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# 제 6 부 별첨부록



## BANGKOK NGO DECLARATION ON HUMAN RIGHTS

27 MARCH 1993

### Introduction

Some 240 participants from 110 non-governmental organisations (NGOs) concerned with issues of human rights and democratic development from the Asia-Pacific region - representing women, children, indigenous peoples, workers, community development and other concerns, met in Bangkok from 24- 28 March 1993 to review the current human rights situation in the region and to formulate strategies for the future promotion and protection of human rights.

This gathering was motivated by the need to offer, in a spirit of international solidarity, ideas and suggestions in the lead-up to the Asian inter-governmental conference on human rights (Bangkok, 29 March - 2 April 1993), the World Conference on Human Rights (Vienna, June 1993), and beyond.

### Challenges

The participants identified the following essential challenges:

1. **Universality.** We can learn from different cultures in a pluralistic perspective and draw lessons from the humanity of these cultures to deepen respect for human rights. There is emerging a new understanding of universalism encompassing the richness and wisdom of Asia-Pacific cultures.

Universal human rights standards are rooted in many cultures. We affirm the basis of universality of human rights which afford protection to all of humanity, including special groups such as women, children, minorities and indigenous peoples, workers, refugees and displaced persons, the disabled and the elderly. While advocating cultural pluralism, those cultural practices which derogate from universally accepted human rights, including women's rights, must not be tolerated.

**As human rights are of universal concern and are universal in value, the advocacy of human rights cannot be considered to be an encroachment upon national sovereignty.**

2. **Indivisibility.** We affirm our commitment to the principle of indivisibility and interdependence of human rights, be they civil, political, economic, social or cultural rights. The protection of human rights concerns both individuals and collectivities. The enjoyment of human rights implies a degree of social responsibility to the community.

Violations of civil and political rights are perpetrated every day. These include the stifling of self-determination, military occupation, killings, torture, political repression, and suppression of freedom of expression and other freedoms. By contrast, poverty and the lack of basic necessities constitute key violations of economic, social and cultural rights.

Violations of civil, political and economic rights frequently result from the emphasis on economic development at the expense of human rights. Violations of social and cultural rights are



often the result of political systems which treat human rights as being of secondary importance.

Economic rights involve a fair distribution of resources and income, the right to freedom from hunger and poverty. These can only be protected where people are able to exercise their civil and political rights, for example, the right of workers to organise and form unions to protect their economic rights. Poverty arises from maldevelopment in the face of systemic denial of human rights.

**There must be a holistic and integrated approach to human rights. One set of rights cannot be used to bargain for another.**

**3. Women's Rights as Human Rights.** The issue of women's rights has not been sufficiently visible in the human rights discourse, in human rights institutions and practices. Patriarchy which operates through gender, class, caste and ethnicity, is integral to the problems facing women. Patriarchy is a form of slavery and must be eradicated. Women's rights must be addressed in both the public and private spheres of society, in particular in the family.

To provide women a life with dignity and self-determination, it is important that women have inalienable, equal economic rights (e.g. right to agricultural land, housing and other resources, and property). It is imperative for governments and the United Nations (UN) to guarantee these rights.

Crimes against women, including rape, sexual slavery and trafficking, and domestic violence are rampant. **Crimes against women are crimes against humanity, and the failure of governments to prosecute those responsible for such crimes implies complicity.**

In the Asia-Pacific region, women's rights are violated by increasingly militant assertions of religious and ethnic identity; the fact that these violations often take place through private actors is used by states as a pretext for failing to counter them as transgressions of human rights. In crisis situations - ethnic violence, communal riots, armed conflicts, military occupation and displacement - women's rights are specifically violated.

In the case where countries have acceded to the relevant international instruments on women's rights, many countries have entered too many reservations to exempt themselves from responsibility. This illustrates the lack of political and social will to protect women's rights.

**4. Solidarity.** We are entitled to join hands to protect human rights worldwide. We commit ourselves to international solidarity and to voice the concerns of our brothers and sisters without boundaries and barriers. Discrimination based upon race, gender, political, economic, social, religious or ethnic origin must not be tolerated. **International solidarity transcends the national order to refute claims of state sovereignty and non-interference in the internal affairs of a state.**

**5. Sustainable Development.** No country can attain genuine development if it is not truly free, if it has not been able to successfully liberate itself from foreign domination and control. A major cause of maldevelopment and gross violations of human rights is the dominance and consequence of imperialism in the Asia-Pacific region. A pre-condition to genuine development is the attainment of national liberation and self-determination of the peoples in the region.

We re-emphasise the need for balanced development, bearing in mind maximisation of people's development; integrated approaches on civil, political, economic, social and cultural rights; equity and social justice; income distribution and fair resource allocation. Particular attention must be paid to the needs of different groups including women, children, rural people, the urban poor, minorities and indigenous peoples, refugees and displaced persons, workers,

and others in disadvantaged positions. The natural environment must be protected as part and parcel of human rights.

Various top-down development models have led to maldevelopment. Action against national liberation and the people's right of self-determination against political/military repression are key constraints for the realisation of development. These are compounded by regional peculiarities whereby state boundaries are at times artificial when viewed from the commonalities between peoples across frontiers.

On the one hand, we must restructure the international development framework to respond more directly to the needs of people in our societies and communities - both men and women, including debt relief, reform of the international financial, economic and commercial systems, and greater democratisation of the decision-making process. The role of international aid agencies - multilateral and bilateral - and financial institutions has given rise to a number of human rights violations; they must be held accountable for the human rights violations caused by their policies and deeds.

International economic forces have great impact on human rights. The divide between North and South in terms of global equity and resource base, compounded by elitism, perpetuates social and economic disparities. The shift to a market economy has led to various human rights violations linked with development. Market rights do not mean human rights. "One dollar, one vote" does not mean democracy. Freedom to exploit does not deliver economic rights to the poor.

On the other hand, reform is also required at the national level. Maldevelopment leads to increasing poverty, income disparities, dispossession and deprivation, including land and resource holdings, environmental degradation, and over-emphasis on macro-economic development without sufficient enhancement of human development, freedoms and dignity, including dignity of men and women.

**There is an urgent call to democratise the development process at both the national and international levels so as to ensure a harmonious relationship between humanity and the natural environment, and to create processes to enhance the empowerment of women and gender equality. The thrust is to promote human and humane development.**

**6. Democracy.** Democracy is more than a legalistic or formal process. Democracy is more than the ritual casting of a ballot at one party or multi-party elections. True democracy involves participatory democracy by the people at all levels so that the people have a voice in the discussions by which they are governed.

It must be realised in the form of people's empowerment and participation at the grassroots and other levels with responsive and accountable processes and institutions at both the local and national levels. It demands good governance, freedom from corruption, and accountability of state and other authorities to the people. It involves the protection and participation of those groups which are not in the majority, namely minorities and disempowered groups. It is intertwined with the issue of land and social justice for rural people and other disadvantaged groups.

**Democracy is a way of life; it pervades all aspects of human life - in the home, in the workplace, in the local community, and beyond. It must be fostered and guaranteed in all countries.**

**7. Militarisation.** We express deep concern over the increasing militarisation throughout the region and the diversion of resources for this purpose. Militarisation has led to the destruction of



civil society, undermined the right of self-determination, and denied the people the right to liberate themselves and their freedom from fear. At times, militarisation has taken the guise of civilian groups, such as vigilantes.

It has particularly harmed indigenous peoples and has resulted in forced migration. It is interrelated with violence against women, such as sexual slavery, rape and other crimes committed in armed conflicts. It has particularly harmed the children. They suffer from physical health problems, emotional disorders, and social maladjustments due to traumatic events such as arrest and torture, evacuation, massacre, disappearance, and other forms of human rights violations.

Militarisation is closely linked with religious fundamentalism and ethnic discord, including ethnic cleansing fanned by certain governments.

Militarisation of smaller, less militaristic states is often abetted by superpowers and regional powers. Profiteering from the sale of weapons of mass destruction has been a prime cause of economic growth in developed countries and maldevelopment in developing countries. It is aggravated by the proliferation of nuclear weapons and energy, and environmental damage due to toxic wastes.

The quest for peace and human rights is intertwined with the need to demilitarise.

**8. Self-determination.** The right of self-determination of peoples is well-established in international human rights instruments and international law. The root cause of most internal conflicts can be traced back to this fundamental human right.

We affirm that all peoples have the right to self-determination. By virtue of that right, they freely determine their political status, and freely pursue their economic, social and cultural development. The right of peoples to self-determination must, therefore, be observed by all governments.

It is understood also that self-determination does not necessarily imply secession or independence. Self-determination can mean independence, free association, integration with an independent state or other constitutional arrangement arrived at through popular consultation and consent.

**9. Torture.** The existence of torture and inhuman and degrading treatment in the Asia-Pacific region gives rise to increasing concern. These practices must be eradicated.

In many countries, suspects are tortured by law enforcement personnel for extracting "confessions". This inhuman practice is officially encouraged by some authorities as a cheap and convenient method of crime control. These so-called "confessions" are used as "evidence" in court cases.

The action needed to counter such practices needs to be both preventive and curative. The latter implies prosecution of those responsible, as well as rehabilitation assistance for torture victims.

**10. Freedom of expression.** This freedom is constrained in many Asia-Pacific countries. It is necessarily interrelated with the call for civil and political rights, and democracy.

In several countries, there are no independent media. People cannot express themselves without fear. Many people are persecuted, jailed, and even killed because they speak out their thoughts. The pretext for constraining these channels of expression is often national security and law and order; this is a facade for authoritarianism and for the suppression of

democratic aspirations.

**11. Human rights education and training.** Human rights education and training have so far not been incorporated sufficiently into both formal and non-formal education. Illiteracy remains widespread.

School curriculum tends to favour the ruling elites. Not only are millions of people unaware of their rights, but also receive no encouragement or assistance in asserting their rights. Human rights education and training have both preventive and curative impact - they can empower people to prevent problems from arising by nurturing respect for other people's rights, and vice versa, as well as to inform people of the possibilities of redress.

If we wish to promote democracy and respect for human rights, we must develop comprehensive human rights education and training in both governmental and non-governmental programmes, in and out-of-school.

**12. Indigenous Peoples.** The Asia-Pacific region is home to many indigenous peoples. A basic issue among these indigenous peoples is the fact that many are not recognised as indigenous by governments and as such are denied the right to self-determination.

They are denied their specific cultural identity and entitlement to protection under relevant international human rights instruments. They are victims of ethnocide and genocide perpetrated by certain governments - whether from the North, the South or together, international financial institutions and transnational corporations. International legal instruments presently available are weak in ensuring collective human rights protection.

In many parts of the region, their right to land and other rights are not respected. Among the consequences are the expropriation and despoilation of their lands, armed conflicts and displacement as refugees. This has been accompanied by persecution and suppression by force. On another front, tourism has at times led to the degradation of indigenous lifestyles through commercial exploitation.

**13. Children.** A variety of abuses and exploitation of children arise in the region. These include child labour, children in bondage and sexual slavery, child prostitution, sale and trafficking of children, children in armed conflict situations, children in prison, children in poverty situations and other deprivations, and children abused in families compounded by family break-up and breakdown. Basic needs, such as physical and mental health, nutrition, education, shelter, and participation are often unsatisfied. The advent of AIDS has increased the plight of children; discrimination is increasing both against children with AIDS and orphans of AIDS affected families.

Children's rights are endangered in a wide variety of situations. At a very early age, they are exposed to violence in many forms by governments - poverty, malnutrition, disease, and lack of education which stultify their growth and deprive them of their childhood.

The scenario is much linked with discrimination against the girl child, militarisation, and the distorted development process. Although many countries have now acceded to the International Convention on the Rights of the Child, implementation remains weak, with much lip-service rather than effective action to protect children and to assist their families.

Implementation of the rights of children to survival, protection, development and participation as embodied in the International Convention on the Rights of the Child must be a paramount concern of every state regardless of considerations of national capacity and security.



**14. Workers.** Workers of the Asia-Pacific region do not enjoy acceptable standards of human rights. Too often it is workers and trade union leaders who endure the worst cases of human rights abuses in the region. The right of freedom of association and the right to organise trade unions are very restricted in several countries.

In this setting, human rights that are taken for granted in the civil society are ignored within the factory and the workplace. The human rights of workers such as women, migrants, bonded labourers, children and youths, and those in the informal/unorganised sector are in an even more critical situation.

The economic rights of workers, especially their access to an adequate standard of living, is often neglected in the region. Transnational corporations and agencies such as the International Monetary Fund and the World Bank at times work to undermine this right in the name of economic freedom. Many abuses of worker rights in this region come from the same countries of the North which preach human rights to the South.

**15. Refugees and Displaced Persons.** The problem of refugees and displaced persons is widespread and growing in the region; it is becoming a permanent phenomenon. It is intermingled with political repression, armed conflicts, ethnic discord, and other factors. Economic factors also push people to move in search of a livelihood elsewhere.

Inadequate attention is paid to their plight. Their position is compounded by the lack of effective national and international machinery to ensure their protection and assistance.

The safety of refugees and displaced persons is often jeopardised by restrictive state policies and discrimination. The basic right of refugees not to be pushed back to the frontiers of dangers is violated on many occasions. The procedures established to determine refugee status are often defective, and voluntary repatriation to the country of origin is not always guaranteed. The human rights of refugees and displaced persons, including freedom of expression, are violated in the name of restrictive national policies.

Few countries have acceded to the relevant refugee instruments. This displays a reticence to recognise international human rights standards and to render the situation more transparent internationally.

**16. Derogations.** Several countries seek to constrain the enjoyment of human rights by means of derogations. In cases of increasing militarisation, military occupation and rule - at times in the guise of civilian governments, the space for civil society is becoming narrowed with negative impact for human rights.

We re-emphasise that states must not derogate from human rights standards for reasons of national security, law and order, or the equivalent. We reiterate that states are bound to respect human rights in their totality in all circumstances.

**17. Human Rights Activists/Defenders.** Increasing restrictions are being imposed on the work of human rights activists/defenders - peoples from all walks of life involved with human rights - and social movements in the region, including the operations of NGOs. Often they are intimidated, harassed, and even murdered. In some countries, NGOs are not even allowed to exist.

As these groups voice the interests of the people and work for their advancement, it is imperative that they be permitted to work freely; their right to participate in community life and to enjoy the totality of human rights must be respected.

**18. Judicial independence and responsibility.** In many societies, the independence of the

judiciary and the administration of justice are being jeopardised by authoritarian elements. This is compounded by various national laws that conflict with human rights standards, particularly discrimination and inequality, and the complicity of certain judges in perpetuating authoritarian regimes.

The legal structure is also distant from many communities. There is a key question concerning access by people to the courts system. This is intertwined with the issue of legal aid, assistance and dissemination of legal knowledge.

We re-affirm the need for judicial independence and call for judicial responsibility to render justice more accessible to the people.

### Issues

The participants highlighted the following concerns as issues requiring urgent and effective action, both in terms of prevention and remedies:

- \* increasing lawlessness on the part of governmental authorities;
- \* governmental action undermining the universality and indivisibility of human rights;
- \* failure to enhance human freedoms and dignity, including the dignity of men and women;
- \* threats to the right to self-determination;
- \* non-recognition of and continuing violations of women's rights due to patriarchy, including economic rights, and inadequacy of processes to enhance the empowerment of women and gender equality;
- \* breaches of children's rights due to economic needs, socio-cultural constraints, criminality, consumerism, discrimination and militarisation;
- \* increasing environmental degradation and depletion of natural resources;
- \* proliferation of armed conflicts, enmeshed in ethnic discord, with threats to civilians;
- \* political repression by means of killings, disappearances, and torture, and political prisoners, and suppression of civil and political rights, including self-determination, freedom of expression and assembly;
- \* violation of the right to health, and underdeveloped health care systems characterised by maldistribution and inaccessibility of resources to the poor majority;
- \* denial of health services to survivors of human rights violations;



- \* attacks on the rights of workers;
- \* insecurity of migrant workers;
- \* threats to agrarian and rural communities;
- \* harassment of persons, including health and church workers, carrying out their humanitarian functions;
- \* widespread sexual exploitation;
- \* religious intolerance mixed with extremism, and other forms of discrimination on the basis of religion;
- \* lack of legal and other redress for human rights violations;
- \* impunity of those who commit human rights violations;
- \* numerous constraints imposed upon the mass media;
- \* lack of access to information to empower people to protect their human rights;
- \* discrimination and national oppression of minorities and indigenous peoples, and inadequate protection of tribal peoples;
- \* discrimination and violence perpetrated against the "untouchables" and the process of untouchability;
- \* increasing number of and threats to refugees and displaced persons, particularly through lack of fair and effective refugee screening procedures, violations of their human rights, and menace to their right to seek asylum and safety;
- \* insufficient protection of the disabled, including both physical and mental dimensions;
- \* lack of services and assistance for the elderly;
- \* escalation of AIDS and related discrimination;
- \* spread of drugs and related exploitation;
- \* low levels of education, in particular unavailability of essential human rights information, lack of awareness and skills;
- \* paucity of accession to international human rights instruments ( as well as too many "reservations" upon accession) and failure to implement them at the national and local levels;

- \* restricted access by individuals and NGOs to the international human rights system;
- \* lack of regional and national inter-governmental mechanisms to protect human rights in an independent and accessible manner.

RECOMMENDATIONS FOR ACTIONS BY GOVERNMENTS OF THE ASIA-PACIFIC REGION

GENERAL RECOMMENDATIONS

We, representatives of Asian-Pacific NGOs, call on Asia-Pacific governments:

- i) to promote and protect the **universality and indivisibility** of human rights by :
  - recognising and guaranteeing the interrelationship between human rights, development and democracy as propounded by this NGO Declaration;
  - guaranteeing the rights of collectivities, such as minorities, indigenous peoples and the unorganised sectors of labour as well as individual rights.
  - eliminating the root causes of human rights violations - civil, political, economic, social and cultural.
- ii) to **review and reform laws, policies and practices** which are detrimental to the full realisation of the civil, political, economic, social and cultural rights of their people
- iii) to ensure that **development strategies are sustainable, equitable, people-based** and in a balance with the natural environment, with the aim of assuring equity and enhancing the freedoms and the dignity of all women and men.
- iv) to **counter socio-cultural practices** and extremism which constrain human rights, particular women's rights, and in particular to reform laws, policies and religious and cultural practices that tend to deny women's independent existence and to take measures, such as community mobilisation, mass education and long-term development, to initiate and and enhance the process of empowerment and equality.
- v) to **lift constraints on political rights** imposed by national security and law and order, by repealing repressive laws, ending arbitrary arrests, and releasing all political prisoners before the UN World Conference on Human Rights, and liberalising the political system so as to democratize the decision-making process, guarantee people's participation at all levels of government, and abide by good governance.
- vi) to **address the root causes of armed conflicts** which are foreign domination, widespread landlessness and powerlessness among the people, and the collaboration of ruling elites with foreign powers and their instrumentalities;
- vii) to **reduce arms purchases and re-allocate arms expenditure** to development needs, the improvement of preventive mechanisms and the promotion of human rights promotion and



protection, and to initiate and pursue consultative processes, social services and peaceful settlement of disputes, bearing in the mind the special concerns of women, children, minorities indigenous peoples, workers in the organised and unorganised sectors, refugees and displaced persons, peasants, and other disadvantaged groups.

- viii) to **respect the work of human rights activists/defenders** and social and legal movements, including non-government organisations, to cease harassment, intimidation and other malpractices against this sector and to facilitate, rather than obstruct, the operations of these catalysts of social change.
- ix) to **guarantee the independence of the judiciary**, while nurturing a commitment to responsibility to the people, providing adequate remedies for human rights violations through judicial and other channels, including the availability of legal aid and assistance, and to counter the impunity of violators by effective legal and other measures.
- x) to **ensure that human rights have the first call on state resources**, by reducing arms purchases and diverting the funds from militarisation to human rights promotion and protection, and by reallocating from other sources;
- xi) to **promote comprehensive human rights education and training**, including an increase in the provision of information, the development of awareness and of skills. Participatory learning methods will enrich the process and contribute to the promotion and protection of universal human rights standards by utilizing the cultural wealth of the region.

#### SPECIFIC RECOMMENDATIONS

##### 1. We call on governments in the Asia-Pacific region :

- i) to **accede to and effectively implement international human rights instruments**, and to protect international human rights standards contained in the :
  - International Covenant on Civil and Political Rights (ICCPR);
  - International Covenant on Economic, Cultural and Social Rights;
  - Optional Protocols I and II to the ICCPR;
  - Convention Against Torture;
  - Convention Against the Elimination of All Discrimination Against Women (CEDAW);
  - Convention on the Elimination of all forms of Racial Discrimination;
  - Convention on the Rights of the Child;
  - Convention on the Status of Refugees;
  - Convention on the Non Applicability of Statutory
  - Limitations to War Crimes and Crimes against Humanity
  - ILO Conventions;
  - UN Declaration on the Rights of Minorities;

and as a matter of priority to protect the rights of women by ratifying CEDAW, of indigenous people by ratifying ILO Convention 169 and of workers by ratifying all other ILO Conventions.

- ii) to **guarantee the totality of human rights by withdrawing reservations**, in particular those applying to CEDAW and the Convention on the Rights of the Child, removing reservations determined to be incompatible, and establishing an expeditious procedure for reviewing the compatibility of reservations;
- iii) to **support the adoption** of the proposed Optional Protocol to the Convention Against Torture, the Draft Declaration on Violence against Women and an Optional Protocol to the Covenant for Economic, Cultural and Social Rights (ICESR) and subsequently to ratify the protocol to the ICESR.
- iv) to **introduce or amend domestic legislation**
  - to ensure compliance with these international obligations, in particular with the standards of equality and non-discrimination, and to resolve conflicts between the customary laws of a group or people and those of the state, in conformity with the universality of human rights according priority to those which conform to the spirit of the Universal Declaration on Human Rights.
  - to ensure the protection of the rights of women, children, indigenous peoples, peasants and workers and all marginalised groups;
  - to guarantee the freedom of religious organisation and expression;
  - to abolish the death penalty.
- v) to **cease immediately all forms of political repression**, including organised sexual violence, torture, enforced or involuntary disappearances, extrajudicial executions and arbitrary detention;
- vi) to **ensure protection** of the rights of all victims of human rights violations, particularly torture victims and prisoners;
- vii) to provide the basic needs of **political prisoners, torture victims, refugees and displaced persons**;
- viii) to provide **compensation, indemnification and total health services, including rehabilitation to survivors and families of victims** of organised violence sponsored and sanctioned by the State, including torture, sexual slavery (including victims of the devadasi (slaves of god) system), forced labour, involuntary disappearances, summary execution, police and military oppression, political repression, unjust detention and internal displacement;
- ix) while welcoming any initiative by governments to set up a **regional mechanism for the protection and promotion of human rights** in the Asia-Pacific region, such measures must be subject to the following conditions:



- if a regional commission is set up, it should be mandated to apply without reservations the International Bill of Human Rights, CEDAW, the Convention against Torture, the Declaration of the Right to Development and other relevant human rights instruments;
  - member states of this regional Commission must ratify or accede to the above international instruments prior to their membership;
  - the right of individuals and NGOs to petition the regional Commission must be guaranteed;
  - such petitions or appeals should not preclude concurrent appeals to the various UN mechanisms for the protection of human rights;
  - no member of this regional Commission should hold an official position in Government concurrently, and members should be appointed in consultation with NGOs;
  - there should be a regular reporting system by states on their implementation of human rights standards domestically with NGO participation in the drafting of the reports;
  - meetings of this regional Commission and its deliberations should be generally open to the public;
  - no aspect of government operation and no official should be immune from scrutiny or investigation, including the military and security forces;
  - the regional commission should have full investigative powers;
  - a separate body should be set up to adjudicate complaints;
  - member governments must be required to disseminate information on the regional commission and how it operates.
- x) to adopt, following public consultation, a **gender-sensitive national policy on human rights education** and training which provides, among other things, for specific programs designed for government officers and employees, law enforcement officials. There should be programs, both formal and nonformal, on human rights in the curricula of all educational institutions, for which governments should be held primarily responsible, and effective use of the mass media. Particular emphasis should be given to programmes designed specifically for marginalised members of the community. NGOs should be assisted and encouraged to conduct Human Rights Education and training.
- xi) to **translate and disseminate materials** relating to human rights instruments and mechanisms into the vernacular languages of the Asia Pacific.

