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

Summary of arbitrary executions

Report by the Special Rapporteur, Mr. S. Amos Wako,
appointed pursuant to resolution 1982/35 of 7 May 1982
of the Economic and Social Council

1. In his report on Summary of Arbitrary Executions (E/CN.4/1993/16) chapter II, paragraph 10 (i), the Special Rapporteur mentioned the Governments from which he received replies to the note verbale dated 17 September 1982. Subsequent to the completion of that report the Special Rapporteur received replies from: Barbados, Greece, Mauritius, Netherlands, Philippines, Tunisia.
2. In paragraph 12 the Special Rapporteur mentioned the Governments from which he received replies to the note verbale dated 19 November 1982. Subsequent to the completion of that report, further replies were received from Argentina and Iraq and they are reproduced in the annex to this addendum.
3. Subsequent to the completion of the report the Special Rapporteur received a reply dated 11 February 1993 from Democratic Kampuchea, which is also reproduced in the annex.

Annex

COMMUNICATIONS FROM GOVERNMENTS

Responses to notes verbales dated 19 November 1982 and 7 and 14 January 1983

ARGENTINA

[Original: Spanish]

[8 February 1983]

With respect to the first-mentioned communication, it should be pointed out that the text was already transmitted to the Argentine Government some years ago by the Secretary-General of the United Nations (note G/SO 215/1 ARGEN, of 17 July 1980), in relation to an Amnesty International communication of 30 May 1980. The transmission was effected under the confidential procedure of Economic and Social Council resolution 1503 (XLVIII) and the reply from this Permanent Mission was submitted in note 225/81 of 5 August 1981.

It is not the intention of this Permanent Mission to reproduce in the present note the terms of the reply deserved by the Amnesty International communication, or even to make a general reference to the main concepts referred to therein. That would be in breach of the applicable procedures, which should be scrupulously respected not only by countries members of the system but also, and particularly, by international organizations. The communication and the reply thereto were, in their time, the subject of the procedure provided for by the rules in force for such cases, and it is therefore in no way fitting to repeat the exercise by a means for which neither the Commission nor any other United Nations organ has given authorization or made provision. Had the Commission desired to put an end, through the mission of the Special Rapporteur for summary or arbitrary executions, to the confidential procedure with respect to communications, that would have been done expressly and not through the granting of a mandate for the investigation of a phenomenon the scope of which, as in the case of many others considered by the Commission, remains to be identified.

The Argentine Government also notes that the Special Rapporteur sees fit to receive and transmit an allegation concerning events that presumably occurred several years ago, when the Economic and Social Council's request to the Special Rapporteur was for a report "on the occurrence and extent of the practice of such executions ..." (Economic and Social Council resolution 1982/35, paragraph 5).

The allegations transmitted by Amnesty International in May 1980 concern imaginary events reported to have occurred up to the beginning of 1979, or some four years ago. It is difficult in such a case to refer to the "occurrence of [a] practice".

For the reasons explained above, this Permanent Mission does not propose to reply to Amnesty International's second pamphlet, of 12 October 1982. It cannot, however, refrain from remarking how curious it is that the Special Rapporteur should have repeated reports of two cases which clearly belong to a country's police records and which are under investigation by the Argentine Judiciary, with the full co-operation of the authorities and the police. Moreover, the very organization from which the information emanated refrained from making specific allegations and merely hinted at certain indirect suppositions that deserve no credence whatsoever. On the contrary, the pamphlet in question gave an account of the deserved condemnation by the President of the Nation of one of the acts with regard to which the Minister of the Interior himself called for the appearance of witnesses.

It is also curious that the Special Rapporteur should have transmitted these police reports, which were not obtained through any of the many other bodies or procedures which the United Nations places at the disposal of persons or organizations wishing to report an alleged violation of human rights in any country of the world. In fact, the Special Rapporteur has, in his good faith, been taken unawares by persons desirous of prolonging an international campaign to discredit the Argentine Republic. These elements have already exhausted the possible means of seeking to destabilize the country, with no practical results, since all citizens are moving towards the restoration of democratic institutions through the national elections to be held this year in accordance with the guidelines established by the Argentine Government.

