her early 20s;
Akhtar Tnabit, aged 19;
Simin Sabiri, in her early 20s;
Mahshid Nirumand, aged 18.



According to the information, Suhayl Hushmand, aged 24, arrested and imprisoned in Shiraz in late 1982, was hanged on 28 June 1982.

It was further alleged that a total of 142 Baha'is had been executed since the beginning of the Islamic Revolution in February 1979."

(b) Libya

"According to this information, on 7 April 1983, six persons were executed. The identity of two of the six was given as Mohammed Mahadhab Haffaf and Ali Al Ghariani, and the other four were Palestinian secondary school teachers. Mohammed Muhadhab Haffaf and Ali Al Ghariani were alleged to have been publicly executed in Tripoli and the four Palestinians were alleged to have been publicly executed in Ajdabia.

It was further alleged that three persons were facing imminent executions after having been sentenced to death in July 1983 by the Permanent Revolutionary Court. The names of the three were given as Farid Ashraf, Muhammad Hillal and Mustapha Al Nawari."

(c) Malawi

"According to this information, in March 1983, an opposition leader, whose name was given as Atati Mpakati, was killed in Zimbabwe by two Malawians who, charged with the killing, reportedly said that they were acting on official orders.

It was further alleged that, on 18 May 1983, three cabinet ministers and a legislator, whose names were given as Dick Matenje, Aaron Gadama, John Sangala and David Chiwanga, were shot dead by security forces or law enforcement officers or with their complicity."

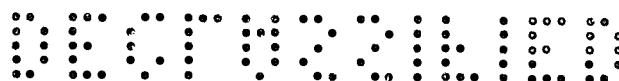
16. The attention of the Special Rapporteur has been drawn particularly to those allegations of executions, either actual or imminent, or deaths, which may possibly have taken place or may take place in the absence of the safeguards designed to protect the right to life embodied in international instruments, such as the International Covenant on Civil and Political Rights 1/ (articles 4, 6, 7, 14 and 15), the Standard Minimum Rules for the Treatment of Prisoners, 2/ the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 3/ and the Code of Conduct for Law Enforcement Officials. 4/

1/ General Assembly resolution 2200 A (XXI).

2/ First United Nations Congress on the Prevention of Crime and the Treatment of Offenders: report by the Secretariat (United Nations publication, Sales No. 1956.IV.4), annex I.A., as amended by Economic and Social Council resolution 2076 (LXII).

3/ General Assembly resolution 3452 (XXX).

4/ General Assembly resolution 34/169.



17. Those allegations which the Special Rapporteur has taken into consideration concern:

(a) Actual or imminent executions

(i) Without a trial

(ii) With a trial but without

(a) A fair and public hearing by a competent, independent and impartial tribunal established by law, and/or

(b) Prompt notification of the charge against the accused,

(c) Right to legal defence and counselling,

(d) Right not to be compelled to testify against oneself or confess guilt,

(e) Right to appeal to a higher tribunal according to law,

(f) Right not to be tried or punished again for an offense for which the accused has already been finally convicted or acquitted,

(g) Right not to be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed, and not to be imposed a heavier penalty than the one that was applicable at the time when the criminal offence was committed.

(b) Deaths which took place:

(i) As a result of torture or cruel, inhuman or degrading treatment during detention,

(ii) As a result of abuse of lethal force by police, military or any other governmental or quasi-governmental forces.

(iii) As a result of assault by paramilitary groups under official control.

B. Urgent appeals to Governments

18. The Special Rapporteur, in the course of his mandate, received appeals from various sources making allegations of imminent or threatened summary executions which might appear prima facie relevant to his mandate. In this context the Special Rapporteur addressed an urgent message by telex to the Governments concerned, namely, Afghanistan, Angola, Bangladesh, Cameroon, Guatemala, the Islamic Republic of Iran, Kuwait, Liberia, Nigeria, Pakistan, Somalia, Sudan and the United Arab Emirates. The Special Rapporteur expresses his appreciation to the Governments of Bangladesh and Somalia for their replies to his urgent messages.

CONFIDENTIAL

E/CN.4/1985/17

page 6

19. The messages of the Special Rapporteur to the Governments concerned are reproduced below:

(a) On 29 May, 27 June, 28 August and 11 September 1984 the following telexes were sent to the Minister of Foreign Affairs of Afghanistan:

29 May 1984

"I have the honour to refer to Economic and Social Council Resolution 1984/35 by which the Council renewed my mandate as Special Rapporteur of the Commission on Human Rights on the question of summary or arbitrary executions. My attention has been drawn to the allegation of possible execution of a person, whose name was given as Dr. Mohammad Younis Akbari. According to the allegation this person was sentenced to death on 23 May 1984 by the Special Revolutionary Court in Kabul and no appeal was allowed against the sentence. Without in any way wishing to interfere with matters which may pertain to the domestic sovereign jurisdiction of Your Excellency's Government, may I emphasize that the right to life is a most fundamental and crucial human right and appeal to you on a purely humanitarian basis to ensure that no executions take place, especially if such executions result from a summary trial or any other procedure in which the rights of the individuals are not fully protected, in particular may I refer to articles 3 and 10 of the Universal Declaration of Human Rights and articles 6 and 14 of the International Covenant on Civil and Political Rights to which Afghanistan is a party. It would be appreciated if I were to receive from Your Excellency's Government any information concerning the safeguards applied in the above-mentioned case."

27 June 1984

"I have the honour to refer to my cable 03703 of 29 May 1984 concerning the allegation of possible execution of a person whose name was given as Mohammad Younis Akbari. My attention has been further drawn to similar allegations of possible execution of three persons who were recently sentenced to death by special revolutionary courts. The names of the three were given as Sanat Gol, sentenced to death in Pol-e Khomri district, Baghlan province, in April; Abdol Qayum sentenced to death in Sheberghan on 3 May and Mohammad Omar sentenced to death in Maymana, Farias province. According to the information received, the verdict of special revolutionary courts must be ratified by the Presidium of the Afghan Revolutionary Council before being carried out, but no judicial appeal is possible. Without in any way wishing to interfere with matters which may pertain to the domestic sovereign jurisdiction of Your Excellency's Government, I am urged to emphasize that the right to life is a most fundamental and crucial human right and appeal to you on a purely humanitarian basis to ensure that no executions will take place, especially if such executions result from a summary trial or any other procedure in which the rights of the individuals are not fully protected. In this connection may I refer to articles 3 and 10 of the Universal Declaration of Human Rights and articles 6 and 14 of the International Covenant on Civil and Political Rights to which Afghanistan is a party, and in particular to paragraph 5 of article 14 of the Covenant, which states that 'everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law'. It would be appreciated if I were to receive from Your Excellency's Government any information concerning the safeguards applied in the above-mentioned cases as well as the case referred to in my cable 03703 of 29 May 1984."

CONFIDENTIAL

0312241030

E/CN.4/1985/17
page 8

carried out after confirmation by the Presidium of the Council of Revolution. No judicial appeal from special revolutionary courts is said to be possible. Without in any way wishing to interfere with matters which may pertain to the domestic sovereign jurisdiction of Your Excellency's Government, I am urged to emphasize that the right to life is a most fundamental and crucial human right and appeal to you on a purely humanitarian basis to ensure that no executions will take place, especially if such executions result from a summary trial or any other procedure in which the rights of the individuals are not fully protected. In this connection may I refer to articles 3 and 10 of the Universal Declaration of Human Rights and articles 6 and 14 of the International Covenant on Civil and Political Rights to which Afghanistan is a party, and in particular to paragraph 5 of article 14 of the Covenant which states that 'everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law'. May I also refer again to the communication of Your Excellency's Government to the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities dated 29 May 1984 (E/CN.4/Sub.2/1984/12/Add.2), in which it is stated in particular that 'the state organs are trying to reduce the number of executions and abolish capital punishment in Afghanistan'. It would be appreciated if I were to receive from Your Excellency's Government any information concerning the safeguards applied in the above-mentioned cases as well as the cases referred to in my cables of 29 May, 27 June and 28 August 1984."

No reply has been received from the Government of Afghanistan.

(b) On 29 May, 2 November and 14 November 1984, the following telexes were sent to the Minister for Foreign Affairs of Angola:

29 May 1984

"I have the honour to refer to Economic and Social Council resolution 1984/35 by which the Council renewed my mandate as Special Rapporteur of the Commission on Human Rights on the question of summary or arbitrary executions. My attention has been drawn to the allegation of the possible execution of six persons who were recently sentenced to death by regional military courts in Angola. Their names were given as Simao Quintas, sentenced on 25 April 1984 in the province of Bie, Abilio Sindaco and Paulo Segundo sentenced on 1 May 1984 in the province of Moxico, Albino Chimbaia, Alfonso Tchiamba and Felisberto Mateus Chitumbas, sentenced on 6 May 1984 in the province of Kuando-Kubango. Without in any way wishing to interfere with matters which may pertain to the domestic sovereign jurisdiction of Your Excellency's Government, I am urged to emphasize that the right to life is a most fundamental and crucial human right and appeal to you on a purely humanitarian basis to ensure that no executions will take place, especially if such executions result from summary trial or other procedure in which the rights of the individuals are not fully protected. In this connection, may I refer to articles 3 and 10 of the Universal Declaration of Human Rights and articles 6 and 14 of the International Covenant on Civil and Political Rights. It would be appreciated if I were to receive from your Excellency's Government any information concerning the safeguards applied in the above-mentioned cases."

0312241030

2 November 1984

"I have the honour to refer to Economic and Social Council resolution 1984/35 by which the Council renewed my mandate as Special Rapporteur of the Commission of Human Rights on the question of summary or arbitrary executions. My attention has been drawn to the allegation of the possible executions of four persons, three of whom were sentenced to death on 13 October 1984 by a regional military court at Lubango and the fourth, whose name was given as Francisco Fragata, sentenced to death by the people's revolutionary court at Luanda on 30 October 1984. According to the information received, Francisco Fragata was executed on 4 November 1984. Without in any way wishing to interfere in matters which may pertain to the domestic sovereign jurisdiction of Your Excellency's Government, may I emphasize that the right to life is a most fundamental and crucial human right and appeal to you on a purely humanitarian basis to ensure that no execution will take place, especially if such executions result from a summary trial or any other procedure in which the rights of the individual are not fully protected. In this connection, may I refer to articles 3 and 10 of the Universal Declaration of Human Rights and articles 6 and 14 of the International Covenant on Civil and Political Rights. It would be appreciated if I were to receive from your Excellency's Government any information concerning the safeguards applied in the above-mentioned cases."

14 November 1984

"I have the honour to refer to Economic and Social Council resolution 1984/35 by which the Council renewed my mandate as Special Rapporteur of the Commission on Human Rights on the question of summary arbitrary execution. My attention has been drawn to the allegation of the possible execution of four persons who were sentenced to death on 24 October 1984 by the regional military court at Menongue, Province of Kuando-Kubango. Their names were given as Manuel Lingumba, Fernando Bango, Antonio Isala and Floriano Manuel. Without in any way wishing to interfere with matters which may pertain to the domestic sovereign jurisdiction of Your Excellency's Government, may I emphasize that the right to life is a most fundamental and crucial human right and appeal to you on a purely humanitarian basis to ensure that no executions take place, especially if such executions result from a summary trial or any other procedure in which the rights of the individuals are not fully protected. In this connection, may I refer to articles 3 and 10 of the Universal Declaration of Human Rights and articles 6 and 14 of the International Covenant on Civil and Political Rights. It would be appreciated if I were to receive from Your Excellency's Government any information concerning the safeguards applied in the above-mentioned case."

No reply has been received from the Government of Angola. The Special Rapporteur later received information that the death sentence imposed on Francisco Fragata on 30 October had been commuted to six years' imprisonment by the Luanda Court of Appeal on 7 November.

CONFIDENTIAL

- (c) On 19 and 27 June 1984, the following telexes were sent to the Minister for Foreign Affairs of Bangladesh:

"I have the Honour to refer to Economic and Social Council resolution 1984/35 by which the Council renewed my mandate as Special Rapporteur of the Commission on Human Rights on the question of summary or arbitrary executions. May I also refer to my cable 00770 of 2 February 1984 addressed to His Excellency, President H.M. Ershad and the letter of Ambassador A.K.H. Morshed, Permanent Representative of the Republic of Bangladesh in Geneva dated 9 March 1984 (Ref. No. IO/HCR/78) regarding a person named Ghulam Mustafa. According to information recently received the death sentence on Ghulam Mustafa was confirmed in early June by a review board and the execution will be carried out shortly. It was also alleged that under martial law regulation 1 of 1982 which provides that no judgement or sentence issued by the Special Martial Law Court may be reviewed by any court, the death sentence on Ghulam Mustafa was not reviewed by a higher tribunal. Without in any way wishing to interfere with matters which may pertain to the domestic sovereign jurisdiction of Your Excellency's Government, I am urged to reiterate that the right to life is a most fundamental and crucial human right and to appeal to you on a purely humanitarian basis to ensure that no executions take place, especially if such executions result from a summary trial or any other procedure in which the rights of the individuals are not fully protected. May I refer to articles 3 and 10 of the Universal Declaration of Human Rights and articles 6 and 14 of the International Covenant on Civil and Political Rights, and in particular to paragraph 5 of article 14 which states that 'everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law'. It would be appreciated if I were to receive from Your Excellency's Government any information concerning the safeguards applied in the above-mentioned case."

