

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL
E/CN.4/1985/SR.28
28 February 1985
ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

Forty-first session

SUMMARY RECORD OF THE 28th MEETING

Held at the Palais des Nations, Geneva, on
Friday, 22 February 1985, at 3 p.m.

Chairman: Mr. CHOWDHURY (Bangladesh)

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GE.85-15385

The meeting was called to order at 3.25 p.m.

ORGANIZATION OF THE WORK OF THE SESSION

1. Mr. CHERNICHENKO (Union of Soviet Socialist Republics), speaking on a point of order, said that he would like the Secretariat to inform the members of the Commission about progress in the preparation of the documentation relating to item 5, concerning human rights in Chile. The events which were taking place in Chile and which were due to the dictatorial régime of repression were deeply disturbing, and it was regrettable that the members of the Commission had not received any documentation in that regard.

2. Mr. PACE (Secretary of the Commission) pointed out that documents E/CN.4/1985/38 and 41, on item 5, were available in all official languages, except Chinese in the case of document E/CN.4/1985/38. The Commission also had before it the report in document A/39/631, prepared by the Special Rapporteur on the situation of human rights in Chile. The additional report by the new Special Rapporteur was not yet ready, however, and it was not possible to say when it would appear. The Special Rapporteur would participate in the Commission's deliberations, and further information would be given concerning the publication of the documentation for item 5.

3. Mr. YAKOVLEV (Union of Soviet Socialist Republics) thanked the Secretary for the information, but said that his delegation was not satisfied with his statement. He deplored the delay in publishing the Special Rapporteur's most recent report and expressed the hope that the Secretariat would lose no time in producing and distributing the document, which the new Special Rapporteur had already announced at the previous session.

4. The CHAIRMAN noted the remarks by the representative of the USSR and assured him that the Secretariat would deal with the matter.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR: (Agenda item 10) (continued) (E/CN.4/1983/26; E/CN.4/1985/25 and Add. 1-4; E/CN.4/Sub.2/1983/30)

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT (A/39/662; A/Res.39/46)

(b) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES (E/CN.4/1985/15 and Add.1; E/CN.4/1985/NGO/10 and 23)

5. Mr. HEINEMANN (Netherlands) recalled that when the Argentine Minister for Foreign Affairs had made a statement at the Commission's fortieth session, he had underscored the particular seriousness of the human rights violations of torture and disappearances, and the capital importance of international co-operation in combating them. All too often, the United Nations tended to give credence to the responsible Government rather than to the victims of torture. Thus, in the late 1970s, the new President of Uganda had complained to the General Assembly about the failure of the United Nations to end his country's eight-year nightmare under Idi Amin. The cause of human rights was too serious to be a subject of propaganda between blocs.

6. The most recent example of what could be achieved among member countries of the United Nations had been the adoption by consensus of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature on 4 February 1985. His delegation, which had conducted the consultations leading to the adoption of the Convention by consensus, was encouraged to see that 21 States belonging to all the regional groups had already signed that instrument, and it urged other States to sign it as soon as possible. When the Convention entered into force, its effectiveness would depend to a large extent on the political will of Governments and the firmness with which they would apply its provisions at the national level in order to end once and for all the particularly inhuman practice of torture. As Mr. Kooijmans had already suggested, it would be useful for the Commission to set up a mechanism by means of which it could be notified of the occurrence of torture and receive and formulate proposals in order to combat the practice more effectively, since the ultimate objective was universal respect for the Convention.

7. With regard to the question of enforced or involuntary disappearances, the format of the report of the Working Group (E/CN.4/1985/15 and Add.1) had been improved, as a result of which the information in the report was more accessible. His delegation welcomed the reintroduction of the practice of appending annexes to the report. However, the report did not clearly indicate whether the number of disappearances had increased or decreased in a given period, and the answer to that question was important for anyone trying to follow closely developments in the situation in a particular country. His delegation would, therefore, like the Working Group and the Secretariat to consider the idea of preparing a statistical and chronological breakdown of actual cases of disappearances over the last five years.