## ACTION BY THE UNITED NATIONS

## INTERNATIONAL MECHANISMS

- i) We call upon the United Nations to undertake a **gender analysis of all human rights instruments to remove gender bias and to address gender specific abuses, and to ensure that** such issues are addressed in all reports, documents etc. produced by UN treaty bodies, thematic and country rapporteurs and working groups, independent experts and all bodies entrusted with protecting human rights in all areas that fall within their mandate;
- ii) Welcoming the Draft Declaration on Violence Against Women and urging its adoption by the General Assembly, we recommend that the World Conference **recognise women's rights as human rights** and develop more effective **implementation procedures to eliminate violence against women in both the public and private spheres**, which constitutes the gravest form of sexual discrimination, (for example by adding a supplementary article to CEDAW to outlaw the use of biological engineering to determine the sex of the foetus), and urge consideration of the initiative by the Coalition Against the Trafficking of Women in introducing a **Draft Convention Against Sexual Exploitation**;
- iii) We reiterate the importance of the **Secretary General in monitoring state compliance with Article 4 of the International Covenant on Civil and Political Rights** which requires that he be notified of derogations during times of national emergencies;
- iv) We urge that the **UN Rapporteur on States of Emergency be given adequate powers to play a more active role in effectively monitoring derogations of human rights by governments during states of emergency**;
- v) We urge the United Nations World Conference on Human Rights, to adopt a Convention on the Right to Development embodying the existing Declaration, and to move towards the adoption of Declaration on the Rights of Human Rights Defenders.
- vi) We recommend a rethinking and review of the existing definitions of human rights, including the definition of torture, the inclusion of rape, forced migration and the destruction of habitats as war crimes and a recognition of the right to be free from sexual exploitation, including sexual harassment, incest, trafficking and prostitution.
- vii) We call on the UN to take appropriate steps to eradicate the practice of untouchability, which is a crime against humanity, and discrimination on the basis of caste, religion and other factors by the year 2000, failing which sanctions will be imposed, keeping in view that development projects financed by UNDP and IFIs of the poor are not effected.
- viii) We call on the UN to take appropriate steps for the speedy realisation of the decolonisation of indigenous peoples.



## EFFECTIVENESS

We call for specific improvements in the United Nations' capacity and to establish new mechanisms to **effectively promote** and protect human rights:

- i) A special UN office, perhaps under the Under-Secretary general, should be set up to consider the issue of self-determination;
- ii) by applying sanctions against governments engaged in gross human rights violations;
- iii) by ensuring individual access to UN bodies and providing for individual complaints procedures - to this end, a working group should be established in the Commission on the Status of Women to outline procedures for drafting an Optional Protocol establishing individual complaints procedure under CEDAW
- iv) by expanding the impact of the treaty monitoring bodies including in the following ways: requiring a clear report on the extent to which a country has fulfilled its obligations and the extent to which it has failed; insisting on the submission of state reports and submission on time; encouraging consultation by states with NGOs and inclusion of NGO reports in State reports (with the NGO's consent); officially allowing for NGOs to submit parallel reports; full public disclosure of the proceedings of each session;
- v) by reinforcing the work of existing country and thematic Rapporteurs and Working Groups and by establishing new mandates as required, and enhancing the effectiveness of such mechanisms by: providing for greater investigatorial powers; setting up a system to follow-up on recommendations for implementation by governments; regularisation of on-site visits; more accessibility for victims and their families; improving security for UN delegations, rapporteurs, working group members;
- vi) by requiring that serving members of the Sub-Commission on Human Rights not be drawn from government ranks (such as politicians or diplomats) but should be sought from academia, NGOs, the media or other appropriate sectors and allowing for candidates to be nominated by countries other than own;
- vii) by establishing a UN Special Commissioner for Human Rights as a new high-level political authority to bring a more effective and rapid response, coherence and coordination in the protection of human rights;
- viii) by the formation of a UN Commission on Indigenous Peoples' with a permanent status and with the functions of monitoring, raising consciousness of the public on the situation of indigenous peoples and others;
- ix) by improving the operation of the UN Commission on Human Rights through the inclusion of discrimination against indigenous peoples as a permanent item on the agenda; and, by not precluding as a result of using the 1503 procedure, the raising of an issue in other fora;

- x) by improving emergency mechanisms through: an "early warning device" enabling the UN to respond more effectively before a situation deteriorates into crisis; maximising the use of special envoys by the Secretary General; expanding the powers of the Under-Secretary for Human Rights to enable a response to emergency situations; strengthening Urgent Action procedures;
- xi) by establishing a Permanent International Court on Human Rights with compulsory jurisdiction over all cases of human rights violations;
- xii) by establishing a Permanent International Criminal Court, to which individuals have direct access, to provide both criminal sanctions and civil remedies against war crimes, crimes against peace and crimes against humanity including gender-specific abuses - in international, internal and armed conflicts.
- xiii) by establishing a war crimes tribunal in Asia to adjudicate on military atrocities, including sexual slavery
- xiv) by establishing Special Rapporteurs on the rights of indigenous peoples, on gender discrimination and violence, and on children's rights, on the trafficking in women, authorized to receive and report on information from governments, NGOs and inter-governmental institutions, to respond effectively to allegations of violations of human rights and to recommend measures for their prevention. The rapporteur on gender violence should also report to the Commission on the Status of Women.
- xv) by sending fact-finding missions to countries in our region where gross violations of indigenous peoples' rights are reported;
- xvi) by providing mandatory gender training for UN personnel and independent experts,
- xvii) by the integration of a gender perspective programme in all UN advisory services on human rights;
- xviii) by allocating at least 5% of the UN budget to human rights work;
- xix) by increasing resources available to UN human rights bodies, such as CEDAW - by extending meeting sessions and providing more support staff- and the UN Voluntary Fund for the Victims of Torture
- xx) ensuring periodic evaluations of the effectiveness of UN monitoring, reporting and complaints procedures and its advisory services and training programs in addressing violations of the rights of women, children and indigenous peoples;



HUMAN RIGHTS EDUCATION AND TRAINING

We call upon the UN to

- i) declare a 'Peoples' Decade for Human Rights Education and Training';
- ii) implement mechanisms for the review of Human Rights Education and Training, possibly by the relevant treaty monitoring bodies;
- iii) establish an International Fund for Human Rights education and Training activities for states and NGOs
- iv) instruct each UN body to prepare a report on the effectiveness of their initiatives to address women's human rights for the 1995 World Conference on Women;
- v) ensure that the rights of indigenous peoples finally gain a place on the formal agenda of the UN Commission on Human Rights.

DEMOCRATISATION

We recommend the democratisation of relevant UN processes in the following ways :

- i) by **democratization of the Security Council**, in particular by abolition of the veto and permanent membership and the transfer of additional responsibilities to the General Assembly; moreover, membership of the Security Council should be denied to any State responsible for war crimes against humanity, such as military sexual slavery, before it accepts its state responsibility.
- ii) by establishing mechanisms to ensure that the concerns, experiences and struggles of hitherto marginalised groups, including women, children, indigenous peoples and workers, can be represented in all UN structures and its ongoing activities; in particular by the granting of consultative status, the inclusion of such concerns in the agenda of the regional meeting and the World Conference; and by recognising their representatives to speak at the meetings.
- iii) taking into account the absence of an inter-governmental human rights mechanism in the Asia-Pacific region, we call on the UN Commission on Human rights to develop procedures and provide the means to enable NGOs to access the UN system both within Asia and beyond; specifically, we call for the sittings of the Sub-Commission on Human Rights in August every year to be held in rotation in the Latin American, African and Asian-Pacific regions; ECOSOC rules and procedures limiting NGO participation should be waived; the accreditation decisions should always be by majority and may be by secret ballot;

- iv) by recognising, promoting and supporting NGO activities on human rights by making available technical, human and financial resources from the UN;

SPECIALISED AGENCIES

With regard to UN institutions and their specialised agencies we call upon the UN, governments of the North and the South to actively monitor, regulate and ensure:

- i) the policies of the IMF, World Bank, GATT and other multilateral agencies -and bilateral agencies - to ensure their conformity with UN/ILO standards;
- ii) the protection of all workers, trade unions and labour rights groups not officially recognized by their governments, by: strengthening ILO policies relating to workers in the unorganized/informal sector and to the trade union rights of government employees; and addressing the practice of the expulsion or forced migration of workers, especially women, in occupied territories;
- iii) the activities of TNCs operating in the Asia-Pacific region so as to ensure compliance with international labour standards.
- iv) procedures for the accountability of the UN delegates, personnel and agents for human rights violations, including gender specific abuses.

MILITARISATION

We call on governments :

- i) to adopt measures to bring to an immediate end the production, sale, exhibition and advertising of weapons of mass destruction and nuclear weapons, and military exercises of all kinds;
- ii) to dismantle all existing weapons of mass destruction and to end the military training of Asia-Pacific defence, military and security personnel by Western countries for combat against their own people;
- iii) to re-allocate military budgets to development needs, improved preventive mechanisms, consultative processes, social services and peaceful settlement of disputes;
- iv) to disband all paramilitary forces;
- v) to take immediate steps to ensure that Asia and the Pacific are not host to foreign bases and are free of nuclear weaponry and power;
- vi) to make publicly available information on military expenditure;



- vii) with specific reference to the operation of UN peace-keeping forces, emergency response mechanisms and humanitarian assistance, to ensure an effective response to the particular vulnerabilities of women as a group in situations of armed or ethnic conflict; to address the impact on women and children of all measures taken and the effect on the local female population of the discipline and behaviour of male military personnel;
- viii) to release all Prisoners of War and civilians detained in contravention of international humanitarian law;
- xix) to ensure all citizens have the right to conscientious objection.

ENDS

## VIENNA NGO FORUM FINAL DOCUMENTS

### 1. Introduction

On the occasion of the second United Nations World Conference on Human Rights a NGO-Forum on the "All Human Rights For All" was held in Vienna from 10 - 12 June 1993. The NGO-forum was attended by over 2,000 participants representing a total of more than 1,000 non-governmental organizations active in the field of human rights and development as well as of indigenous peoples. The NGO-forum has been prepared by a joint NGO planning committee, consisting of representatives of the Congo Planning Committee in Geneva and New York, the Ludwig Boltzmann Institute of Human Rights (BIM) in Vienna and the three "southern" regional coordinating committees. During the plenary session which was chaired by Albertina Sisulu (South Africa), keynote speeches were delivered by Ibrahama Fall, Secretary General of the world conference on human rights, Vera Chirwa (Malawi), Sheik Hasina (Bangladesh), Issan Abdulhadi (Pakistan), Jonathan Mann (USA), Jimmy Carter (USA) and Adolfo Perez Esquivel (Argentina). Manfred Nowak (Austria) served as general rapporteur.

The aim of the NGO-forum was to give international, regional and local human rights organizations as well as indigenous peoples from all regions of the world an opportunity to evaluate the achievements of the United Nations in promoting and protecting human rights, to formulate common recommendations on how to improve and restructure the UN human rights program, in order to meet the new challenges in a period of global political change and to ensure improved access of NGO's and indigenous peoples to the UN mechanisms in the field of human rights.

The actual work of the NGO-forum was carried out in five major working groups and another six working groups established spontaneously on the first day. The recommendations of all working groups were adopted by the plenary and form an appendix to this general report. In the following report the major recommendations of each working group are highlighted.

### 2. Working Group Recommendations

2.1. Working Group A: General evaluation of progress made in the field of human rights, and of the overall effectiveness of UN standards and mechanisms. Recommendation for their improvement, and greater involvement of NGO's.



The members of working group a underline the universality, indivisibility and interdependence of human rights and stress that claims of relativism can never justify violations of human rights. They recommend the establishment of a high commissioner for human rights, of an international criminal court to prosecute gross violations and a special rapporteur of the human rights commission on violence against women and gender-based discrimination as a means of fully integrating women's rights into the UN's human rights program. They further recommend the elaboration of optional protocols to the international covenant of economic, social and cultural rights and to the convention on the elimination on all forms of discrimination against women, which would provide for individual complaints procedures. Other recommendations refer to the need for a significant increase in the UN human rights budget comprising 3-5 % of the UN's regular budget, and the establishment of a comprehensive human rights data base.

#### 2.2. Working Group B: Assessment Of The Present State Of The Rights Of Indigenous Peoples.

The members of the Working Group B stress the distinct characteristics of indigenous peoples which distinguishes them from minorities. They urge that indigenous peoples be recognized as nations with inherent collective rights of self determination, development, self-government and autonomy.

Recommendations include the proclamation of the international decade of the world's indigenous peoples, the establishment of a high commissioner, a special rapporteur or another permanent UN body with adequate resources for the protection of the rights of indigenous peoples. Furthermore, they urge the UN to adopt, without further delay, the strongest possible draft of the universal declaration of the rights of indigenous peoples and to ensure full participation of representatives of indigenous peoples in the drafting process and related activities.

#### 2.3 Working Group C: Evolution Of The Present State Of The Protection Of Women's Rights.

The members of the working group c stress that the UN and the governments have by and large failed to promote and protect women's human rights. They recommend that all UN human rights monitoring bodies should address violations of women's human rights by including gender-specific abuses with particular reference to refugee women, migrant women, exiled and internally displaced women abuses.

They propose the appointment of a special rapporteur on human rights of women, by the UN human rights commission they further urge governments to ratify the women's convention, to withdraw their reservations and to strengthen the implementation procedures, by means of individual and group complaints. Particular emphasis was put on the necessity of effective UN procedures to eliminate violence against women, both in the public and private spheres. Women should have equitable participation in shaping development progress with a view toward establishing a more just economic order. The working group recommends the establishment of a permanent international criminal court which should also have jurisdiction over gender specific abuses, such as rape, sexual slavery, forced sterilization, and forced pregnancy. Finally the working group stresses the need for women's access to decision making powers in all fields including UN bodies, as well as the promotion of human rights education as a human right.

#### 2.4. Working Group D: Examination Of The Relationship Between Human Rights, Development And Democracy With Particular Attention To The Role Of NGO's In Fostering Popular Participation And In Creating Awareness Of The Necessity Of Solidarity Between The North And The South.

The working group recommends the democratization of UN structures, in particular the abolition of the veto in the security council. It also stresses that structural adjustment programs should be compatible with human rights, the abolition of economic conditionality and a holistic approach to the right to development.

It considers the impoverishment of large sectors of the population as a gross violation of human rights and calls upon the NGO's to campaign against the present round of gatt. Development should be linked to democracy and to the satisfaction of the basic needs of the disadvantaged sectors of the population. The working group urges the adoption of a new strategy of formal and non-formal human rights education at all levels. Urgent attention should be given to violations of migrant workers, displaced and stateless persons as well as to the erosion of worker rights. Finally, the working group emphasizes the importance of civil institutions as the basis of participatory democracy respect for human rights and genuine development. In this context, the fostering of solidarity between NGO's of the south as well as those of the south and north is stressed.



2.5 Working Group E: examination of the current trends in human rights violations as a result of racism, xenophobia, ethnic violence, and religious intolerance with a particular focus on minorities. What should be the appropriate response of the UN?

The working group urges governments to ratify the convention on the elimination against racial discrimination (cerd) and the convention on migrant workers and to accept the individual petition procedure under cerd. It stresses the important role of NGO's, national and international institutions in combating racism, racial discrimination, xenophobia, ethnic violence and religious intolerance. As one of the root causes of these phenomena the worsening economic conditions in the "developed" countries have been identified.

The working group urges the united nations to establish mechanisms in order to eliminate the double discrimination which affects women belonging to ethnic groups that are discriminated against and thereby recommends that violence against women, as well as the sale and traffic in women, shall be considered a gross human rights violation. Gender equality was also stressed in the context of combatting religious intolerance. The effectiveness of the UN special rapporteur on religious intolerance should be enhanced.

With respect to the rights of minorities, the working group urges effective means to implement the UN declaration on the rights of persons belonging to minorities by establishing a working group of the UN commission on human rights dealing with minority issues. Effective mechanisms should also be developed to counter discrimination against other disadvantaged groups, such as people with disabilities, person who are hiv positive or who live with aid's, sexually exploited people, homeless children and children who are victims of armed conflicts and of child prostitution. Particular attention should be paid to trade union rights. Finally, the working group raised the serious issue of gross human rights violations committed by non-state entities which are not accountable to the world community.

2.6. Additional Working Group 1: Military/paramilitary/ Police And Political Repression/ Missing/ Disappearance/torture/ Foreign Occupation And Human Rights.

The working group strongly denounces gross violations of human rights existing in many countries, such as torture,

extrajudicial executions, missing persons, enforced disappearances and arbitrary detention. Governments are urgently requested to address the root causes of exploitation and domination including foreign occupation, poverty and powerlessness among the people. They should also respect the work of human rights activists and should ensure proper legal procedures in case of human rights abuses.

Among others, the following specific recommendations are made: governments should adopt the proposed draft optional protocol to the UN convention against torture and the draft declaration on violence against women, they should declare grave and systematic human rights violations as crimes against humanity, they should adopt a new machinery to react efficiently and promptly to massive human rights violations, to reallocate arms expenditures to development needs and to recognize conscientious objection to military service as a fundamental human right.

2.1. Additional Working Group 2: The Human Rights Of Children And Young People

The working group states that, despite the ratification of the UN convention on the rights of the child by 136 governments, numerous public and private violations of the human rights of children and young people are committed and particularly affect the girl child. The working group recommends the adoption of an special procedure to submit individual petitions to the UN committee on the rights of the child as well as more efficient mechanisms for the protection of children in violent situations, such as armed conflicts, "social cleansing", extermination and torture. States are requested to fix a minimum age of criminal responsibility and to raise the age limit prohibiting participation in child labour.

Furthermore, development and structural adjustment programs should include specific measures to guarantee better protection of children and young people. In conclusion, the working group urges all states, social entities and individuals to respect the right of children and young people to participate as valued members of society, to speak and to be listened to.

2.8. Additional Working Group 3: Forced Eviction, Displacement And Housing Rights

The working group underlines the legal nature of the right to adequate housing under article 11(1) of the international covenant on economic, social and cultural rights and welcomes the recent appointment of justice rayindar sachar



as UN special rapporteur on the right to housing. It stresses the inseparable relationship between this right and other human rights, such as the right to life. It urges governments to allocate the resources, land and services necessary for all citizens to enjoy the right to housing.

The working group expresses its deepest concern that forced evictions are a widespread and global phenomenon constituting a gross violation of human rights. It emphasises that the denial of housing rights including the practice of forced evictions creates situations ripe for outburst of communal and ethnic violence. It urges international and bilateral financial agencies not to fund development projects and economic adjustment policies leading to the involuntary removal of people from their homes. Finally, the working group strongly recommends the appointment, by the UN commission on human rights, of a special rapporteur on forced evictions.

2.9. Additional Working Group 5: The Caste System, Untouchability, Bonded Labour And The United Nation's Role

The working group urges the united nations to take appropriate steps to eradicate the practice of untouchability, which it considers a crime against humanity and discrimination on the basis of caste, religion and other factors by the year 2000. To this end, the working group recommends the appointment of a special rapporteur to carry out a study of the situation of the untouchables in South Asia, in particular of bonded labour, child servitude and child prostitution. In addition, a special committee is called for in order to initiate the process of declaring the untouchables as an indigenous people of South Asia to whom all UN resolutions on indigenous peoples should be applicable.

2.10. Additional Proposal By The NGOs Of The Disabled Persons

The representatives of NGO's of the disabled persons stress that ten to fifteen percent of all oppressed groups are disabled persons, who thus encounter a double, often multiple discrimination and violations of their rights. There are more than 500 million disabled persons in the world. The respective NGO's urge for the adoption, and effective implementation, by the united nations and its member states, of the standard rules on the equalization of opportunities of disabled persons on the implementation of the world program of action of disabled persons.

2.11. Additional Working Group 6: Beyond Vienna: Building The Human Rights Movement

The working group calls for a common manifesto or agenda on "all human rights for all", based on the content of the conclusions and recommendations of the NGO-forum and the regional meetings. This agenda should include a human rights education campaign, the establishment of a UN High Commissioner for human rights and a permanent penal court for violations of human rights and a number of demands raised in other working groups. The working group stresses the accountability of major institutions of society, such as multinational corporations, global financial and other institutions, religious bodies, as well as national and international NGO's. In addition, it suggests campaigning against unfair trade practices and in favour of unilateral disarmament by states.

In structural terms, the working group recommends the establishment of democratic, non-partisan and decentralized NGO networks, as well as the election of a coordination committee to implement the aims and objectives of the agenda. Already during the present NGO-forum, and ad hoc, democratically oriented structure - tentatively called a "continuing committee" - should be formed in order to take up the work of coordination of activities beyond Vienna. This committee should be composed of members equally representing the different regions and should give priority to organizations of working people, indigenous peoples, women, and other historically oppressed sections.

3. Conclusions

In the opinion of the general rapporteur, it is a major achievement to bring together more than 1,000 international, regional and local NGOs from all parts of the world, representing a great variety of concerns, and to produce, in a short period of time, such constructive and forward-looking common recommendations to improve the united nations human rights program.

I sincerely hope that these proposals will guide the future cooperation amongst NGO's as well as between NGO's and the united nations. I also hope that these concerns of the global human rights community will be taken into account by the government representatives meeting in Vienna over the next two weeks and will be reflected in the final document of the second world conference on human rights. I thank all of you for your commitment and active participation in this joint NGO-forum on "All Human Rights For All".



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VIENNA DECLARATION AND PROGRAMME OF ACTION

Note by the secretariat

Attached is the text of the Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights on 25 June 1993.

GE.93-14233 (E)

VIENNA DECLARATION AND PROGRAMME OF ACTION

The World Conference on Human Rights,

Considering that the promotion and protection of human rights is a matter of priority for the international community, and that the Conference affords a unique opportunity to carry out a comprehensive analysis of the international human rights system and of the machinery for the protection of human rights, in order to enhance and thus promote a fuller observance of those rights, in a just and balanced manner,

Recognizing and affirming that all human rights derive from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms,

Reaffirming their commitment to the purposes and principles contained in the Charter of the United Nations and the Universal Declaration of Human Rights,

Reaffirming the commitment contained in Article 56 of the Charter of the United Nations to take joint and separate

C. 비엔나선언 및 행동계획(VIENNA DECLARATION AND PROGRAMME of ACTION)

action, placing proper emphasis on developing effective international cooperation for the realization of the purposes set out in Article 55, including universal respect for, and observance of, human rights and fundamental freedoms for all,

Emphasizing the responsibilities of all States, in conformity with the Charter of the United Nations, to develop and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Recalling the Preamble to the Charter of the United Nations, in particular the determination to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women and of nations large and small,

Recalling also the determination expressed in the Preamble of the Charter of the United Nations to save succeeding generations from the scourge of war, to establish conditions under which justice and respect for obligations arising from treaties and other sources of international law can be maintained, to promote social progress and better standards of life in larger freedom, to practice tolerance and good neighbourliness, and to employ international machinery for the promotion of the economic and social advancement of all peoples,

Emphasizing that the Universal Declaration of Human Rights, which constitutes a common standard of achievement for all peoples and all nations, is the source of inspiration and has been the basis for the United Nations in making advances in standard setting as contained in the existing international human rights instruments, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Considering the major changes taking place on the international scene and the aspirations of all the peoples for an international order based on the principles enshrined in the Charter of the United Nations, including promoting and encouraging respect for human rights and fundamental freedoms for all and respect for the principle of equal rights and self-determination of peoples, peace, democracy, justice, equality, rule of law, pluralism, development, better standards of living and solidarity,

Deeply concerned by various forms of discrimination and violence, to which women continue to be exposed all over the world,



Recognizing that the activities of the United Nations in the field of human rights should be rationalized and enhanced in order to strengthen the United Nations machinery in this field and to further the objectives of universal respect for observance of international human rights standards,

Having taken into account the Declarations adopted by the three regional meetings at Tunis, San Jose and Bangkok and the contributions made by Governments, and bearing in mind the suggestions made by intergovernmental and non-governmental organizations, as well as the studies prepared by independent experts during the preparatory process leading to the World Conference on Human Rights,

Welcoming the International Year of the World's Indigenous People 1993 as a reaffirmation of the commitment of the international community to ensure their enjoyment of all human rights and fundamental freedoms and to respect the value and diversity of their cultures and identities,

Recognizing also that the international community should devise ways and means to remove the current obstacles and meet challenges to the full realization of all human rights and to prevent the continuation of human rights violations resulting thereof throughout the world,

Invoking the spirit of our age and the realities of our time which call upon the peoples of the world and all States Members of the United Nations to rededicate themselves to the global task of promoting and protecting all human rights and fundamental freedoms so as to secure full and universal enjoyment of these rights,

Determined to take new steps forward in the commitment of the international community with a view to achieving substantial progress in human rights endeavours by an increased and sustained effort of international cooperation and solidarity,

Solemnly adopts the Vienna Declaration and Programme of Action.

I

1. The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question.

In this framework, enhancement of international cooperation in the field of human rights is essential for the full achievement of the purposes of the United Nations.

Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments.

2. All peoples have the right of self-determination. By virtue of that right they freely determine their political status, and freely pursue their economic, social and cultural development.

Taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, the World Conference on Human Rights recognizes the right of peoples to take any legitimate action, in accordance with the Charter of the United Nations, to realize their inalienable right of self-determination. The World Conference on Human Rights considers the denial of the right of self-determination as a violation of human rights and underlines the importance of the effective realization of this right.

In accordance with the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations, this shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind.

3. Effective international measures to guarantee and monitor the implementation of human rights standards should be taken in respect of people under foreign occupation, and effective legal protection against the violation of their human rights should be provided, in accordance with human rights norms and international law, particularly the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 14 August 1949, and other applicable norms of humanitarian law.

4. The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international cooperation. In the framework of these purposes and principles, the promotion and protection of all human rights is a legitimate concern of the international



community. The organs and specialized agencies related to human rights should therefore further enhance the coordination of their activities based on the consistent and objective application of international human rights instruments.