The following reply, dated 17 July 1984, was received from the Permanent Mission of Bangladesh to the United Nations Office at Geneva.

[Original: English]

"Kindly refer to the telegram of Mr. S. Amos Wako, Special Rapporteur of the Commission on Human Rights on summary or arbitrary executions addressed to the Foreign Minister of Bangladesh in the case of Mr. Golam Mostafa a former MP.

I am directed to convey that the President and the Chief Marshal Law Administrator of Bangladesh has been pleased to commute the sentence of former MP Mr. Golam Mostafa to transportation for life. I shall accordingly be grateful if this decision is brought to the attention of Mr. Wako with a view to the removal of the above case from his report on summary or arbitrary executions."

CONFIDENTIAL

DECLASSIFIED

E/CN.4/1985/17

page 11

On 28 January 1985, the following additional information was received from the Permanent Mission of Bangladesh.

"As regards the points as to whether Mr. Golam Mostafa's trial before a Special Martial Law Court conformed to international standards for a fair trial, I would request you please to note that all accused persons in a Special Martial Law Court are free to engage lawyers of their choice. The Special Law Courts are legally constituted bodies in which Magistrates (first class) are also included. Moreover, the officers of the armed forces included in the courts possess the requisite training to conduct the proceedings of the courts. Therefore, any doubts about the standards of the proceedings of the courts and about the fairness of the trials held before them are absolutely unfounded. The judgements/sentences passed by such courts are all subject to review by the Chief Martial Law Administrator, who is assisted in this work by a group of expert jurists. The Chief Martial Law Administrator, on review may confirm, set aside, modify or pass orders for retrial or such other orders as he deems necessary for meeting the ends of justice as per law. The convicted persons may also submit mercy petitions to the Chief Martial Law Administrator.

In the case of Mr. Golam Mostafa, trial was held before Special Martial Law Court No. 8, Jessore as per law and the procedure described above. The court found him guilty and accordingly he was sentenced to death which was duly confirmed after review.

Subsequently, Mr. Golam Mostafa's mother and he himself submitted mercy petitions. The Chief Martial Law Administrator was then pleased to commute the death sentence passed by the Special Martial Law Court to a sentence of transportation for life. This information was conveyed to you vide our letter No. IO/HRC/78, dated 17 July 1984. Since then two thirds of the said sentence (transportation for life) has further been remitted vide Government order dated 5 November 1984. The question of not being fair in the trial of this case, therefore, does not arise.

...

May I also take this opportunity to invite your kind attention to the statement made by the Honorable President of Bangladesh on 15 December 1984 which outlined a number of steps that the Government intends to take with the objective of ensuring a smooth transition to democracy and lifting of Martial Law through peaceful means by holding free and fair elections. The salient features of the speech are given below:

DECLASSIFIED

14X

0311507030

E/CN.4/1985/17
page 12

- (i) The posts and offices of the District Martial Law Administrator and the Sub-Zonal Martial Law Administrator will be abolished by 31 December 1984 and those of the Zonal Martial Law Administrator by 31 January 1985.
- (ii) The Special Martial Law Tribunal will cease to function on 31 December 1984 and the Special Martial Law Courts on 15 January 1985.
- (iii) The suspended constitution will be fully revived and Martial Law will be lifted after summoning of the newly elected Parliament.
- (iv) Fundamental rights and in some cases writ jurisdiction of the High Court Division of the Supreme Court will be restored with the partial revival of the suspended constitution by 15 January 1985.
- (v) From the very day the Election Commission announces the election schedule, there will be no member of any political party in the Government.

Since then, in accordance with this declaration of the Honorable President, (1) the posts and offices of the District Martial Law Administrator and that of the Sub-Zonal Martial Law Administrator have been abolished with effect from 31 December 1984, (2) the Special Martial Law Tribunal has been abolished with effect from 31 December 1984 and the Special Martial Law Courts with effect from 15 January 1985, (3) the Election Commission announced on 15 January 1985 that the election to the Parliament will be held on 6 April 1985 and on the same day the Cabinet was dissolved and a new Cabinet has subsequently been sworn in which does not include any member of any political party, and (4) on 15 January 1985, the Government has restored some of the provisions of the suspended constitution thereby restoring fundamental rights and has enlarged the writ jurisdiction of the Supreme Court. As stated earlier the suspended constitution will be fully revived and Martial Law will be completely withdrawn after summoning of the newly elected Parliament."

The Special Rapporteur has taken note with satisfaction of the information furnished by the Government of Bangladesh and wishes to express his gratitude for its positive co-operation.

0311507030

(d) On 18 June 1984, the following telex was sent to the Minister for Foreign Affairs of Cameroon:

"I have the honour to refer to Economic and Social Council resolution 1983/36 by which the Council renewed my mandate as Special Rapporteur of the Commission on Human Rights on the question of summary or arbitrary executions. At its fortieth session the Commission once again recommended to the Economic and Social Council to extend my mandate. My attention has been drawn to the allegation of the possible execution of 46 persons who were sentenced to death early this week in secret trials by military tribunals following events reported to have occurred on 6 April 1984. Three of the 46 were allegedly sentenced to death in absentia. Without in any way wishing to interfere with matters which may pertain to the domestic sovereign jurisdiction of Your Excellency's Government, I am compelled to emphasize that the right to life is a most fundamental and crucial human right and to appeal to you on a purely humanitarian basis to ensure that no executions take place especially if such executions result from a summary trial or any other procedure in which the rights of the individuals are not fully protected. In particular may I refer to articles 3 and 10 of the Universal Declaration of Human Rights and articles 6 and 14 of the International Covenant on Civil and Political Rights. It would be appreciated if I were to receive from Your Excellency's Government any information concerning the safeguards applied in the above-mentioned cases."

No reply has been received from the Government of Cameroon.

(e) On 4 May 1984, the following telex was sent to the Minister for Foreign Affairs of Guatemala:

"I have the honour to refer to Economic and Social Council resolution 1984/35 by which the Council renewed my mandate as Special Rapporteur of the Commission on Human Rights on the question of summary or arbitrary executions. At its fortieth session the Commission once again recommended to the Economic and Social Council to renew my mandate. My attention has been drawn to allegations of the possible execution by the navy of leaders of the area of Cantel, a town in the Department of Quetzaltenango. The names were given as Victor Manuel Morales Mull, his son Antonio Morales, his brother Benito Morales, Calixto Sacalxoth, David Ordoñez and his sons Juan Jacinto and Alfonso Ordoñez. It is also feared that further executions may take place if the inhabitants refuse to take part in the 'civilian patrols'. Without in any way wishing to interfere with matters which may pertain to the domestic sovereign jurisdiction of Your Excellency's Government, I should like to emphasize that the right to life is a most fundamental and crucial human right and to appeal to you on a purely humanitarian basis to ensure that no executions take place especially if such executions result from a summary trial or any other procedure in which the rights of the individuals are not fully protected. In particular may I refer to articles 3 and 10 of the Universal Declaration of Human Rights and articles 6 and 14 of the International Covenant on Civil and Political Rights.

No reply has been received from the Government of Guatemala. However, in regard to the case mentioned in the telex, reference is made to the report on the situation of human rights in Guatemala submitted by the Special Rapporteur of The Commission to the General Assembly at its thirty-ninth session. (A/39/635, paras.48-55).

0312001030

E/CN.4/1985/17

page 14

(f) On 29 August 1984, the following telex was sent to the Minister for Foreign Affairs of the Islamic Republic of Iran:

"I have the honour to refer to Economic and Social Council resolution 1984/35 by which the Council renewed my mandate as Special Rapporteur of the Commission on Human Rights on the question of summary or arbitrary executions. My attention has been drawn to the allegation of the possible execution of 32 persons sentenced to death in the Islamic Republic of Iran. Their names and places of detention were given as follows: Shapur Markazi, Ahmad Bashiri, Sirru'llah Vahdat-Nizami, Muluk Khadim in Tehran; Ghulam-Husayn Farhand, Na'im Badi'i, Firuz Athari, Inayatu'llah Haqiqi, Jamshid Pur-Ustadkar, Jamal Kashani, Yunis Nawruzi in Karaj; Munirih Vahdat-Parsa in Mashhad; 'Inayatu'llah Tashakkur, Fariburz Sana'i, Dhikru'llah Zayni in Gunbad Qabus; Dhikru'llah Tawfiq, Zuhuru'llah Zuhuri in Gorgan; Dihnam Pasha'i (Kashani), Afrasiyab Subhani, Ghaffar-Quli Ma'rufikhah in Simnan; Jalalu'llah Vahdati, Fathu'llah Laqa'i, Mansur Shidanshaydi, Mansur Anbili in Kirman, Farid Dhakiri, Mihran Tashakkur, Vahid Qudrat in Yazd; Ata'u'llah Guran, 'Abbas Kuhbur, Suhayl Adhari, Firaydun (Kayumarth) Khudadadih and Ali Qiyami in Kirmanshah. According to the allegation those 32 persons sentenced to death are Baha'is. Without in any way wishing to interfere with matters which may pertain to the domestic sovereign jurisdiction of Your Excellency's Government, may I emphasize that the right to life is a most fundamental and crucial human right and appeal to you on a purely humanitarian basis to ensure that no executions take place, especially if such executions result from a summary trial or any other procedure in which the rights of the individuals are not fully protected. In particular, may I refer to articles 3, 10 and 18 of the Universal Declaration of Human Rights and articles 6, 14 and 18 of the International Covenant on Civil and Political Rights to which the Islamic Republic of Iran is a party. It would be appreciated if I were to receive from Your Excellency's Government any information concerning the safeguards applied in the above-mentioned cases."

No reply has been received from the Government of the Islamic Republic of Iran. Information was later received according to which eight of those named in the Special Rapporteur's communication to the Government of the Islamic Republic of Iran were executed. The names and dates of executions were given as follows:

<u>Name</u>	<u>Date executed</u>
Mr. Shahpur Markazi	23 September 1984
Mr. Ahmad Bashiri	November 1984
Mr. Yunis Nawruzi	November 1984
Mr. Ghulam-Husayn Farhand	9 December 1984
Mr. Firuz Athari	9 December 1984
Mr. Inayatu'llah Haqiqi	9 December 1984
Mr. Jamal Kashani	9 December 1984
Mr. Jamshid Pur-Ustadkar	9 December 1984

0312001030

17

DECLASSIFIED

E/CN.4/1985/17

page 15

(g) On 10 April 1984, the following telex was sent to the Deputy Premier of Kuwait:

"I have the honour to refer to Economic and Social Council resolution 1983/36 by which the Council renewed my mandate as Special Rapporteur of the Commission on Human Rights on the question of summary or arbitrary executions. At its fortieth session the Commission once again recommended that the Economic and Social Council extend my mandate. My attention has been drawn to allegations received of the death sentences imposed on six persons by the State Security Court on 27 March 1984. Three names of the six persons facing possible execution were given as Baker Ibrahim Abdul Ridha, Elias Fuad Saas and Hussein Kassen Hassan. Three others whose names were given as Ahmed Ali Hassan, Mustapha Ibrahim Ahmed and Jamal Jaffer Mohammed were alleged to have escaped arrest and been sentenced in absentia.

It was also alleged that the trial was held in camera and the right to appeal against the sentences given by the State Security Court was denied. Without in any way wishing to interfere with matters which may pertain to the domestic sovereign jurisdiction of Your Excellency's Government, I am compelled to emphasize that the right to life is a most fundamental and crucial human right and to appeal to you on a purely honorific basis to ensure that no executions take place especially if such executions result from a summary trial if any other procedure in which the rights of the individuals are not fully protected. In particular may I refer to articles 3 and 10 of the Universal Declaration of Human Rights and articles 6 and 14 of the International Covenant on Civil and Political Rights."

No reply has been received from the Government of Kuwait.

(h) On 10 April 1984, the following telex was sent to the Minister for Foreign Affairs of Liberia:

"I have the honour to refer to Economic and Social Council resolution 1983/36 by which the Council renewed my mandate as Special Rapporteur of the Commission on Human Rights on summary or arbitrary executions. At its fortieth session the Commission once again recommended to the Economic and Social Council to extend my mandate. My attention has been drawn to allegations received of the imminent execution of seven persons. Three of the seven, whose names were given as Captain Acquah Dolo, Lieutenant Arthur Sush and Private Wilfred Sarai, were convicted of high treason, mutiny, murder and conspiracy. The other four, whose names were given as Sergeant Johnny Davies, Police Sergeant Becker, Patrolman Moses Powen and Private James Garteh, were found guilty of participating in an armed robbery. It was also alleged that all of the seven persons were denied the right of appeal against decisions by the Special Military Tribunal. Without in any way wishing to interfere with matters which may pertain to the domestic sovereign jurisdiction of Your Excellency's Government, I am compelled to emphasize that the right to life is a most fundamental and crucial human right and to appeal to you

DECLASSIFIED

18X



on a purely humanitarian basis to ensure that no executions take place, especially if such executions result from a summary trial or any other procedure in which the rights of the individuals are not fully protected. In particular may I refer to articles 3 and 10 of the Universal Declaration of Human Rights and articles 6 and 14 of the International Covenant on Civil and Political Rights."

No reply has been received from the Government of Liberia.