The Secretary-General has been, and is, a witness to the Argentine Government's efforts to co-operate with the international organizations concerned with the defence of human rights. In this spirit, the Government has always been prepared to provide any kind of information or comments required of it, in respect for international law and United Nations rules and practices. The present note cannot, therefore, be interpreted as indicative of a lack of interest on the Government's part concerning the allegations of which it has been informed, but must be viewed in the context of the rules in force and of the steadfast attitude of co-operation shown by the national authorities.

For the above reasons, the Special Rapporteur can only reject forthwith the allegations placed before him, thus preventing the attachment of any importance to politically-motivated accusations.

IRAQ

[Original: ENGLISH]

[5 January 1983]

1. The Government of Iraq has ratified the International Covenant on Civil and Political Rights in 1971 and honours faithfully its commitments to this Covenant.
2. Iraq was one of the Countries which was totally in favour of and supportive of ECOSOC resolution 1982/35 on "Summary or Arbitrary Executions" and firmly believes in the principles contained therein. The Iraqi Government has demonstrated its readiness to co-operate fully with the Special Rapporteur and has made available to the Rapporteur in accordance with the Note of the Permanent Mission of Iraq No. 2/4/7 of 5 January 1983 complete information in reply to the questionnaire concerning "Summary or Arbitrary Executions". The information supplied has clarified that all courts of justice in Iraq follow juridical procedures stipulated in the laws of the country which are in harmony with the international legislations, regulations and conventions.
3. With regard to the documentary attachments to the note verbale of the Secretary-General of 19 November 1982 concerning allegations of some cases of summary executions, summary trials in camera, the Government of Iraq wishes to confirm that some of these allegations are unfounded, some are misinformation, some are politically motivated and the rest of them are misrepresentation of the facts. Furthermore the delegation of Iraq which participated in an observer capacity in the last session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, 16 August - 10 September 1982, refuted completely the same allegations and announced that Iraq had and has nothing to hide in this regard and was willing to receive a delegation from Amnesty International which raised these allegations in order that Amnesty could find for itself directly the truth and satisfy itself that procedures of all courts in Iraq are legal and constitutional. Amnesty was also invited to investigate the allegations.
4. Between 21 January and 28 January 1983 a delegation of Amnesty International headed by its Secretary-General visited Iraq. All possible facilities, official and unofficial were made available to the delegation to observe in the field the situation in Iraq. The delegation of Amnesty investigated for itself the cases referred to in the allegations and received first hand knowledge and documentary information from the high relevant authorities.

The delegation of Amnesty expressed clearly its opinion that it was convinced that Amnesty International should and would correct its prior opinion and information regarding those allegations it had before the visit and in the light of the evidence and true situation which the delegation investigated and received directly as a result of its visit to Iraq.

Summary executions

Crimes for which the death sentence is imposed in Iraq are specified in the Penal Code. By way of introduction to this subject, we wish to state the following:

1. Article 19 (a) of the Provisional Constitution promulgated by Revolutionary Command Council decision 792 of 17 July 1970 stipulates that all citizens shall be equal before the law without discrimination on grounds of sex, race, language or social or religious origin.

Article 20 stipulates that:

(a) The accused shall be presumed innocent until proved guilty at a legal trial.

(b) Defence shall be a sacred right at all stages of the investigation and trial, in accordance with the provisions of the law.

Article 21 of the Provisional Constitution states that:

(a) Punishment shall be personal.

(b) There shall be no crime or punishment except as defined by law. Punishment shall be imposed only in respect of an act the commission of which, in the eyes of the law, constitutes a criminal offence. The penalty imposed must not be more severe than that prescribed by law at the time of the commission of the offence.

Article 22 of the Provisional Constitution states that:

(a) The dignity of the human person must be safeguarded and it shall be forbidden to practise any form of physical or mental torture.

(b) No person shall be arrested, detained, imprisoned or searched except in accordance with the provisions of the law.

Article 91 of the Code of Criminal Procedure (Act No. 23 of 1971) stipulates: No person shall be arrested or detained except on the basis of an order issued by a judge or a court of law or in circumstances where arrest or detention is permitted by law.