5. All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

6. The efforts of the United Nations system towards the universal respect for, and observance of, human rights and fundamental freedoms for all, contribute to the stability and well-being necessary for peaceful and friendly relations among nations, and to improved conditions for peace and security as well as social and economic development, in conformity with the Charter of the United Nations.

7. The processes of promoting and protecting human rights should be conducted in conformity with the purposes and principles of the Charter of the United Nations, and international law.

8. Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. In the context of the above, the promotion and protection of human rights and fundamental freedoms at the national and international levels should be universal and conducted without conditions attached. The international community should support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world.

9. The World Conference on Human Rights reaffirms that least developed countries committed to the process of democratization and economic reforms, many of which are in Africa, should be supported by the international community in order to succeed in their transition to democracy and economic development.

10. The World Conference on Human Rights reaffirms the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights.

As stated in the Declaration on the Right to development, the human person is the central subject of development.

While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights.

States should cooperate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development.

Lasting progress towards the implementation of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favourable economic environment at the international level.

11. The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. The World Conference on Human Rights recognizes that illicit dumping of toxic and dangerous substances and waste potentially constitutes a serious threat to the human rights to life and health of everyone.

Consequently, the World Conference on Human Rights calls on all States to adopt and vigorously implement existing conventions relating to the dumping of toxic and dangerous products and waste and to cooperate in the prevention of illicit dumping.

Everyone has the right to enjoy the benefits of scientific progress and its applications. The World Conference on Human Rights notes that certain advances, notably in the biomedical and life sciences as well as in information technology, may have potentially adverse consequences for the integrity, dignity and human rights of the individual, and calls for international cooperation to ensure that human rights and dignity are fully respected in this area of universal concern.

12. The World Conference on Human Rights calls upon the international community to make all efforts to help alleviate the external debt burden of developing countries, in order to supplement the efforts of the Governments of such countries to attain the full realization of the economic, social and cultural rights of their people.



13. There is a need for States and international organizations, in cooperation with non-governmental organizations, to create favourable conditions at the national, regional and international levels to ensure the full and effective enjoyment of human rights. States should eliminate all violations of human rights and their causes, as well as obstacles to the enjoyment of these rights.

14. The existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights; its immediate alleviation and eventual elimination must remain a high priority for the international community.

15. Respect for human rights and for fundamental freedoms without distinction of any kind is a fundamental rule of international human rights law. The speedy and comprehensive elimination of all forms of racism and racial discrimination, xenophobia and related intolerance is a priority task for the international community. Governments should take effective measures to prevent and combat them. Groups, institutions, intergovernmental and non-governmental organizations and individuals are urged to intensify their efforts in cooperating and coordinating their activities against these evils.

16. The World Conference on Human Rights welcomes the progress made in dismantling apartheid and calls upon the international community and the United Nations system to assist in this process. The World Conference on Human Rights also deplores the continuing acts of violence aimed at undermining the quest for a peaceful dismantling of apartheid.

17. The acts, methods and practices of terrorism in all its forms and manifestations as well as linkage in some countries to drug trafficking are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity, security of States and destabilizing legitimately constituted Governments. The international community should take the necessary steps to enhance cooperation to prevent and combat terrorism.

18. The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.

Gender-based violence and all forms of sexual

harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support.

The human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women.

The World Conference on Human Rights urges Governments, institutions, intergovernmental and non-governmental organizations to intensify their efforts for the protection and promotion of human rights of women and the girl-child.

19. Considering the importance of the promotion and protection of the rights of persons belonging to minorities and the contribution of such promotion and protection to the political and social stability of the States in which such persons live,

The World Conference on Human Rights reaffirms the obligation of States to ensure that persons belonging to minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law in accordance with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

The persons belonging to minorities have the right to enjoy their own culture, to profess and practise their own religion and to use their own language in private and in public, freely and without interference or any form of discrimination.

20. The World Conference on Human Rights recognizes the inherent dignity and the unique contribution of indigenous people to the development and plurality of society and strongly reaffirms the commitment of the international community to their economic, social and cultural well-being and their enjoyment of the fruits of sustainable development. States should ensure the full and free participation of indigenous people in all aspects of society, in particular in matters of concern to them. Considering the importance of the promotion and protection of the rights of indigenous people, and the contribution of such promotion and protection to the political and social stability of the States in which such people live, States should, in accordance with international law, take concerted positive steps to ensure respect for all human rights and



fundamental freedoms of indigenous people, on the basis of equality and non-discrimination, and recognize the value and diversity of their distinct identities, cultures and social organization.

21. The World Conference on Human Rights, welcoming the early ratification of the Convention on the Rights of the Child by a large number of States and noting the recognition of the human rights of children in the World Declaration on the Survival, Protection and Development of Children and Plan of Action adopted by the World Summit for Children, urges universal ratification of the Convention by 1995 and its effective implementation by States parties through the adoption of all the necessary legislative, administrative and other measures and the allocation to the maximum extent of the available resources. In all actions concerning children, non-discrimination and the best interest of the child should be primary considerations and the views of the child given due weight. National and international mechanisms and programmes should be strengthened for the defence and protection of children, in particular, the girl-child, abandoned children, street children, economically and sexually exploited children, including through child pornography, child prostitution or sale of organs, children victims of diseases including acquired immunodeficiency syndrome, refugee and displaced children, children in detention, children in armed conflict, as well as children victims of famine and drought and other emergencies. International cooperation and solidarity should be promoted to support the implementation of the Convention and the rights of the child should be a priority in the United Nations system-wide action on human rights.

The World Conference on Human Rights also stresses that the child for the full and harmonious development of his or her personality should grow up in a family environment which accordingly merits broader protection.

22. Special attention needs to be paid to ensuring non-discrimination, and the equal enjoyment of all human rights and fundamental freedoms by disabled persons, including their active participation in all aspects of society.

23. The World Conference on Human Rights reaffirms that everyone, without distinction of any kind, is entitled to the right to seek and to enjoy in other countries asylum from persecution, as well as the right to return to one's own country. In this respect it stresses the importance of the Universal Declaration of Human Rights, the 1951 Convention relating to the Status of Refugees, its 1967 Protocol and regional instruments. It expresses its appreciation to States that continue to admit and host large

numbers of refugees in their territories, and to the Office of the United Nations High Commissioner for Refugees for its dedication to its task. It also expresses its appreciation to the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

The World Conference on Human Rights recognizes that gross violations of human rights, including in armed conflicts, are among the multiple and complex factors leading to displacement of people.

The World Conference on Human Rights recognizes that, in view of the complexities of the global refugee crisis and in accordance with the Charter of the United Nations, relevant international instruments and international solidarity and in the spirit of burden-sharing, a comprehensive approach by the international community is needed in coordination and cooperation with the countries concerned and relevant organizations, bearing in mind the mandate of the United Nations High Commissioner for Refugees. This should include the development of strategies to address the root causes and effects of movements of refugees and other displaced persons, the strengthening of emergency preparedness and response mechanisms, the provision of effective protection and assistance, bearing in mind the special needs of women and children, as well as the achievement of durable solutions, primarily through the preferred solution of dignified and safe voluntary repatriation, including solutions such as those adopted by the international refugee conferences. The World Conference on Human Rights underlines the responsibilities of States, particularly as they relate to the countries of origin.

In the light of the comprehensive approach, the World Conference on Human Rights emphasizes the importance of giving special attention including through intergovernmental and humanitarian organizations and finding lasting solutions to questions related to internally displaced persons including their voluntary and safe return and rehabilitation.

In accordance with the Charter of the United Nations and the principles of humanitarian law, the World Conference on Human Rights further emphasizes the importance of and the need for humanitarian assistance to victims of all natural and man-made disasters.

24. Great importance must be given to the promotion and protection of the human rights of persons belonging to groups which have been rendered vulnerable, including migrant workers, the elimination of all forms of



discrimination against them, and the strengthening and more effective implementation of existing human rights instruments. States have an obligation to create and maintain adequate measures at the national level, in particular in the fields of education, health and social support, for the promotion and protection of the rights of persons in vulnerable sectors of their populations and to ensure the participation of those among them who are interested in finding a solution to their own problems.

25. The World Conference on Human Rights affirms that extreme poverty and social exclusion constitute a violation of human dignity and that urgent steps are necessary to achieve better knowledge of extreme poverty and its causes, including those related to the problem of development, in order to promote the human rights of the poorest, and to put an end to extreme poverty and social exclusion and to promote the enjoyment of the fruits of social progress. It is essential for States to foster participation by the poorest people in the decision-making process by the community in which they live, the promotion of human rights and efforts to combat extreme poverty.

26. The World Conference on Human Rights welcomes the progress made in the codification of human rights instruments, which is a dynamic and evolving process, and urges the universal ratification of human rights treaties. All States are encouraged to accede to these international instruments; all States are encouraged to avoid, as far as possible, the resort to reservations.

27. Every State should provide an effective framework of remedies to redress human rights grievances or violations. The administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development. In this context, institutions concerned with the administration of justice should be properly funded, and an increased level of both technical and financial assistance should be provided by the international community. It is incumbent upon the United Nations to make use of special programmes of advisory services on a priority basis for the achievement of a strong and independent administration of justice.

28. The World Conference on Human Rights expresses its dismay at massive violations of human rights especially in the form of genocide, "ethnic cleansing" and systematic rape of women in war situations, creating mass exodus of refugees

and displaced persons. While strongly condemning such abhorrent practices it reiterates the call that perpetrators of such crimes be punished and such practices immediately stopped.

29. The World Conference on Human Rights expresses grave concern about continuing human rights violations in all parts of the world in disregard of standards as contained in international human rights instruments and international humanitarian law and about the lack of sufficient and effective remedies for the victims.

The World Conference on Human Rights is deeply concerned about violations of human rights during armed conflicts, affecting the civilian population, especially women, children, the elderly and the disabled. The Conference therefore calls upon States and all parties to armed conflicts strictly to observe international humanitarian law, as set forth in the Geneva Conventions of 1949 and other rules and principles of international law, as well as minimum standards for protection of human rights, as laid down in international conventions.

The World Conference on Human Rights reaffirms the right of the victims to be assisted by humanitarian organizations, as set forth in the Geneva Conventions of 1949 and other relevant instruments of international humanitarian law, and calls for the safe and timely access for such assistance.

30. The World Conference on Human Rights also expresses its dismay and condemnation that gross and systematic violations and situations that constitute serious obstacles to the full enjoyment of all human rights continue to occur in different parts of the world. Such violations and obstacles include, as well as torture and cruel, inhuman and degrading treatment or punishment, summary and arbitrary executions, disappearances, arbitrary detentions, all forms of racism, racial discrimination and apartheid, foreign occupation and alien domination, xenophobia, poverty, hunger and other denials of economic, social and cultural rights, religious intolerance, terrorism, discrimination against women and lack of the rule of law.

31. The World Conference on Human Rights calls upon States to refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among States and impedes the full realization of the human rights set forth in the Universal Declaration of Human Rights and international human rights instruments, in particular the rights of everyone to a standard of living adequate for their health and well-being, including food and medical



care, housing and the necessary social services. The World Conference on Human Rights affirms that food should not be used as a tool for political pressure.

32. The World Conference on Human Rights reaffirms the importance of ensuring the universality, objectivity and non-selectivity of the consideration of human rights issues.

33. The World Conference on Human Rights reaffirms that States are duty-bound, as stipulated in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights and in other international human rights instruments, to ensure that education is aimed at strengthening the respect of human rights and fundamental freedoms. The World Conference on Human Rights emphasizes the importance of incorporating the subject of human rights education programmes and calls upon States to do so. Education should promote understanding, tolerance, peace and friendly relations between the nations and all racial or religious groups and encourage the development of United Nations activities in pursuance of these objectives. Therefore, education on human rights and the dissemination of proper information, both theoretical and practical, play an important role in the promotion and respect of human rights with regard to all individuals without distinction of any kind such as race, sex, language or religion, and this should be integrated in the education policies at the national as well as international levels. The World Conference on Human Rights notes that resource constraints and institutional inadequacies may impede the immediate realization of these objectives.

34. Increased efforts should be made to assist countries which so request to create the conditions whereby each individual can enjoy universal human rights and fundamental freedoms. Governments, the United Nations system as well as other multilateral organizations are urged to increase considerably the resources allocated to programmes aiming at the establishment and strengthening of national legislation, national institutions and related infrastructures which uphold the rule of law and democracy, electoral assistance, human rights awareness through training, teaching and education, popular participation and civil society.

The programmes of advisory services and technical cooperation under the Centre for Human Rights should be strengthened as well as made more efficient and transparent and thus become a major contribution to improving respect for human rights. States are called upon to increase their contributions to these programmes, both through promoting a larger allocation from the United Nations regular budget, and through voluntary contributions.

35. The full and effective implementation of United Nations activities to promote and protect human rights must reflect the high importance accorded to human rights by the Charter of the United Nations and the demands of the United Nations human rights activities, as mandated by Member States. To this end, United Nations human rights activities should be provided with increased resources.

36. The World Conference on Human Rights reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights.

The World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the "Principles relating to the status of national institutions" and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level.

37. Regional arrangements play a fundamental role in promoting and protecting human rights. They should reinforce universal human rights standards, as contained in international human rights instruments, and their protection. The World Conference on Human Rights endorses efforts under way to strengthen these arrangements and to increase their effectiveness, while at the same time stressing the importance of cooperation with the United Nations human rights activities.

The World Conference on Human Rights reiterates the need to consider the possibility of establishing regional and subregional arrangements for the promotion and protection of human rights where they do not already exist.

38. The World Conference on Human Rights recognizes the important role of non-governmental organizations in the promotion of all human rights and in humanitarian activities at national, regional and international levels. The World Conference on Human Rights appreciates their contribution to increasing public awareness of human rights issues, to the conduct of education, training and research in this field, and to the promotion and protection of all human rights and fundamental freedoms. While recognizing that the primary responsibility for standard-setting lies with States, the conference also appreciates the contribution of non-governmental organizations to this process. In this respect, the World Conference on Human Rights emphasizes the importance of continued dialogue and cooperation between Governments and non-governmental organizations.



Non-governmental organizations and their members genuinely involved in the field of human rights should enjoy the rights and freedoms recognized in the Universal Declaration of Human Rights, and the protection of the national law. These rights and freedoms may not be exercised contrary to the purposes and principles of the United Nations. Non-governmental organizations should be free to carry out their human rights activities, without interference, within the framework of national law and the Universal Declaration of Human Rights.

39. Underlining the importance of objective, responsible and impartial information about human rights and humanitarian issues, the World Conference on Human Rights encourages the increased involvement of the media, for whom freedom and protection should be guaranteed within the framework of national law.

## II

### A. Increased coordination on human rights within the United Nations system

1. The World Conference on Human Rights recommends increased coordination in support of human rights and fundamental freedoms within the United Nations system. To this end, the World Conference on Human Rights urges all United Nations organs, bodies and the specialized agencies whose activities deal with human rights to cooperate in order to strengthen, rationalize and streamline their activities, taking into account the need to avoid unnecessary duplication. The World Conference on Human Rights also recommends to the Secretary-General that high-level officials of relevant United Nations bodies and specialized agencies at their annual meeting, besides coordinating their activities, also assess the impact of their strategies and policies on the enjoyment of all human rights.

2. Furthermore, the World Conference on Human Rights calls on regional organizations and prominent international and regional finance and development institutions to assess also the impact of their policies and programmes on the enjoyment of human rights.

3. The World Conference on Human Rights recognizes that relevant specialized agencies and bodies and institutions of the United Nations system as well as other relevant intergovernmental organizations whose activities deal with human rights play a vital role in the formulation, promotion and implementation of human rights standards, within their respective mandates, and should take into account the outcome of the World Conference on Human Rights within their fields of competence.

4. The World Conference on Human Rights strongly recommends that a concerted effort be made to encourage and facilitate the ratification of and accession or succession to international human rights treaties and protocols adopted within the framework of the United Nations system with the aim of universal acceptance. The Secretary-General, in consultation with treaty bodies, should consider opening a dialogue with States not having acceded to these human rights treaties, in order to identify obstacles and to seek ways of overcoming them.

5. The World Conference on Human Rights encourages States to consider limiting the extent of any reservations they lodge to international human rights instruments, formulate any reservations as precisely and narrowly as possible, ensure that none is incompatible with the object and purpose of the relevant treaty and regularly review any reservations with a view to withdrawing them.

6. The World Conference on Human Rights, recognizing the need to maintain consistency with the high quality of existing international standards and to avoid proliferation of human rights instruments, reaffirms the guidelines relating to the elaboration of new international instruments contained in General Assembly resolution 41/120 of 4 December 1986 and calls on the United Nations human rights bodies, when considering the elaboration of new international standards, to keep those guidelines in mind, to consult with human rights treaty bodies on the necessity for drafting new standards and to request the Secretariat to carry out technical reviews of proposed new instruments.

7. The World Conference on Human Rights recommends that human rights officers be assigned if and when necessary to regional offices of the United Nations Organization with the purpose of disseminating information and offering training and other technical assistance in the field of human rights upon the request of concerned Member States. Human rights training for international civil servants who are assigned to work relating to human rights should be organized.

8. The World Conference on Human Rights welcomes the convening of emergency sessions of the Commission on Human Rights as a positive initiative and that other ways of responding to acute violations of human rights be considered by the relevant organs of the United Nations system.

### Resources

9. The World Conference on Human Rights, concerned by the growing disparity between the activities of the Centre for Human Rights and the human, financial and other resources available to carry them out, and bearing in mind the



resources needed for other important United Nations programmes, requests the Secretary-General and the General Assembly to take immediate steps to increase substantially the resources for the human rights programme from within the existing and future regular budgets of the United Nations, and to take urgent steps to seek increased extrabudgetary resources.

10. Within this framework, an increased proportion of the regular budget should be allocated directly to the Centre for Human Rights to cover its costs and all other costs borne by the Centre for Human Rights, including those related to the United Nations human rights bodies. Voluntary funding of the Centre's technical cooperation activities should reinforce this enhanced budget; the World Conference on Human Rights calls for generous contributions to the existing trust funds.

11. The World Conference on Human Rights requests the Secretary-General and the General Assembly to provide sufficient human, financial and other resources to the Centre for Human Rights to enable it effectively, efficiently and expeditiously to carry out its activities.

12. The World Conference on Human Rights, noting the need to ensure that human and financial resources are available to carry out the human rights activities, as mandated by intergovernmental bodies, urges the Secretary-General, in accordance with Article 101 of the Charter of the United Nations, and Member States to adopt a coherent approach aimed at securing that resources commensurate to the increased mandates are allocated to the Secretariat. The World Conference on Human Rights invites the Secretary-General to consider whether adjustments to procedures in the programme budget cycle would be necessary or helpful to ensure the timely and effective implementation of human rights activities as mandated by Member States.

Centre for Human Rights

13. The World Conference on Human Rights stresses the importance of strengthening the United Nations Centre for Human Rights.

14. The Centre for Human Rights should play an important role in coordinating system-wide attention for human rights. The focal role of the Centre can best be realized if it is enabled to cooperate fully with other United Nations bodies and organs. The coordinating role of the Centre for Human Rights also implies that the office of the Centre for Human Rights in New York is strengthened.

15. The Centre for Human Rights should be assured adequate means for the system of thematic and country rapporteurs, experts, working groups and treaty bodies. Follow-up on recommendations should become a priority matter for consideration by the Commission on Human Rights.

16. The Centre for Human Rights should assume a larger role in the promotion of human rights. This role could be given shape through cooperation with Member States and by an enhanced programme of advisory services and technical assistance. The existing voluntary funds will have to be expanded substantially for these purposes and should be managed in a more efficient and coordinated way. All activities should follow strict and transparent project management rules and regular programme and project evaluations should be held periodically. To this end, the results of such evaluation exercises and other relevant information should be made available regularly. The Centre should, in particular, organize at least once a year information meetings open to all Member States and organizations directly involved in these projects and programmes.

Adaptation and strengthening of the United Nations machinery for human rights, including the question of the establishment of a United Nations High Commissioner for Human Rights

17. The World Conference on Human Rights recognizes the necessity for a continuing adaptation of the United Nations human rights machinery to the current and future needs in the promotion and protection of human rights, as reflected in the present Declaration and within the framework of a balanced and sustainable development for all people. In particular, the United Nations human rights organs should improve their coordination, efficiency and effectiveness.

18. The World Conference on Human Rights recommends to the General Assembly that when examining the report of the Conference at its forty-eighth session, it begin, as a matter of priority, consideration of the question of the establishment of a High Commissioner for Human Rights for the promotion and protection of all human rights.



B. Equality, dignity and tolerance

1. Racism, racial discrimination, xenophobia and other forms of intolerance

19. The World Conference on Human Rights considers the elimination of racism and racial discrimination, in particular in their institutionalized forms such as apartheid or resulting from doctrines of racial superiority or exclusivity or contemporary forms and manifestations of racism, as a primary objective for the international community and a worldwide promotion programme in the field of human rights. United Nations organs and agencies should strengthen their efforts to implement such a programme of action related to the third decade to combat racism and racial discrimination as well as subsequent mandates to the same end. The World Conference on Human Rights strongly appeals to the international community to contribute generously to the Trust Fund for the Programme for the Decade for Action to Combat Racism and Racial Discrimination.

20. The World Conference on Human Rights urges all Governments to take immediate measures and to develop strong policies to prevent and combat all forms and manifestations of racism, xenophobia or related intolerance, where necessary by enactment of appropriate legislation, including penal measures, and by the establishment of national institutions to combat such phenomena.

21. The World Conference on Human Rights welcomes the decision of the Commission on Human Rights to appoint a Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. The World Conference on Human Rights also appeals to all States parties to the International Convention on the Elimination of All Forms of Racial Discrimination to consider making the declaration under article 14 of the Convention.

22. The World Conference on Human Rights calls upon all Governments to take all appropriate measures in compliance with their international obligations and with due regard to their respective legal systems to counter intolerance and related violence based on religion or belief, including practices of discrimination against women and including the desecration of religious sites, recognizing that every individual has the right to freedom of thought, conscience, expression and religion. The Conference also invites all States to put into practice the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

23. The World Conference on Human Rights stresses that all persons who perpetrate or authorize criminal acts associated with ethnic cleansing are individually responsible and accountable for such human rights violations, and that the international community should exert every effort to bring those legally responsible for such violations to justice.

24. The World Conference on Human Rights calls on all States to take immediate measures, individually and collectively, to combat the practice of ethnic cleansing to bring it quickly to an end. Victims of the abhorrent practice of ethnic cleansing are entitled to appropriate and effective remedies.

2. Persons belonging to national or ethnic, religious and linguistic minorities

25. The World Conference on Human Rights calls on the Commission on Human Rights to examine ways and means to promote and protect effectively the rights of persons belonging to minorities as set out in the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities. In this context, the World Conference on Human Rights calls upon the Centre for Human Rights to provide, at the request of Governments concerned and as part of its programme of advisory services and technical assistance, qualified expertise on minority issues and human rights, as well as on the prevention and resolution of disputes, to assist in existing or potential situations involving minorities.

26. The World Conference on Human Rights urges States and the international community to promote and protect the rights of persons belonging to national or ethnic, religious and linguistic minorities in accordance with the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities.

27. Measures to be taken, where appropriate, should include facilitation of their full participation in all aspects of the political, economic, social, religious and cultural life of society and in the economic progress and development in their country.

Indigenous people

28. The World Conference on Human Rights calls on the Working Group on Indigenous Populations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to complete the drafting of a declaration on the rights of indigenous people at its eleventh session.



29. The World Conference on Human Rights recommends that the Commission on Human Rights consider the renewal and updating of the mandate of the Working Group on Indigenous Populations upon completion of the drafting of a declaration on the rights of indigenous people.

30. The World Conference on Human Rights also recommends that advisory services and technical assistance programmes within the United Nations system respond positively to requests by States for assistance which would be of direct benefit to indigenous people. The World Conference on Human Rights further recommends that adequate human and financial resources be made available to the Centre for Human Rights within the overall framework of strengthening the Centre's activities as envisaged by this document.

31. The World Conference on Human Rights urges States to ensure the full and free participation of indigenous people in all aspects of society, in particular in matters of concern to them.

32. The World Conference on Human Rights recommends that the General Assembly proclaim an international decade of the world's indigenous people, to begin from January 1994, including action-orientated programmes, to be decided upon in partnership with indigenous people. An appropriate voluntary trust fund should be set up for this purpose. In the framework of such a decade, the establishment of a permanent forum for indigenous people in the United Nations system should be considered.

#### Migrant workers

33. The World Conference on Human Rights urges all States to guarantee the protection of the human rights of all migrant workers and their families.

34. The World Conference on Human Rights considers that the creation of conditions to foster greater harmony and tolerance between migrant workers and the rest of the society of the State in which they reside is of particular importance.

35. The World Conference on Human Rights invites States to consider the possibility of signing and ratifying, at the earliest possible time, the International Convention on the Rights of All Migrant Workers and Members of Their Families.

#### 3. The equal status and human rights of women

36. The World Conference on Human Rights urges the full and equal enjoyment by women of all human rights and that this be a priority for Governments and for the United Nations.