8. For the first time, the Working Group was adopting a more structural approach in analysing the measures taken by Governments in countries where disappearances had been reported. Such an analysis would make for a better understanding of the mechanics of disappearances and for recommendations aimed at eliminating the practice. Regrettably, the Group had received very few replies to its request for information on the steps taken by Governments in accordance with paragraph 1 of General Assembly resolution 33/173. It was therefore important for the Commission to endorse the recommendation made in paragraph 302 (b) of the report. The Working Group might also draw up a questionnaire which would make it simpler for it to obtain information.

9. The Working Group had discharged its responsibilities in an admirable way, in particular by establishing more direct contacts with Governments and members of families of disappeared persons, as well as with local organizations and non-governmental organizations active in the field.

10. His delegation had been very interested in the details concerning the missions of Mr. Jonas Foli and Mr. Luis Varela Quirós to Bolivia, appearing in paragraphs 51 to 72 of document E/CN.4/1985/15. The members of the missions had expressed the view that the United Nations should try to develop the advisory services required to meet the needs of countries in situations similar to that of Bolivia. It was there unfortunate that the Working Group had not formulated recommendations along those lines. The international community's responsibility should not end with merely condemning those Governments that committed violations of human rights. It should contribute in a practical way to shedding light on all reported cases of disappearances, and his delegation hoped that the next report

of the Working Group would contain recommendations to that effect. For instance, United Nations agencies could help to make the considerable progress achieved in Argentina in the area of forensic medicine and its applications to investigations into cases of disappearances available to other countries in the region.

11. His delegation was concerned about the difficulties which the Working Group was encountering in carrying out its task and which were clearly not due to the Secretariat staff whose competence and dedication did not always receive sufficient recognition. The Working Group seemed to be complaining of a lack of continuity in the Secretariat support made available to it, and that was why it justifiably recommended that its mandate should be renewed for a further two years. It would also be helpful for it to be able to call on more Spanish-speaking staff, in view of the abundant documentation in Spanish it was required to process.

12. His delegation was surprised that almost half the 31 countries named in the report were situated in the western hemisphere. The Working Group might study the reasons for such a situation and ascertain whether it was true that disappearances occurred more frequently in Latin America or whether the only difference was that very little information was available on disappearances in other continents. Moreover, as the long list in paragraph 37 of the report (E/CN.4/1985/15) showed, in the western hemisphere there were numerous groups and organizations involved in the problem of missing persons and they communicated readily with the Working Group whereas, in other regions, few such organizations existed. Consequently the Working Group should try to make itself and its role better known.

13. It was, however, true that the Working Group had been established mainly in response to the problem of enforced disappearances that had occurred under the former Argentine military régime. The energetic measures taken by the new Argentine Government to investigate cases of disappearance and, in particular, the publication of the Sabato Commission's report which listed 8,961 cases of missing persons who had been arrested or abducted in the presence of witnesses, were most welcome, as was the exceptional co-operation given by the Argentine Government in inviting the Working Group to hold its next session in Buenos Aires.

14. There was still a large number of unresolved cases in El Salvador, and the new Salvadorian Government, which was certainly sincere in its intention to put a stop to cases of disappearance, would have to step up its efforts to clear up the unresolved cases. In Guatemala, it was regrettable that disappearances, affecting all sections of society, were still very common and very numerous (174, apparently, in 1984). The Guatemalan Government had not been particularly co-operative vis-à-vis the Working Group, and it would be logical for it to adopt a more responsive attitude if it was genuinely concerned about improving the human rights situation. The section of the report concerning the situation in Peru was very brief, which was surprising since the evidence and statistics provided seemed to indicate that the phenomenon of disappearance was spreading more rapidly in Peru than elsewhere in Latin America. However, the Working Group might first of all wish to evaluate the situation at first hand, since the Peruvian Government had informed it that it would be happy to welcome some of its members in Peru. That invitation should serve as an example to other Governments experiencing similar problems. At present, Peru was in an extremely difficult situation due to the activities of the Sendero Luminoso terrorist group, which was deliberately

seeking to destroy the democratic political structure that had replaced the military dictatorship. On the other hand, the existence of such a nihilist movement in no way justified the excesses attributed to the police or the armed forces in counter-insurgency actions and, similarly, those who criticized the excesses should not be regarded as supporters of the Sendero Luminoso movement. The Peruvian authorities should be encouraged to abide by the human rights laid down in international instruments.