Penalties

Article 1 of the Penal Code (Act No. 111 of 1969) states: No act of commission or omission shall be penalized except in accordance with a legislative provision under which the said act is regarded as a criminal offence at the time of its occurrence. Penalties or preventive measures not prescribed by law shall not be imposed.

Article 20 of the Penal Code clearly specifies that offences are to be divided into two separate categories, ordinary offences and political offences, the death sentence being commuted to life imprisonment in the case of political offences.

Offenders subject to the death sentence are defined as follows in the chapter of the Penal Code entitled "Offences Prejudicial to the External Security of the State":

1. Any person who commits an act likely to endanger the independence of the country (article 156).

2. Any person who joins the ranks of the enemy (article 157, paragraph 1).
3. Any person who conspires or colludes with a foreign State or its agents with a view to impairing the military operations of the Republic of Iraq (article 159).
4. Any person who assists the enemy to enter the country and stirs up sedition in the ranks of the people (article 160).
5. Any person who willfully helps to mobilize military or other personnel to serve the interests of a State at war with Iraq (article 161, paragraph 2).
6. Any person who helps the enemy to enter the country, who surrenders to the enemy any part of the country or of its strategic resources such as weapons, communications, factories, installations or funds, or who engages in the transmission of information or other forms of espionage (article 162).
7. Any person who, in time of war, attempts to jeopardize the military, political or economic situation of Iraq (article 164).
8. Any person who, in time of war, deliberately destroys documents relating to the external security of the State (article 164, paragraph 2).
9. Any person who attempts to organize a criminal conspiracy with a view to the commission of the offences specified in articles 156 to 174 of the Penal Code.
10. Any public servant who, in time of war or in furtherance of the interests of a foreign State, commits any of the following acts specified in article 177 of the Penal Code:
 - (a) The disclosure of a State secret.
 - (b) The transmission or disclosure of a national defence secret to a foreign State or one of its agents.
 - (c) The destruction, in the interests of a foreign State, of documents or material which constitute national defence secrets.

Offences prejudicial to the internal security of the State

These offences, which carry the death penalty, are as follows:

1. The use of force or violence in an attempt to overthrow the Iraqi republican regime or to change the Constitution or form of government by force of arms, if this results in the death of any person (article 190).
2. Taking command of a military force, without the authorization of the Government, for a criminal purpose and continuing to exercise such command in disregard of orders (article 191).
3. The instigation of armed insurrection leading to loss of life (article 192, paragraph 3).
4. The organization of an armed group for the purpose of committing illegal acts (article 193).

5. Any successful attempt to instigate civil or intercommunal strife (article 195).
6. The organization of an armed group for the purpose of occupying Government property, if such purpose is fulfilled (article 196).
7. The sabotage of oil installations or Government property (article 197, paragraph 1).
8. The use of explosives to destroy Government installations or damage the national economy (article 197, paragraph 2).
9. Any person who propagates Zionist or Masonic principles or who joins or advocates membership of Zionist or Masonic institutions (article 201).
10. Any person who sets up, establishes, organizes or directs in Iraq any association, body, organization, group or gathering, of any nature or type whatsoever, with a view to the commission of the acts specified in articles 190, 192, 199, 200, 201 and paragraphs (a), (b) and (c) of article 204.
11. Any person who deliberately conceals his previous party and political links and affiliations when joining the Arab Socialist Ba'ath Party or who, while a member of the Party, is found to have links with, or to be working for or in the interests of, any other political or party organization (article 200).

Offences constituting a danger to the public, and which are punished by the death penalty, are as follows:

1. The deliberate endangering on human life, if it leads to the loss of life (article 351, paragraph 1).
2. The death penalty is imposed for any of the following acts of murder specified in article 406, paragraph 1, of the Penal Code:
 - (a) Premeditated murder from ambush.
 - (b) Murder by a toxic substance or explosives.
 - (c) Murder committed for a base motive, in return for remuneration, or in a barbarous manner.
 - (d) If the victim is a lineal ascendant of the murderer.
 - (e) If the victim is a civil servant killed in the discharge of his official functions.
 - (f) If the murderer intended to kill two or more persons and did so through the commission of a single act.
 - (g) If the act of wilful murder is combined with one or more other offences involving wilful or attempted murder.