The World Conference on Human Rights also underlines the importance of the integration and full participation of women as both agents and beneficiaries in the development process, and reiterates the objectives established on global action for women towards sustainable and equitable development set forth in the Rio Declaration on Environment and Development and chapter 24 of Agenda 21, adopted by the United Nations Conference on Environment and Development (Rio de Janeiro, Brazil, 3-14 June 1992).

37. The equal status of women and the human rights of women should be integrated into the mainstream of United Nations system-wide activity. These issues should be regularly and systematically addressed throughout relevant United Nations bodies and mechanisms. In particular, steps should be taken to increase cooperation and promote further integration of objectives and goals between the Commission on the Status of Women, the Commission on Human Rights, the Committee for the Elimination of Discrimination against Women, the United Nations Development Fund for Women, the United Nations Development Programme and other United Nations agencies. In this context, cooperation and coordination should be strengthened between the Centre for Human Rights and the Division for the Advancement of Women.

38. In particular, the World Conference on Human Rights stresses the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism. The World Conference on Human Rights calls upon the General Assembly to adopt the draft declaration on violence against women and urges States to combat violence against women in accordance with its provisions. Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response.

39. The World Conference on Human Rights urges the eradication of all forms of discrimination against women, both hidden and overt. The United Nations should encourage the goal of universal ratification by all States of the Convention on the Elimination of All Forms of Discrimination against Women by the year 2000. Ways and means of addressing the particularly large number of reservations to the Convention should be encouraged. Inter alia, the Committee



on the Elimination of Discrimination against Women should continue its review of reservations to the Convention. States are urged to withdraw reservations that are contrary to the object and purpose of the Convention or which are otherwise incompatible with international treaty law.

40. Treaty monitoring bodies should disseminate necessary information to enable women to make more effective use of existing implementation procedures in their pursuits of full and equal enjoyment of human rights and non-discrimination. New procedures should also be adopted to strengthen implementation of the commitment to women's equality and the human rights of women. The Commission on the Status of Women and the Committee on the Elimination of Discrimination against Women should quickly examine the possibility of introducing the right of petition through the preparation of an optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The World Conference on Human Rights welcomes the decision of the Commission on Human Rights to consider the appointment of a special rapporteur on violence against women at its fiftieth session.

41. The World Conference on Human Rights recognizes the importance of the enjoyment by women of the highest standard of physical and mental health throughout their life span. In the context of the World Conference on Women and the Convention on the Elimination of All Forms of Discrimination against Women, as well as the Proclamation of Tehran of 1968, the World Conference on Human Rights reaffirms, on the basis of equality between women and men, a woman's right to accessible and adequate health care and the widest range of family planning services, as well as equal access to education at all levels.

42. Treaty monitoring bodies should include the status of women and the human rights of women in their deliberations and findings, making use of gender-specific data. States should be encouraged to supply information on the situation of women de jure and de facto in their reports to treaty monitoring bodies. The World Conference on Human Rights notes with satisfaction that the Commission on Human Rights adopted at its forty-ninth session resolution 1993/46 of 8 March 1993 stating that rapporteurs and working groups in the field of human rights should also be encouraged to do so. Steps should also be taken by the Division for the Advancement of Women in cooperation with other United Nations bodies, specifically the Centre for Human Rights, to ensure that the human rights activities of the United Nations regularly address violations of women's human rights, including gender-specific abuses. Training for United Nations human rights and humanitarian relief personnel to assist them to recognize and deal with human

rights abuses particular to women and to carry out their work without gender bias should be encouraged.

43. The World Conference on Human Rights urges Governments and regional and international organizations to facilitate the access of women to decision-making posts and their greater participation in the decision-making process. It encourages further steps within the United Nations Secretariat to appoint and promote women staff members in accordance with the Charter of the United Nations, and encourages other principal and subsidiary organs of the United Nations to guarantee the participation of women under conditions of equality.

44. The World Conference on Human Rights welcomes the World Conference on Women to be held in Beijing in 1995 and urges that human rights of women should play an important role in its deliberations, in accordance with the priority themes of the World Conference on Women of equality, development and peace.

4. The rights of the child

45. The World Conference on Human Rights reiterates the principle of "First Call for Children" and, in this respect, underlines the importance of major national and international efforts, especially those of the United Nations Children's Fund, for promoting respect for the rights of the child to survival, protection, development and participation.

46. Measures should be taken to achieve universal ratification of the Convention on the Rights of the Child by 1995 and the universal signing of the World Declaration on the Survival, Protection and Development of Children and Plan of Action adopted by the World Summit for Children, as well as their effective implementation. The World Conference on Human Rights urges States to withdraw reservations to the Convention on the Rights of the Child contrary to the object and purpose of the Convention or otherwise contrary to international treaty law.



47. The World Conference on Human Rights urges all nations to undertake measures to the maximum extent of their available resources, with the support of international cooperation, to achieve the goals in the World Summit Plan of Action. The Conference calls on States to integrate the Convention on the Rights of the Child into their national action plans. By means of these national action plans and through international efforts, particular priority should be placed on reducing infant and maternal mortality rates, reducing malnutrition and illiteracy rates and providing access to safe drinking water and to basic education. Whenever so called for, national plans of action should be devised to combat devastating emergencies resulting from natural disasters and armed conflicts and the equally grave problem of children in extreme poverty.

48. The World Conference on Human Rights urges all States, with the support of international cooperation, to address the acute problem of children under especially difficult circumstances. Exploitation and abuse of children should be actively combated, including by addressing their root causes. Effective measures are required against female infanticide, harmful child labour, sale of children and organs, child prostitution, child pornography, as well as other forms of sexual abuse.

49. The World Conference on Human Rights supports all measures by the United Nations and its specialized agencies to ensure the effective protection and promotion of human rights of the girl child. The World Conference on Human Rights urges States to repeal existing laws and regulations and remove customs and practices which discriminate against and cause harm to the girl child.

50. The World Conference on Human Rights strongly supports the proposal that the Secretary-General initiate a study into means of improving the protection of children in armed conflicts. Humanitarian norms should be implemented and measures taken in order to protect and facilitate assistance to children in war zones. Measures should include protection for children against indiscriminate use of all weapons of war, especially anti-personnel mines. The need for aftercare and rehabilitation of children traumatized by war must be addressed urgently. The Conference calls on the Committee on the Rights of the Child to study the question of raising the minimum age of recruitment into armed forces.

51. The World Conference on Human Rights recommends that matters relating to human rights and the situation of children be regularly reviewed and monitored by all relevant organs and mechanisms of the United Nations system and by the supervisory bodies of the specialized agencies in accordance with their mandates.

52. The World Conference on Human Rights recognizes the important role played by non-governmental organizations in the effective implementation of all human rights instruments and, in particular, the Convention on the Rights of the Child.

53. The World Conference on Human Rights recommends that the Committee on the Rights of the Child, with the assistance of the Centre for Human Rights, be enabled expeditiously and effectively to meet its mandate, especially in view of the unprecedented extent of ratification and subsequent submission of country reports.

#### 5. Freedom from torture

54. The World Conference on Human Rights welcomes the ratification by many Member States of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and encourages its speedy ratification by all other Member States.

55. The World Conference on Human Rights emphasizes that one of the most atrocious violations against human dignity is the act of torture, the result of which destroys the dignity and impairs the capability of victims to continue their lives and their activities.

56. The World Conference on Human Rights reaffirms that under human rights law and international humanitarian law, freedom from torture is a right which must be protected under all circumstances, including in times of internal or international disturbance or armed conflicts.

57. The World Conference on Human Rights therefore urges all States to put an immediate end to the practice of torture and eradicate this evil forever through full implementation of the Universal Declaration of Human Rights as well as the relevant conventions and, where necessary, strengthening of existing mechanisms. The World Conference on Human Rights calls on all States to cooperate fully with the Special Rapporteur on the question of torture in the fulfilment of his mandate.

58. Special attention should be given to ensure universal respect for, and effective implementation of, the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations.

59. The World Conference on Human Rights stresses the importance of further concrete action within the framework



of the United Nations with the view to providing assistance to victims of torture and ensure more effective remedies for their physical, psychological and social rehabilitation. Providing the necessary resources for this purpose should be given high priority, inter alia, by additional contributions to the United Nations Voluntary Fund for the Victims of Torture.

60. States should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law.

61. The World Conference on Human Rights reaffirms that efforts to eradicate torture should, first and foremost, be concentrated on prevention and, therefore, calls for the early adoption of an optional protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, which is intended to establish a preventive system of regular visits to places of detention.

#### Enforced disappearances

62. The World Conference on Human Rights, welcoming the adoption by the General Assembly of the Declaration on the Protection of All Persons from Enforced Disappearance, calls upon all States to take effective legislative, administrative, judicial or other measures to prevent, terminate and punish acts of enforced disappearances. The World Conference on Human Rights reaffirms that it is the duty of all States, under any circumstances, to make investigations whenever there is reason to believe that an enforced disappearance has taken place on a territory under their jurisdiction and, if allegations are confirmed, to prosecute its perpetrators.

#### 6. The rights of the disabled person

63. The World Conference on Human Rights reaffirms that all human rights and fundamental freedoms are universal and thus unreservedly include persons with disabilities. Every person is born equal and has the same rights to life and welfare, education and work, living independently and active participation in all aspects of society. Any direct discrimination or other negative discriminatory treatment of a disabled person is therefore a violation of his or her rights. The World Conference on Human Rights calls on Governments, where necessary, to adopt or adjust legislation to assure access to these and other rights for disabled persons.

64. The place of disabled persons is everywhere. Persons with disabilities should be guaranteed equal opportunity

through the elimination of all socially determined barriers, be they physical, financial, social or psychological, which exclude or restrict full participation in society.

65. Recalling the World Programme of Action concerning Disabled Persons, adopted by the General Assembly at its thirty-seventh session, the World Conference on Human Rights calls upon the General Assembly and the Economic and Social Council to adopt the draft standard rules on the equalization of opportunities for persons with disabilities, at their meetings in 1993.

#### C. Cooperation, development and strengthening of human rights

66. The World Conference on Human Rights recommends that priority be given to national and international action to promote democracy, development and human rights.

67. Special emphasis should be given to measures to assist in the strengthening and building of institutions relating to human rights, strengthening of a pluralistic civil society and the protection of groups which have been rendered vulnerable. In this context, assistance provided upon the request of Governments for the conduct of free and fair elections, including assistance in the human rights aspects of elections and public information about elections, is of particular importance. Equally important is the assistance to be given to the strengthening of the rule of law, the promotion of freedom of expression and the administration of justice, and to the real and effective participation of the people in the decision-making processes.

68. The World Conference on Human Rights stresses the need for the implementation of strengthened advisory services and technical assistance activities by the Centre for Human Rights. The Centre should make available to States upon request assistance on specific human rights issues, including the preparation of reports under human rights treaties as well as for the implementation of coherent and comprehensive plans of action for the promotion and protection of human rights. Strengthening the institutions of human rights and democracy, the legal protection of human rights, training of officials and others, broad-based education and public information aimed at promoting respect for human rights should all be available as components of these programmes.

69. The World Conference on Human Rights strongly recommends that a comprehensive programme be established within the United Nations in order to help States in the task of building and strengthening adequate national structures



which have a direct impact on the overall observance of human rights and the maintenance of the rule of law. Such a programme, to be coordinated by the Centre for Human Rights, should be able to provide, upon the request of the interested Government, technical and financial assistance to national projects in reforming penal and correctional establishments, education and training of lawyers, judges and security forces in human rights, and any other sphere of activity relevant to the good functioning of the rule of law. That programme should make available to States assistance for the implementation of plans of action for the promotion and protection of human rights.

70. The World Conference on Human Rights requests the Secretary-General of the United Nations to submit proposals to the United Nations General Assembly, containing alternatives for the establishment, structure, operational modalities and funding of the proposed programme.

71. The World Conference on Human Rights recommends that each State consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights.

72. The World Conference on Human Rights on Human Rights reaffirms that the universal and inalienable right to development, as established in the Declaration on the Right to Development, must be implemented and realized. In this context, the World Conference on Human Rights welcomes the appointment by the Commission on Human Rights of a thematic working group on the right to development and urges that the Working Group, in consultation and cooperation with other organs and agencies of the United Nations system, promptly formulate, for early consideration by the United Nations General Assembly, comprehensive and effective measures to eliminate obstacles to the implementation and realization of the Declaration on the Right to Development and recommending ways and means towards the realization of the right to development by all States.

73. The World Conference on Human Rights recommends that non-governmental and other grass-roots organizations active in development and/or human rights should be enabled to play a major role on the national and international levels in the debate, activities and implementation relating to the right to development and, in cooperation with Governments, in all relevant aspects of development cooperation.

74. The World Conference on Human Rights appeals to Governments, competent agencies and institutions to increase considerably the resources devoted to building well-functioning legal systems able to protect human rights, and to national institutions working in this area. Actors in

the field of development cooperation should bear in mind the mutually reinforcing interrelationship between development, democracy and human rights. Cooperation should be based on dialogue and transparency. The World Conference on Human Rights also calls for the establishment of comprehensive programmes, including resource banks of information and personnel with expertise relating to the strengthening of the rule of law and of democratic institutions.

75. The World Conference on Human Rights encourages the Commission on Human Rights, in cooperation with the Committee on Economic, Social and Cultural Rights, to continue the examination of optional protocols to the International Covenant on Economic, Social and Cultural Rights.

76. The World Conference on Human Rights recommends that more resources be made available for the strengthening or the establishment of regional arrangements for the promotion and protection of human rights under the programmes of advisory services and technical assistance of the Centre for Human Rights. States are encouraged to request assistance for such purposes as regional and subregional workshops, seminars and information exchanges designed to strengthen regional arrangements for the promotion and protection of human rights in accord with universal human rights standards as contained in international human rights instruments.

77. The World Conference on Human Rights supports all measures by the United Nations and its relevant specialized agencies to ensure the effective promotion and protection of trade union rights, as stipulated in the International Covenant on Economic, Social and Cultural Rights and other relevant international instruments. It calls on all States to abide fully by their obligations in this regard contained in international instruments.

#### D. Human rights education

78. The World Conference on Human Rights considers human rights education, training and public information essential for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace.



79. States should strive to eradicate illiteracy and should direct education towards the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. The World Conference on Human Rights calls on all States and institutions to include human rights, humanitarian law, democracy and rule of law as subjects in the curricula of all learning institutions in formal and non-formal settings.

80. Human rights education should include peace, democracy, development and social justice, as set forth in international and regional human rights instruments, in order to achieve common understanding and awareness with a view to strengthening universal commitment to human rights.

81. Taking into account the World Plan of Action on Education for Human Rights and Democracy, adopted in March 1993 by the International Congress on Education for Human Rights and Democracy of the United Nations Educational, Scientific and Cultural Organization, and other human rights instruments, the World Conference on Human Rights recommends that States develop specific programmes and strategies for ensuring the widest human rights education and the dissemination of public information, taking particular account of the human rights needs of women.

82. Governments, with the assistance of intergovernmental organizations, national institutions and non-governmental organizations, should promote an increased awareness of human rights and mutual tolerance. The World Conference on Human Rights underlines the importance of strengthening the World Public Information Campaign for Human Rights carried out by the United Nations. They should initiate and support education in human rights and undertake effective dissemination of public information in this field. The advisory services and technical assistance programmes of the United Nations system should be able to respond immediately to requests from States for educational and training activities in the field of human rights as well as for special education concerning standards as contained in international human rights instruments and in humanitarian law and their application to special groups such as military forces, law enforcement personnel, police and the health profession. The proclamation of a United Nations decade for human rights education in order to promote, encourage and focus these educational activities should be considered.

#### E. Implementation and monitoring methods

83. The World Conference on Human Rights urges Governments to incorporate standards as contained in international human rights instruments in domestic legislation and to strengthen national structures, institutions and organs of society

which play a role in promoting and safeguarding human rights.

84. The World Conference on Human Rights recommends the strengthening of United Nations activities and programmes to meet requests for assistance by States which want to establish or strengthen their own national institutions for the promotion and protection of human rights.

85. The World Conference on Human Rights also encourages the strengthening of cooperation between national institutions for the promotion and protection of human rights, particularly through exchanges of information and experience, as well as cooperation with regional organizations and the United Nations.

86. The World Conference on Human Rights strongly recommends in this regard that representatives of national institutions for the promotion and protection of human rights convene periodic meetings under the auspices of the Centre for Human Rights to examine ways and means of improving their mechanisms and sharing experiences.

87. The World Conference on Human Rights recommends to the human rights treaty bodies, to the meetings of chairpersons of the treaty bodies and to the meetings of States parties that they continue to take steps aimed at coordinating the multiple reporting requirements and guidelines for preparing State reports under the respective human rights conventions and study the suggestion that the submission of one overall report on treaty obligations undertaken by each State would make these procedures more effective and increase their impact.

88. The World Conference on Human Rights recommends that the States parties to international human rights instruments, the General Assembly and the Economic and Social Council should consider studying the existing human rights treaty bodies and the various thematic mechanisms and procedures with a view to promoting greater efficiency and effectiveness through better coordination of the various bodies, mechanisms and procedures, taking into account the need to avoid unnecessary duplication and overlapping of their mandates and tasks.

89. The World Conference on Human Rights recommends continued work on the improvement of the functioning, including the monitoring tasks, of the treaty bodies, taking into account multiple proposals made in this respect, in particular those made by the treaty bodies themselves and by the meetings of the chairpersons of the treaty bodies. The comprehensive national approach taken by the Committee on the Rights of the Child should also be encouraged.



90. The World Conference on Human Rights recommends that States parties to human rights treaties consider accepting all the available optional communication procedures.

91. The World Conference on Human Rights views with concern the issue of impunity of perpetrators of human rights violations, and supports the efforts of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities to examine all aspects of the issue.

92. The World Conference on Human Rights recommends that the Commission on Human Rights examine the possibility for better implementation of existing human rights instruments at the international and regional levels and encourages the International Law Commission to continue its work on an international criminal court.

93. The World Conference on Human Rights appeals to States which have not yet done so to accede to the Geneva Conventions of 12 August 1949 and the Protocols thereto, and to take all appropriate national measures, including legislative ones, for their full implementation.

94. The World Conference on Human Rights recommends the speedy completion and adoption of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms.

95. The World Conference on Human Rights underlines the importance of preserving and strengthening the system of special procedures, rapporteurs, representatives, experts and working groups of the Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, in order to enable them to carry out their mandates in all countries throughout the world, providing them with the necessary human and financial resources. The procedures and mechanisms should be enabled to harmonize and rationalize their work through periodic meetings. All States are asked to cooperate fully with these procedures and mechanisms.

96. The World Conference on Human Rights recommends that the United Nations assume a more active role in the promotion and protection of human rights in ensuring full respect for international humanitarian law in all situations of armed conflict, in accordance with the purposes and principles of the Charter of the United Nations.

97. The World Conference on Human Rights, recognizing the important role of human rights components in specific

arrangements concerning some peace-keeping operations by the United Nations, recommends that the Secretary-General take into account the reporting, experience and capabilities of the Centre for Human Rights and human rights mechanisms, in conformity with the Charter of the United Nations.

98. To strengthen the enjoyment of economic, social and cultural rights, additional approaches should be examined, such as a system of indicators to measure progress in the realization of the rights set forth in the International Covenant on Economic, Social and Cultural Rights. There must be a concerted effort to ensure recognition of economic, social and cultural rights at the national, regional and international levels.

#### F. Follow-up to the World Conference on Human Rights

99. The World Conference on Human Rights on Human Rights recommends that the General Assembly, the Commission on Human Rights and other organs and agencies of the United Nations system related to human rights consider ways and means for the full implementation, without delay, of the recommendations contained in the present Declaration, including the possibility of proclaiming a United Nations decade for human rights. The World Conference on Human Rights further recommends that the Commission on Human Rights annually review the progress towards this end.

100. The World Conference on Human Rights requests the Secretary-General of the United Nations to invite on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights all States, all organs and agencies of the United Nations system related to human rights, to report to him on the progress made in the implementation of the present Declaration and to submit a report to the General Assembly at its fifty-third session, through the Commission on Human Rights and the Economic and Social Council. Likewise, regional and, as appropriate, national human rights institutions, as well as non-governmental organizations, may present their views to the Secretary-General on the progress made in the implementation of the present Declaration. Special attention should be paid to assessing the progress towards the goal of universal ratification of international human rights treaties and protocols adopted within the framework of the United Nations system. -----





PERMANENT MISSION OF THE REPUBLIC OF KOREA  
GENEVA

The Fourth Session of the Preparatory Committee for the  
World Conference on Human Rights

Statement

By

Ambassador KIM, Sam Hoon

Head of the Delegation of the  
Republic of Korea

21 April 1993

Madame Chairman,

As many previous speakers have pointed out, this Fourth Prep-com meeting is the most crucial for the success of the World Conference.

The final outcome of the World Conference will represent a milestone on the long road toward fulfilling our noble goal of the protection and promotion of human rights and fundamental freedoms.

At this meeting, we have various invaluable materials for the elaboration of the final document. Among others, the three declarations adopted at the regional meetings in Tunis, San Jose and Bangkok are the most important contributions to this preparatory process for the World Conference.

In addition to this, now we have before us a working-paper prepared by the Secretary-General of the World Conference. My delegation wonders whether this working paper fully meets all the concerns and aspirations expressed so far in the preparatory meetings, particularly in the three regional meetings.

However, in light of the time constraints facing us before the World Conference in June, and of our experience when we discussed the agenda of the World Conference, my delegation is of the view that we could use the working paper as a starting point for further elaboration of the draft final document, taking due consideration of the documents from the three regional meetings.

Keeping in mind the outstanding significance of this meeting, I would like to take the opportunity to briefly touch upon the issues and elements in the preparation of



the final document of the World Conference to which my delegation attaches great importance.

Madame Chairman,

When it comes to an overall evaluation of the progress made in the field of human rights since the adoption of the Universal Declaration, I would say "Yes, there have been enormous achievements."

We have to recognize, first of all, that significant and substantial progress has been made in codifying human rights, including the adoption of the two International Covenants which are the pillars of the UN human rights system.

By acceding to these human rights instruments, each state has specifically reaffirmed its commitment to achieve the human rights objectives enshrined in the UN Charter and the Universal Declaration.

The most important point is that our attention and emphasis should now be directed at determining how best to effectively implement the human rights instruments that we ourselves have created.

My delegation is of the view that the final outcome of the World Conference should include some concrete suggestions to this end, including possible reform of the treaty monitoring bodies, and technical assistance to states parties in the preparation or presentation of reports to the treaty monitoring bodies.

Madame Chairman,

No one would hesitate to recognize the significant contribution made so far by the UN human rights organs, in particular by the Commission on Human Rights, as well as the Center for Human Rights, in promoting human rights in each and every country in the global community.

The human rights monitoring mechanisms of the UN human rights bodies, and the advisory services and technical assistance provided by the Centre have proved an effective and useful tool for obtaining human rights objectives.

Nevertheless, some difficulty has resulted from the multiplicity of systems, particularly as the United Nations has yet to provide the degree of coordination necessary to harness the diversity of approaches.

My delegation believes in this context, that the World Conference should come up with concrete ideas on the further rationalization of the complex human rights framework.

Madame Chairman,

Ensuring the principles of universality, objectivity and non-selectivity should be our first and foremost concern if we are to successfully tackle human rights issues. My delegation agrees that we have not been successful in carrying out these principles. The World Conference should be viewed as an opportunity to identify problems in upholding the principles of universality, objectivity and non-selectivity, so that we can further strengthen the international human rights system.



We recognize that discrepancies exist concerning the interpretation of human rights in different regions and countries of the world, mainly due to social, cultural, religious and ethnic diversity. Nonetheless, these particularities cannot justify any derogation from the principle of universality.

On the other hand, application of double standards and the politicization of human rights issues should be avoided.

Madame Chairman,

As discussed on many previous occasions, including the Regional Meetings for the preparation of the World Conference, we are also supposed to identify existing obstacles to further progress in the field of human rights. Each delegation may have different views on this matter arising from their different perspectives.

My delegation also wishes to refer to some remaining obstacles, which we find necessary to review, such as racism, xenophobia, slavery, torture, poverty, lack of democracy and freedom, lack of education, various forms of intolerance, widespread violence, lack of independent judiciary systems, the failure to ratify international human rights instruments, and the lack of respect for resolutions adopted by the UN.

Madame Chairman,

With regard to the relation between human rights and development, there is a clear consensus among the member states of the United Nations on the importance of development for the enjoyment of human rights. Used in this sense, development means far more than economic or material development, it also comprises civil, political, social and cultural development.

There is also a clear consensus that all human rights are indivisible and interdependent. Unbalanced emphasis on some human rights may result in hampering the enjoyment of other human rights. It is gratifying to note that the importance being attached by the international community to economic and social rights is growing. The rights to life and freedom suffer a significant loss of meaning in cases of extreme poverty and deprivation.

With respect to the implementation of the Declaration on the Right to Development, my delegation believes that governments, as well as the UN and other international agencies involved in development activities, should bear in mind that the foundation of development is the promotion of all the human rights set forth in the Universal Declaration of Human Rights and the International Covenants on Human Rights.