(i) On 18 December 1984, the following telex was sent to the Minister for Foreign Affairs of Nigeria:

"I have the honour to refer to Economic and Social Council resolution 1984/35 by which the Council renewed my mandate as Special Rapporteur of the Commission on Human Rights on the question of summary or arbitrary executions. My attention has been drawn to the allegation of the possible execution of five persons whose names were given as Bernard Ogedengbe, Bisi Akinrinde, José Luis Pecina Martínez, Henderson Memberi and Cyprian Obi. According to the information received, the five persons were sentenced to death by a 'miscellaneous offences tribunal' in Nigeria after having been convicted on various charges. It was also alleged that the procedures of the tribunals do not allow the right to appeal and that José Luis Pecina Martínez, Henderson Memberi and Cyprian Obi were sentenced to death for a crime allegedly committed at a time when it did not carry the death penalty. Without in any way wishing to interfere with matters which may pertain to the domestic sovereign jurisdiction of Your Excellency's Government, may I emphasize that the right to life is a most fundamental and crucial human right and appeal to you on a purely humanitarian basis to ensure that no executions take place especially if such executions result from a summary trial or any other procedure in which the rights of the individuals are not fully protected. In particular may I refer to articles 3, 10 and 11 of the Universal Declaration of Human Rights and articles 6, 14 and 15 of the International Covenant on Civil and Political Rights. Article 14, paragraph 5, of the Covenant states that 'everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law'. Also, article 15, paragraph 1, of the Covenant states that 'no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed'. It would be appreciate if I were to receive from Your Excellency's Government any information concerning the jurisdiction and procedures of these tribunals, in particular the right of the defendant to appeal, and also under which law the five persons were sentenced to death."

No reply has been received from the Government of Nigeria.

(j) On 9 November 1984, the following telex was sent to the Ministry for Foreign Affairs of Pakistan:

"I have the honour to refer to Economic and Social Council resolution 1984/35 by which the Council renewed my mandate as Special Rapporteur of the Commission on Human Rights on the question of summary or arbitrary executions. My attention has been drawn to the allegation of the possible execution of four persons whose names were given



DECLASSIFIED

E/CN.4/1985/17
page 17

as Abdul Nasir Baluch, Mohammad Essa Baluch, Saifullah Khalid Lashari Baluch and Mohammad Ayub Malik. According to this information the four were sentenced to death on 6 November 1984 by Special Military Court No. 2 in Karachi after being convicted of abetting the hijacking of an airliner. It was also alleged that the trial proceedings of the Special Military Court did not provide adequate safeguards to protect the rights of individuals, in particular, the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, the right not to be compelled to testify against oneself or to confess guilt and the right to appeal. Without in any way wishing to interfere with matters which may pertain to the domestic sovereign jurisdiction of Your Excellency's Government, may I emphasize that the right to life is a most fundamental and crucial human right and appeal to you on a purely humanitarian basis to ensure that no executions take place especially if such executions result from a summary trial or any other procedure in which the rights of the individuals are not fully protected, in particular may I refer to articles 3 and 10 of the Universal Declaration of Human Rights and articles 6 and 14 of the International Covenant on Civil and Political Rights. It would be appreciated if I were to receive from Your Excellency's Government any information concerning the safeguards applied in the above-mentioned cases."

No reply has been received from the Government of Pakistan.

(k) On 15 October 1984, the following telex was sent to the Minister for Foreign Affairs of Somalia:

"I have the honour to refer to Economic and Social Council resolution 1984/35 by which the Council renewed my mandate as Special Rapporteur of the Commission on Human Rights on the question of summary or arbitrary executions. My attention has been drawn to the allegation of the possible execution of seven persons whose names were given as Abdi Damar Abdi, Abdirahman Mohamed Barud, Abdi Ismail Mohamed, Ahmed Ibrahim Sheikh Omar Sheikh Madar, Mohamed Sheikh Ali, Abdirizak Sheikh Ibrahim Koshin and Yusuf Mohamed. According to the allegation, the seven persons were sentenced to death by the National Security Court in Hargeisa, Northern Somalia, on or about 2 October 1984 after having been charged under the National Security Law. It was also alleged that the procedures of the National Security Court do not guarantee adequate legal defence and, in particular, the right to appeal. Without in any way wishing to interfere with matters which may pertain to the domestic sovereign jurisdiction of Your Excellency's Government, may I emphasize that the right to life is a most fundamental and crucial human right and appeal to you on a purely humanitarian basis to ensure that no executions take place, especially if such executions result from a summary trial or any other procedure in which the rights of individuals are not fully protected. In particular may I refer to articles 3 and 10 of the Universal Declaration of Human Rights and articles 6 and 14 of the International Covenant on Civil and Political Rights. It would be appreciated if I were to receive from Your Excellency's Government any information concerning the safeguards applied in the above-mentioned case."

DECLASSIFIED

20X

03:45:03

E/CN.4/1985/17

page 18

The following reply, dated 18 January 1985, was received from the Permanent Mission of Somalia to the United Nations Office at Geneva:

"We have the honour to refer to your telegram G/SO 214 (33-2) dated 15 October 1984, addressed to Mr. A.J. Barre, the Somali Minister for Foreign Affairs and copied to this Mission.

As soon as we received the copy of your telegram, we got in contact with the competent Somali authorities in order to seek an early despatch of the information that you have requested on the case of seven persons who were allegedly victims of a summary trial by the National Security Court in Hargeisa, Northern Somalia.

The Somali authorities have now informed us that the seven persons were arrested on the charge, duly formulated by the Attorney-General of the National Security Court in Hargeisa, of acting in contravention of provisions contained in the National Security Law (law No. 54 of 10 September 1970).

The National Security Court thoroughly examined all the circumstances of the case and the accused were given the fullest opportunity to defend themselves. They were assisted by their lawyers: (1) Dr. Hussien Bile, (2) Dr. Osman A. Omar, (3) Dr. Mohamed Abdalla Salah, (4) Dr. Ahmed Wehelie Guled and (5) Dr. Bashir Hassan Abdi.

In the course of the hearing of the court, the accused were proven guilty - beyond any doubt of breaching the National Security Law by forming a secret association (in violation of article 3 of the N.S. Law) and undertaking actions in fulfilment of that association's aims and objectives (in violation of articles 9 and 18), thereby endangering the existence, unity and stability of the nation. The crimes perpetrated by the accused were forbidden under death penalty.

Accordingly, after thorough and careful deliberations, the Court sentenced the seven accused to death on 3 October 1984. As soon as the judgement was passed, the condemned submitted to the President of the Somali Democratic Republic a demand for pardon which is still under consideration.

We hope that the above information gives you a clear indication of the regularity of the procedure that was followed in dealing with this case and that there is no question of a summary trial and an absence of guarantee of adequate legal defence.

All the rights of the accused were respected and, in fact, the exercise of these rights ensured.

We hope that this answer is satisfactory and we are at your disposal for any further clarifications."

03:45:03

DELETED

E/CN.4/1985/17
page 19

(1) On 16 January 1985, the following cable was sent to the Minister for Foreign Affairs of Sudan:

"I have the honour to refer to Economic and Social Council resolution 1984/35 by which the Council renewed my mandate as Special Rapporteur of the Commission on Human Rights on the question of summary or arbitrary executions. My attention has been drawn to the allegation of the possible execution of five persons whose names were given as Mahmoud Mohamed Taha, Abdulatif Omer Hasaballah, Khalid Babikir Hamza, Mohamed Salim Bashir and Tajadin Abdulrazid. According to the information received the five persons were sentenced to death by a criminal court on 8 January 1985. It was also alleged that they had been arrested for preparing and possessing leaflets criticizing the application of Islamic law in Sudan and charged with offences against State security and organizing a prohibited organization under the State Security Act.

Without in any way wishing to interfere with matters which may pertain to the domestic sovereign jurisdiction of Your Excellency's Government, may I emphasize that the right to life is a most fundamental and crucial human right and appeal to you on a purely humanitarian basis to ensure that no executions take place especially if such executions result from a summary trial or any other procedure in which the rights of the individuals are not fully protected. In particular may I refer to articles 3, 18, 19 and 20 of the Universal Declaration of Human Rights and articles 6, 18, 19 and 22 of the International Covenant on Civil and Political Rights. Article 6, paragraph 2, of the Covenant states that 'sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant'. It would be appreciated if I were to receive from Your Excellency's Government any information on these cases and also on the above-mentioned State Security Act under which the five were sentenced to death."

No reply has been received from the Government of Sudan. Information was received later according to which Mahmoud Mohamed Taha, one of the five named in the Special Rapporteur's communication to the Government of Sudan was executed, and the remaining four were released on 19 January 1985 after publicly reading their recantations.

(m) On 19 March 1984, the following telex was sent to the Minister for Foreign Affairs of the United Arab Emirates:

"I have the honour to refer to Economic and Social Council resolution 1983/36 by which the Council renewed my mandate as Special Rapporteur of the Commission on Human Rights on the question of summary or arbitrary executions. My attention has been drawn to allegations received of the imminent execution of a woman whose name was given as Shahila, a citizen of Sri Lanka. Also there was an allegation that a man by the name of Kondela of Indian nationality faced execution. Without in any way wishing to interfere with matters which may pertain to the domestic sovereign jurisdiction of Your Excellency's Government, I am compelled to emphasize that the right to life is a most fundamental and crucial human right and to appeal to you on a purely humanitarian basis to ensure that no executions take place,

DELETED

24

03175001030

E/CN.4/1985/17
page 20

especially if such executions result from a summary trial or any other procedure in which the rights of the individuals are not fully protected. In particular may I refer to articles 3, 10 and 11 of the Universal Declaration of Human Rights and articles 6 and 14 of the International Covenant on Civil and Political Rights."

No reply has been received from the Government of the United Arab Emirates. However, the Special Rapporteur received information that the death sentence imposed on the woman was commuted to 35 lashes, one year's imprisonment and deportation from the country. The death sentence given to the man was also reported to have been commuted.

C. Visit to Suriname

20. In addition to the foregoing, the Special Rapporteur, in the context of his mandate, visited Suriname from 23 to 27 July 1984 upon the invitation of the Government of Suriname. He also visited the Netherlands on 30 and 31 July 1984 in order to meet a number of persons in connection with his visit to Suriname.

21. The Special Rapporteur wishes to express his deep appreciation to the Government of Suriname for its positive co-operation and efforts to make the Special Rapporteur's visit meaningful. The Special Rapporteur was fully satisfied with the arrangement made by the National Commission of Information and Guidance on Human Rights for meetings with people from various sectors of society, either official or private. During his stay in Suriname the Special Rapporteur was able to meet the persons he asked to see. (An account of his visit to Suriname is contained in annex V to this report).

03175001030

II. PROTECTION OF THE RIGHT TO LIFE: REVIEW OF LAWS AND SITUATIONS

22. In chapter I of his last report (E/CN.4/1984/29) the Special Rapporteur examined national legislations, on which information had been received in the course of his previous mandate, according to international criteria set up by the International Covenant on Civil and Political Rights and the Code of Conduct for Law Enforcement Officials.

23. In the course of his current mandate, two international instruments relevant to the subject were adopted by the United Nations.

24. The Special Rapporteur would like in the first place to refer to Economic and Social Council resolution 1984/50, adopted on 25 May 1984, in which the Council approved the safeguards guaranteeing protection of the rights of those facing the death penalty, recommended by the Committee on Crime Prevention and Control and annexed to the resolution. The annex covers the safeguards established under articles 6, 14 and 15 of the International Covenant on Civil and Political Rights as well as additional factors particularly related to the death penalty. The Special Rapporteur considers that these safeguards will contribute to further elaboration of the concept of summary or arbitrary executions and will serve as criteria for ascertaining whether an execution is of a summary or arbitrary nature.

25. Mention may also be made of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly in resolution 39/46 of 10 December 1984. The Convention is now open for signature, ratification and accession.

26. Article 2 of the Convention states:

"1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture."

27. Article 4 states:

"1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature."

28. In regard to national legislations relevant to the mandate of the Special Rapporteur, information was received from a number of governments on safeguards embodied in their constitutions or other laws as well as from other sources.

29. The Special Rapporteur wishes to mention that, in response to his request, in a note verbale dated 21 September 1984 (see annex IV), for information regarding measures and programmes undertaken to enhance the importance of the right to life in the training of members of the armed forces, law enforcement agencies, paramilitary forces and other governmental officials or agents, he received relevant information from several governments explaining in depth laws, regulations and training programmes enforced or undertaken in their countries. However, in the view of the Special Rapporteur, he has not yet received sufficient information to warrant analysis.

30. In the following paragraphs, the information obtained by the Special Rapporteur in the course of his present mandate is reflected as an update of chapters I and II of the previous report (E/CN.4/1984/29).

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

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

31. Several governments reported that the death penalty had been totally abolished. Several others stated that the death penalty could be applied under the Military Penal Code only in time of war.