(h) If the act of wilful murder is committed with a view to the perpetration, facilitation or furtherance of a felony or misdemeanour punishable by imprisonment, or with a view to enabling the perpetrator or his accomplice to escape or avoid punishment.

(i) If the murderer, having already been sentenced to life imprisonment for wilful murder, commits a further act of wilful or attempted murder while serving his sentence.

3. A thief is punished by the death sentence if he tortures or treats his victim with extreme cruelty (article 441).

4. The death penalty is imposed on any person who initiates, takes part in, or attempts to carry out a conspiracy against the State. The murder of the President of the Republic or of any of his deputies, etc. is deemed to constitute conspiracy. The attempted commission of such crimes carries the same penalty as the crime itself (the Punishment of Conspirators Act No. 66 of 1971 promulgated on 20 July 1974).

The courts competent to try criminal cases in Iraq are the criminal courts, the military courts martial and the Revolutionary Court.

The jurisdiction of the various criminal courts is defined as follows in article 137 of the Code of Criminal Procedure:

(a) The criminal courts shall comprise the Criminal Court, the Higher Criminal Court and the Court of Cassation. These courts shall be competent to hear all criminal cases unless specific provision is made to the contrary.

(b) On the basis of a proposal from the competent Minister, the Minister of Justice may decide to vest a civil servant who is not a member of the judiciary with the authority to act as a judge enjoying the powers of criminal jurisdiction stipulated in special legislation to that effect.

Article 138 of the Code of Criminal Procedure defines the jurisdiction of the above-mentioned courts in the following manner:

(a) The Criminal Court shall be competent to pass judgement in cases involving misdemeanours and/or minor offences.

(b) The Higher Criminal Court shall be competent to pass judgement in cases involving felonies and other offences specified in the Code.

(c) The Court of Cassation shall be competent to review judgements and decisions relating to felonies, misdemeanours and other offences stipulated in the Code.

Iraqi law forbids the use of improper methods during the questioning of the accused. Article 127 of the Code of Criminal Procedure stipulates that no improper means shall be used to influence the accused with a view to obtaining a confession. Improper means shall include maltreatment, intimidation, inducement, promises, threats, psychological pressure, and the use of narcotics, intoxicants and drugs.

With regard to the public nature of the trial, article 152 of the Code of Criminal Procedure states that the trial proceedings must be conducted in public unless, with a view to the protection of security or morality, the court decides that all or some of them should be conducted in camera and attended only by the parties concerned. In such cases, the court may be closed to some categories of the public.

Article 156 of the Code stipulates that the accused shall appear in court without handcuffs or other means of restraint and the court may take the measures needed for the maintenance of security during the proceedings.

In order to protect the right of the accused to defend himself in court, article 144 (a) of the Code of Criminal Procedure stipulates that in cases involving felonies, the President of the Higher Criminal Court shall appoint a lawyer to defend the accused if the latter has not already appointed a legal counsel. The lawyer's fees, which shall be determined by the court once a verdict has been reached in the case, shall be paid by the State.

Under paragraph (b) of the same article, the lawyer is obliged to attend the proceedings and to defend the accused either in person or by delegating another lawyer to that end. The court is empowered to impose a fine on the lawyer if he fails to ensure the defence of the accused.

As stipulated in Revolutionary Command Council decision 565 of 30 April 1979, the Revolutionary Court is competent to hear cases involving the following offences:

1. Offences prejudicial to the internal or external security of the State, as defined in articles 156 to 222 of the Penal Code.
2. Offences specified in Legislative Act No. 141 of 1974 concerning the punishment of foreign intelligence agents, as amended.
3. Offences against the public authorities, as defined in articles 223 to 226 of the Penal Code.

This does not, however, apply to offences committed by members of the armed forces as defined in articles 225 and 226 of the Penal Code.