15. His Government wholeheartedly supported the efforts being made by the Working Group to alleviate the suffering caused by disappearances as well as to acquire a better understanding of the phenomenon itself, and wished the Working Group success in its work.

16. Mrs. OGATA (Japan) welcomed the adoption, by consensus, on 10 December 1984 of General Assembly resolution 39/46, containing the text of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Although torture was already explicitly prohibited in several international instruments, the adoption of the Convention was particularly significant, since it intimated that the international community was determined to eliminate that abhorrent and all too common practice.

17. Although article 9 of the International Covenant on Civil and Political Rights stipulated that everyone had the right to liberty and security of person and that no one should be subjected to arbitrary arrest or detention, enforced or involuntary disappearances were reported throughout the world. As with violations of most civil and political rights, the disappearances usually occurred in a climate of political tension and required a determined but sensitive approach.

18. The report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1985/15 and Add.1) regrettably proved that the number of disappearances was increasing, especially in Latin America. The Working Group had, in fact, been set up largely in response to the sizeable number of disappearances taking place in Argentina. In December 1983, the Argentine Government itself had established a national commission to investigate missing persons. Her delegation believed that when serious efforts were being made at the national level to cope with the problem of disappearances, international bodies should offer additional support and encouragement.

19. Whereas the numbers of disappearances had decreased in Argentina, cases of that type had increased considerably in other countries, but very few of them had been brought to the attention of the Working Group. It therefore seemed that the existence and role of the Working Group were not sufficiently well known in certain regions of the world, and that error should be rectified.

20. She considered the emergency action procedure described by the Working Group in its report to be particularly useful. The procedure proved that the Group was able to take swift action to lessen the suffering of victims. Its secretariat used an electronic data processing system to obtain summaries of individual cases rapidly; that was surely a good example of the use of scientific and technological developments for the promotion of human rights. The Working Group's discreet and humanitarian approach also seemed to be extremely successful in securing the co-operation of Governments. Today, more and more Governments were sending representatives to the Working Group's meetings.

21. However, her delegation had some reservations on the suggestion by the Working Group that its mandate should be extended for a two-year period; it was not entirely sure that that was the best way of meeting the Group's organizational and financial requirements. Neither did her delegation consider that there was any need to draft an international instrument on enforced or involuntary disappearances. Many international instruments were already applicable in that regard, such as for instance, article 9 of the International Covenant on Civil and Political Rights. Many States already had national legislation prohibiting arbitrary arrest or detention. There was therefore room for doubt as to whether the elaboration of a convention in that area would be effective, and whether it would not be better to envisage the possibility of devising some sort of international monitoring system.

22. In the previous year, her delegation had stressed the need for the international community to make a careful study of the emergency situations in which derogations from certain obligations under the International Covenant on Civil and Political Rights were authorized in conformity with article 4 of that instrument. It found it useful that the Sub-Commission Working Group on Detention had begun to draw up an annual list of countries which had proclaimed or terminated a state of emergency; such a list, based on reliable information, could be the basis for an international monitoring system.

23. The co-operation of non-governmental organizations was particularly important in that area. They provided useful information on irregularities in the administration of justice, and helped to alleviate the suffering caused by such anomalies. The United Nations Centre for Human Rights already prepared very useful synopses of material received from non-governmental organizations for the use of the Sub-Commission; she would like the synopses to be made available to the Commission as well. Over-all co-operation among United Nations bodies, Governments and non-governmental organizations was needed in order to make progress towards eliminating irregularities in the administration of justice.

24. Mr. NDIAYE (Senegal) stressed that 10 years had elapsed between the adoption by the General Assembly of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment and the adoption of the Convention against Torture, on 5 December 1984. The new instrument was a major landmark on the road towards universal respect for human rights. Senegal had played an active part in the drafting work in the Working Group against Torture. Subsequently, it had proceeded to sign the Convention, and it intended to use its influence to ensure that 20 States members soon acceded to it, so that it could enter into force.

25. Before the Committee against Torture, provided for in article 17 of the Convention, began to operate effectively, a temporary body which would report regularly to the Commission would have to be set up.