Madame Chairman,

The question of contemporary trends and new challenges, including the protection of the human rights of various vulnerable groups, is also one of the great concerns to be dealt with at the World Conference.

In some parts of the world, we are witnessing flagrant human rights violations, such as ethnic cleansing, new forms of racial discrimination, and xenophobia and related intolerance which urgently need to be tackled by the international community.

We must also give our utmost attention to the protection, promotion and full realization of the rights of women, children, indigenous peoples, disable persons, migrant workers, the ethnic, religious and linguistic minorities and other vulnerable groups.



Madame Chairman,

Strengthening international, technical and financial cooperation will undoubtedly serve to better resolve human rights problems and to further improve human rights situations at the national level, as well as at the international level.

By expanding the range of advisory services and technical assistance, each state can promote education and training in the field of human rights, and improve the administration of its justice, police and prison systems, which together constitute the basic infrastructure for ensuring respect for human rights.

To this end, my delegation supports the need to provide the Centre for Human Rights with sufficient human and financial resources, particularly in view of the fact that its workload has significantly increased while resources have failed to keep pace with the expansion of its responsibilities.

As we believe that human rights should be given a higher priority on the UN agenda, we should positively consider increasing the allocation of UN resources to human rights activities.

In concluding, Madame Chairman,

We recognize that advancing the noble cause of human rights is one of the most important tasks of the international community and that human rights violations are a matter of international concern.

It is my delegation's ardent hope that under your able guidance this meeting will produce a comprehensive and meaningful draft final document for the historic World Conference on Human Rights. Thank you.



STATEMENT

BY  
H.E. HAN SUNG-JOO  
THE MINISTER OF FOREIGN AFFAIRS  
OF  
THE REPUBLIC OF KOREA  
AT THE  
WORLD CONFERENCE ON HUMAN RIGHTS

Vienna  
15 June 1993

Mr. President,  
Distinguished Delegates,  
Ladies and Gentlemen,

Forty-five years ago, the United Nations adopted the Universal Declaration of Human Rights. That same year, the United Nations helped establish the government of the Republic of Korea. Since then, for almost half a century, the Declaration has served as a guiding light for Korean people in their struggle for freedom and democracy.

In striving for the ideal, we have experienced numerous trials and tribulations. There were times when we despaired because the possibility of success seemed so remote. There were times when we rejoiced prematurely because of false hopes. As a divided nation, we had overriding security concerns. As a country ridden by century-old poverty, we had pressing economic concerns.

But against all odds, we continued our march toward full respect for human rights, building on the courage and sacrifice of those who stood up for fundamental rights and freedom.

As we gather here at the World Conference on Human Rights, I am happy to report to you that human rights have finally come of age in Korea. I stand before you representing a nation and a people who can proudly say that truth, freedom and democracy have at last triumphed in their country.

Mr. President,

The world capitalized on the opportunities created by the end of World War II by establishing the United Nations and subsequently adopting the Universal Declaration of Human Rights. It was our first significant action for the protection and promotion of human rights. Now as we gather in this forum, we realize that a new opportunity is unfolding before us in the wake of the Cold War. Ideologically speaking, World War II was fought against fascism and the Cold War against communism.

The demise of the Cold War means that liberal democracy has survived and triumphed. In retrospect, oppressive ideologies perversely justified the systematic and wholesale violation of human rights in the 20th century. Now



we can put to rest frightening Orwellian phrases such as "freedom is slavery" or "two and two make five." States that ignored such basic rights as the freedom to choose where to live, not to mention the freedom to travel, are ceasing to exist.

Now, in the post cold war era, the trends of reconciliation and cooperation have become an integral part of the emerging new world order. These trends offer a new opportunity for the promotion of human rights, a rare opportunity comparable to the one we had forty five years ago after the second World War.

Together with this new opportunity of achieving universal human rights, we also face difficult challenges of the post cold war era: eruption of regional conflicts with massive violation of human rights and the persistence of poverty and underdevelopment. The essence of these challenges is reflected in the agenda items of this forum, such as the universality of human rights, and the relationship between development, democracy and the human rights.

During our struggle, we found out that the fight for human rights is inherent to human nature. Human rights are something mankind is eventually bound to cherish and aspire to regardless of political or economic circumstances. Human rights are universal, indivisible and interdependent. They cannot be altered according to circumstances. It is neither justifiable nor appropriate to deny some human rights in order to guarantee others.

At the same time, we have to bear in mind that the journey toward human rights cannot be completed overnight. It will be a long and arduous one to be achieved concurrently with other tasks. Without security and economic development, human rights cannot be genuine. Democracy and human rights cannot flourish without a certain degree of economic prosperity. There is no denying that development and human rights are closely related.

It is also true that regional and national circumstances need to be taken into account in the promotion and protection of human rights. Yet, history shows us that special circumstances do not justify abuses of human rights. Lack of development, for example, can never be used as an excuse or justification for any abuse of human rights.

Clearly, we have a dilemma here. In dealing with this problem, we should bear in mind that a simplistic and self-righteous approach to the issue of human rights could be counter-productive by provoking another powerful

human sentiment, namely, nationalism. Compassion and pragmatism, rather than subjective moralism, should be our guiding principle.

Mr. President,

As we discuss ways to promote human rights, we have to pay particular attention to the importance of two interrelated elements: free flow of information and integration of the state in the international order. The days when governments controlled the flow of information among their people are over. Free information always works for the promotion and protection of human rights. In the same vein, the more a state becomes integrated in the regional and world order, the less likely it is that gross violation of human rights will occur.

Twentieth-century history bears witness to the fact that only democracy and human rights ensure the full blossoming of individual potential, which in turn forms the basis for political, social and economic development.

In this process, we have learned that individual courage and sacrifice is a fundamental driving force behind the promotion and protection of human rights. In this respect, the important role of individuals and non-governmental organizations cannot be overemphasized.

More often than not, the NGOs, as well as the individuals, can be more responsive to the implementation of human rights than governments. For that reason, the increasing number of NGOs indicates a promising trend for the universal realization of human rights.

Individuals and NGOs function within the realm of a state. It is the state that has the primary responsibility to protect and promote human rights. Thus, it is imperative that all nations become party to the international human rights instruments, including the two International Covenants on Human Rights. The states which have not yet done so should be urged to ratify or accede to these instruments as soon as possible.

As we turn our attention from the individual and the state to the world scene, we see the vital contributions made by the United Nations Human Rights Commission. The Universal Declaration, the International Covenants and other major human rights instruments were prepared and drafted by the Commission. In the actual promotion of human rights also, the role of



various special rapporteurs and working groups established by the Commission has been crucial.

Now that we have a rare opportunity to promote human rights at a global level and that the United Nations is established as the most effective organization to do this, it is high time to strengthen the U.N. mechanism on human rights.

The United Nations should be provided with a more effective organizational mechanism for dealing with human rights activities. In this respect, Korea supports the proposal to establish the office of High Commissioner for Human Rights.

A High Commissioner will facilitate the coordination of activities conducted by various human rights organs of the United Nations. This institution will also be able to respond more effectively to emergency situations involving massive human rights violations.

We fully support the strengthening of U.N. activities to ensure the rights of women so that human rights violations against women can be dealt with in a more effective and comprehensive manner.

Likewise, concrete programs of action should be adopted to facilitate the promotion and protection of the rights of vulnerable groups, such as children, minorities, indigenous people and the disabled. Such programs of action should be prepared with the recognition that the people in these groups should not only be the objects of protection but become full participants in the development process of the society to which they belong.

Mr. President,

The Republic of Korea is a party to most of the major human rights instruments, including the Optional Protocol to the International Covenant on Civil and Political Rights. We are now preparing to accede to the Convention Against Torture within this year, and will faithfully carry out all the obligations under these conventions.

Korea is irrevocably committed to the cause of human rights. The President of the Republic of Korea announced new foreign policy guidelines last month, which have particular bearing on human rights. Korea's new diplomacy, he

said, is the one which places emphasis on such universal values as democracy, liberty, welfare and human rights.

His announcement reflects the belief in democracy shared by all people in my country. The Republic of Korea, with the firm faith that democracy is an ultimate guarantor of human rights, individual liberties, peace and development, will continue to do its part in the international endeavour to expand democratic ideals.

Mr. President,

In 1998, we will commemorate the 50th anniversary of the epoch-making Universal Declaration of Human Rights. These intervening five years will be critical for the cause of human rights as the new world order takes clearer shape.

With our common efforts to achieve the goals set in the Declaration, we must be able to say to future generations that this conference here and now opened a new and bright chapter of human rights for the 21st century.

Thank you.



## 한승주 외무장관 세계인권회의 기조연설

1993. 6. 15. 비엔나

의장, 대표 및 신사숙녀 여러분,

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(신세계질서와 인권)

의장,

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(인권의 보편성)

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우리는 인권보장을 위한 여정을 하룻밤새에 마칠 수 없다는 점도 인식해야 할 것입니다. 그것은 여타 과제들과 함께 달성해야 할 길고도 힘든 여정일 것입니다. 안보와 경제적 발전 없이 진정한 인권은 불가능하며, 민주주의와 인권은 어느정도의 경제적 번영 없이는 꽃피기 어렵습니다. 발전과 인권은 밀접히 관련되어 있다는 점을 부인할 수는 없습니다.

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이러한 딜레마에서 우리가 명심해야 할 것은, 다른 국가와 지역의 인권문제에 대한 고압적이고 독선적인 태도는 민족주의라는 또다른 강력한 감정을 촉발함으로써 역효과를 발생시킬 수 있다는 점입니다.

무분별한 비판과 독선적인 도덕주의가 아니라, 동정과 실용주의가 우리의 기본지침이 되어야 할 것입니다.

(인권증진방안)

의장,

우리는 인권증진 방안을 논의하면서 상호 연관성이 있는 두가지 중요한 문제에 특히 관심을 기울여야 할 것입니다. 그것은 정보의 자유로운 흐름과 한 국가의 국제질서로의 통합입니다.

국민에 대해 정보의 유통을 통제하던 시대는 끝났습니다. 정보의 자유는 언제나 인권의



보호와 증진에 긍정적으로 작용합니다. 같은 맥락에서, 한 국가가 지역질서와 세계질서에 통합되면 될수록 인권을 저해하는 조치를 취하기는 어려워질 것입니다.

오직 민주주의가 인권만이 정치적, 사회적, 경제적 발전의 바탕이 되는 개인 잠재력의 완전한 발휘를 보장한다는 사실을 20세기 역사는 증명하고 있습니다. 이러한 과정에서 우리는 개인의 용기와 희생이 인권의 증진과 보호에 중요한 원동력임을 알게 되었습니다. 이러한 점에서 개인과 민간단체들의 역할은 높이 평가되어야 합니다. 개인과 함께 민간단체들은 인권규범의 이행에 있어 정부보다 더 적극적인 대응을 할 수 있으며, 따라서 민간단체의 증가는 인권의 보편적 실현에 긍정적인 징조라고 하겠습니다.

그러나 인권의 보호와 증진을 위한 일차적 책임은 국가에 있습니다.

이러한 점에서, 모든 국가가 2개의 국제인권규약을 포함한 제반 국제인권협약에 가입하는 것이 시급합니다. 아직 이러한 협약에 가입하지 않은 국가들이 가능한한 조속히 협약에 가입할 것을 촉구합니다.

#### (UN 인권활동 강화방안)

우리는 유엔 인권위원회의 지대한 공헌에 주목합니다. 세계인권선언, 국제인권규약과 여타 주요 인권협약들이 동 위원회에 의해 마련되었습니다. 또한, 실질적 인권증진에 있어서도 인권위원회에 의해 설립된 다양한 특별보고관과 실무그룹들이 매우 중요한 역할을 하고 있습니다.

지금 범세계적으로 인권을 증진하는데 있어 드문 기회를 맞이하고 있으며 또한 유엔이 인권증진의 임무를 수행하기에 가장 효율적인 기구인 만큼 지금이야말로 유엔 인권활동의 메카니즘을 강화시켜야 할 호기라고 하겠습니다.

유엔은 인권활동을 수행함에 있어 보다 효율적인 조직체계를 필요로 하고 있습니다. 이러한 의미에서, 한국은 유엔 인권고등판무관을 임명하자는 제안을 지지합니다.

인권고등판무관은 유엔내 다양한 인권기관의 활동을 용이하게 조정할 수 있을 것입니다. 또한 인권고등판무관은 대량 인권침해를 수반하는 긴급상황에 보다 효과적으로 대처할 수 있을 것입니다.

우리는 여성에 대한 인권침해가 보다 효과적이고 포괄적인 방법으로 다루어지도록 여성인권의 보장을 위한 유엔 활동이 강화되는 것을 지지합니다.

아울러, 아동, 소수민족, 원주민 및 장애자와 같은 취약계층의 인권보호와 증진을 도모할 수 있는 구체적인 행동계획이 채택되어야 할 것입니다.

그러한 행동계획은 취약계층의 사람들이 보호의 대상만이 아니라 그들이 속한 사회의 발전과정에 완전한 참여자가 되어야 한다는 인식위에서 마련되어야 할 것입니다.

#### (민주주의와 인권을 위한 한국의 약속)

의장,

대한민국은 시민적, 정치적 권리에 관한 국제규약 선택의정서를 포함한 거의 모든 주요 국제인권협약에 가입하였습니다. 또한 금년내에 고문방지협약에 가입하기 위하여 국내절차를 추진중이며, 나아가 이러한 제협약상의 모든 의무를 충실히 준수해 나갈 것입니다.

한국은 인권보장에 대해 확고한 의지를 가지고 있습니다. 김영삼 대통령은 지난달 신외교정책기조를 천명하면서 인권에 대해 각별한 의미를 부여했습니다. 한국의 신외교는 민주주의, 자유, 복지 그리고 인권과 같은 보편적 가치에 중점을 둘 것이라고 밝혔습니다.

김 대통령의 선언은 우리나라의 모든 국민이 갖고 있는 민주주의에 대한 신뢰를 반영하는 것입니다. 대한민국은 민주주의가 인권과 개인의 자유, 평화와 발전의 궁극적인 보장장치라는 굳은 신념위에서, 민주주의 이상의 확산을 위한 국제적인 노력에 참여하여 그 나름의 역할을 계속해 나갈 것입니다.

의장,

1998년에 우리는 역사적인 세계인권선언 50주년을 기념하게 될 것입니다. 향후 5년은 새로운 국제질서가 보다 명확한 형태를 갖추어 가면서 인권이란 목표에 있어 매우 중요한 기간이 될 것입니다.

세계인권선언의 목표를 달성하기 위한 공동의 노력을 통하여, 우리는 21세기를 위한 새롭고 찬란한 인권의 장을 열었다고 후세에 대해 말할 수 있어야 할 것입니다.

감사합니다.



## THE NEED FOR A UN SPECIAL COMMISSIONER FOR HUMAN RIGHTS

### A PROPOSAL FROM AMNESTY INTERNATIONAL

The 1993 World Conference on Human Rights - the first high-level global UN summit on human rights for 25 years - will be a historic event and it should set a progressive agenda for human rights promotion and protection into the 21st century. The major objectives of the Conference, as stipulated in General Assembly 45/155, include a review of the development of the international human rights framework since the adoption of the Universal Declaration on Human Rights in 1948 and the formulation of "concrete recommendations for improving the effectiveness of United Nations activities and mechanisms in the field of human rights".

In reviewing achievements to date it is important not only to identify and preserve what has proved successful but also to confront the ways in which the international community has not been as effective as it can and should be in addressing human rights problems. It is, for example, shocking that the UN's human rights bodies are still relatively powerless in the face of situations of gross and systematic violations of fundamental human rights - such as torture, "disappearances" and extra-judicial executions - which continue to occur on a large scale and in countries in every region of the world.

Internal conflict can present particularly acute human rights crises, with abuses committed by government forces and by armed opposition groups and sometimes resulting in the total disintegration of state authority and accountability.

To address such entrenched problems, the World Conference must take bold and creative measures. Amnesty International calls on the international community to consider one such proposal - the establishment of a UN Special Commissioner for Human Rights. Such a major new initiative could do much to address some of the critical shortcomings of the UN human rights system and revitalize a program capable of responding to the tough challenges and the exciting opportunities of the post-Cold war era.

The special Commissioner for Human Rights would function as a new high-level political authority with a specific human rights mandate covering the full range of rights in the economic, social, cultural, civil and political sphere. The task of the Special Commissioner would be to ensure the coordination and maintain an overview of all the UN's human rights activities and to integrate human rights fully into other areas of the UN's work.

He or she might be most appropriately based at the UN head-quarters in New York to ensure that human rights issues are taken seriously at the political level, are recognized as underlying all the UN's activities and that the work of human rights bodies and mechanisms is fully coordinated with other relevant areas of the UN's work.

The Special Commissioner could be assisted by at least five high-level experts, each drawn from a different geographic region, to be responsible for oversight of the Special Commissioners' programs and activities in different world regions.

The Special Commissioner should be an individual with proven expertise in the human rights field entrusted with the authority and the necessary independence to carry out his or her functions impartially and objectively, as the UN must operate in any human rights situation deserving of attention. As long as a substantial number of individual governments, each with their own specific bilateral and multilateral concerns, have to reach a common agreement on an appropriate response in a particular situation, it is inevitable that human rights situations will be addressed selectively and that the voices of the most powerful international actors will prevail.

Amnesty International has identified a number of critical shortcomings in the existing human rights program which we believe a Special Commissioner for Human Rights could address.

First, there is a pressing need for the system to have the capacity for an emergency response in any human rights crisis. While the special session of the Commission on Human Rights on the former Yugoslavia in August 1992 demonstrated that an urgent response to a grave situation is possible, such special sessions are likely to remain very exceptional and may not always be the most appropriate mechanism or the best use of scarce resources. The Commission's thematic mechanisms can and do act rapidly in individual cases but their capacity for addressing violations on a massive scale and for addressing a crisis situation characterized by a wide range of different types of violations is very restricted.

The Special Commissioner would have the necessary authority and capacity to act rapidly at any time in the UN cycle in response to emergencies and to address the full range of human rights issues in such situations. For example, he or she could enter into immediate dialogue with the country concerned and possibly other governments; appoint experts to investigate and report on a particular urgent situation; implement emergency measures aimed at safeguarding the lives and safety of anyone at risk, including the establishment of on-site monitors where necessary; and consult with and ensure coordination of action taken by other human rights bodies and by other UN officials.

Secondly, the Special Commissioner could play an important role in developing a creative and more varied range of possible responses to human rights problems that can be tailored to the requirements of a particular situation. In some situations, sustained on-site monitoring and other protection activities are needed. In others, where there is a clear political commitment by the government to tackle human rights problems, a program of assistance may best address the specific requirements in that country. While the UN is already responding in new and different ways, this tends to be somewhat ad-hoc and uncoordinated and there is a need for better planning, evaluation and comparative analysis.

Third, the Special Commissioner could ensure improved coordination within the UN system of activities which impact on human rights. Human rights are too often marginalized or compartmentalized when, to reflect the aspirations of the UN Charter, human rights promotion and protection should be the foundation stone of all the UN's activities. For example, the human rights bodies have not had any significant involvement in the rapidly-expanding area of conflict resolution operations.



The UN Secretary-General has said, "human rights are an essential component of sustainable development. Sustainable development is not possible without respect for human rights", yet the human rights and development programs rarely interact. The human rights of women appear to fall somewhat between the Commission on Human Rights and the Commission on the Status of Women, and are not dealt with adequately by either body. The priority themes of the new Commission on Crime Prevention and Criminal Justice do not include any reference to human rights, although respect for human rights should be an integral part of all criminal justice systems.

The Special Commission could consult and coordinate with other human rights bodies and UN officials in areas such as conflict resolution, humanitarian assistance, advisory services, development and other relevant programs such as those relating to women and to crime prevention and control. This would include a key role for the Special Commissioner in UN operations in the field of peace-keeping and peace-building, ensuring the involvement of human rights bodies with specialist expertise in these activities. He or she would also have an overview of longer-term programs of action for the promotion and protection of human rights and technical assistance in different countries.

The Special Commissioner could also pay special attention to the neglected areas of the UN human rights program. For example, the UN's treatment of economic, social and cultural rights and of civil and political rights is fragmented and uneven. Mechanisms and procedures to monitor and secure the better implementation of economic, social and cultural rights are inadequate and much more remains to be done in this area.

Finally, the UN human rights system must be publicly accountable and more accessible to non-governmental organizations (NGOs). The involvement of NGOs at the international, regional and national level in the development and implementation of UN programs is vital. The Special Commissioner could work more closely with NGOs in situations he or she may be involved in, ensuring that their expertise is utilized and their concerns addressed.

The Special Commissioner would not replace but would work closely with the mechanisms and procedures already established under the human rights program (for example, drawing on their expertise, receiving their information and incorporating them as experts in different country programs) and with the Centre for Human Rights. He or she could also be a catalyst for recommending any appropriate rationalization of the human rights program as the Special Commissioner's role develops and for proposing additional mechanisms that might be needed.

## 인권특별판무관의 필요성

〈방콕회의에 제출할 A-I의 제안〉

지구적 차원에서 유엔의 주도로 25년만에 열리는 93년의 세계인권대회는 역사적인 일이 될 것이고, 아울러 이 대회에서 미래의 인권신장과 보호를 위한 진전된 결정이 나와야 한다. 유엔총회의 결의에서 밝혔듯이 대회의 주요한 목표는 1948년의 유엔인권선언의 채택과 '유엔의 활동과 인권제도를 효과적으로 개선하기 위한 권고'가 나온 이래 국제적인 인권상황을 검토하는 것도 포함되어 있다.

그 동안의 성과를 검토할 때, 인권보장에 유효하다고 생각되는 것을 보전하는 것 뿐만 아니라 국제사회에서 효과적이지 못하다고 생각되는 방법에 대한 검토를 하는 것은 매우 중요하다. 그리하여 인권문제를 개선해야하고 또 할 수 있어야 한다. 예를 들어서 유엔인권기관이 전체적으로 힘이 없고, 고문, 행방불명, 비합법적인 범죄 등의 문제가 인권실현에 대한 구조적인 장애로 지구상의 어떤 나라에서 계속되고 있다는 것은 아주 충격적인 일이다.

정부에 의해 자행되는 심각한 인권침해와 그에 반대하는 무장세력의 행동등의 상호간의 투쟁은 심각한 인권의 위기를 가져오는데, 때때로 국가의 신뢰성에 대한 완전한 붕괴를 가져오기도 한다.

이와 같은 문제를 극복하기 위해 세계인권대회는 대담하고 창조적인 수단을 택해야 한다. 엠네스티는 국제사회에 다음에 제안을 신중하게 고려해주길 호소한다. 유엔인권 특별판무관의 설치가 필요하다. 이것은 유엔인권제도의 구조적인 개선을 단기간에 상당히 개선할 수 있을 것이고, 인권에 대한 심각한 도전과 냉전이후 절호의 기회에 대한 응답할 수 있는 계획에 힘을 불러일으킬 수 있을 것이다.

인권특별판무관은 아주 높은 수준의 정치적인 권위를 가지는 기능을 수행해야 할 것이다. 경제, 사회, 문화, 정치적 권리를 포괄하는 전문적인 인권에 대한 명령을 가질 필요가 있다. 특별판무관은 유엔의 인권행동을 전지구적 전망을 가지고 조정 및 관리하고, 유엔의 다른 영역에서 인권에 관계된 사항을 조정해야 한다.

특별판무관은 유엔 본부가 있는 뉴욕에 본부를 두는 것이 적합하다. 인권문제가 정치적인 수준에서 고려될 수 있고 유엔의 활동과 인권기관의 활동의 기초가 될 수 있을 것이기 때문이다. 또한 국제인권제도가 유엔의 인권과 관련을 가진 다른 영역에서 조정될 수 있을 것이다.

판무관은 서로 다른 각 지역에서 선출되는 최소한 다섯명의 전문가로 이루어



져야한다. 판무관은 판무관의 계획과 서로 다른 지역의 행동에 대해 책임을 질 의무가 있다.

판무관은 인권분야에서 그의 임무를 공정하고 객관적으로 수행하는데 필요한 독립성과 권위가 인정된 개인이어야 한다. 그리하여 유엔은 어떤 인권상황에도 관심을 가져야한다. 정부와 상관없는 개인이 다수를 차지하는 한 상호간 및 다자간의 문제에 대한 각각의 특별한 관심은 특별한 인권상황에 대한 적절하고 상식적인 결론을 내릴 수 있을 것이다. 인권상황에 대한 개선은 피할 수 없는 것이 될 것이고 강력한 힘을 가진 활동가의 목소리는 더욱 강력해질 것이다.

엠네스티는 현재의 인권문제를 가장 효과적으로 개선할 수단을 검토해온 끝에 인권특별판무관제도가 인권을 개선할 수 있을 것이라고 믿는다.

첫째, 어떠한 인권위기에도 긴급하게 대처할 수 있는 권한을 가진 구조가 필요하다. 구 유고슬라비아에 대한 인권위원회의 특별회의에서 심각한 인권상황에 긴급한 대처를 요구하는 것은 가능하다. 이와같은 특별회의는 매우 예외적이고, 중요한 일이나 구조적인 문제에 항상 최선의 대응을 하는 것은 아니다. 위원회는 개별의 사건에 대해 신속하게 행동할 수 있고 할 수 있어야 한다. 그러나 거대한 규모의 인권장벽을 개선하기 위해, 각각 개별화된 형태의 수 많은 인권위기를 개선하기 위한 위원회의 권한은 매우 협소하다.