32. In its general comment 6 (16) on article 6 of the International Covenant on Civil and Political Rights, the Human Rights Committee stated that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure". 5/

33. In one country the following decision was taken by the legislative body:

"Penalties above the maximum stipulated in criminal law, up to and including the death penalty, may be imposed with respect to the following criminal elements who seriously endanger public security:

(1) Ringleaders of criminal hooligan groups or those who carry lethal weapons to engage in criminal hooligan activities, when the circumstances are serious, or those who engage in criminal hooligan activities resulting in especially serious harm;

(2) Those who intentionally harm others, causing serious bodily injury or death, when the circumstances are odious, or those who use violence against and cause injury to State personnel or citizens who accuse, expose or arrest criminal elements or stop criminal conduct;

(3) Ringleaders of groups that abduct and sell people, or those who abduct and sell people when the circumstances are especially serious;

(4) Those who illegally manufacture, trade in, transport, steal or forcibly seize guns, ammunition or explosives, when the circumstances are especially serious or when serious consequences result;

5/ Report of the Human Rights Committee, Official Records of the General Assembly, Thirty-seventh session, Supplement No. 40 (A/37/40), annex V, general comment 6 (16), para. 7.

Handwritten initials

(5) Those who organize reactionary superstitious sects and secret societies or exploit feudal superstition to carry on counter-revolutionary activities, thereby seriously endangering public security;

(6) Those who lure women into prostitution, shelter them in prostitution, or force them into prostitution, when the circumstances are especially serious."

34. It was alleged that a number of persons had been sentenced to death under this decision and executed; however, in the view of one government, the death penalty imposed on serious criminal offenders did not constitute a summary or arbitrary execution.

35. In another country, the military authorities promulgated decrees which prescribed the death penalty for 17 offences previously punishable by terms of imprisonment, and declared them retroactive. The offences for which the death penalty was made applicable for the first time included arson, dealing in counterfeit currency, sabotaging oil pipelines or power cables, illegal dealing in petroleum products and trafficking in cocaine.

36. A number of persons were allegedly executed after having been convicted under these decrees.

37. In another country five persons were sentenced to death under the State Security Act allegedly for their preparation and possession of leaflets criticizing the government's policy. It was said that those persons were charged with offences against State security. It was reported later that one of the five was executed and the remaining four were freed after having renounced their opinions.

38. In some countries, persons were allegedly sentenced to death for their political opinions or religious beliefs. In one country it was reported that practices such as having a mimeograph machine to produce religious tracts was a capital offence. In another country members of a specific religious group were executed allegedly for espionage.

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

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

39. In some countries the death penalty was allegedly carried out within an extremely short period of time, thus, not allowing the convicted persons enough time to seek pardon or commutation of sentence. In several cases persons were allegedly executed within a few hours of having been sentenced to death.

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

"Sentence of death shall not be imposed for crimes committed by persons below 18 years of age and shall not be carried out on pregnant women."

40. In one country, it was alleged that, among those executed during the past few years, 430 persons had been identified as under 18 years old as well as 15 children and 18 pregnant women.



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

The death penalty can only be carried out pursuant to a final judgement rendered by a competent court where legal safeguards to protect the rights of the accused are guaranteed. Those rights include: an impartial and independent court, a public and fair trial, legal counselling and defence, the right to examine evidence and witnesses against the defendant, the right to present evidence and witnesses for the defendant, the right to have his conviction and sentence reviewed by a higher tribunal according to law, and the right not to be tried or punished again for an offence for which he has already been finally convicted or acquitted.

41. In a number of countries hundreds of persons were allegedly sentenced to death in secret trials and executed either secretly or publicly.
42. In one country even the families of the persons executed were not informed of the execution. In another country secret executions of a number of persons allegedly followed secret trials. Those persons were suspected of their involvement in a coup attempt against the government.
43. In another country persons were allegedly sentenced to death in a secret trial by a military tribunal after the government ordered the tribunal to reconsider the original sentence of imprisonment. In that country, under the state of emergency enforced for an extended period by the military authorities, civilians were tried and sentenced to death by the military tribunal which did not allow the right to appeal to a higher tribunal.
44. In a number of countries a special tribunal was allegedly established in order to try the accused persons for specific crimes designated by decrees. In some countries the judges in special tribunals were either government officials or military officers without a legal background. In many cases the procedure of the tribunal did not allow the defendant the right to appeal and he was sentenced to death and later executed. In one country a person was sentenced to death with a special procedure prescribed for "serious crimes", depriving the rights of the defendant.
45. In one country the legislative body made a decision to set a time-limit for appeal by persons sentenced to death for murder, rape, robbery, explosions or other serious endangerment of public security, to three days instead of 10 days as provided for in the criminal procedure.

E. Article 7 of the International Covenant on Civil and Political Rights

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

46. In a number of countries, it was alleged that, despite strict prohibition of torture as a means of interrogation, persons were subjected to torture and were forced to make "confessions" against themselves on the basis of which the death penalty was imposed.
47. In a number of countries, prisoners allegedly died as a result of torture, deprivation of food and water, or refusal of medical treatment by prison authorities.



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

"No one shall be subjected to arbitrary arrest or detention."

48. In a number of countries, persons were allegedly found dead after having been arbitrarily arrested without the legal procedures required by law and having disappeared.

49. In one country the bodies of persons who had disappeared were allegedly found in mass graves, often with signs of mutilation and torture.

50. In a number of countries, persons died in detention allegedly killed by law enforcement agents, military or other government agents. In some cases it was officially explained that those persons had committed suicide, had been trying to escape or had died of illness.

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

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

51. According to several governments, police officers and other law enforcement officers are given a thorough training in order to ensure the observance of the constitutional and other legal requirements and obligations imposed on them.

52. One government stated that the use of force by police officers was strictly controlled by the Disciplinary Code of the Police Ordinance and the Criminal Code. Any violation of such codes were illegal as was the use of criminal force.

53. Regarding the use of firearms one government provided detailed information on the regulations imposed on police officers who might employ such force. It stated that the Official Instructions under the Police Act

"permit the use of force only in the exercise of duty and establish the principles that (a) force may only be used as the last resort if other means have failed or can reasonably be expected to fail (the principle of secondariness) and that (b) the use of force must be justified by the importance of the objective (the principle of proportionality)." (CCPR/C/10/Add.3, p.10).

Furthermore, a detailed explanation was given concerning how the firearm might be employed in such situations as might require its use:

"A firearm may be used only if there is a reasonable degree of certainty that an accurate shot can be fired under the prevailing conditions."

"Immediately prior to aiming a firearm and shooting, an officer shall give a warning ... in a loud voice or in some other unmistakable manner, that the firearm will be fired if the order given is not obeyed without delay. Only if such circumstances dictate otherwise, may this warning, which may if necessary be substituted by a warning shot, be omitted."

031100000000

E/CN.4/1985/17
page 26

"Use may not be made of a firearm if the identity of the person to be apprehended is known to the officer and if apprehension can reasonably be postponed. This restriction means in fact that only in cases where the suspect is caught red-handed may a firearm be used."

54. Another government stated that:

"As regards the use of firearms by police officers and with a view to ensuring that they employ these only when it is strictly necessary and to the extent required by the performance of their duties, within the strictest interpretation of the laws in force, ... it is stated that police officials must be given clear and precise instructions on the manner and circumstances in which they may use their weapons.

"The intent of this provision is that the police, paying maximum respect to the right to life and physical integrity enshrined in our Constitution, shall reconcile their function of protecting the free exercise of rights and liberties with the safeguarding of public security."

55. One government stated that:

"... a person is not justified ... in using force that is intended or is likely to cause death or grievous bodily harm unless he believes on reasonable and probable grounds that it is necessary for the purpose of preserving himself or anyone under his protection from death or grievous bodily harm.

"A peace officer who is proceeding lawfully to arrest, with or without warrant, any person for an offence for which that person may be arrested without warrant, and everyone lawfully assisting the peace officer, is justified, if the person to be arrested takes flight to avoid arrest, in using as much force as is necessary to prevent the escape by flight, unless the escape can be prevented by reasonable means in a less violent manner."

56. According to another government:

"Any officer to whom a firearm is issued is aware that it may only be used as a last resort when he believes human life is at risk. It would be for a court of law to decide in the event of death or injury resulting from the police use of firearms whether reasonable force had been used in the circumstances to prevent crime ... Any police officer to whom a firearm is issued is answerable personally in law as any other private citizen would be for his actions."

57. In one country the Public Security Ordinance provides for the obligation to report the facts relating to the death of any person due to the action of, or in the custody of, any police officer or any member of the armed forces. It further provides that:

"(2) The Deputy Inspector-General of Police to whom the body is handed over under regulation ... shall hand over the dead body to any relations who may claim the dead body, subject to such conditions or restrictions as he may deem necessary in the interest of national security or for the maintenance or preservation of public order:

031100000000

Provided, however, that that Deputy Inspector-General of Police may, in the interest of national security or for the maintenance or preservation of public order, authorize the taking possession of and effecting the burial or cremation of the dead body in accordance with such steps as he may deem necessary in the circumstances."

58. In a number of countries it was alleged that persons were shot to death by police forces or by the military. In some cases an official explanation was given that those persons had been shot dead in armed encounters or that they had resisted arrest with firearms.

H. Inquiries and/or investigations of alleged violations of the foregoing provisions

59. In his report to the thirty-ninth session of the Commission on Human Rights (E/CN.4/1983/16) the Special Rapporteur stated that

"Governments have been extremely reluctant to investigate cases and ... to punish those law enforcement officers or civilians who have acted with their authority, complicity or acquiescence who are guilty of summarily or arbitrarily executing persons" (para. 224).

Apparently, this is mainly due to lack of political will on the part of governments to investigate cases of excesses and illegal acts committed by the police, military or security forces.

60. In the same report the Special Rapporteur recommended that

"Minimum standards of investigation need to be laid down to show whether a government has genuinely investigated a case reported to it and that those responsible are fully accountable" (para. 230 (4)).

61. In the course of his current mandate the Special Rapporteur had received information on investigations and criminal procedures undertaken by governments against members of the military, police and security forces. In some countries commissions have been established to investigate specific cases of death which occurred under previous regimes. In other countries investigations are carried out within the normal judicial process. In one country there is a law which provides for investigation and inquiry when a person dies in custody. However, the Special Rapporteur was told that the National Police Commission recommended that in cases of death or grievous injury while in police custody there should be a judicial inquiry to ensure its objectivity and impartiality.

62. A considerable number of governments replied to the Special Rapporteur's request for information concerning the allegations brought to his attention. The Special Rapporteur feels it necessary to examine those replies from the governments and to seek, if appropriate, further clarification on the specific allegations, either from those governments or from other sources. As for the previous report, there was limited time for governments to carry out investigations into the allegations. The Special Rapporteur is of the opinion that this aspect should be reflected in his future reports.

III. SITUATIONS AND CASES

A. General background

63. In the course of his current mandate, the Special Rapporteur received information concerning situations and cases in which the right to life might not have been respected. He has taken into consideration information containing allegations of the occurrence of summary or arbitrary executions during 1984 as well as information which had not been brought to his attention prior to the submission of his previous report to the Commission on Human Rights (E/CN.4/1984/29).

64. The Special Rapporteur's attention has been drawn particularly to allegations concerning a number of countries, as described in the following paragraphs. He would like to make it clear that in mentioning those allegations regarding specific countries, he is not in any way passing judgement or drawing definitive conclusions on the truth or accuracy of the allegations. He also wishes to state that it is highly likely that some incidents of summary or arbitrary executions that took place during the past year may not have been made known to him.

65. The Special Rapporteur is of the opinion that the allegations as summarized in the present report should be considered as an indication of the ongoing phenomenon of summary or arbitrary executions.

66. In the case of those countries that are under review by other specific mandates established by the Commission on Human Rights or the General Assembly, namely, Afghanistan, Chile, El Salvador, Guatemala, the Islamic Republic of Iran, South Africa and Namibia, reference should be made to the respective chapters and paragraphs of the reports submitted under those mandates.

67. In his report to the fortieth session of the Commission on Human Rights (E/CN.4/1984/29) the Special Rapporteur analysed the situations in which summary or arbitrary executions usually took place (chap. II), and divided such situations into the following broad categories: political upheavals; internal armed conflicts; suppression of opposition groups or individuals; abuse of power by agencies entrusted with law enforcement; and other situations.

68. In the same chapter the Special Rapporteur examined the background of the situations in which summary or arbitrary executions took place. He identified a number of characteristic elements as factors likely to foment conditions for the occurrence of summary or arbitrary executions. These factors were divided into civil and political factors and economic and social factors.

69. The Special Rapporteur considers that the analysis made in chapter II of his last report still remains valid for the situations dealt with in his present report.

B. Situations

70. Having examined the information on allegations of summary or arbitrary executions, the Special Rapporteur communicated these allegations to the 21 Governments concerned.

71. The Special Rapporteur received replies from six Governments with relevant information and explanations concerning the above-mentioned allegations.

DECLASSIFIED

E/CN.4/1985/17
page 29

Representatives of several Governments came to meet the Special Rapporteur to give their explanation of the allegations. The Special Rapporteur wishes to express his gratitude to those Governments for their positive response to and co-operation with him.

72. At the same time, the Special Rapporteur would like to express his hope that the 15 Governments which have not replied to his inquiries concerning allegations of summary or arbitrary executions will respond positively and provide him with information on the allegations summarized below:

(a) Executions carried out secretly or publicly without a trial, or after the defendant has been sentenced to death by special courts in public trials or in camera without safeguards to protect his rights, in particular, the right to appeal;

(b) Executions as a result of death sentences imposed for a wide range of criminal offences normally not punishable by death, such death sentences being justified in connection with a nation-wide campaign against crime;

(c) Deaths in detention due to refusal of medical treatment, deprivation of food and water and/or as a result of torture;

(d) Killing of persons, including political and trade-union leaders, peasants and lawyers, by the police, security forces or by hired assassins for their suspected opposition to the Government;

(e) Killing of non-combatant civilians by armed forces in areas where guerrillas or armed opposition groups are active;

(f) Arbitrary killing of suspected criminals by security forces;

(g) Killing of members of certain ethnic groups by the armed forces.