4. Offences defined in Legislative Act No. 8 of 1976 concerning the penalties for acting illegally as a commission agent.
5. Offences involving bribery, as defined in articles 307 to 314 of the Penal Code.
6. Offences involving embezzlement, as defined in articles 315, 316, 318, 319 and 320 of the Penal Code.
7. Offences involving narcotics, as defined in article 14 of the Narcotics Act No. 68 of 1965, as amended.
8. Offences involving weapons, as defined in article 29, paragraphs (1), (2) and (3), and article 30 of the Weapons Act No. 151 of 1968, as amended, and offences for which provision is made in Revolutionary Command Council decision 807 of 29 July 1975.

9. Any other offence which, under the law or by decision of the President of the Republic, must be referred to the Revolutionary Court.

From this it can be seen that the courts competent to pass the death sentence in Iraq are the higher courts (each of which consists of three members), the Revolutionary Court (also consisting of three members), and the permanent military courts for members of the armed services.

Judgements of the higher courts delivered at first instance, irrespective of whether they impose capital or other forms of punishment, are automatically referred to the Iraqi Court of Cassation for review in accordance with article 254 of the Code of Criminal Procedure, which stipulates that if the Higher Criminal Court delivers a judgement or decision at first instance, the case file must be sent within 10 days to the Court of Cassation for review even if no appeal has been made.

Death sentences are reviewed by the General Board comprising all the judges of the Court of Cassation, as stipulated in article 257, paragraph (b) of the Code of Criminal Procedure.

Death sentences passed by the military courts in respect of members of the armed services are reviewed by the General Board of the Military Court of Cassation in accordance with article 105 of the Code of Military Procedure.

Death sentences passed by the competent Revolutionary Court are final and not subject to review. However, such sentences are not carried out until they have been approved in a decree promulgated by the President of the Republic who, under the Constitution, is empowered to grant a pardon or commute the sentence of the condemned person.

Execution of sentence

The law makes the following provisions for the execution of death sentences:

Article 285 of the Code of Criminal Procedure promulgated under Act No. 23 of 1971 stipulates that:

(a) The person under sentence of death shall be confined in a prison until the arrangements are completed for execution of the sentence.

(b) The death sentence shall be carried out only by presidential decree in accordance with the provisions of the following articles:

Article 286

If the Court of Cassation confirms the death sentence, it must send the case file to the Minister of Justice for transmission to the President of the Republic with a view to the promulgation of a decree ordering the execution of the sentence, commuting the penalty, or granting a pardon to the condemned person. If the decree calls for execution of the sentence, the Minister of Justice shall issue an order in which reference is made to the presidential decree and the completion of the legal procedures.

Article 287

(a) If a condemned woman is found to be pregnant at the time of receipt of the order for the execution of sentence, the Prison Administration must inform the Public Prosecutor who, in turn, must apply to the Minister of Justice for postponement or commutation of sentence. The Minister of Justice must then submit this application to the President of the Republic and execution of sentence shall be postponed until a new order is issued by the Minister in accordance with the decision of the President of the Republic. If the new order calls for execution of the death sentence, the sentence shall not be carried out until four months after the date of the woman's delivery, irrespective of whether the delivery takes place before or after receipt of the order.

(b) The provisions of paragraph (a) shall apply to a condemned woman whose delivery takes place before the receipt of the order calling for execution of the sentence in cases where four months have not passed since the date of her delivery. The sentence shall not be carried out until four months after the date of her delivery, even if the new order calling for execution of sentence has arrived.

Article 288

The death sentence shall be carried out by hanging, within the prison or at any other place prescribed by law, after a period of not less than 30 days from the date on which the sentence is delivered by the competent criminal court. The sentence shall be carried out in the presence of the Execution Board consisting of a criminal court judge, a member of the Office of the Public Prosecutor if such member is able to attend, a representative of the Ministry of the Interior, the Prison Governor and the prison doctor or any other doctor appointed by the Ministry of Health. The condemned person's lawyer shall also be permitted to attend if he so desires.

Article 289

(a) The presidential decree ordering execution of the sentence shall be read out, by the prison governor, to the condemned person and those present.

(b) If the condemned person wishes to make a statement, it shall be recorded in writing by the judge and signed by the Execution Board.

(c) On execution of the sentence, the prison governor shall draw up a report, noting the doctor's certification regarding the time of death, for signature by the Board of Execution.