판무관은 유엔의 범위에서 벌어지는 긴급상황에 대해 어떤 때라도 즉각 대처할 수 있는, 인권문제를 개선하기 위해 필요한 능력과 권위를 가져야한다. 예를 들어서 판무관은 인권문제가 발상할 때 그 나라, 그 나라와 관련된 나라와 즉각 대화에 돌입할 수 있어야 한다. 전문가를 파견하여 인권상황에 대한 조사 및 보고서를 제출할 수 있어야한다. 필요한 지역에서 인권감시 모니터를 설치하는 것을 포함한 어떠한 위협이 일어나거나 생명에 영향을 미치는 어떤 위협이라도 보호할 수 있도록 긴급한 행동을 할 수 있어야 한다. 국제인권기관과 다른 유엔기구와 협의하고 조정할 수 있어야한다.

두번째로 판무관은 꼬리를 물고 일어나는 인권침해사태에 대한 가능한 응답을 다양하고 창조적으로 발전시키는데 중요한 역할을 할 수 있을 것이다. 어떤 상황에서는 인권침해 감시제도가 필요하고 또 다른 상황에서는 인권보호를 위한 행동이 필요하다. 어떤 정부에 의해 인권을 침해하는 정치적인 범죄가 저질러지면 그 나라에 특별한 응답을 요구하여 구조계획을 실시할 수도 있다. 유엔은 이미 새롭고 다양한 문제에 여러가지 수단을 취했지만, 이것은 어떤 경우에는 심각하게 사태가 진전되는 것을 막지 못했고 유엔내에서 조정되지도 못했다. 높은 수준의 계획과 평가 및 분석이 필요하다.

세번째로, 판무관은 인권에 영향을 미치는 유엔행동의 구조속에서 조정을 개선해야한다. 인권은 너무나 무시되고 형식화되었다. 이제 유엔헌장의 정신을 반영하여 인권보호와 인권신장은 모든 유엔 활동의 기초가 되어야한다. 예를 들어서 유엔인권기구는 급속한 모순해결이 요구되는 지역과 특별한 관계를 가질 필요가 없다.

유엔사무국은 '인권은 발전에 필요한 필수적인 요소다. 지속적인 발전은 인권신장 없이는 가능하지 않다.'고 말했다. 아직도 인권과 발전은 서로 관계를 가지고 있지 못하고 있다. 여성의 인권은 인권위원회와 여성의 지위에 관한 위원회에서 성공적으로 다루는데 실패한 것으로 보이고 기타 다른 기구에서도 관심을 가지지 않는다. 범죄 예방위원회와 범죄재판소에서도 인권에 대해서는 어떠한 언급도 하지 않는다. 그럼에도 불구하고 모든 범죄재판구조에 인권부분은 절대적으로 필요하다.

판무관은 모순해결, 인간적인 원조, 여성에 관련된 일, 범죄예방에 대해 인권기구 및 유엔 기관과 협의하고 조정할 수 있어야 한다. 이것은 평화를 유지하는 유엔의 기능에서 볼때도 판무관의 역할이 중요하게 될 것이고 전문지식을 가진 인권관련기관과 인권보장을 위한 행동에서 관계를 더욱 강화하게 될 것이다. 판무관은 인권보장과 인권신장을 위한 장기적인 전망뿐만 아니라 다른나라에 대한 기술적인 도움에 대해서도 전망을 가져야한다.

판무관은 유엔의 인권활동에서 무시되고 있는 분야에 대해서도 특별한 관심을 가져야 한다. 예를 들어서 경제, 사회, 문화에 관한 협약과 시민적 및 정치적 권리에 관한 협약은 붕괴되고 불평등하다. 이를 감시할 수 있는 구조와 경제, 사회, 문화에 대한 권리를 보장하기 위한 실천은 부적절할 뿐만 아니라 해야할 많은 일이다.

마지막으로, 유엔인권제도는 공개적으로 되어야 하고 비정부단체들의 접근을 더욱 보장해야 한다. 국제적, 지역적 국가적 수준에서 활동하는 비정부단체와의 관계를 마련하는 것은 유엔의 실천활동에서 필수적이다. 판무관은 비정부단체와 관계를 밀접히하여 판무관의 활동에 관계된 비정부단체의 지식을 이용하고 그들의 관심을 고양시켜야 한다.

판무관은 다른 유엔의 인권기구를 대체하는 것이 아니라 오히려 기존에 확립된 인권계획(예를 들어서 그들의 지식을 이용하고 다른나라 전문가의 계획을 받아들인다.) 및 인권센터등의 구조에서 진행하고 있는 것과의 관계를 강화할 것이다. 판무관은 자신의 역할을 발전시킬 수 있고 다른 추가적인 구조에 대한 적절한 제안이 필요하다면, 어떠한 적절하고 합리적인 인권보장수단이더라도 받아들일 수 있어야한다.





# INTERNATIONAL COMMISSION OF JURISTS

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## POSITION PAPER:

### THE ESTABLISHMENT OF A PERMANENT INTERNATIONAL PENAL COURT

International Commission of Jurists

Geneva, Switzerland

April 1993

### THE ESTABLISHMENT OF A PERMANENT INTERNATIONAL PENAL COURT

The gross violations of human rights and humanitarian law committed in the former Yugoslavia have brought to the public consciousness a point long maintained by international jurists: perpetrators of such crimes must be brought to justice.

Highlighting the absence of an international judicial mechanism to enforce human rights and humanitarian law, various expert bodies, including the International Commission of Jurists (ICJ), have been urging for the establishment of a permanent International Penal Court to try cases of gross violations of human rights and humanitarian law. For decades, several bodies, including the United Nations International Law Commission, have been engaged in studying the feasibility of this idea. No practical steps, however, have been taken in this direction.

As the international community is moving from the phase of standard-setting in the human rights field to the phase of implementation, the ICJ believes that the establishment of a permanent International Penal Court is timely and essential. In the Decade of International Law, this Court should be made a reality.

The crisis in the former Yugoslavia has revived international interest in this matter. Responding to universal calls to try those responsible for serious violations of international law committed in this territory, the U.N. Security Council adopted Resolution 808 that decided to create an *ad hoc* tribunal.

The *ad hoc* tribunal approach to international criminal jurisdiction versus the permanent court approach has become the subject of further debates. The ICJ takes the stand that while the *ad hoc* approach could be appropriate to



respond to the crisis in the former Yugoslavia, it fails to address the global need for an international judicial mechanism to try cases of gross violations of human rights and humanitarian law wherever and whenever they occur. As stated in the International Meeting Concerning Impunity in November 1992,<sup>1</sup> we believe that it is possible to build on the work of the *ad hoc* tribunal as a step towards establishing a permanent International Penal Court. The work on these two fronts should be carried out in parallel.

This position paper seeks to raise questions surrounding the establishment of the permanent International Penal Court. Part One of this paper briefly discusses the history of developments towards an International Penal Court, including the recent work of the International Law Commission. Part Two addresses the question of why a permanent International Penal Court is needed, and it responds to the most common arguments against the establishment of such a Court. In Part Three, a possible blueprint of the International Penal Court is outlined, raising alternatives and questions concerning the structure and procedure of the Court. Part Four concludes with the ICJ's final recommendations.

## I BACKGROUND

### A. History

The idea of a court with international criminal jurisdiction is not a new concept.<sup>2</sup> Contemporary efforts to establish such a court started after World War I. Articles 227-29 of the Treaty of Versailles provided for an international court to prosecute war criminals, including Kaiser Wilhelm II. The Kaiser, however, fled to the

<sup>1</sup>Organized by the ICJ and the French National Human Rights Consultative Commission, Geneva, November, 1992.

<sup>2</sup>See M. Cherif Bassiouni, *International Criminal Law: A Draft International Criminal Code* (1980); I *International Criminal Law* 587 (M. Cherif Bassiouni & Ved P. Nanda eds.) (1973).

Netherlands where he obtained refuge, and the Allies abandoned the idea of an international court.

The Allies of the First World War also failed to prosecute those responsible for the killing of an estimated 600,000 Armenians in Turkey. The 1919 Commission on the Responsibilities of the Authors of the War and on the Enforcement of Penalties for Violations of the Laws and Customs of War recommended the prosecution of responsible Turkish officials, and in doing so, highlighted the concept of "crimes against humanity". The United States, however, opposed prosecution on the technical legal argument that no such crimes existed under positive international law. Consequently, the Treaty of Sévres (1920), which was to serve as a basis for the prosecution of those responsible, was never ratified, and its replacement, the Treaty of Lausanne (1923), gave the Turkish officials amnesty.

After World War II, the Allies established two international tribunals, at Nuremberg and Tokyo, to try major war criminals. Subsequent to the Nuremberg and Tokyo trials, the Allies established war crime tribunals in their respective zones of occupation in Germany and tried over 20,000 war criminals. Germany then took over the task of prosecuting offenders found in its territory. Formerly-occupied countries of Europe prosecuted Nazis and nationals who had collaborated with them.

In 1948, the Convention on the Prevention and Punishment of the Crime of Genocide, codified the jurisdiction of an international penal court for the first time. The Convention prescribes that "[p]ersons charged with genocide, shall be tried by a competent tribunal of the state in the territory of which the act was committed or by such international penal tribunal as may have jurisdiction with respect to those contracting parties, which shall have accepted its jurisdiction."<sup>3</sup>

As a result of the post-World War II prosecutions, the United Nations established a Committee to codify "Offences

<sup>3</sup>Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277 (1948).



Against the Peace and Security of Mankind". In 1951, the Code was prepared, and in 1953, it was amended. Between 1950 and 1952, two Committees on international criminal jurisdiction prepared a draft statute for the International Penal Court. The General Assembly, however, took no steps concerning these developments.

Subsequently, in 1973, the International Convention on the Suppression and Punishment of the Crime of Apartheid provided that persons charged with apartheid acts "may be tried by a competent tribunal of any State Party to the Convention which may acquire jurisdiction over the person of the accused or by an international penal tribunal having jurisdiction with respect to those State Parties which shall have accepted its jurisdiction."<sup>4</sup> In 1980, a Draft Statute for an International Criminal Tribunal to prosecute apartheid violators was elaborated, but the project has not been acted upon.

More recently, the United Nations and its members have responded to the crisis in the former Yugoslavia by deciding to create an *ad hoc* international tribunal. The Special Rapporteur of the U.N. Commission on Human Rights entrusted to investigate violations of human rights in these territories recognized "[t]he need to prosecute those responsible for mass and flagrant human rights violations and for breaches of international humanitarian law and to deter future violators...."<sup>5</sup> In this regard, Security Council Resolution 780 created an impartial panel of experts to investigate the violations of the Geneva Conventions and all other violations of international humanitarian law committed in the former Yugoslavia.<sup>6</sup> Security Council Resolution 808 further decided to create an *ad hoc* international tribunal with the power to prosecute those

<sup>4</sup>International Convention on the Suppression and Punishment of the Crime of Apartheid, G.A. Res. 3068, 28 GAOR (No.50), U.N. Doc. A/9233/Add. 1 (1973).

<sup>5</sup>Report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, E/CN.4/1992/S-1/9, at 13.

<sup>6</sup>S/RES/780 (1992).

persons responsible for "serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991".<sup>7</sup>

#### B. Recent Work of the U.N. International Law Commission

In 1981, the General Assembly invited the International Law Commission (ILC) to resume its work to elaborate the draft Code of Crimes against the Peace and Security of Mankind (draft Code). Ten years later, the General Assembly specifically requested the ILC to prepare a report on the possibility of an international criminal court within the context of the draft Code. In 1990, ILC-member Professor Stephan C. McCaffrey stated that there was "broad agreement, in principle, on the desirability of establishing a permanent international criminal court within the United Nations system.... The international climate now appears particularly favourable for the establishment of such a court ... and it would be unfortunate if the opportunity were lost."<sup>8</sup> The ILC's 1991 Report offered some provisional formulations and an extended commentary on two issues: 1) the court's jurisdiction; and 2) the requirements for instituting criminal proceedings.<sup>9</sup>

In 1992, ILC Special Rapporteur for the draft Code, Mr. Doudou Thiam, devoted his Tenth Report entirely to the question of international criminal jurisdiction, which led to a debate on the issue during the ILC's 1992 session.<sup>10</sup> The Commission established a Working Group on the question of an international criminal jurisdiction, chaired by Mr. Abdul Koromo. The Report of the Working Group, included as an Annex to the ILC's 1992 Report, concluded that such a

<sup>7</sup>S/RES/808 (1993), at 2.

<sup>8</sup>Benard B. Ferencz, *An International Criminal Code and Court: Where They Stand and Where They're Going*, 30 Colum. J. Transnat'l L. 375, 385 (1992), quoting Stephan C. McCaffrey, *The Forty-Second Session of the International Law Commission*, 84 Am. J. Int'l L. 930, 933 (1990).

<sup>9</sup>See Report of the International Law Commission on the Work of its Forty-Third Session, U.N. GAOR, 46th Sess., Supp. No. 10 U.N. Doc. A/46/10 (1991) [hereinafter 1991 ILC Report].

<sup>10</sup>Special Rapporteur on the draft Code of Crimes of Crimes Against the Peace and Security of Mankind, Tenth Report, A/CN.4/442, para. 47.



court was indeed possible and it set forth concrete recommendations.<sup>11</sup> This Report represents the most official, albeit an exceedingly cautious, development towards the establishment of an International Penal Court to date. The findings of the Working Group will be discussed in further detail below.

## II. THE NEED FOR A PERMANENT INTERNATIONAL PENAL COURT

### A. Why a judicial mechanism?

The U.N. system on human rights has developed immensely since its establishment. The implementation of standards, however well-established, has been notoriously unsuccessful. As an increasing number of U.N. Working Groups and Special Rapporteurs catalogue the steady deterioration of human rights situations around the globe, abuses such as torture, summary or arbitrary executions, and disappearances continue unabated. The lack of adequate international machinery to protect individuals from gross violations of human rights is the alarming and disturbing reality. Now, more than any other time in the past, the international community appears to be ready to proceed in taking practical steps towards the creation of a permanent International Penal Court.

The relevant law exists. A body of international treaties, culminating with the draft Code of Crimes Against the Peace and Security of Mankind,<sup>12</sup> prohibits, *inter alia*, systematic or gross violations of human rights (including torture, disappearances, and extrajudicial executions), crimes against humanity, war crimes, and various other crimes of an international nature. What is conspicuously absent is a method of enforcement to give these laws significance in the real world and to punish offenders of

<sup>11</sup>Report of the Working Group on the question of an international criminal jurisdiction, Report of the International Law Commission on the Work of its Forty-Fourth Session, A/47/10 (1992) [hereinafter Report of the ILC Working Group].

<sup>12</sup>1991 ILC Report, *supra* note 9.

these norms. The burden is now to show how an International Penal Court would satisfy this need.

One of the purposes of any penal system is to ensure that perpetrators are justly made responsible for the crimes they commit. The same is true under international law: as it was recognized in Principle I of the Charter of the Nuremberg Tribunal, "[a]ny person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment."<sup>13</sup>

Today, many of those who violate human rights law are not made accountable for their acts. Grave violations of human rights are committed with impunity the world over. This impunity lessens and even eliminates the legal effect of the norms which define conduct as criminal. Impunity undermines the principle of equality before the law by freeing certain persons from all responsibility. As correctly stated by the ILC Working Group,

"the case for some international jurisdictional mechanism starts from the fact that there have been since 1945 notorious cases of crimes against humanity that have gone unpunished. It has proved extremely difficult to bring such offenders to justice, and the lack of any alternative forum at the international level has exacerbated these difficulties. One reason for the difficulty is that, in many cases, serious crimes against peace or humanity have been committed by persons who were at the time members of the Government of a State. It discredits the norms of international law if they are never enforced."<sup>14</sup>

However, the seriousness of accusing an individual or group of committing gross violations of human rights or humanitarian law requires a cautious approach. No one should be unjustly labelled with such charges. The existence of an international court that fairly examines and verifies these accusations will ensure that they are handled with impartiality and objectivity.

<sup>13</sup>Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal.

<sup>14</sup>Report of the ILC Working Group, *supra* note 11, at 155-56.



There is also the problem of politicization. Various parties or non-parties to a conflict accuse others of committing crimes against international law to serve their own political ends. Moreover, experience demonstrates that taking action against the perpetrators of such crimes at the international level is also surrounded by political considerations. Creating a court rather than an international political office to deal with such issues should, therefore, minimize the politicization of these matters. An impartial and independent court will undoubtedly enhance international cooperation in the respect for international human rights law.

The just implementation of individual punishment will deter others from committing similar crimes. Crime becomes less attractive to potential offenders when punishment will result from their actions as a matter of course. It is equally important to compensate victims of violations of human rights. If international law, painstakingly established over the last five decades, is to have relevance, a permanent International Penal Court, which can justly and surely implement it, is indispensable.

#### B. Arguments against an International Penal Court

Some governments have expressed opposition to the development of an International Penal Court. The following is a list of the most common arguments against the Court, and our responses to them.

First, some governments believe that international agreement on a court, other than on an *ad hoc* basis, is unlikely. Technical and political disagreements will prevent the implementation of international jurisdiction.

While the creation of the Court is a technical task, it is not more complex than was the creation of similar bodies already established, including, the International Court of Justice, the European Court of Human Rights, and the Inter-American Court of Human Rights. Moreover, the International Law Commission has completed a detailed assessment of the technical possibility of creating a Court, and has concluded

that such a Court is possible. While we do not agree with all of the findings of the ILC Working Group, we do agree that the Court would be a "workable system".<sup>15</sup> So far, it has been the lack of political will, not the myriad technical issues, that has stood in the way.

The catastrophe in the former Yugoslavia, however, has prompted political will, dormant since Nuremberg, into action. The *ad hoc* tribunal is the result. Furthermore, the changing political climate presents the possibility for States to work together in a more systematic and comprehensive way. Establishing an International Penal Court is one example of cooperation based on reciprocity, mutual understanding, and reliance.

Second, and more importantly, the idea of the Court has been seen as an infringement of national sovereignty. National courts, according to this view, have exclusive jurisdiction over crimes committed in the territory of a State.

This argument ignores a number of basic points. It is well accepted under international law that "individuals have international duties which transcend the national obligations of obedience imposed by the individual state."<sup>16</sup> Gross violations of human rights, such as genocide and torture, by their very nature, fall under international jurisdiction. They constitute an attack on the very conscience of humanity. They negate the principles and objectives of the United Nations Charter. Many times, they constitute a threat to international peace and security. These matters transcend the claim of national sovereignty.

Moreover, States have already forfeited exclusive jurisdiction over these types of crimes by ratifying or adhering to the treaties that prohibit them. The supremacy of international law over domestic law is a customary

<sup>15</sup>*Id.* at 147.

<sup>16</sup> Trial of the Major War Criminals Before the International Military Tribunal -- Nuremberg: 14 November 1945 - 1 October 1946, at 168-69 (1947); see also Nanette Dumas, Note, *Enforcement of Human Rights Standards: An International Human Rights Court and Other Proposals*, 13 *Hastings Int'l & Comp. L. Rev.* 585, 593 (1990).



international law principle. Article 14 of the Declaration on the Rights and Duties of States provides that "[e]very State has the duty in its relations with other States to comply with international law and with the principle which holds that the sovereignty of each State is subject to the supremacy of international law." Furthermore, Article 27 of the 1969 Vienna Convention on the Law of Treaties states: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."

Of course, the national courts are encouraged to try crimes, but they must do so effectively. Impunity rewarded for human rights violations precisely illustrates the failure of national courts. If national courts were always effective, the world would look a lot different than it does. National judicial sovereignty far from excludes the creation of an International Penal Court, it demands it. This point draws overwhelming support from the 1992 Report of the ILC Working Group:

"The problem is such that courts, and the system of national jurisdiction generally, seem ineffective to deal with an important class of international crime, especially State-sponsored crime or crime which represents a fundamental challenge to the integrity of State structures. Reinforcing national criminal justice systems is not likely to address this need."<sup>17</sup>

### III. A BLUEPRINT FOR THE INTERNATIONAL PENAL COURT

The primary purpose of the International Penal Court is to adjudicate the criminal responsibility of individuals charged with crimes under international law, primarily with respect to war crimes, crimes against peace and humanity, and systematic or mass violations of human rights.

The following is a brief and accessible blueprint of the permanent International Penal Court.<sup>18</sup> We claim neither to

<sup>17</sup>Report of the ILC Working Group, *supra* note 11, at 160.

<sup>18</sup>Our proposals are provided in the context of the work already done by the ILC Working Group. To an extent, we follow the Working Group's order of issues and accept some of its findings. While we do

raise every issue nor to solve every problem. In some instances, we have simply listed possible alternatives to questions that will be answered during the establishment process.

#### A. Structure and Jurisdiction

##### 1. Creation of the Court

The ILC Working Group has determined that:

"Other methods of the establishment of an international criminal court have sometimes been proposed (e.g. through a resolution of the General Assembly or the Security Council). But the normal method for the creation of an institution is by a treaty agreed to by States parties. Where that institution is to be part of the United Nations additional steps may have to be taken, but initially the necessary structure needs to be agreed on by States. ... an international criminal court should have its own Statute in treaty form."<sup>19</sup>

The ICJ believes that the International Penal Court could be created either by a multilateral treaty among states or by an amendment to the United Nations Charter. While it is preferable that the Court be a permanent independent organ of the United Nations, the complex process of amending the U.N. Charter would prove more burdensome than the creation of a treaty. The most pragmatic initial step, therefore, would be a treaty. In this case, the International Penal Court should seek a formal relationship agreement with the United Nations.

##### 2. The judiciary

Most importantly, the composition of the Court must be above suspicion of bias. Its members should fairly represent all the regions of the world. They should not be functionaries of their governments but should be independent jurists of the highest moral and legal standing. The independence and the impartiality of the judges have to be

not fully endorse the report, we recognize its value as a thorough and concrete development. Many views expressed here, however, significantly differ from those of the Working Group.

<sup>19</sup>Report of the ILC Working Group, *supra* note 11, at 162-3.



guaranteed by and enshrined in the Statute of the Court. It must be a duty for all governments to respect and observe that independence. An independent and impartial judiciary is an indispensable requisite in any free society under the Rule of Law, including, of course, international society. In keeping with the 1985 U.N. Basic Principles of the Independence of the Judiciary, the judiciary of the International Penal Court shall:

"decide matters before it impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter for any reason."<sup>20</sup>

Judges must be more than impartial, they must be highly qualified both in matters of criminal justice and international law. Furthermore, any method of judicial selection shall safeguard against judicial appointments for improper motives, and there shall be no discrimination on the basis of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status.<sup>21</sup>

The ILC Working Group concluded that the judiciary of the Court will be part-time body; judges would be selected each time the Court was called for. In our opinion, this is coming dangerously close to an *ad hoc* approach to international criminal jurisdiction. To ensure the development of a cohesive, independent, and committed judiciary, the Court should be a full-time body from its inception. In fact, a full-time judiciary is most necessary during the first days of the Court's existence to develop a collective understanding of the Court's procedures and to establish the precedent of consistent jurisprudence.

### 3. Jurisdiction

When a crime under international law is committed, there is always at least one State concerned: the State in

<sup>20</sup>art. 2.

<sup>21</sup>See U.N. Basic Principles of the Independence of the Judiciary, art. 10.

whose territory the crime was committed, or the State to which the crime was directed.<sup>22</sup> In the best case scenario, a State would confer compulsory jurisdiction to the Court by simply becoming a party to its Statute. While it may seem logical that the acceptance of the Court's Statute is understood as an obligation to confer jurisdiction, the example of the International Court of Justice, in which a State must make a specific declaration to confer jurisdiction, gives reason to doubt the practicality of this approach.

Although the principle of national sovereignty is no longer absolute, States remain reluctant to confer international jurisdiction. The ILC Working Group suggested that this problem be solved in the following way:

"Each State party to the Statute would be free to accept the court's jurisdiction. This could be done either *ad hoc* in relation to a particular offence alleged to have been committed by specified persons, or in advance for a specified category of offences against one or more of the treaties which fall within the subject-matter jurisdiction of the court, to the extent that the treaty is in force for the State concerned."<sup>23</sup>

This approach would give the Court solely concurrent jurisdiction; a State having jurisdiction under any of the internationally-recognized theories of jurisdiction, including territoriality and nationality, would be able to exercise that jurisdiction, but could, if it chooses, confer jurisdiction to the International Penal Court. This approach might not be sufficient, however.

In our opinion, the question of jurisdiction needs to be further examined when the treaty establishing the Court is drafted. It has been suggested, and we agree, that the International Penal Court should be vested with exclusive jurisdiction over crimes such as genocide, systematic or mass violations of human rights, and apartheid.<sup>24</sup> While we

<sup>22</sup> The ICJ does not consider a State to have jurisdiction because its national is the victim or the perpetrator.

<sup>23</sup>Report of the ILC Working Group, *supra* note 11, at 165.