26. Senegal would ratify the Convention, since its legislation had always been guided by the same principles. Further, a new code of criminal procedure, adopted in Senegal that very month, contained important changes designed to strengthen fundamental freedoms. The new code of criminal procedure provided stricter controls in respect of detention in custody, and a remedy was available to anyone who might have occasion to complain of police brutality. Preventive detention, which had become "provisional detention", was so organized that the examining magistrate was required to expedite the procedures, thus avoiding lengthy periods of pre-trial detention. Work was also proceeding on a draft revised criminal code. Its text would take account of all the recommendations contained in international instruments,

particularly those appearing in the Convention against Torture. The criminal legislation of Senegal therefore formed a coherent whole which fully respected the human rights of all persons subjected to any form of detention or imprisonment.

27. Mr. de PIEROLA (Peru), referring to the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1985/15 and Add.1), said that the Sendero Luminoso organization named in that report had committed acts of terrorism in Peru which had unleashed an aggravated cycle of violence; the organization had in particular massacred entire peasant communities. The authorities had been compelled to respond by actions which might have given rise to certain excesses by the forces of order; in such cases, however, the Government had taken immediate action, instructing the competent legal organs to conduct inquiries. Repression was repugnant to the Peruvian Government, which was deeply attached to respect for human rights, as attested by its accession to various relevant international conventions.

28. Members of the Working Group had been invited to visit Peru in order to see for themselves that the Peruvian Government implemented a policy of total respect for human rights. The Government had a number of reservations in respect of the paragraphs of the Working Group's report concerning persons alleged to have disappeared in Peru, but it supported the recommendations appearing in paragraph 302 of document E/CN.4/1985/15.

29. The addendum to the report (E/CN.4/1985/15/Add.1) drew attention to letters from the Working Group to the Peruvian Government dated 18, 30 and 31 January 1985, and cables dated 9 and 29 January and 5 February 1985, concerning alleged cases of disappearance. The addendum also referred to letters sent in reply by the Permanent Representative of Peru to the United Nations Office at Geneva dated 4, 8 and 11 February 1985. Annexed to those letters was the text of communications from the Vice-Minister and Secretary-General for Foreign Affairs of Peru, providing information on the situation of a large number of people reported to be missing. It would be noted that those answers again confirmed the Peruvian Government's attachment to the cause of human rights, and its appreciation of the work of the Commission and its specialized Group.

30. His Government would continue to keep the Working Group informed of its investigations. That assurance should dispel the misgivings expressed by the representative of the Netherlands.

31. Mr. PAN Weihuang (China) thanked the Assistant Secretary-General and the Special Rapporteur for their introductory statements and said that the adoption of the Convention against Torture, now open for signature, at a time when preparations were being made to celebrate the fortieth anniversary of the United Nations was a very important contribution to the cause of human rights. The Government and people of China had always been opposed to torture and cruel, inhuman and degrading treatment. There were provisions against torture in the Constitution and the Chinese criminal code. His delegation had been actively involved in drafting the text of the Convention and in the work of the Working Group against Torture. The Chinese authorities were currently giving consideration to the question of signing the Convention.

32. Mr. GUEVORGUIAN (Union of Soviet Socialist Republics) said that the adoption of the Convention against Torture, drawn up by the Commission was of particular symbolic significance at a time when preparations were being made to celebrate the fortieth anniversary of the United Nations and the defeat of the Nazis who had tortured and exterminated so many people in their camps. Regrettably, torture was widely used still today, particularly against members of progressive movements.

Torture was also commonly used to repress demonstrations against discrimination, apartheid and other human rights violations. The international community must strive to bring such practices to an end forthwith. He recalled that when the draft convention was being drawn up his delegation had suggested a provision designed to enlarge the concept of torture.

33. The phenomenon of "disappearances" continued on a large scale. Like torture, it could not leave one indifferent. Measures must be taken by Governments to put an end forthwith to practices involving disappearances, to investigate the situation of the victims, and punish those responsible. Cases were particularly frequent in countries known more generally for their systematic infringements of human rights, such as South Africa, Chile, El Salvador and Guatemala. In those and other countries with a repressive régime, disappearances were one way of eliminating people who were a threat to the current régime. He stressed that the Soviet people were particularly sensitive to that issue, since many Soviet citizens had disappeared during the Second World War, and 40 years after, advertisements trying to trace people who had disappeared at that time continued to appear in the press.