Article 290

The death sentence shall not be carried out on official holidays or festivals celebrated in the religion of the condemned person.

Article 291

The condemned person may be visited by his relatives on the day prior to the date set for the execution of sentence and the Prison Administration shall inform them accordingly.

Article 292

If the religion of the condemned person prescribes confession or other religious obligations prior to death, the necessary arrangements must be made to enable him to be visited by a minister of religion.

Article 293

The body of the condemned person shall be delivered to his relatives if they so request, failing which it shall be buried by the Prison Administration at the expense of the State. In all cases the burial shall take place without ceremony.

Neither age nor sex has any legal effect with regard to commutation of the death sentence, although a person afflicted with a medically certified mental illness is committed to a psychiatric hospital and is put on trial only after he is cured. However, certain mitigating circumstances are taken into account by the court in accordance with article 128 of the Penal Code, which stipulates that the commission of an offence for honourable motives or as a result of serious and undue provocation by the victim shall constitute mitigating circumstances which must be explained by the court when it gives the reasons for its verdict.

Criminal responsibility is also excluded by factors such as (1) lack of intent or inability to distinguish between right and wrong; (2) duress; (3) necessity; (4) being under 7 years of age.

Clemency may also be shown if the offender acted in the discharge of a duty, in exercise of a right, or in legitimate self-defence.

DEMOCRATIC KAMPUCHEA

[Original: French]

[11 February 1983]

1. At the request of the Permanent Mission of Democratic Kampuchea, the Commission on Human Rights has already circulated during its past three sessions several official documents which relate to the question under consideration by the Special Rapporteur and which would therefore be of interest to him. In any event, the Mission holds them entirely at the disposal of the Special Rapporteur.

2. It should be noted, however, that the Amnesty International text refers to testimony by refugees, which is inevitably difficult to verify. It also quotes information received from the capital Phnom Penh after January 1979, i.e. when it was occupied by a foreign army; such information cannot therefore be regarded as impartial.

For example, the type of reference made on page 6 to the so-called "revolutionary tribunal in August 1979", that is to say, after eight months of occupation, tends to further the interests of the occupier. Moreover, the phraseology used on page 9 where it is asserted that "In January 1979 the government of Democratic Kampuchea was overthrown by the forces of the Kampuchean United Front for National Salvation (sic) after an invasion by Vietnamese troops in December 1978" places the author in the difficult position of endeavouring to reconcile the fact of the Vietnamese invasion with the fallacy of the civil war which was invented in order to justify that very invasion.

3. The statement on page 10 is even more regrettable. To claim that "In Kampuchea [the killings] ended only when the (legal) government was overthrown" is, to say the least, dishonest since such an assertion implies total disregard of the tragedies caused by that Vietnamese invasion, of which hundreds of thousands of Kampuchean refugees have been daily witnesses for over four years.

How many persons in Kampuchea have so far fallen victim to famine, chemical weapons and killings committed by the Vietnamese army? Do these killings not constitute a question of human rights?

4. The Permanent Mission of Democratic Kampuchea categorically rejects the assertion on page 9, paragraph 4, concerning Mr. Ieng Sary, former Deputy Prime Minister with responsibility for Foreign Affairs. Such a Statement has never been made by Mr. Sary.

5. Lastly, the following points should be borne in mind:

(a) Through their fifth-column agents, the Vietnamese leaders committed horrendous crimes, including summary executions, against Kampuchea in the period 1975-1978, until the day when, realizing that they could not subjugate its people in that way, they resorted to the overt aggression unleashed on 25 December 1978.

Consequently, it is not surprising that Viet Nam should be prepared to distort the facts and devise all sorts of fabrications in order to reverse the roles and pose as the benefactor of Kampuchea.

(b) It is the present intention to investigate the period 1975-1978 and to ignore what has happened since the Vietnamese army attacked and occupied Kampuchea over four years ago?

Unfortunately, the above-mentioned text shows that this is indeed the intention of its author since he concludes by asserting that "the killings ... ended ... when the (legal) government was overthrown", i.e. when the Vietnamese army invaded and occupied Kampuchea. This is truly regrettable in a study that claims to defend human rights.