DECLASSIFIED

31x



IV. CONCLUSIONS AND RECOMMENDATIONS

73. Since the submission of his last report to the Commission on Human Rights at its fortieth session (E/CN.4/1984/29), the Special Rapporteur has received information containing allegations of the occurrence of summary or arbitrary executions in various parts of the world. This indicates that the practice of summary or arbitrary executions still continues to be a wide-spread phenomenon in the international community. The Special Rapporteur is of the view that the information which has reached him may not be exhaustive or complete. In addition to those cases known to the Special Rapporteur, a considerable number of persons may well have become victims of the violation of the right to life. The Special Rapporteur therefore strongly recommends that the Commission should not only continue to monitor situations of summary or arbitrary executions which have occurred and which are imminent, but should consider ways and means by which all such cases can be brought to its attention so that an effective way can be found to eliminate the abhorrent phenomenon of summary or arbitrary execution.

74. The updating of the review of national legislation which the Special Rapporteur originally analysed in chapter I of his latest report (E/CN.4/1984/29) has made it clear that a number of exceptions, in the form of legislation, decisions or executive decrees, have been made to the national legislation applicable in normal situations in regard to safeguards of the right to life. The Special Rapporteur considers it a disturbing trend with negative effects on the protection of the right to life, rendering the guarantees provided in the constitutions and other legislation meaningless. In such a context, summary or arbitrary executions can take place despite the safeguards of the right to life meticulously stipulated in national legislation in conformity with the International Covenant on Civil and Political Rights.

75. The Special Rapporteur stated briefly in his last report (E/CN.4/1984/29, para. 145) that he had noted that the violation of the right to life through summary or arbitrary executions was the responsibility of State authorities or agencies in several instances. However, he again wished to make it clear that the information before him also indicated that lack of respect for the right to life could be attributed to groups other than Governments or quasi-governmental agencies. During the past year under his current mandate, the Special Rapporteur has noted that, in a number of situations, summary or arbitrary executions have occurred as countermeasures taken by Governments responding to killings of either government officials or civilians by non-governmental groups.

76. The Special Rapporteur wishes to emphasize that the primary responsibility for ensuring respect for the right to life rests with the State under national and international law. However, this does not exonerate groups other than Governments from observing the right to life; indeed the Special Rapporteur has noted an increase in non-respect for the right to life by such groups. The Commission on Human Rights should give urgent attention to the responsibility of such groups in ensuring that the right to life is universally respected, as required by the international community.

77. In his previous report (E/CN.4/1984/29, para. 147), the Special Rapporteur referred to the increase in summary or arbitrary executions which were not exclusively politically motivated but resulted from campaigns to curb a rising crime rate. However, during his current mandate he has noted that, in some countries, Governments have resorted to harsh measures to cope with the rampant



phenomenon of crime. The harsh measures included a significant increase in the number of offences punishable by death, accelerated trial procedures, retroactive enforcement of new laws and direct action against suspected criminals. One Government explained to the Special Rapporteur that, with the serious threat posed to the State by the upsurge of crime, such measures were necessary in order to restore law and order and that thanks to such measures the crime rate had been drastically reduced. The Special Rapporteur is of the view that whatever measures are taken must be consistent with the fundamental requirement of respect for the right to life as enshrined in the International Covenants on Human Rights and various declarations adopted by the international community.

78. The Special Rapporteur has been encouraged by the positive response of Governments, in a direct or indirect manner, to his urgent communications as described in chapter II and he appreciates the co-operation and support given by those Governments. Bearing in mind the request by the Economic and Social Council in paragraph 5 of resolution 1984/35 that the Special Rapporteur "pay special attention to cases in which a summary or arbitrary execution is imminent or threatened", the Special Rapporteur considers that his urgent communications have become an important part of his mandate. Without making any judgement on the allegations communicated to him, the Special Rapporteur has established criteria for making such urgent communications to Governments, on an entirely humanitarian basis, while trying to eliminate any room for a discriminatory or selective approach. The Special Rapporteur would like to make a strong appeal to all Governments to which urgent communications have been sent to co-operate and assist him and the Commission by responding to such communications without delay.

79. After having examined situations of summary or arbitrary executions during the period of his current mandate, the Special Rapporteur wishes to reiterate the conclusions and recommendations of his two previous reports (E/CN.4/1983/16 and E/CN.4/1984/29). In addition, the following points are raised for further consideration by the Commission on Human Rights:

(a) The Special Rapporteur refers in particular to the conclusions of his first report, in which he stated that there was a close relationship between summary or arbitrary executions and violations of other human rights, in particular the right not to be subjected to torture and the right not to be arbitrarily arrested or detained. In this connection, he welcomes the adoption by the General Assembly of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 6/ and urges States Members of the United Nations to sign, ratify and accede to it. The Special Rapporteur further recommends that Governments consider incorporating into their national laws or regulations the Code of Conduct for Law Enforcement Officials 7/ and the Standard Minimum Rules for the Treatment of Prisoners; 8/

6/ General Assembly resolution 39/46.

7/ General Assembly resolution 34/169, annex.

8/ First United Nations Congress on the Prevention of Crime and the Treatment of Offenders: report by the Secretariat (United Nations publication, Sales No. 1956. IV. 4), annex I, A, as amended by Economic and Social Council resolution 2076 (LXII).

031307030

(b) The Special Rapporteur hopes that the trend being set for impartial investigation, prosecution and punishment of those involved in summary or arbitrary executions will become a permanent and accepted feature in all countries where such executions take place;

(c) Governments must be urged to set up training programmes for law enforcement officials with emphasis on the provisions of the instruments mentioned in (a) above. The Special Rapporteur has noted in paragraph 30 that the response to his note verbale requesting information on measures taken to establish such training programmes was limited. He hopes that Governments will respond to his request so that programmes can be formulated, where necessary, to build awareness of the importance of the right to life, not only within the law enforcement agencies, the army, etc., but also in the international community as a whole.

031307030

DECLASSIFIED

E/CN.4/1985/17
Annex I
page 1

Annex I

ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1984/35 */

Summary or arbitrary executions

The Economic and Social Council,

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

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

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

Mindful of General Assembly resolutions 36/22 of 9 November 1981, 37/182 of 17 December 1982 and 38/96 of 16 December 1983,

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

Taking note also of the work done by the Commission on Crime Prevention and Control in the area of summary and arbitrary executions, including the elaboration of minimum legal guarantees and safeguards to prevent recourse to such extra-legal executions, to be considered by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1985,

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

1. Strongly deplores, once again, the large number of summary or arbitrary executions, including extra-legal executions, which continue to take place in various parts of the world;

2. Appeals urgently to Governments, United Nations bodies, the specialized agencies, regional intergovernmental organizations and non-governmental organizations to take effective action to combat and eliminate summary or arbitrary executions, including extra-legal executions;

*/ The final edited text of this resolution will be published in Official Records of the Economic and Social Council, 1984, Supplement No. 1 (E/1984/1).

DECLASSIFIED

35X

03115907030

E/CN.4/1985/17
Annex I
page 2

3. Takes note with appreciation of the report of the Special Rapporteur, Mr. S. Amos Wako;
4. Decides to continue the mandate of the Special Rapporteur, Mr. S. Amos Wako, for another year, in order to enable him to submit further conclusions and recommendations to the Commission on Human Rights;
5. Requests the Special Rapporteur in carrying out his mandate to continue to examine situations of summary or arbitrary executions and to pay special attention to cases in which a summary or arbitrary execution is imminent or threatened;
6. Requests the Special Rapporteur in carrying out his mandate to respond effectively to information that comes before him;
7. Considers that the Special Rapporteur in carrying out his mandate should continue to seek and receive information from Governments, United Nations bodies, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council;
8. Requests the Secretary-General to continue to provide all necessary assistance to the Special Rapporteur so that he may carry out his mandate effectively;
9. Urges all Governments and all others concerned to co-operate with and assist the Special Rapporteur;
10. Requests the Commission on Human Rights to consider the question of summary or arbitrary executions as a matter of high priority at its forty-first session, under the item entitled "Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories".

20th plenary meeting
24 May 1984

03115907030

54

Annex II

GENERAL ASSEMBLY RESOLUTION 39/110 */

Summary or arbitrary executions

The General Assembly,

Recalling the provisions of the Universal Declaration of Human Rights, which states that every human being has the right to life, liberty and security of person and that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal,

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

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

Recalling further its resolution 36/22 of 9 November 1981, in which it condemned the practice of summary or arbitrary executions, and its resolutions 37/182 of 17 December 1982 and 38/96 of 16 December 1983,

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

Recalling resolution 1982/13 of 7 September 1982 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in which the Sub-Commission recommended that effective measures should be adopted to prevent the occurrence of summary or arbitrary executions,

Taking note of the work done by the Committee on Crime Prevention and Control in the area of summary or arbitrary executions, including the elaboration of minimum legal guarantees and safeguards to prevent recourse to such extra-legal executions, to be considered by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders to be held in 1985,

Convinced of the need for appropriate action to combat and eventually eliminate this practice, which represents a flagrant violation of the most fundamental human right, the right to life,

1. Strongly deplores the large number of summary or arbitrary executions, including extra-legal executions, which continue to take place in various parts of the world;

*/ The final edited text of this resolution will be published in Official Records of the General Assembly, forty-ninth session, Supplement No. 51 (A/39/51).



E/CN.4/1985/17

Annex II

page 2

2. Welcomes Economic and Social Council resolutions E/1982/35 of 7 May 1982, in which the Council decided to appoint for one year a special rapporteur to examine the questions related to summary or arbitrary executions and 1983/36 of 26 May 1983, in which the Council decided to continue for another year the mandate of the Special Rapporteur;
3. Also welcomes Economic and Social Council resolution 1984/35 of 24 May 1984, in which the Council again decided to continue the mandate of the Special Rapporteur, Mr. S.A. Wako, for another year and decided that the Commission on Human Rights should consider the question of summary or arbitrary executions as a matter of high priority at its forty-first session;
4. Appeals to all Governments to co-operate with and assist the Special Rapporteur of the Commission on Human Rights in the preparation of his report;
5. Requests the Special Rapporteur, in carrying out his mandate, to respond effectively to information that comes before him, in particular when a summary or arbitrary execution is imminent or threatened;
6. Considers that the Special Rapporteur, in carrying out his mandate, should continue to seek and receive information from Governments, United Nations bodies, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council;
7. Requests the Secretary-General to provide all necessary assistance to the Special Rapporteur so that he may effectively carry out his mandate;
8. Again requests the Secretary-General to continue to use his best endeavours in cases where the minimum standard of legal safeguards provided for in articles 6, 14 and 15 of the International Covenant on Civil and Political Rights appear not to be respected;
9. Requests the Commission on Human Rights at its forty-first session, on the basis of the report of the Special Rapporteur to be prepared in conformity with Economic and Social Council resolutions 1982/35, 1983/36 and 1984/35, to make recommendations concerning appropriate action to combat and eventually eliminate the practice of summary or arbitrary executions.

101st plenary meeting
14 December 1984



DECLASSIFIED

E/CN.4/1985/17
Annex III

Annex III

NOTE VERBALE DATED 25 APRIL 1984 FROM THE SECRETARY-GENERAL
TO GOVERNMENTS

The Secretary-General of the United Nations presents his compliments to the Minister for Foreign Affairs of Afghanistan and has the honour to draw the attention of his Excellency's Government to General Assembly resolution 38/96 of 16 December 1983, entitled "Summary or arbitrary executions". A copy of the resolution is attached.

DECLASSIFIED

DECLASSIFIED

E/CN.4/1985/17

Annex IV

Annex IV

NOTE VERBALE DATED 21 SEPTEMBER 1984 FROM THE
SECRETARY-GENERAL TO GOVERNMENTS

The Secretary-General of the United Nations presents his compliments to the Prime Minister and Minister for Finance and Foreign Affairs of ... and has the honour to refer to Economic and Social Council resolution 1984/35 of 24 May 1984, entitled "Summary or arbitrary executions". A copy of the resolution is attached.

The attention of His Excellency's Government is drawn to paragraphs 2, 9 and, in particular to paragraph 4, in which the Council decided to continue the mandate of the Special Rapporteur, Mr. S. Wako, for another year, in order to enable him to submit further conclusions and recommendations to the Commission on Human Rights.

The Special Rapporteur would be most grateful if he received from His Excellency's Government its views on and any information relevant to his mandate and in particular on the following matters:

1. Incidents of summary or arbitrary executions or threatened or imminent summary or arbitrary executions.
2. Policies and measures which Your Excellency's Government thinks should be adopted both at national and international levels in order to prevent the occurrence of summary or arbitrary executions.
3. Information on constitutional, legislative and administrative controls in the exercise or use of force both in peace time and war-like situations, affecting the right to life by armed forces, law enforcement agencies, paramilitary forces and other governmental officials or agents.
4. Information on the programmes and the measures undertaken to enhance the importance of the right to life in the training of members of the armed forces, law enforcement agencies, paramilitary forces and other governmental officials or agents.