34. The Working Group on Enforced or Involuntary Disappearances had not been able to achieve a major breakthrough, as it recognized in its report (E/CN.4/1985/15). Its work was complicated by the objections raised by certain Governments against its methods of work. It would be desirable for the Group to adapt its methods more to the rules in use in the United Nations. It must adopt a pragmatic approach, but must not neglect certain cases simply because of objections on the ground of interference in the internal affairs of States.

35. It was the responsibility of the Commission to mobilize the international community against forced or involuntary disappearances, as it had done against torture. In conclusion, he hoped that decisions would be taken at the current session which would make it possible to combat those abhorrent forms of human rights violations.

36. Mr. LUKYAMUZI (Christian Democratic International) said that his organization to which the Democratic Party of his country, Uganda, was affiliated, was very much concerned by the persistence, in certain countries, of cruel treatment of detainees. Some political opponents of Governments, often held without a charge, were tortured, denied medical care and starved. That was the situation in many third world countries, including Uganda. As many prisons are overcrowded, a large number of prisoners succumbed to typhoid epidemics or other diseases, lacking medical care and adequate food.

37. Ill-treatment, disappearances and the killing of helpless people, including women and children, sometimes reached genocidal proportions. According to reliable information, in Uganda more than 500,000 people not belonging to the dominant groups and tribes had been killed or were under the threat of death. No action had been taken to investigate and rectify the situation. Many third world régimes in acting thus were committing a crime against humanity within the meaning of the Convention on the Prevention and Punishment of the Crime of Genocide which clearly defined the role of civilized nations in that area.

38. To be a journalist was a truly hazardous occupation in the third world. In Uganda, since the return to a multi-party parliamentary system in 1980, private reporting continued to be hazardous. In November 1984, security agents had confiscated all the equipment and working documents of private newspapers, whose editors were still in detention. Practices such as those were an infringement of the freedom of expression and association.

39. In conclusion, Christian Democratic International requested the Commission to recommend the immediate cessation of summary executions, killings and enforced disappearances, especially in countries like Uganda. It would also like the Commission to prepare a new detailed report on progress in human rights in Uganda, since that country had availed itself since the previous year of advisory services in that field. The Commission's attention should be drawn to the fact that, unlike events in other countries, no tangible outcome of the extension of those services to Uganda was apparent.

40. Christian Democratic International therefore requested the Commission to ensure that detainees were tried in accordance with constitutional procedure and that their rights were not infringed, even during their imprisonment. Through the Commission, humanitarian organizations like in the ICRC and Amnesty International should investigate the situation of persons being held legally and illegally and should report to the Commission. The Commission should keep abreast at all times of the situation concerning detention and torture in the developing countries, by appointing representatives of international organizations as monitors and rapporteurs.

41. Mr. MacDERMOT (International Commission of Jurists) said that his organization was much concerned by the abuse of administrative detention. That term meant detention without charge or trial on the order of the executive arm and usually without any form of judicial recourse. The term of "preventive detention" used in most common law countries was misleading, as in France and other civil law countries and in the United States it meant almost the opposite, namely, detention in custody pending trial. The most accurate term was that used in France, namely "administrative internment".

42. The International Commission of Jurists which had long been concerned with the practice, had formulated the principles which it considered should govern its use at an international conference held in Bangkok in 1962. It was envisaged, inter alia, that it should be lawful only during a period of emergency threatening the life of the nation; that the detainee should be informed forthwith of the grounds for his detention; that there should be a prompt administrative hearing and decision regarding the need for detention, with the right to a judicial review and with representation by counsel; that the emergency situation should be reported to and ratified by the legislature and that except in time of war, it should be for a period not exceeding six months, renewable by the legislature after careful consideration.