<sup>24</sup>See Special Rapporteur on the draft Code of Crimes Against the Peace and Security of Mankind, *supra* note 10, at para. 47.



recognize that political reality makes exclusive jurisdiction unlikely, some type of exclusive jurisdiction is necessary for the International Penal Court to fulfil its promise. One possibility is that the Court have exclusive jurisdiction over some crimes, and concurrent jurisdiction over others.

In any case, the Court must be empowered to judge on legal and factual issues. Mere review jurisdiction over legal questions is not sufficient. On this question, the ILC Working Group found that:

"the case for an international criminal court is essentially a case for a trial court, rather than an appellate or review body. Controversies surrounding allegations of serious international crimes are likely to be controversies about the facts -- especially if the offences have already been carefully defined by international treaties in force. In criminal cases, facts are essentially found at trial rather than on appeal or review -- especially if such appeal or review is to occur after national procedures have been exhausted -- i.e., at third or fourth remove from the trial itself."<sup>25</sup>

a. Sources of law and subject-matter jurisdiction

The Court must have a subject-matter jurisdiction which includes crimes under international law. These crimes include offences very different from each other. Apartheid and genocide are crimes under international law even if they are committed within the borders of a single State. International terrorism and drug trafficking, however, are international crimes precisely because they take place across national borders. Other actions, like State aggression, are crimes because they threaten international peace and security.

In addition to the treaty establishing the Court, the Court's primary sources of law are treaties defining some offences as crimes under international law. Over the last five decades of standard setting, the international community has created a body of law which provides the

<sup>25</sup>ILC Working Group, *supra* note 11, at 157-58.

outline of the Court's subject-matter jurisdiction. Customary international law also constitutes an important source of reference on this matter.

First and foremost, these sources should include the draft Code of Crimes against the Peace and Security of Mankind. The inter-relationship between the draft Code and the Court has been established by the work of the International Law Commission. The International Penal Court would ensure the most objective and uniform interpretation of the draft Code, the most complete codification of international criminal law. Crimes under the draft Code include, *inter alia*:

- genocide;
- apartheid;
- mass or systematic violations of human rights, including, e.g., murder, torture, forced transfer or deportation of populations, and persecution on social, political, racial, religious or cultural grounds;
- war crimes, including, e.g., acts of inhumanity, cruelty or barbarity directed against the life, dignity or mental integrity of persons, such as torture and wilful killing;
- other international crimes, including drug trafficking and international terrorism.

The subject-matter jurisdiction should not be limited to the draft Code. Other sources of international law which could be used independently or as reference for the draft Code, include, *inter alia*: Convention on the Prevention and Punishment of the Crime of Genocide; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; Convention Concerning the Abolition of Forced Labour; Geneva Conventions and Additional Protocols; International Convention on the Suppression and Punishment of the Crime of Apartheid; and, any other treaties, including those yet to be created, that define crimes under international law.



b. Personal jurisdiction

We tend to agree with the ILC finding that "[t]his is one of the most difficult technical issues to be faced, in part because the potential range of circumstances is so wide, in part because of the different bases for the assertion of personal jurisdiction in criminal matters under the different national legal systems."<sup>26</sup> Some national legal systems utilize territoriality as the basis for criminal jurisdiction, and correspondingly have few inhibitions about the extradition of their own nationals to a State where the offence was committed. Others, while relying also on territoriality, assert criminal jurisdiction over acts of their nationals wherever committed, and will not extradite them.<sup>27</sup>

The broadest possibility, for example, would be to build on the existing principle of universal jurisdiction. Provided that the International Penal Court is established in a way that does not give rise to questions about political neutrality, independence, objectivity and impartiality, a procedure similar to extradition is no doubt a realistic tool for bringing perpetrators to justice.<sup>28</sup> It must be considered desirable for the international community to bring perpetrators of war crimes, systematic or massive violations of human rights, and crimes against peace and humanity to justice before an impartial international court with fair trial procedures.

Further, it is important not to confine possible perpetrators of crimes to public officials or representatives only, but also to private individuals acting under the acquiescence, order, or tolerance of State authorities, liberation movements, or organised groups exercising *de facto* control over a particular territory.

<sup>26</sup>*Id.* at 168.

<sup>27</sup>*Id.* Again, the ICJ does not accept personal jurisdiction based solely on nationality.

<sup>28</sup>Extradition is used to bring individuals before foreign courts. The International Penal Court, however, should not be considered as a foreign institution.

B. Procedure & Prosecution1. Criminal justice

Criminal procedure has to be established by the Statute of the Court. In this regard, the primary consideration must be the guarantees of fair trial and due process. The principles of non-retroactivity of less favourable criminal laws and penal sanctions, the principles *Nullum crimen sine lege* and *Nulla poena sine lege*, must be upheld.<sup>29</sup> Other fair trial guarantees, such as presumption of innocence, speedy trial, and assistance of counsel, must also be provided for.

These provisions can be based on Article 14 of the International Covenant on Civil and Political Rights, which provides in part:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. ...
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
  - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
  - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
  - (c) To be tried without undue delay;
  - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
  - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (f) To have free assistance of an interpreter if he cannot understand or speak the language used in court;

<sup>29</sup>See International Covenant on Civil and Political Rights, art. 15.



(g) Not to be compelled to testify against himself or to confess guilt.<sup>30</sup>

## 2. System of prosecution

Of the many possible methods of bringing charges against an accused, the ICJ believes that the power to bring charges should be entrusted to an prosecutorial organ, strictly separate from the judiciary and judicial proceedings. An independent office of prosecutors is necessary because the preparation of charges should be accompanied by the complete guarantees of impartiality and objectivity.

The office of prosecutors would be responsible for the investigation, collection, and production of all necessary evidence. Given the importance of this responsibility, selection criteria for prosecutors must embody safeguards against appointments based on partiality or prejudice of any kind, and requirements for a high level of professional experience and expertise in criminal and international law.

In the performance of its duties, the office of prosecutors shall:

- carry out its functions impartially and avoid all kinds of discrimination;
- protect the public interest, act with objectivity, take account of the position of the suspect and the victim and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or the disadvantage of the suspect;
- keep matters in its possession confidential, unless performance of duty or needs of justice require otherwise;
- consider the views and concerns of victims and ensure they are informed of their rights in accord with the Declaration of Basic Principles of Justice for Victims of Abuse of Power;
- not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded;
- refuse evidence it believes to have been obtained through unlawful methods, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, and shall take all necessary steps to ensure that those responsible are brought to justice.<sup>31</sup>

<sup>30</sup>Id. at art. 14.

<sup>31</sup>See U.N. Guidelines on the Role of Prosecutors.

The office of prosecutors should accept complaints from a broad variety of sources. States would be able to submit complaints. The same right should be granted to individuals, in particular to victims, as is the case, for example, under the Optional Protocol to the International Covenant on Civil and Political Rights. It must be emphasized that the International Penal Court is a judicial, and not political, organ, and that the office of prosecutors should concern itself only with prosecuting those responsible for crimes under the Court's jurisdiction.

One way of enhancing the authority of the Special Rapporteurs and Working Groups established by the Commission of Human Rights would be to grant them the right to bring complaints before the Court. Given this power, they could more effectively fulfil their tasks, and be more likely to receive the full cooperation of States in their investigations.

## 3. Bringing defendants before the Court

As mentioned briefly above in the discussion of personal jurisdiction, the question of how to bring defendants before the Court could present a formidable obstacle. In his tenth report, the Special Rapporteur on the draft Code recommended that the Statute of the Court should provide that transfer to the Court was not to be regarded as extradition. The International Penal Court is not to be equated to a foreign court, but to a court of the transferring State. This direct approach avoids the complications presented by extradition.<sup>32</sup>

This approach, however, could also present conflicts with domestic constitutions. It is necessary, therefore, that the treaty establishing the Court includes the minimum requirements for the transfer of accused persons. State parties to the treaty would be bound by this transfer agreement.

<sup>32</sup>Special Rapporteur on the draft Code of Crimes Against the Peace and Security of Mankind, *supra* note 10, at paras. 76-83.



4. Penalties & implementation of sentences

Another issue to be addressed is the question of punishment. The sources that define crimes under international law, such as those listed above, are silent on this issue. Even the Genocide Convention, which visualises an international genocide court, goes no further than to refer to "effective penalties" for persons guilty of genocide.<sup>33</sup> It is suggested, both by the ILC Working Group and the ICJ, that the treaty establishing the Court deal with the question of penalties.

Regarding the enforcement of execution of sentences the Court might either depend on the cooperation of States, who will carry out the sentences in their own detention facilities, or the Court might have its own facilities. In any event, prison conditions would be consistently monitored by the Court, in particular to ensure that the United Nations Minimum Standard Rules for the Treatment of Prisoners were followed.

5. Right to Appeal

The right to appeal a decision of the International Penal Court must also be guaranteed. We emphasize the importance of Article 14 (5) of the International Covenant on Civil and Political Rights: "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."

It is conceivable that the permanent International Penal Court be composed of two level of jurisdictions, one of first instance and another of appeal. It is also possible that the International Court of Justice be entrusted with review competence over questions of law decided by the International Penal Court.

VI. RECOMMENDATIONS & CONCLUSIONS

The ICJ proposes the establishment of an independent and permanent International Penal Court to prosecute those responsible for crimes under international law. The International Penal Court should:

1. be a full-time, permanent, impartial, and independent body associated with the United Nations;
2. be composed of highly-qualified independent and impartial jurists representing all regions of the world;
3. have subject-matter jurisdiction over all crimes under international law, including, those listed in the draft Code of Crimes Against the Peace and Security of Mankind, including;
  - genocide;
  - apartheid;
  - mass or systematic violations of human rights, including, e.g., murder, torture, forced transfer or deportation of populations, and persecution on social, political, racial, religious or cultural grounds;
  - war crimes, including, e.g., acts of inhumanity, cruelty or barbarity directed against the life, dignity or mental integrity of persons, such as torture and wilful killing;
  - other international crimes, including drug trafficking and international terrorism.
4. ensure all due process and fair trial guarantees, such as those provided for in Article 14 of the International Covenant on Civil and Political Rights;
5. contain an independent and full-time prosecutorial organ to bring charges against accused persons and to collect, prepare, and present necessary evidence;
6. accept complaints from a broad variety of sources, including States and individuals.

This is not the first time the ICJ has urged for the creation of an international judicial mechanism. In 1968,



the year of the first World Conference on Human Rights held in Tehran, then-Secretary-General Seán MacBride wrote:

"The great defect of the present efforts of the United Nations to provide implementation machinery is that it is piecemeal, disjointed and is political rather than judicial. Effective implementation machinery should conform to judicial norms, it should be objective and automatic in its operation; it should not be ad hoc nor dependent on the political expediency of the moment. Has the time not come to envisage the establishment of a Universal Court of Human Rights analogous to the European Court of Human Rights with jurisdiction to pronounce on violations of human rights? Even if its judgments were initially to be only declaratory, they would be of considerable moral value and would help to create judicial norms in the field of human rights. Its findings would certainly carry far more weight than those of transient and often ill-equipped part-time U.N. Committees or Sub-Committees, selected on a political basis.

... Such a permanent judicial tribunal would not suffer from the inherent defect of being set up on an ad hoc basis to deal ex post facto with a particular situation. The decisions of such a tribunal might remain temporarily unenforceable in some regions. But behind every act of cruelty there is an individual who perpetrates or inspires the act of cruelty. That individual could at least be identified and branded as an outlaw. Such a sanction would have a restraining influence and would reduce the trend towards the brutalization of mankind.

In protecting human rights, it is not sufficient to enunciate the rights involved; it is essential to provide a judicial remedy accessible to those affected. In curbing cruelty and crimes against humanity it is not sufficient to deplore them; it is essential to pass judgment and if necessary outlaw the individuals responsible."<sup>34</sup>

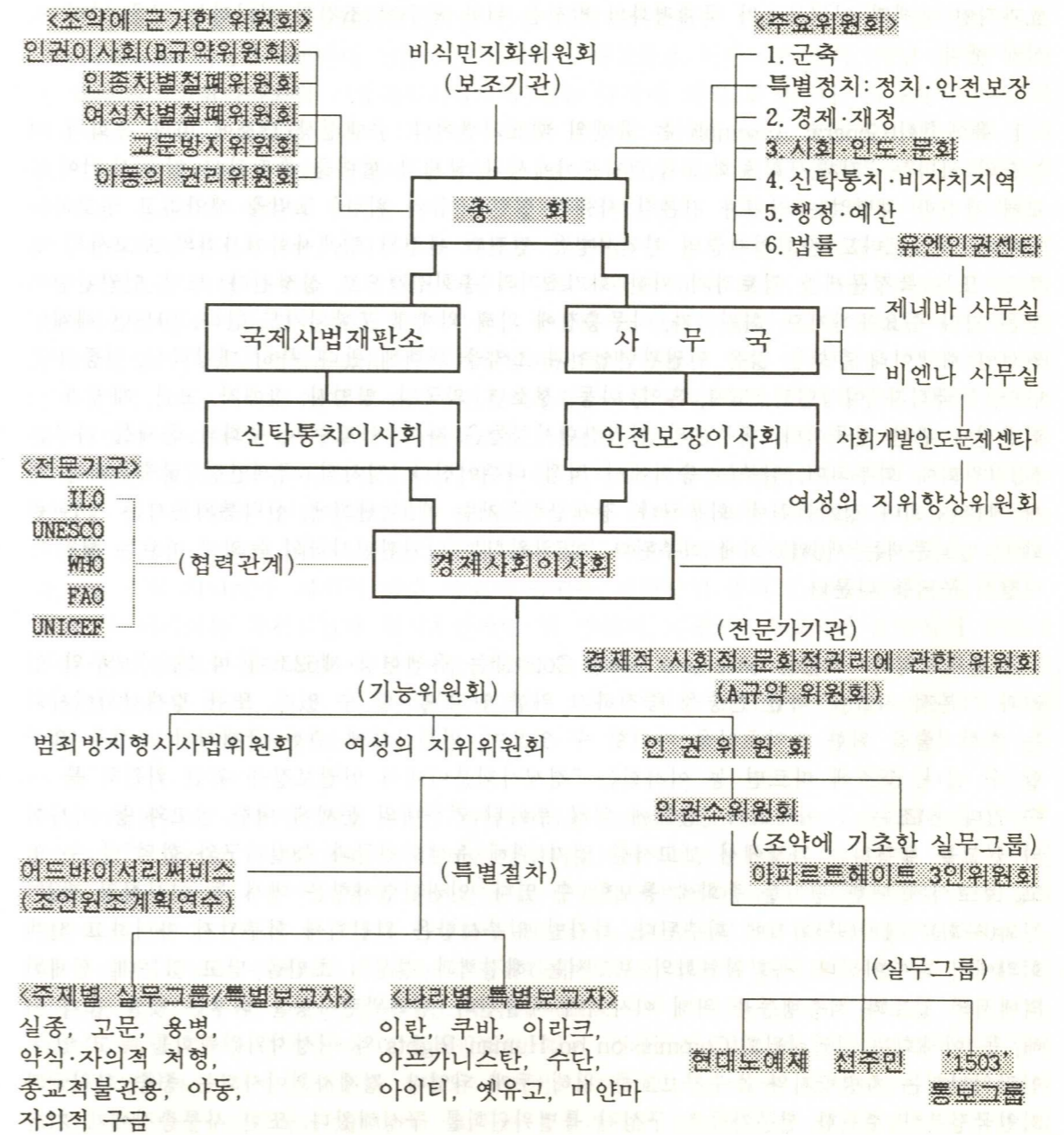
Twenty-five years later, we can conclude no better than to repeat these words. Our hope is that this time, in 1993, they will be heeded.

<sup>34</sup>Seán MacBride, Introduction, 8 Journal of the I.C.J. iii, iv-vi (1968).

### G. 유엔 인권관련 주요기구표 및 설명

(정리: 김한균)

#### UN 인권관련 기구표



(제공: 인권하루소식)



인권과 기본적 자유의 보호증진에 관한 유엔의 관심은 “자유, 정의와 세계평화의 근본인 모든 인류의 존엄성과 평등하고 양도할 수 없는 권리에 대한 승인”의 국제사회에 의한 실현과, 유엔회원국들의 “유엔과의 협력하에 인권과 기본적 자유에 대한 보편적 존중의 증진실현”에의 약속에 직접적으로 근거하고 있다. 따라서 “인권과 기본적 자유에 대한 인종, 성, 언어, 종교에 관련한 차별없는 존중의 증진”에서 국제적 협력의 달성이라는 유엔헌장의 목표는 그 기초자들의 인권에 대한 깊은 관심의 분명한 표현인 것이다. 실로 2차대전의 경험은 효과적인 국제적 인권보호가 국제평화와 발전을 위한 필수적 조건의 하나라는 점을 널리 인식케 했다.

1. 유엔총회(General Assembly)는 유엔의 대표기관이다. 유엔헌장 13조에 따라 총회의 기능중의 하나는 “경제, 사회, 문화, 교육, 건강분야에서의 국제적 협력을 증진하고 인종, 성, 언어, 종교에 관련한 차별없는 인권과 기본적 자유의 실현을 돕기 위한” 노력을 제안하고 권고하는 것이다. 무엇보다도 총회의제중의 인권사항은 인권과 관련된 경제사회이사회의 보고서의 일부로, 또는 특정문제를 검토하기 위한 회기초기의 총회결정으로 상정된다. 또한 인권관련사항은 기타 주요유엔기관, 회원국가, 사무총장에 의해 의제에 포함되기도 한다. 1948년 세계인권선언 채택이래 총회는 많은 인권관련선언과 조약을 채택해 왔다. 특히 대량학살, 인종차별, 난민, 무국적자, 여성인권, 노예, 혼인, 아동, 청소년, 외국인, 망명자, 장애인, 고문, 개발과 사회발전에 관한 것들이다. 대부분의 인권관련사항들은 사회, 인도주의, 문화의 문제를 다루는 제3위원회에 회부되며, 일부는 총회에서 직접 다루어진다. 정치적, 국제안전, 군축문제는 대개 제1위원회나 정치특위에 회부된다. 경제관련문제는 제2위원회에, 신탁통치문제는 제4위원회에, 법적문제는 제6위원회에 회부된다. 제5위원회는 인권관련사항의 논의에 따르는 행정적, 재정적 문제를 다룬다.

2. 경제사회이사회(Economic and Social Council)는 유엔헌장 제62조에 따르면 “모든 인권과 기본적 자유에 대한 존중을 증진하기 위한 권고”를 할 수 있다. 또한 경제사회이사회는 총회제출을 위한 조약초안을 마련할 수 있으며, 인권문제에 관한 국제회의의 소집을 요구할 수 있다. 68조에 따르면 동 이사회는 “경제사회분야에서 인권보장을 위한 위원회”를 둘 수 있다. 64조는 동 이사회가 “총회에 의해 부여된 권한내의 문제에 대한 권고와 동 이사회 의 권고를 실행하는 과정에서 보고서를 얻기 위해 유엔회원국과 특별기구와 협의”할 수 있고, 보고서에 대한 평가를 총회에 통보할 수 있다. 인권관련사항은 대개 동 이사회 제2위원회(사회)의 1차(봄)회기에 회부된다. 하지만 일부사항은 위원회에 회부되지 아니하고 전체회의에서 다루어진다. 사회위원회의 보고서는 해결책과 결정의 초안을 담고 있는데, 전체회의에서의 검토와 최종행동을 위해 이사회에 제출된다. 인권관련사항을 다루는 것을 돕기 위해, 동 이사회는 인권위원회(Commission on Human Rights)와 여성지위위원회를 두고 있다. 인권위원회는 차별방지와 소수자보호를 위해 두게 되었다. 경제사회이사회는 종종 회원국과 회원국정부가 추천한 전문가들로 구성된 특별위원회를 구성해왔다. 또한 사무총장에게 기술적문제에 관한 보고서를 작성할 특별보고자나 전문가위원회를 지명할 권한을 부여하기도 한다.

3. 인권위원회(Commission on Human Rights)는 1946년 경제사회이사회에 의해 설립되어, 매년 회의를 가진다. 인권과 관련된 모든 문제를 다루는 인권문제의 중심기구이다. 인권위원회는 인권관련연구와 권고와 국제조약초안마련의 활동을 하고 있다. 또한 인권침해에 관한 주장과 그러한 침해에 관한 통보(Communication)에 관한 조사를 포함해서, 총회나 경제사회이사회에 의해 주어질 특별임무를 수행한다. 인권위원회는 인권분야에서 다른 모든 유엔기구들과 밀접한 협력관계를 가진다. 또한 경제사회이사회가 유엔체제속에서의 인권관련활동을 조정하는 것을 돕는다. 인권위원회는 본래 국제인권헌장을 기초하기 위한 18회원국으로 구성되었는데, 지금은 3년마다 선출되는 43회원국 대표들로 이루어져 있다. 매년 6주간 회의를 하며, 경제사회이사회 기능위원회절차에 관한 규정에 따라 운영된다. 이사회회원국만이 투표권을 갖지만, 심의될 문제와 관련된 국가와 총회의 결정에 따라 또는 승인에 의해 국내운동단체도 관련된 사항의 심의에 참석할 수 있다. 전문기구와 기타 정부간기구도 관련문제에 대한 이사회 심의에 참여할 수 있고, 경제사회이사회와 협력관계에 있는 비정부기구도 인권위원회의 공개회의에 옵저버로서 대표를 파견할 수 있다. 인권위원회에는 차별방지와 소수자보호를 위한 소위를 포함해서 다수의 부속기관이 있다. 최근 인권위원회는 특정지역 내에서의 인권문제를 조사하기 위한 기구를 구성했다. 현재 다음과 같은 그룹들이 있다. 즉 남아프리카전문가 특별활동그룹, 인종차별범죄규제와 처벌에 관한 국제협약 제4조에 따라 설립된 세 그룹, 지속적 형태의 대량인권침해상황조사를 위한 활동그룹, 실종에 대한 활동그룹, 개발의 권리에 관한 정부전문가활동그룹, 인권과 기본적 자유의 증진에 대한 전반적 분석을 위한 활동그룹 등이 그것이다. 게다가 동 이사회는 인권침해에 대처하기 위해 다양한 방법을 동원해 왔다. 인권상황연구를 위해 이사회에 의해 임명된 특별보고자나 대표자들로 구성된 전문가에 의한 사실조사도 그중의 하나인데, 아프가니스탄, 칠레, 엘살바도르, 과테말라, 이란 등의 지역이나, 자의적 처형, 종교적 불관용, 대량난민 등의 문제에 관해서 행해진다. 또한 동 이사회는 국제선언과 협약초안작업 즉 민족적, 인종적, 종교적인 소수자의 권리에 관한 협약초안, 아동의 권리에 관한 협약초안, 보편적으로 승인된 인권과 기본적 자유를 증진하고 보장할 개인, 집단, 사회기관의 권리와 의무에 관한 선언초안작업을 보조하기 위한 비공식적 공개활동그룹을 조직하고 있다.

4. 차별방지와 소수자보호를 위한 소위원회(Sub-Commission on Prevention of Discrimination and Protection of Minorities)는 1947년 인권위원회에 의해 설립되었다. a) 특히 세계인권선언에 따라 인권과 기본적 자유에 관련된 모든 종류의 차별방지 그리고 인종, 종교, 언어상의 소수자보호에 관련해서 연구하고 이사회에 권고하며, b) 경제사회이사회나 인권위원회에 의해 부여된 기능을 수행한다. 소위는 인권위원회에 의해 임명된 26인의 전문가로 구성되어 있는데, 각국 정부에 의해 지명되지만 국가의 대표로서가 아니라 개인의 자격으로 활동한다. 소위는 매년 4주간 회합한다. 인권위원회와 같이 경제사회이사회 기능위원회절차규정에 따라 운영된다. 여기에는 회원과 정부의 옵저버, 유엔기구, 전문기구, 정부간기구, 경제사회이사회 자문 비정부기구들이 참여한다. 소위는 특정과제를 보조하는 세 활동그룹을 가지고 있는데, 통보에 관한 활동그룹, 노예에 관한 활동그룹, 소수민족에 대한 활동그룹이 그것이다. 통보에 관한 활동그룹은 인권침해의 주장을 담은 통보를 조사하고, 지속적 형태의 대량인권



침해에 대해 주의를 기울인다. 노예에 관한 활동그룹은 노예, 노예매매, 아동노동착취, 창녀 착취분야의 조사를 한다. 소수민족에 대한 활동그룹은 소수민족의 인권보호에 관련된 조사를 한다. 게다가 소위는 회기중 특정문제를 다루기 위해 활동그룹을 만들 수 있다. 이러한 예가 인권규약의 보편적 수용촉진을 위한 활동그룹, 피구금자의 권리에 대한 활동그룹, 피구금정신병자문제에 관한 활동그룹이다. 각각의 활동그룹은 소위에 보고서를 제출한다. 그 기능수행과 관련한 문제를 포함한 일부분문에 관해서 소위는 자신의 결정과 결의를 채택할 수 있다. 소위는 매 회기의 활동에 대한 보고서를 인권위원회에 제출한다.