The Special Rapporteur would greatly appreciate if His Excellency's Government could transmit such information to the Assistant Secretary-General for Human Rights, United Nations Office at Geneva, CH-1211 Genève 10, if possible by 30 November 1984.

DECLASSIFIED

Annex V

VISIT BY THE SPECIAL RAPPORTEUR TO SURINAME

I. INTRODUCTION

A. Background

1. The report of the Special Rapporteur of the Commission on Human Rights on summary or arbitrary executions submitted to the Commission at its thirty-ninth session (E/CN.4/1983/16, Add.1 and Add.1/Corr.1) referred to an allegation received by the Special Rapporteur of the summary or arbitrary execution of a number of persons in Suriname on or about 9 December 1982. a/ At the thirty-ninth session of the Commission on Human Rights, the observer for Suriname indicated that an invitation to the Commission to visit Suriname would be made in order to examine the human rights situation. For a number of reasons, the visit of the Special Rapporteur could not take place prior to the fortieth session (see E/CN.4/1984/29, paras. 22 and 25-29).

2. At the fortieth session of the Commission on Human Rights, the observer for Suriname confirmed his Government's invitation to the Special Rapporteur to visit the country and evaluate the unfortunate events which had taken place in December 1982.

B. Visit to Suriname

3. The visit to Suriname by the Special Rapporteur took place from 22 to 27 July 1984 and was followed by a visit to the Netherlands on 30 and 31 July 1984.

1. Aims of the visit

4. The subjects for examination during the visit by the Special Rapporteur were as follows:

(a) The alleged occurrence of summary or arbitrary executions in December 1982 and the official measures taken to determine the facts of those incidents;

(b) The safeguards adopted or envisaged to enhance the protection of the right to life.

2. Arrangements

5. Prior to his visit, and by a cable dated 18 June 1984, the Special Rapporteur communicated to the Permanent Representative of Suriname the names of those persons whom he wished to meet in Suriname. Furthermore, on the request of the Special Rapporteur, a public announcement was made in newspapers and other media concerning his visit to Suriname, prior to his arrival as follows:

a/ Subsequently, a letter was received from the Government of Suriname which explained that these persons "were killed in an unfortunate accident as a result of their attempt to escape custody".

414



"By a resolution adopted by the Economic and Social Council on 24 May 1982, the Council appointed Mr. S. Amos Wako as Special Rapporteur of the Commission on Human Rights with a mandate to examine the question of summary or arbitrary executions. In another resolution adopted on 24 May 1984, the Council decided to continue the mandate of the Special Rapporteur for another year. Mr. Wako presented a report to the Commission on Human Rights at its thirty-ninth session in 1983. The report contained a statement concerning Suriname and, in particular, the events which occurred on 8 and 9 December 1982. In that connection, the Government of Suriname extended an invitation to Mr. Wako to visit the Republic of Suriname. That visit will take place from 23 to 27 July 1984. Mr. Wako will meet Government officials, military and prominent civil leaders. Mr. Wako will also be available to meet any persons wishing to provide information concerning the events referred to above. The Special Rapporteur has been assured by the Government of Suriname that it shall grant the pertinent guarantees to all those who may provide the Special Rapporteur and his staff with information, testimony or evidence of any kind. Mr. Wako may be contacted at Hotel Krasnapolsky".

3. Schedule

6. With the assistance and co-ordination of the National Commission of Information and Guidance on Human Rights, meetings were arranged with Government officials, military personnel, trade-union leaders, professional and religious groups and the business community. The Special Rapporteur also met a number of private individuals. b/

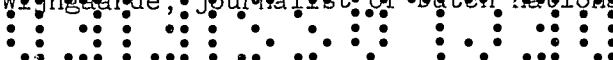
II. ALLEGATIONS

7. It was alleged to the Special Rapporteur in several communications that 15 persons c/ (listed below) had been summarily executed without recourse to

b/ In all the Special Rapporteur met with over 100 persons.

c/ The names of the individuals were given as follows:

- (1) John Baboeram, lawyer
- (2) Bram Behr, journalist
- (3) Cyril Daal, trade-unionist and Chairman of the Moederbond
- (4) Kenneth Gonçalves, Dean of the Surinamese Bar Association
- (5) Eddy Hoost, lawyer and former Minister of Justice
- (6) Andre Kamperveen, businessman, owner of the ABC radio station and former Minister of Culture and Sport
- (7) Gerald Leckie, Professor at the University of Suriname
- (8) Suchrin Oemrawsingh, professor at the University of Suriname
- (9) Leslie Rahman, journalist
- (10) Soerindre Rambocus, army officer serving a sentence of imprisonment for his involvement in the coup attempt in March 1982
- (11) Harold Riedewald, lawyer
- (12) Jiwansingh Sheombar, army officer serving a sentence of imprisonment for his involvement in the coup attempt in March 1982
- (13) Jozef Slagveer, journalist
- (14) Somradj Sohansing, businessman
- (15) Frank Wijnberge, journalist of Dutch nationality.



DECLASSIFIED

E/CN.4/1985/17
Annex V
page 3

legal safeguards and that they had been tortured while in custody. Two of the persons were military officers who were serving sentences of imprisonment.

8. It was also alleged that the military leadership had decided to arrest and execute a number of persons who were believed to have been involved in a series of anti-Government or counter-revolutionary activities in December 1982 and that the execution was actually carried out by the military authorities. It was further alleged that no autopsy had been performed on any of the dead and that there had been no investigation into their deaths.

9. In addition it was alleged to the Special Rapporteur that, on 3 February 1983, Maj. Roy Horb, second in command in the military and allegedly involved in the arrest and death of the above-mentioned persons, had been found dead hanging in the cell where he had been detained after his arrest on 30 January 1983 for an alleged plot against Lt. Col. Bouterse. Serious doubts were communicated to the Special Rapporteur by a number of sources as to the official explanation of suicide by hanging.

10. In essence, the allegations relate to the following provisions of the International Covenant on Civil and Political Rights: article 6, paragraph 1, on arbitrary deprivation of life; article 7, on torture or cruel, inhuman or degrading treatment; article 9, on arbitrary arrest and detention; article 10, paragraph 1; and the Standard Minimum Rules for the Treatment of Prisoners, d/ paragraph 37, on respect for the inherent dignity of prisoners and contacts with their families and friends; article 14, paragraph 1, on a fair and public trial.

III. REPORTS BY OTHER INTERNATIONAL ORGANIZATIONS

11. The Special Rapporteur has taken note of reports prepared on Suriname by the following organizations:

(a) International Commission of Jurists, Human Rights in Suriname, Report of a Mission (February/March 1983) by M. Bossuyt and J. Griffiths;

(b) International Labour Office, 230th Report of the Committee on Freedom of Association (GB.224/9/7), Case No. 1160, annex "Report on the direct contacts mission to Suriname carried out by Mr. W. R. Simpson, Chief of the Freedom of Association Branch, International Labour Standards Department" pp. 117-131.

(c) Organization of American States, Inter-American Commission on Human Rights: Report on the situation of human rights in Suriname (OAS/Ser.L/II.61, Doc.6 Rev.1, October 5, 1983).

12. The Government's observations on the report of the Inter-American Commission on Human Rights submitted to its Chairman in September 1983 was made available to the Special Rapporteur by the Government of Suriname.

d/ First United Nations Congress on the Prevention of Crime and the Treatment of Offenders: report by the secretariat (United Nations publication, Sales No. 1956.IV.4), annex I.A, as amended by Economic and Social Council resolution 2076 (LXII).

DECLASSIFIED

438



E/CN.4/1985/17

Annex V

page 4

13. The Special Rapporteur has taken note of the findings and conclusions of these reports and also the observations by the Government of Suriname as far as they are relevant to his mandate.

IV. INFORMATION OBTAINED DURING THE VISIT

14. During his visit to Suriname and the Netherlands, the Special Rapporteur did his utmost to inform himself of the events of December 1982 regarding the allegations described above and of the measures taken by the Government to prevent the recurrence of such events. His activities in this respect, however, cannot be considered as a formal investigation which might correspond to or replace the investigations envisaged in criminal procedure in the domestic legal system or an inquest. The following paragraphs therefore describe as comprehensively as possible, the information gathered by the Special Rapporteur as a result of the invitation kindly extended to him by the Government of Suriname.

A. Developments leading up to the December killings

15. In the view of the Special Rapporteur, if the events which led to the killings are to be fully understood, they must be seen in the light of the circumstances prevailing since the military take-over in 1980 and especially the circumstances immediately before the killings took place.

16. It would appear that, since the military take-over in 1980, the human rights situation in Suriname has been through a process of restriction largely as a result of circumstances linked with attempted take-overs, of which at least three are generally acknowledged. This situation was further characterized by periodic unrest including, in particular, strikes and demonstrations. The process gathered momentum throughout 1981 and 1982 when, in March 1982, an attempted coup was foiled. A series of strikes continued thereafter. (These developments are reflected in more detail in paragraphs 42 to 46 below).

17. In October 1982, a strike was called by the Moederbond led by Cyrill Daal. The Special Rapporteur was told that the strikes called by the Moederbond were politically motivated and aimed at returning soldiers to the camp and restoring democracy. Both the Progressive Workers Association (PWO) and the Civil Servants Association (CLO) informed the Special Rapporteur that they had not joined the strikes because they had thought that they were not being called for purely trade-union activities but mainly to achieve certain political objectives. The Union C-47 told the Special Rapporteur that it did not support the strike and the demonstrations. According to the members of the Steering Committee of the University, the strike had been timed not only to cause the military maximum embarrassment but also to have a showdown with them. One source informed the Special Rapporteur that it was not by chance that the strike had coincided with the visit to Suriname of Prime Minister Maurice Bishop of Grenada, who was reportedly a friend of Lt. Col. Bouterse; he had arrived when the air-controllers and the electricity workers were on strike. The Special Rapporteur was informed that, on the day and time that Lt. Col. Bouterse and Mr. Bishop addressed a meeting at Fort Bomika, Cyrill Daal had also called a meeting in the grounds of Moederbond. Whereas the former meeting had been attended by some 1,500 people, the latter had been attended by over 15,000 people. Consequently, Lt. Col. Bouterse promised at the public rally held for Maurice Bishop "to pay Daal's account in cash and Daal could keep the change". The extent to which the situation had thus polarized is reflected in the statement attributed to Mr. Bishop at that time to the effect that "the Surinamese revolution was too friendly and that the reactionary forces are too strong".

18. In the course of his speech at the rally, Cyrill Daal exhorted his listeners to continue to strike until Bourterse was ready to hold elections and to restore democracy.

19. The strike was eventually called off on 2 November 1982 after Major Horb allegedly acted as an intermediary with Daal. The Special Rapporteur was told that thereafter the relationship between Lt. Col. Bourterse and Major Horb became strained and on at least two occasions during meetings in the Memre Boekoe barracks Lt. Col. Bourterse was reported to have accused Major Horb of working for the Central Intelligence Agency (CIA).

20. On 31 October 1982, the three union federations, C-47, CLO and PWO issued the First Plan of Reconstruction for the return to democracy. The fourth federation, the Moederbond, also joined in the support for the First Plan after Daal had been briefly arrested and released following intervention by Mr. F. Derby, the President of C-47. The discussions on the Plan continued between the four federations and the Policy Centre until 15 November 1982; on that date Lt. Col. Bourterse announced on television that groups or organizations which met the requirements formulated as regards "democracy as the basis" would qualify for consultations and participation on further development of the democracy. The trade-union organizations informed the Special Rapporteur that at the time they had construed that as tantamount to cancellation by Bourterse of the ongoing discussions on the First Plan and had issued a joint declaration to that effect.

21. In the meantime, the Association for Democracy e/ addressed a joint letter dated 23 November 1982, to the Chairman of the Policy Centre, Lt. Col. D. D. Bouterse in which they challenged and criticized his conception of democracy and the manner in which he proposed to proceed with consultations. They thought that the military's view of democracy was in fact totalitarian in concept. They further informed Lt. Col. Bouterse that:

"By persisting in this point of view, the consequences will be fully predictable. Considering the fact that your views are rejected for reasons of principle by a large majority of the population, you will be relying on an ever decreasing minority and in the ultimate resort you will be inclined to adopt a power enforcement policy of a repressive nature, unheard of according to Suriname standards".

In the same letter, the Association proposed the discussion of certain basic principles which in its view were fundamental in any democratic society.

22. During the same period, problems arose at the University. The Special Rapporteur was informed by the members of the Steering Committee of the University that, at the University, "the battle of ideas turned into a battle of power between those who wanted the University to be back to what it

e/ The Association for Democracy has the following members: The Committee of Christian Religions, the Hindu Religious Community Sanatan Dharm, the Hindu Religious Community Aryans, the Association of Managers and Chief Editors of the Press, Madjlies Muslimin Suriname, the Suriname Islamic Association, the Suriname Muslim Association, the Suriname Business Association, the Association of Suriname Manufacturers, the Suriname Bar Association, the Association of Medical Practitioners in Suriname, the Central Organization of Farmers' Unions and the National Suriname Women's Council.



was before the revolution, led by the Union of Lecturers and those who wanted the University restructured and led by the Interim Board of the University". In October 1982, the Union of Lecturers tried to call a general strike of students which, according to the members of the Steering Committee of the University, failed due to lack of student support. The Special Rapporteur was told by the Steering Committee that the students from the Faculty of Medicine had joined the lecturers in their demand that the Interim Board should be dissolved and had occupied the Medical Institute for a number of weeks. On 10 November 1982, the students were removed from the building peacefully as was subsequently shown on television.