5. 여성의 지위위원회(Commission on the Status of Women)는 1946년 경제사회이사회에 의해 설립되었다. 그 기능은 a) 정치, 경제, 사회, 교육분야에서 여성의 권리증진에 대해 경제사회이사회에 제출할 보고서와 권고를 준비하며 b) 여성의 권리분야에서 즉각적인 조치가 요구되는 긴급사안에 대해 동 이사회에 권고 제안한다. 남성과 여성이 동등한 권리를 가져야 한다는 원칙을 실현하기 위해서이다. 동 위원회는 경제사회이사회에 의해 선출되는 4년임기의 32개 유엔회원국대표로 구성되며, 격년으로 뉴욕이나 제네바에서 회합한다. 회기중에는 회원국, 유엔회원 및 비회원국 옵저버, 유엔기구들과 전문가 대표, 비정부기구 옵저버등이 참여한다. 전미여성위원회와 아랍여성위원회는 동 위원회에 매 회기마다 보고서를 제출한다. 여성지위위원회는 경제사회이사회가 검토할 결의와 결정과 그 초안을 채택 마련할 수 있다.

6. 인종차별철폐위원회 (Committee on the Elimination of Racial Discrimination)는 1970년에 모든 형태의 인종차별철폐에 관한 국제협약(International Convention on Elimination of All Forms of Racial Discrimination) 8조에 따라 설립되었다. 비밀투표로 선출된 인권분야에서 높은 도덕성과 능력을 인정받은 4년임기의 18인의 전문가로 이루어져 있다. 동 위원회의 과제는 협약 제2장에 제시된 바와 같이 국가가 채택하고 있는 협약상 조항에 영향을 주는 법적, 사법적, 행정적 조치에 대한 보고서를 검토하고, 검토결과와 기타정보를 근거로 제안과 일반적 권고를 하며, 협약의 적용에 관한 당사국간의 분쟁을 해결하며, 동 위원회를 승인하는 국가의 개인이나 그룹으로부터의 통보를 받고 검토하는 것이다. 필요하다면 협약의 적용에 관한 분쟁의 우호적 해결을 위해 조정특위를 구성할 수 있다. 그같은 조정특위는 관련된 모든 사항을 위원회에 보고하며, 분쟁의 우호적 해결을 위한 권고를 한다. 또한 협약 15조에 따라 동 위원회는 신탁통치이사회와 자치특위에 의해 제출된 신탁통치지역과 기타 총회 1514결정이 적용되는 지역에 관련된 인종차별에 관한 청원서, 보고서, 기타 정보들을 검토한다. 동 위원회는 1970년 1월19일 최초 회합 이래로 봄과 여름 두차례 회의를 열고 매년 총회에 보고한다. 보고서검토대상 당사국의 대표자들은 회의에 참여해서 질문에 답하고 추가정보를 제출한다. 또한 동 위원회는 인종차별상황에 대해 논평하거나 총회에 보고할 수 있다. 총회의 요청으로 동 위원회는 최근 남아프리카에서의 인종차별적 정권의 억압에 맞서 싸우는 이들의 상황에 특히 관심을 가지고 있다.

7. 인권이사회(Human Rights Committee)는 1977년 시민적 정치적 권리에 관한 국제협약

제28조에 따라 설립되었다. 4년임기로 당사국의 비밀투표에 의해 선출되는 인권분야에서의 높은 도덕성과 능력이 인정된 18 위원으로 구성되어 있다. 위원들은 개인적 자격으로 선출되고 직무를 수행한다. 동 이사회는 협약 제40조에서 45조에 제시되어 있는 바와 같이, 협약에 인정된 권리에 영향을 주는 당사국들의 조치들과, 그 권리항유에서의 진전에 대한 보고서를 작성하며, 당사국에게 적절한 논평과 함께 보고서를 전달하고, 협약적용에 관한 당사국간의 분쟁을 해결하는 기능을 수행한다. 그리고 필요하다면 협약의 적용에 관한 분쟁의 우호적 해결을 위해 조정특위를 구성할 수 있다. 그 특위는 위원회 의장에게 문제를 다루지 12개월안에 관련당사국에 통보하기 위한 보고서를 제출해야 한다. 협약 41조에 따라 당사국은 언제나 다른 국가로부터 협약상 의무의 이행을 완수하지 못하고 있다는 취지의 통보를 위원회가 전달받아 심의할 권한이 있음을 인정해야 한다. 이 조항에 따른 통보는 특별절차에 따라 다루어진다.

시민적 정치적 권리에 관한 국제협약 선택의정서에 따라, 협약상의 권리침해를 주장하고 모든 가능한 국내적 구제조치를 거친 자는 인권이사회에 심의를 요청하는 통보문서를 제출할 수 있다. 선택의정서의 당사국에 관련된 사안이 아닌 경우에는 인권이사회는 통보를 받을 수 없다. 인권이사회는 개인이나 관련당사국이 제출한 문서정보를 통해서 통보를 심의한다. 그리고 이사회는 견해를 당사국과 통보자에게 송부한다. 당사국대표는 제출한 보고서를 심의하는 인권이사회 회의에 참석할 수 있다. 또한 인권이사회는 더 많은 정보가 요청되는 당사국에게 특정회의에 대표자를 참석시킬 수 있음을 통지한다. 그 대표자는 이사회가 요구하는 질문에 대한 답변과 사전에 이사회에 제출되었던 국가보고서에 대해 연설할 수 있다. 또한 추가정보를 제출할 수도 있다. 인권이사회는 보통 매년 세차례 회의를 하고, 경제사회이사회를 통해 총회에 매년 보고서를 제출한다. 매 회기마다 인권이사회는 국제협약 당사국들이 협약상의 권리실현을 위한 조치들과 권리항유에 있어서의 진전, 협약이행에 있어서의 문제점들에 대해 제출한 보고서를 심의한다. 이사회는 제출국의 대표자가 참석한 공개회의에서 보고서를 심의한다. 또한 이사회는 매 회기 통보에 관한 실무그룹의 도움을 받아, 선택의정서에 따른 통보를 심의한다. 선택의정서에 따른 이사회의 활동에 관련된 모든 문서는 비공개이며, 비공개회의에서 심의된다. 하지만 이사회의 최종결정은 공개된다. 동 이사회는 연례보고서에 선택의정서에 다른 활동내용을 포함시킨다. 또한 일반적 권고와 정기국가보고서심의에 연관된 문제목록기안을 돕는 5명이내의 실무그룹을 조직한다. 1987년말까지 87개 국가가 시민적 정치적 권리에 관한 국제협약 당사국이 되었고, 그 중 39개국은 선택의정서를 비준했으며, 21개 국가는 협약 41조에 따라 인권이사회가 국내분쟁관련통보를 심의할 권한을 인정하고 있다.

8. 경제 사회 문화적 권리 위원회(Committee on Economic, Social and Cultural Rights)는 1985년 경제사회이사회에 의해 설립되었다. 인권분야에서의 능력을 인정받고 개인적 자격으로 임무를 다하는 18인의 전문가로 구성되어 있으며, 매 4년마다 경제 사회 문화적 권리에 관한 국제협약(International Covenant on Economic, Social and Cultural Rights) 당사국에 의해 지명된 인사명단에서 비밀투표로 선출된다. 동 위원회는 협약이행과 관련된 기능을 수행하는데, 당사국이 취한 조치들과 권리보장에 있어서의 진전에 관한 당사국제출보고서를



심의하고, 당사국과 전문기구들에 의해 제출된 보고서심의를 따라 경제사회이사회가 권고 내지 제안을 하는 협약관련 감독기능을 보조한다. 인권이사회는 경우에서처럼 협약 당사국의 대표자는 경제 사회 문화적 권리위원회가 제출된 보고서를 심의하는 회의에 출석할 수 있으며, 제출된 보고서에 관한 연설과 위원회로부터 제기된 질문에 답할 수 있다. 동 위원회는 일년에 한차례 제네바에서 회의를 열어, 1987년말까지 91개국가가 경제적 사회적 문화적 권리에 관한 국제협약의 당사국이 되었다.

9. 여성차별철폐 위원회(Committee on the Elimination of Discrimination against Women)는 1982년 모든 형태의 여성차별철폐협약(Convention on the Elimination of All Forms of Discrimination against Women) 17조에 따라 설립되어 매 4년마다 당사국에 의해 지명된 인사명단에서 비밀투표로 선출되는 23인의 전문가로 구성되어 있다. 동 위원회는 뉴욕이나 비엔나에서 매년 한차례 이주간 회의를 연다. 동 위원회의 기본임무는 협약 17조와 같이 협약이행에 있어서의 진전을 살피는 것이다. 동 위원회의 연례활동보고서는 경제사회이사회를 거쳐 총회에 제출된다. 동 위원회는 당사국으로부터 받은 정보나 보고서에 대한 검토에 기초해서 제안이나 일반적 권고를 할 수 있다. 1987년말까지 94개국이 여성차별철폐협약에 가입하였다.

10. 고문방지위원회(Committee against Torture)는 1987년 고문 및 기타 잔인하고 비인간적이며 비열한 처우 내지 형벌 금지협약 (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) 17조에 따라 설립되어, 협약당사국에 의해 비밀투표로 선출되는 4년임기의 10인의 전문가로 구성되어 있다. 동 위원회의 임무는 협약 19조부터 24조와 같이 협약에 따른 당사국의 조치에 관한 보고서를 조사하고, 당사국 영역내에서 고문이 체계적으로 자행되고 있다는 근거있는 징후와 관련하여 비밀이 보장되는 한 비밀조사도 행한다. 또한 협약적용을 둘러싼 당사국간의 분쟁을 조정하는 특정기능을 수행하고, 필요한 경우 당사국 국내분쟁의 우호적 해결을 위한 임시조정위원회를 설치한다. 그리고 당사국관할에 속하는 개인으로서 협약위반으로 인한 피해자임을 주장하는 통보를 심의하고, 연례활동보고서를 당사국과 유엔총회에 제출한다. 1987년말까지 고문 및 기타 잔인하고 비인간적이며 비열한 처우 내지 형벌 금지협약에 27개국이 가입하였으며, 10개국은 협약 21조와 22조에 따라 국내분쟁과 개인의 통보에 대한 고문위원회의 심의 권한을 인정했다.

11. 유엔인권센터 (Centre for Human Rights)는 제네바에 위치한 인권문제와 가장 관련깊은 유엔사무국부서이다. 인권담당사무부총장과 6개 주요부서로 구성되어 있다. 인권센터는 유엔헌장, 세계인권선언, 다양한 국제인권협약에 제시된 인권과 기본적 자유의 증진과 보장에 있어서 총회, 경제사회이사회, 인권위원회 기타 유엔기구를 보조한다. 인권센터는 인권분야에서 유엔의 중심된 기능을 하는데, 인권과 관련하여 총회, 제3위원회, 경제사회이사회와 산하의 사회위원회, 인권위원회, 소수자보호와 차별방지를 위한 소위원회, 인종차별철폐위원회, 인권이사회, 경제 사회 문화적 권리위원회, 고문방지위원회 등의 유엔기구들에 실질적인 도

움을 제공한다. 관련기구의 요청에 따라 인권문제에 대한 연구와 조사를 수행하며, 인권실현에 대한 보고서를 마련한다. 또한 인권관련 자문서비스나 기술적 보조프로그램을 관리하며, 인권관련비정부기구,외부기관,매체와의 협의를 조정한다. 정보를 수집 분석하고, 출판을 한다.



## H. 유엔의 인권침해 제소절차

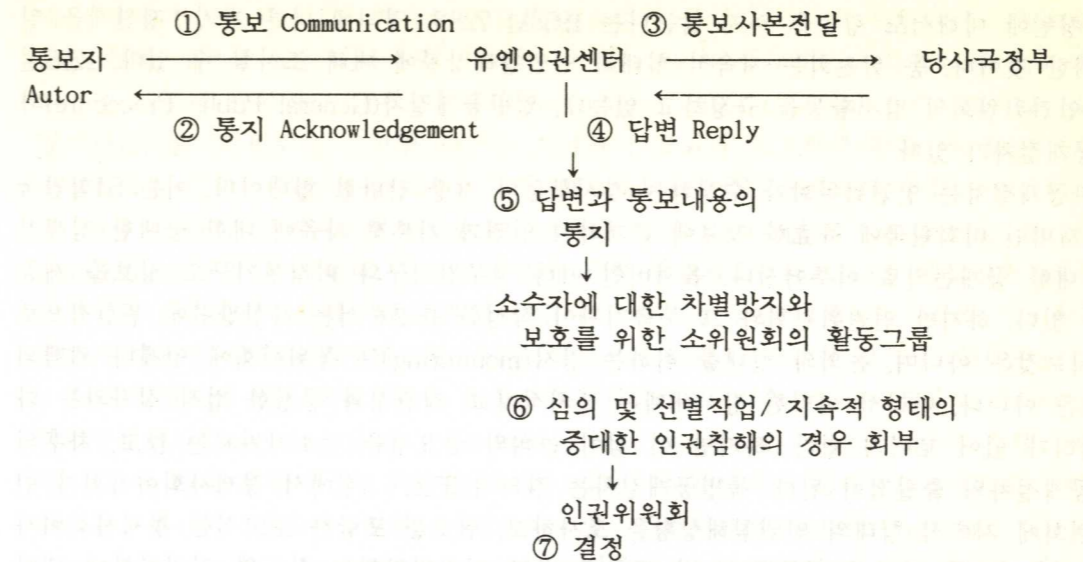
(정리: 김한균)

유엔은 인권문제의 중요성을 인식하고 개별국가의 국내관할권을 넘어 국제적 보호의 대상이 되도록 하는데 많은 노력을 기울이고 있다. 물론 국내문제에 대한 국제적 감시를 꺼리는 각국의 태도로 인해 인권보호를 위한 국제적 제도는 심각한 한계를 가지고 있는 것이 분명하지만, 그럼에도 제한된 영역에서나마 인권문제에 대한 국제여론을 환기시키고 인권상황을 개선하는데 의미있는 기여를 해 오고 있다. 유엔가입과 인권보호관련 국제조약의 가입에 따라 국제인권법의 적용과 관련하여 우리나라의 인권상황해결에 있어서도 새로운 국면이 전개되고 있다. 즉 이제까지 주목되지 못했던 국제적 기준에 따라 우리의 인권침해현실을 검증하고, 현실적으로도 국내법과 사법제도가 한계를 드러내고 있는 인권문제개선에도 일정정도 기여할 수 있게 된 것이다. 따라서 국제인권법이 정하고 있는 기준과 보호절차에 대한 적극적인 인식은 국내인권운동에도 하나의 도움이 될 수 있을 것이다.

### 1. 1503 절차(1503 procedure)

유엔 경제사회이사회 산하 인권위원회(Commission on Human Rights)는 인권증진과 보호를 위한 기능을 담당하고 있다. 동 위원회 산하에는 소수자에 대한 차별방지와 보호를 위한 소위원회(Sub-Commission on the Prevention of Discrimination and Protection of Minorities)가 구성되어 있고, 이 소위원회에서 경제사회이사회의 1503호 결의(resolution 1503 of 27 May 1970)에 따라 진행되는 "인권과 기본적 자유침해에 관련된 통보를 다루는 절차"가 1503절차이다. 이 절차는 인권침해의 명백한 증거를 제시하는 개인이나 그룹 또는 단체에 의한 통보(Communication)가 있을 때 시작된다. 이 절차를 이용하여 인권침해상황을 통보하기 위해서는 지속적 형태의 중대한 인권침해에 대한 증거를 제시할 수 있어야 한다. 따라서 구체적인 피해자들의 사례뿐만 아니라 침해상황에 관련된 통계자료, 정부의 조치내용, 비정부인권단체의 보고서 등이 제출되어야 한다. 1503절차의 대상인 인권침해는 시민적 정치적 권리 뿐만 아니라 세계인권선언이 확인하고 있는 경제 사회 문화 제권리의 침해도 포함하고 있기 때문에, 가장 광범위한 인권보호절차라고 할 수 있다. 이 절차는 통보의 수리여부에 대한 통지외에는 모두 비공개로 진행된다. 이 절차는 기본적으로 구체적인 피해자의 피해를 구제하기 위한 것이기 보다는 대규모의 인권침해를 자행하는 인권침해국을 상대로 하여 정치적 해결을 도모하는 것이기 때문이다.

따라서 통보자가 진행경과를 알 수 없고, 연간 3만여건의 통보중에서 극히 적은 수만 처리되고 있어서, 단기적으로 인권상황을 개선하는데는 한계가 있는 절차이다. 그러나 통보가 일단 소위원회의 심의를 통과하여 인권위원회심의회에 회부되면 당사국의 이름이 인권위원회 연차보고에 공개되기 때문에 인권침해국으로서 국제적인 압력을 피할 수 없게 된다. 따라서 우리의 상황속에서는 근본적으로 정치적 경제적 문제현실에서 비롯되는 대규모의 인권침해 사례들과 관련하여 이용될 수 있을 것이다.



- 결정유형
- 1) 지속적인 중대한 인권침해가 있다고 할 수 없다는 이유로 검토종결
  - 2) 인권침해상황은 인정되지만 특별절차를 취할 만큼 중대한 것은 아니므로 다음해까지 심의를 계속
  - 3) 인권침해상황에 대해 다른 특별절차를 마련
  - 4) 더 상세한 정보를 얻거나 인권침해여부의 사실확인을 위해 결정연기 (임시전문가위원회설치)
  - 5) 사태의 중요성에 비추어 충분한 연구를 결정 (특별보고자임명)
  - 6) 인권침해상황을 개선하기 위한 조치를 당사국정부에 제시하고 전문가를 파견
  - 7) 중대한 인권침해상황에 대한 더 자세한 연구를 위해 임시전문가위원회 구성
  - 8) 인권침해상황의 공개

1503절차상의 통보를 전할 곳은,

Centre for Human Rights

UN Office at Geneva

1211 Geneva 10, Switzerland

### 2. 1235 절차

1967년 6월 6일 유엔경제사회이사회는 결의 1235호를 통해 인권위원회(Commission on Human Rights)와 소수자보호와 차별방지를 위한 소위원회에 인권과 기본적 자유에 대한 중대한 침해에 관련된 정보를 조사할 권한을 부여했다. 1235결의는 이제까지 인권에 관한 어



때한 청원에 대해서도 행동을 하지 않는다는 1958년 728호 결의에 따른 자기부정원칙을 일부 폐기한 것이다. 동 위원회는 지속적 형태의 인권침해 상황에 대해 조사할 수 있다. 1235절차는 인권위원회의 감시활동을 규정하고 있는데, 일반공개절차(General Public Procedure)와 특별공개절차가 있다.

일반공개절차는 인권위원회가 수행하는 감시활동의 가장 간단한 형태이다. 이는 54회원국과 옵저버인 비회원국에 유효한 정보에 근거하여 인권과 기본적 자유에 대한 중대한 침해 상황에 대한 공개논의로 이루어진다. 옵저버인 여타 정부간기구와 비정부기구도 정보를 제공할 수 있다. 하지만 인권위원회와 그 부속기관이 작성한 특별문서는 사실판단에 우선적으로 고려되는 것은 아니며, 논의의 형태를 취하는 감시(monitoring)는 동위원회에 언제나 채택되는 것은 아니다. 따라서 이러한 감시체계는 정치적이고, 객관성과 공정한 법적 절차와는 다소 거리가 있어 보이기 쉽다. 하지만 이 점이 논의의 중요성을 감소시키지는 않고, 차후의 특별공개절차의 출발점이 된다. 특별공개절차는 결의 1235호 3절에서 경제사회이사회가 인권위원회에 지속적 형태의 인권침해 상황을 조사하고, 권고를 포함한 보고서를 경제사회이사회에 제출하도록 한 데서 비롯된다. 이 조항에 따라 인권위원회는 각국의 인권 상황에 대한 특별공개절차를 마련하고 있다. 또한 실종, 자의적 처형, 고문, 종교적 불관용과 차별, 자의적 구금 등에 대한 특별공개절차도 마련하고 있다. 즉 국가관련특별절차는 1967년에 구성되었는데, 중대하고 극단적인 인권침해 상황에 대한 분석으로 이루어지는 감시체계로 정의될 수 있다. 정보기구에 의해 작성되는 특별보고서가 필수적인 절차인데, 이 보고서는 중요하긴 하지만 결정적인 것은 아니다. 또한 인권위원회는 회원국과 비회원국, 기타 정부간기구와 비정부기구에 의해 서면 또는 구두로 제공된 정보를 이용한다. 따라서 감시행동은 주로 공개논의를 통해 수행되며, 대체로 결정의 형태인 특별조치의 채택을 목적으로 한다. 그리고 문제관련특별절차는 인권위원회가 각국의 인권 상황에 대한 보고서 제출을 위임한 특별보고자나 실무그룹을 지명하는 데서 비롯된다. 이 절차는 특히 심각한 인권침해 상황의 저지방법으로 빈번하게 동원된다. 특별공개절차는 당사국의 사전동의 없이도 절차를 구성할 수 있는 권한과 조사활동을 수행할 능력이 인권위원회에 부여되어 있다는 점으로 특징지어진다. 이는 특별공개절차가 인권보호를 위한 조약외의 감시체계로서 가장 효과적이게 한다.

### 3. 국제노동기구(ILO)의 절차

유엔 전문기구인 국제노동기구(ILO)는 노동기본권문제를 비롯하여 아동노동, 빈민문제, 산업보건, 사회보장과 관련된 광범위한 분야에서의 권리를 보장하기 위해 조약과 권고를 채택하며, 구제절차도 마련해 놓고 있다. ILO의 인권보호절차는 가장 효율적이고 철저한 것으로 평가되는데, 조약과 권고의 적용에 관한 전문가위원회(The Committee of Experts on the Application of Conventions and Recommendations)와 조약과 권고의 적용에 관한 총회위원회(The Conference Committee on the Application of Conventions and Recommendations)를 통해 이루어진다. 전문가위원회는 가맹국가 조약의 적용 상황에 관하여 제출한 보고서

와 사용자와 노동자단체가 제출한 자료를 검토하여 문제가 있다고 판단되면 직접요구(direct request)를 정부와 노동자, 사용자 단체에 송부한다. 보다 심각하고 지속적인 문제에 대해서는 의견을 정부에 송부하고 국제노동회의(International labor conference)에 제출하는 보고서에 공개한다. 총회위원회는 보고된 사건을 조사하여 총회에 보고하게 된다. 국제노동기구의 제소절차에는 ①진정(Representation), ②제소(Complaint), ③고용차별에 관한 특별조사, ④결사의 자유에 관한 특별제소절차(Special procedures for complaint concerning Freedom of association)가 있다. 그런데 결사의 자유에 관한 특별제소절차는 다른 제소절차들과는 달리 당사국의 개별조약비준여부와 관계없이 결사의 자유에 관한 국제노동기구의 기본원칙을 위반한 데 대하여 제소가 인정되므로, 우리나라에서도 이용이 가능할 것으로 기대된다.

즉 특별절차에 의한 제소심사는 노동자, 사용자단체로부터의 제소는 결사의 자유에 관한 집행기구위원회(Governing Body's Committee on Freedom of Association)가, 집행기구위원회의 권고에 따라 집행기구가 회부한 제소와 비가맹국에 대하여 경제사회이사회로부터 송부된 제소는 결사의 자유에 관한 사실조사 및 조정위원회(Fact-finding and Conciliation Commission on Freedom of Association)가 다루게 된다. 그런데 이 심사권한은 결사의 자유를 보장한 국제노동기구헌장으로부터 오는 것이기 때문에, 당사국이 1948년 결사의 자유와 단결권보호조약이나 1949년 단결권 및 단체교섭권조약을 비준하지 않았어도 특별절차에 의한 제소가 가능한 것이다. 따라서 정부가 ILO의 조약들을 비준하지 않은 채 노동자의 권리를 억압하는 상황(예컨대 전교조 문제, 제3자개입금지, 복수노조금지 등의 문제)에서 ILO의 특별절차는 조약비준 없이도 제소가 가능하다는 점에서 의미있는 제도가 아닐 수 없는 것이다.

결사의 자유에 관한 집행기구위원회의 경우에는

① 제소 : 문제관련 사용자, 노동자 단체, ILO에 의해 협의자격을 부여받은 국제적 조직 또는 문제관련 산하단체가 있는 국제적 조직의 제소가 있으면 → ② 조사 : 집행기구위원회는 서면, 구두진술을 통한 심사를 거쳐 결사의 자유가 침해되었다고 판단되는 사안에 대하여 → ③ 권고 : 정부에 대하여 일정조치 또는 법률의 개정을 권고하거나, 당사국 정부에 계속 보고하도록 요구하거나, 전문가위원회에 회부 또는 사실조사 및 조정위원회에 회부할 것을 집행기구에 권고한다.

결사의 자유에 관한 사실조사 및 조정위원회의 경우에는

① 사건의 제기 : 집행기구의 권고에 의해 집행기구가 회부하거나, ILO의 권고에 의해 집행기구가 회부하거나, 당사국 정부가 요구하거나, 유엔경제사회이사회에 의해 회부되는 경우 → ② 사실조사 및 조정 : 진상을 조사하고 분쟁해결을 위한 권고하며, → ③ 결정 : 특별보고서를 작성한다.

ILO의 절차에 관한 연락처는,  
International Labour Organization  
International Labour Standards Department