23. According to the members of the Steering Committee, when the Union failed to mobilize the students at the University, they took to the streets and succeeded in mobilizing secondary school students. They told the Special Rapporteur that there were only a small number of the University students in that group. However, instead of the peaceful handling of the situation achieved earlier at the University, this time, in dispersing the students, on 2 December 1982, the security forces had beaten them up thus provoking an immediate emotional reaction from the entire community. In the words of one University lecturer: "If it was meant by the reactionary forces in the army to have a national effect, it had. It was a major reason for the escalation of social unrest ...".

24. The following day, 3 December 1982, the Association for Democracy wrote a letter to Lt. Col. D. D. Bouterse in which it stated:

" ... As far as we are aware, this is the first time in our history that students have been beaten up during an otherwise peaceful demonstration ...

"It was unfortunately again shown on this occasion that a stubborn attempt to impose the will of a small minority on a large majority ultimately ends in the use of senseless violence ...".

The trade unions also expressed solidarity with the students.

25. According to dons on the Steering Committee of the University whom the Special Rapporteur had met, these events were co-ordinated with persons who were behind the attempted coup of March 1982. The Special Rapporteur was also told that the process of polarization was further accentuated when the Union of Lecturers joined the Moederbond. As a result, on one hand, there were the students, lecturers, religious communities, businessmen, professionals, women and farmers and, on the other, was the military that wielded power.

26. The domestic pressure on the military thus increased considerably; however, they were more worried about the external forces. As Mr. Sital, formerly Minister of Public Health and now Deputy Director of the Ministry of Transport and Industry, told the Special Rapporteur:

"We did not feel threatened (by strikes) because we thought we were doing good work ... The Moederbond was mainly pushed by counter-revolutionary forces to stage those strikes ... The military knew that the counter-revolutionary factions had foreign support, not only moral, but also financial. Their aim was to destroy the military authorities ... Maj. Horb had travelled to the United States ... It was on that occasion we got to know about the coup and all the plans of the strikes and the problems that were being created".



DECLASSIFIED

E/CN.4/1985/17
Annex V
page 7

27. The military leaders felt that their fears of CIA involvement were justified when in January 1983 there was a television programme on ABC networks in the United States showing that Suriname was one of the countries where the CIA was planning activities aimed at overthrowing the Government.

28. It was in this setting, with the military feeling threatened by powerful external forces which they thought were aiding the internal forces to return the military "to the barracks", that the arrests of 8 December 1982 took place.

29. As the Prime Minister, Mr. Udenhout told the Special Rapporteur, "the tensions that led to the events of December 1982 created a basis for violence". The military officers informed the Special Rapporteur that the events of December 1982 were considered as "necessary" and "based on the principle of survival"; it was a question of either "them" or "us".

B. Events of December 1982

30. The information in the possession of the Special Rapporteur on the events of 8 and 9 December is as follows:

(a) As a result of the events outlined in the preceding paragraphs, the military decided to arrest the persons who were considered to be the leaders of the "counter-revolutionary" forces in order, as the Special Rapporteur was told at the session with the military officers, "to prevent a catastrophe";

(b) Lt. Col. D. D. Bouterse, in an official announcement made on the evening of 8 December (a video recording of which was made available to the Special Rapporteur by the Government of Suriname), stated that "the revolutionary leadership had succeeded in frustrating" an attempted coup which was "designed to restore the situation whereby a small economic elite would come to power and trample underfoot the interests of the workers, peasants and masses of our people", and that a number of suspects had been arrested and held for questioning;

(c) On the same night the military destroyed what they regarded as centres of counter-revolution, i.e. the headquarters of the Moederbond, two independent radio stations and the offices of an opposition newspaper. A person who stated that he had attended the meeting of military officers on the evening of 7 December 1982 informed the Special Rapporteur that, at that meeting, the decision to arrest the leaders of the counter-revolution and to burn the centres of resistance had been communicated to them by the military leadership. One person still in the Government confirmed to the Special Rapporteur that all these acts (burning or destroying buildings) and arrests were part of the plan decided upon. In the ILO report, the Committee noted that in the Government of Suriname's written communication to it, the premises of the Moederbond trade-union federation were destroyed by the military. Lt. Col. D. D. Bouterse in his official announcement stated: "We have simultaneously dealt with some major focal points that were spreading alarm and were being used as centres for the counter-revolution. Circumstances have been such that, in the process, a number of these centres have also been physically destroyed". The headquarters of the Moederbond is being rebuilt by the Government;

(d) The Special Rapporteur was informed that the arrests were carried out on the night of 7/8 December 1982 by military personnel who, in at least two cases, used gunfire and grenades against the houses of arrested persons. In all cases, telephone wires were cut and guards posted;

DECLASSIFIED

474



(e) On the evening of 8 December 1982, statements were made by two of the arrested persons (Slagveer and Kamperveen) on the radio, a recording of which was also made available to the Special Rapporteur by the Government. Mr. Slagveer made a confession implicating a number of persons in the conspiracy against the military authorities, 11 of whom had already been arrested and were subsequently killed. Of the 15 persons who were killed, including Mr. Slagveer himself, Bram Behr, Leslie Rahman and Frank Wijngaarde were not mentioned in the two confessions. According to the confession, the aim of the conspirators was to get the soldiers back to the barracks and restore democracy by "an uprising of the people";

(f) Multiple sources informed the Special Rapporteur that the face of Mr. Slagveer who made his statement on television was swollen, particularly on the left side. A person who was in Fort Zeelandia at that time informed the Special Rapporteur that he saw both Slagveer and Kamperveen in Fort Zeelandia and that they were so badly beaten that he thought they were dead. However, on inquiring, the person was informed by the military leadership that they were alive. Some sources maintained that the confessions had already been prepared and that a high-ranking member of the military had been detailed to extract confessions from Slagveer and Rambocus.

C. The military's version of the events of December 1982

31. The Government has on a number of occasions stated its version of what happened on the night the 15 persons were killed:

(a) At the meeting with the military officers, the Special Rapporteur was told that Maj. Horb was put in complete charge of the entire operation of arresting "the counter-revolutionaries". The Special Rapporteur was told by the military officers he met in Memre Boekoe Barracks that Maj. Horb and his men were the only ones who in fact knew the details of what happened that night. He was told by the officers concerned that none other than Maj. Horb and Sgt. Maj. Zeeuw were present in Fort Zeelandia during the killings;

(b) According to 2nd Lt. Gorré, who was the military commander at Fort Zeelandia, on the morning of 8 December 1982, Maj. Horb ordered him to leave Fort Zeelandia with his unit (the ECHO company) consisting of 100 to 120 men; he accordingly left with his unit to a point some 25 km from Fort Zeelandia where they set up camp. When he left Maj. Horb took over the Fort.

(c) Sgt. Maj. Zeeuw, the second most senior officer at Fort Zeelandia on the night in question informed the Special Rapporteur that he had been on guard duty outside the office in Fort Zeelandia in which Maj. Horb was interrogating the detainees; he told the Special Rapporteur that Maj. Horb had questioned about seven or eight detainees while Sgt. Maj. Zeeuw sat outside his office. This office led to a small room, then to the corridor and to the terrace where the detainees were being held awaiting interrogation by Maj. Horb. Sgt. Maj. Zeeuw confirmed to the Special Rapporteur that the only officers present were Maj. Horb and himself. According to Sgt. Maj. Zeeuw, at some point the persons manning the Bren gun had opened fire without his or Maj. Horb's authorization. Sgt. Maj. Zeeuw recalled at that time that Maj. Horb was probably interrogating Rahman or Slagveer. He himself was in the corridor leading to the terrace and upon hearing the shots he came out "carefully in military style" and found a "big mess, corpses and everybody shouting and crying". He then went to report to Maj. Horb who was "flat on his belly" and Maj. Horb telephoned Capt. Graanooogst and Lt. Col. Bouterse. When



DECLASSIFIED

E/CN.4/1985/17

Annex V

page 9

Bouterse and Graanoogst came, Zeeuw left and went around the Fort to see that everybody was at his post. "Some soldiers were even dozing";

(d) The Special Rapporteur visited Fort Zeelandia where Sgt. Maj. Zeeuw showed him the site on which 15 persons were said to have been shot. According to Sgt. Maj. Zeeuw the persons were shot dead when a soldier manning the Bren gun on the terrace opened fire; Sgt. Maj. Zeeuw could not explain the reason for the shooting, but speculated that the soldier may have erroneously presumed that a rescue attempt was under way. Sgt. Maj. Zeeuw explained to the Special Rapporteur that the prisoners could only escape by jumping off the wall of the fortification which rose some 20 feet above the bank of the Suriname River; other directions were blocked by the Bren-gun post and the deployment of the guards;

(e) At the meeting with the military officers, the Special Rapporteur was told by Capt. Graanoogst:

"Arrests were made and the people were brought to Fort Zeelandia under the command of the late Maj. Horb ... On the nights of 8 and 9 December 1982, planes arrived over Paramaribo and Maj. Horb and Sgt. Maj. Zeeuw, who is here, told us that shots were fired from a Bren-gun post in the Fort at some detainees who were trying to flee. The people manning the Bren-gun post had not received any authorization to fire either from Maj. Horb or Sgt. Maj. Zeeuw as they were busy with the inquiry";

(f) Among the questions put by the Special Rapporteur and the answers given at the meeting with the military officers were the following:

"Special Rapporteur: Did the shooting occur within Fort Zeelandia?

Answer: Yes.

Special Rapporteur: From the report, 15 people died and they all died together - does it mean that these people were on a parade inside the Fort?

Answer: They were standing, either standing or sitting";

(g) The Special Rapporteur heard from at least two persons who were present at the ministerial meeting that, on the morning of 9 December 1982, Lt. Col. Bouterse was reported to have told the Ministers that planes came over Fort Zeelandia, that there was an attack and that the prisoners had been shot when the guards panicked;

(h) On the evening of 9 December 1982, Lt. Col. Bouterse made a broadcast in which he said:

"... we had already obtained information from some other prisoners that escape plans had been prepared on behalf of the military prisoners, for which they had already won over some other conspirators. At the moment when the transport from the Fort to the barracks was to have been carried out, the fatal occurrence took place, whereby some of the suspects lost their lives".

DECLASSIFIED

49X



(i) The same message addressed to the Secretary-General of the United Nations from the Minister for Foreign Affairs on 11 January 1983 stated:

"In an official statement of the Military Authority it is stated that on 8 December 1982, a number of persons, detained for their involvement in activities to overthrow the Government by violent means, were killed in an unfortunate accident as a result of their attempt to escape custody";

(j) The Special Rapporteur asked to see the persons who had been manning the Bren-gun post and who had allegedly shot the detainees, but nobody among the military officers whom the Special Rapporteur met knew who they were. The answers to a series of questions which the Special Rapporteur put to the military officers can be summarized as follows:

"Nobody knows those persons except Maj. Horb because they were not part of the professional military group but were doing their 18-month military service. Maj. Horb had his own staff and they all lived together in one place. Maj. Horb had his own way of working and did not trust anybody easily".

D. Other versions of the events of December 1982

32. A second version that was communicated to the Special Rapporteur described the events as follows. This version is based on statements made to the Special Rapporteur by a number of persons, including at least five eyewitnesses who claim to have been in Fort Zeelandia on the night of the killings and a further two who claim to have talked to two additional persons who were present and eyewitnesses. According to this version, the following occurred:

(a) A decision was taken by the military leadership to suppress the opposition by arresting and killing the leaders;

(b) In the course of 8 December, the persons who had been arrested were interrogated, some of them more than once. During the interrogations they were confronted with the confessions which had been made by Slagveer and Kamperveen;

(c) Reinforcements were placed inside Fort Zeelandia on the afternoon in question and orders were given to open fire with blanks at a given signal. The signal was given at about 11 p.m. and firing continued for some hours during which time the killings took place;

(d) Among those present at the time inside the Fort were Lt. Col. Bouterse, Maj. Horb, 1st Lt. Bhagwandas, Nelom, Sgt. Maj. Mahadew, Brondestein, Rozendaal and 1st Lt. Leeftang. Also present for part of the time were Mr. E. Alibux and Dr. H. Naarendorp and members of the current Government;

(e) The corpses of the victims were transported by military vehicles to the hospital morgue and put under military guard;

(f) No autopsy was performed on the corpses and there was no request or order to that effect. Eyewitnesses, including family members and medical personnel, viewed the bodies. They informed the Special Rapporteur of their observations including detailed descriptions (in some cases with photographs of the corpses taken in the morgue) which indicated several bullet wounds. The Special Rapporteur



was told that these bullet wounds indicated that shots came from the front of the body at close range. The Special Rapporteur was further told that the majority of the bodies carried other wounds indicating that most of the 15 persons had been very severely tortured;

33. The foregoing paragraphs give the two accounts of the circumstances surrounding the death of the 15 persons as contained in the information received by the Special Rapporteur.

34. The Special Rapporteur has attempted to give as correct a summary of the circumstances surrounding the death of the 15 persons as possible on the basis of the information received.

E. Question whether any measures were taken to determine the facts of the events of December 1982

35. The question arises why there was no investigation or inquiry into an incident which, by all accounts, shook the entire country.

36. This question was put by the Special Rapporteur to the military officers whom he met. No official inquiry into the incident of the night of 8-9 December 1982 was conducted. The Special Rapporteur was told by the military officers that Maj. Horb had been entrusted with the preparation of a report on the incident. This was corroborated by Capt. Graanoogst, who was the Minister for Army and Police at the time and who told the Special Rapporteur that the military wanted to clarify these matters. Maj. Horb was found dead in his cell on 3 February 1983; no evidence of his report has been found.

37. This question was put by the Special Rapporteur to the Minister of Justice, Dr. Frank Lefflang:

"Special Rapporteur: May I ask if there was an investigation on the events of December 1982?

Minister: This question is difficult as it is impossible to answer if you don't know the Suriname reality. There were no investigations. These were special circumstances. No formal request was made to investigate those facts, therefore, our Government is not able to investigate because it did not know all the facts concerning this matter. The Government is in a very difficult position.

Procurator: The facts were not brought to the Government. Because of that no investigations could be made".

38. The Special Rapporteur also put the same question to the Prime Minister, Mr. Udenhout:

"Special Rapporteur: Are there any obstacles to the collection of information on the events by the Government? I assume that [since you became Prime Minister] you have tried to get a correct picture.

Prime Minister: "... It is a problem of having to ask the question. What will be served by ascertaining the facts and bringing to justice all those responsible, directly or indirectly? What would be served by this kind of justice? It might lead to violence again ...".

39. At the meeting with Lt. Col. Bouterse the latter confirmed to the Special Rapporteur that "no attempt has been made to set up a body to investigate the events".

F. Information concerning the safeguards adopted or envisaged to enhance the protection of the right to life

40. As stated above, in the course of his visit to Suriname and in the interviews conducted by the Special Rapporteur in that connection, the Special Rapporteur sought to inform himself of the measures taken or envisaged to enhance the protection of the right to life. The Special Rapporteur recalls the communication from the Government of Suriname addressed to the Secretary-General on 11 January 1983 which states, in reference to the deaths of the 15 persons, that the national army and Government will see to it that such occurrences are prevented in the future.

41. Indeed, in the course of his meetings, the Special Rapporteur was told by members of the Government and other present and past leaders that it was their belief that the protection of the right to life was an integral part of the process of return to democratic government. As stated above, the vicissitudes following the take-over by the military in 1980 implied limitations to certain fundamental rights.

42. The Special Rapporteur was informed that prior to the change of government on 25 February 1980, politics had been based on race, not on programmes, that Parliament had been a show place and proceedings a "comedy". There had been massive corruption and uneven development and lack of concern with the "have-nots" and the political leaders had lost the confidence of the people. It was commonly acknowledged to the Special Rapporteur that the situation was such that, when the Government had refused to negotiate with the union formed by the members of the military and the military had effected a coup, it appeared to have popular support. The military immediately formed a National Military Council and delegated the administration of the State to a Government formed by two military men under the direction of Dr. Hendrik Rudolf Chin-a-Sen. It was expressly announced that all fundamental rights were recognized.

43. In August 1980, Bouterse announced the existence of a conspiracy to stage a military coup involving three members of the National Military Council (Sital, Mij nab, Joeman) and an undetermined number of civilians. A state of siege was imposed all over the country and both Parliament and the Constitution were suspended.

44. On 15 August 1980, Dr. Chin-a-Sen was named as President. In February 1982, Chin-a-Sen resigned as President and was succeeded by Judge L.F. Ramdat.

45. The Special Rapporteur was told that on 11 March 1982, there was an attempted coup led by Lt. Rambocus who demanded the holding of free and secret elections and shortly thereafter a Government was formed on 31 March 1982 headed by Mr. Nejhorst. In the course of his meeting with the Special Rapporteur, Mr. Nejhorst stated that

one of the major objectives of his Government was to try to prepare the way for a return to democracy and, to that end, a former Foreign Minister had been requested to draft the concepts of a democratic structure; he had requested that this preparatory work be done together with trade unions, women's organizations, religious communities and other representative groups. To that end, monthly meetings were held with such groups to obtain their views. Regular contacts with the press were maintained.

46. General Decree A-11 of 25 March 1982 established the basic rights and duties, including "the right to personal liberty and security" and "the right to physical, moral and psychic integrity. No one shall be subjected to torture or degrading or inhuman treatment or punishment". On the same day, two other decrees (A-9 and C-4) were passed, establishing bodies invested with governmental powers and, under article 4 of decree A-9, the Government was to be exercised by a "Policy Centre" and the Council of Ministers. This Policy Centre was said to be the highest administrative power in the nation and its composition was determined by the military authorities, and was to include the Commander and Vice-Commander of the National Army. This arrangement continued until February 1984.

47. On 28 February 1983 a new Government was formed and presented its programme for the period 1983-1986. In it the Government declared its intention "of educating the population in a new democracy that will allow the people's participation and effective control of the Government".

48. The Special Rapporteur was informed that in December 1983/January 1984, major strikes occurred. On 3 February 1984 after these major strikes, an interim Government was appointed by the Military Authority. For the first time the Government was formally appointed by decree (A-15). One of the main tasks of the interim Government, which was to last until 31 December 1984, was "to create democratic structures of a firm and long-lasting nature in mutual consultation with the Military Authority, trade unions, trade and industry organizations". Under the decree, there was to be a Council of Ministers composed of a maximum of nine persons. The Council of Ministers was to be appointed and dismissed by the President upon the recommendation of the Military Authority, trade unions and trade and industry organizations.

49. By another decree (A-16) dated 13 July 1984 a "think tank" was appointed whose main function was "to develop structures and/or institutions that can guarantee participation of the whole society in the future development of the revolutionary process so that a firm and long-lasting democracy can be realized". It was further provided that the advice of the "think tank" was to be of a special nature and to be treated as such by the Military Authorities and the Council of Ministers. The "think tank" group was to be composed of seven members: three appointed by the military, two by the trade and industry organizations and two by the labour unions. Members could only be dismissed on the proposals of the organization which appointed them. Proposals or other contributions to the "think tank" were only accepted from persons or organizations who were invited to make them.

G. Assurances given that the events of December 1982 would not recur

50. Virtually everyone in the military and the Government whom the Special Rapporteur met in Suriname expressed assurances that the events of 8-9 December would never recur.



51. Lt. Col. Bouterse told the Special Rapporteur: "We are very sorry about the events of December 1982. We have said so internationally ... the events of 1982 are certainly not to be repeated".

52. At the meeting with the military officers, Capt. Graanoogst said:

"We will do our utmost to prevent the same thing in the future. It is not our intention to deprive people of life. We are very sorry about what happened on 8 December 1982. We have said so repeatedly and I do not think that a similar thing has occurred since then ... With regard to democracy in Suriname, you probably know that we are trying to do this in a tripartite body of the military, industry and business and the trade unions together. We have asked them to send their views on democracy. We are now discussing the papers and trying to make this into a final paper and when this is finished, we shall submit it to the people and, when accepted, those will become our laws and we will have to obey them".

53. Some persons, however, expressed scepticism to the Special Rapporteur about the intentions of the military to return to democracy and doubted that these intentions would lead to practical measures for restoring democracy and with it the basic guarantees of fundamental rights, in particular the right to life. It was emphasized to the Special Rapporteur that, ever since assuming power, the military had talked about the fundamental rights of individuals and engaged in discussions on programmes to restore democracy, but that nothing concrete had come out of the talks and discussions. Instead, it was alleged to the Special Rapporteur, that the military had at all times frustrated the discussions; moreover, the Special Rapporteur was told that the fundamental rights of individuals and, in particular, the right to life and liberty continued to be violated under military rule.

54. The Special Rapporteur was informed that the killing of the 15 persons on the night of 8-9 December 1982 was not an isolated incident in which the right to life was not protected, since before December 1982 and afterwards persons had been killed or arbitrarily arrested after clashing with the military or with individual members thereof.

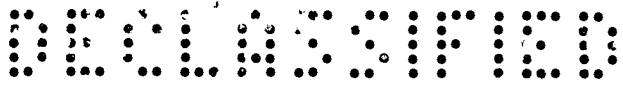
55. Fears were expressed to the Special Rapporteur that similar events to those which occurred in December 1982 could recur should the military feel that their power was threatened.

56. On the other hand, some persons were of the view that the structuring of the interim Government, in which the trade union sector, the industry sector and the military participate and in which no minister can be dismissed without the concurrence of all three sectors, augured well for the future; in particular the Government was charged with the task of submitting proposals for a democratic structure by December 1984. The Special Rapporteur was told that the way had therefore been paved for a dialogue between the various sectors of society, including the military.

57. During the discussions with Dr. Frank Leeflang, the Minister of Justice, the Special Rapporteur put the following question:

"Special Rapporteur: Suriname is a party to the International Covenant on Civil and Political Rights and the





Optional Protocols. Have you taken into account these Covenants in creating the new democratic structure?

Minister: The fact of having ratified the Covenants means that in Suriname that is the law.

Special Rapporteur: Can I assure the international community that account will be taken of the Covenants in laying down the basis for democracy in Suriname?

Minister: Of course. You cannot definitely say how the laws will be, but I can assure you that the will to include and the tendency to improve the principles contained in those Covenants are in the Government's plans".

58. As part of the evidence to show the new flexibility on the part of the military towards democratization, the Special Rapporteur was given the example of the very serious strikes and demonstrations which took place in December 1983/January 1984. It was said that the military did not confront the situation in the same way as it had done in December 1982, although they could easily have broken the strikes by force. During the discussions with Lt. Col. Bouterse, after Lt. Col. Bouterse said that "the events of 1982 were necessary", the Special Rapporteur asked him whether, if the military were faced with the same situation again, it would be handled in the same manner as in December 1982. Lt. Col. Bouterse said:

"The counter-revolutionaries struck once again in 1983, not only once. The strike tried to paralyse the whole country but we managed to solve it in a different way and this proved that what we had said after what happened in 1982 was not mere words".

59. The Special Rapporteur was told by Lt. Col. Bouterse and by the Prime Minister of an agreement between the military and the President under which "whenever there is an allegation of arbitrary arrest or ill-treatment, the President could at any moment visit any place of detention, including Fort Zeelandia".

60. In talking to the representatives of the trade unions, commerce and industry, the Special Rapporteur was told that their participation in the Government was conditional upon serious steps being taken to restore democracy.

61. The representatives of the Progressive Workers Association, for example, told the Special Rapporteur that they had set two conditions on their participation in the Government: that the democratic structures be established and that the time-limit be six months and no more than a year. Similarly the representatives of C-47 informed the Special Rapporteur that their participation in the Government was on two conditions: that the democratic structure be established and secondly the economic crisis be solved. However, priority was to be put on the establishment of the democratic structure. At the meeting with the Suriname Trade and Industry Association and the Surinamese Manufacturers it was said by one participant that:

"We have participated in the interim Government not out of political ambition but because we thought it our duty as citizens to build a new democracy..... We have given ourselves the time-limit of 3 August for drawing up the plan for a democratic structure, but in any case no later than 31 December 1984".



62. Although at the time of the Special Rapporteur's visit, discussions and consultations were still going on the democratic structures suitable for Suriname, the Special Rapporteur was given a great deal of material on this subject, including:

(a) Popular representation at the national, regional and sectoral level on the basis of permanent democratic structures;

(b) Report by the Secretariat of the "think tank". Analysis and evaluation of problems concerning democratic structures;

(c) A theoretical view of the way in which the State of Suriname should be organized according to the trade unions;

(d) Industry's view of differences and similarities between the revolutionary leadership, the trade unions and business in regard to the democratic structures;

(e) Minutes of a meeting of the think tank, with addenda concerning an interim Government.

63. The foregoing is a summary of the information received by the Special Rapporteur in the course of the interviews, meetings and consultations he conducted following the invitation extended to him by the Government.

H. Concluding remarks

64. On the basis of the information in his possession, the Special Rapporteur finds that summary or arbitrary executions took place on the night of 8-9 December in Fort Zeelandia. In view of the fact that there can be no derogation from article 6 of the International Covenant on Civil and Political Rights, that article is binding also "in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed" (art. 4) and therefore even if such a threat had existed or was presumed to exist, the executions of 8-9 December 1982 cannot be justified and cannot but be considered summary or arbitrary. The executions had a traumatic effect on the population of Suriname in view of the prominence or stature of the victims.

65. There are people who believe that the right to life in Suriname cannot be effectively protected unless an independent inquiry is conducted into the killings of December 1982 and the persons who planned and carried out these executions are charged and convicted. However, there are others who believe that the events of 8-9 December 1982 should be "considered a closed chapter", and that Suriname should now look to the future.

66. It was universally acknowledged to the Special Rapporteur that, in looking to the future, summary or arbitrary executions can be prevented if democracy is restored. At the time of the Special Rapporteur's visit, a start had been made by Decree A-15 of 3 February 1984 and Decree A-16 of 13 July 1984 creating the framework for dialogue between the military, the trade unions and the trade and industry organizations. People may have different concepts of democracy and of the democratic institutions and processes that are suitable for Suriname: what is important is that mutual trust should be created enabling every Surinamese to participate in the discussions about the future of his country and the democratic structures on which it should be based. Those structures should take into account the international covenants to which Suriname is a party, so as to ensure, in particular, protection of the right to life and to guard against summary or arbitrary deprivation of life.