43. At present, at least 85 countries, mostly in the third world, had legislation permitting the practice and had had recourse to it within the last three or four years. It had been a tool of colonial repression, vigorously denounced by those struggling for their independence, but after independence many countries had retained it and used it to suppress political opposition. While the legal grounds for permitting it were vague, they authorized the head of State, a particular minister or even the security forces to detain a person in order to protect national security and preserve law and order, or to prevent the person concerned from bringing the Government

into hatred or contempt. It constituted detention on suspicion, without accusation, without proof and without appeal to a court. Forty-three of the 85 countries had laws permitting administrative detention for an indefinite period, which might last for decades, with the attendant serious effects, including psychological effects. Abuses frequently accompanied that form of detention which took place in conditions far worse than those experienced by convicted criminals. Indeed, detainees were frequently held in isolation from the other prisoners and kept in comfortless cells, sometimes 24 hours a day. They were denied visits, correspondence with a lawyer or with their family, who sometimes were not even notified of their detention, and had no access to any information medium. Neither national security nor public order justified the detention of persons in such abhorrent conditions. The Inter-American Commission on Human Rights had described it as equivalent to punishment without the slightest semblance of due process and even without the formality of a sentence. It was frequently used to prolong a sentence imposed by the courts, or to impose one when the person concerned had been found not guilty. Thus, in August 1974, Miss Aguilar was acquitted of charges of subversion in Manila and promptly detained under a Presidential Decree.

44. The use of administrative detention greatly encouraged the practice of torture, since there was no form of judicial control of the reasons for or the conditions of detention. Indeed, when a person was not brought before a magistrate within 48 hours of his arrest, but only two or three weeks later, the torturer could ensure that there would be no signs of brutality when the person was brought before a judge.

45. In some countries where there was the remedy of habeas corpus or its equivalent, the law excluded that remedy in cases of administrative detention. A person detained by mistake, or for reasons not covered by the law, therefore had no legal remedy.

46. The fact that such abuses existed was well-known to the members of the Sub-Commission, and the Draft Body of Principles for the Protection of Persons in All Forms of Detention, drafted some years earlier, was still before the Sixth Committee of the General Assembly. The document did not, however, deal adequately with administrative detention and the abuses to which it gave rise, and no principles governing administrative detention had been formulated by the United Nations.

47. It would therefore be desirable for the Sub-Commission Working Group on Detention to instruct one of its members to collect detailed information on the practice in as many countries as possible, and to submit recommendations which could be considered by the Sub-Commission, and transmitted thereafter to the Commission.

48. Mrs. PELLIER (International Indian Treaty Council) recalled that for seven years the International Indian Treaty Council had provided the Commission with documents and testimony concerning the campaign of repression conducted against Indian peoples and organizations engaged in the struggle for self-determination.

49. As far as the rights of prisoners incarcerated in the context of that struggle were concerned, her husband, Leonard Peltier, was at present imprisoned in the United States for crimes he had not committed and in conditions that failed to comply with Economic and Social Council resolutions concerning the Standard Minimum Rules for the Treatment of Prisoners. The case of Leonard Peltier showed the lengths to which the Government of the United States was prepared to go in violating the human rights of Indians who opposed its interests. The United States Government had spared no efforts to secure Leonard Peltier's conviction, by falsifying evidence, having him extradited from Canada, coercing witnesses and interfering in the legal procedure. Not satisfied with imprisoning him, it was also trying to dehumanize him

by denying him his fundamental rights as a prisoner and, above all, an Indian prisoner. Leonard Peltier was being deprived of his right to practise his religion, in violation of article 19 of the International Covenant on Civil and Political Rights and sections 41 and 42 of the Standard Minimum Rules for the Treatment of Prisoners. In protest against that situation, Leonard Peltier had undertaken a fast at the Federal Prison in Marion, Illinois, which had focused national and international attention on him and brought about his transfer to the Springfield Medical Facility for Federal Prisoners. In that facility, Leonard Peltier could not pray and was not allowed access to the sweat lodge (the equivalent to a Christian mass). However, she herself had noticed that a rabbi visited the prison and that a Catholic priest was always on call. Why was Leonard Peltier subjected to such discrimination?

50. Leonard Peltier was kept in a maximum security cell 24 hours a day. He was not allowed to communicate with prisoners, whether Indians or others. He slept on a concrete slab covered by a thin mattress and could not avail himself of the daily hour of exercise stipulated in section 21 (1) of the Standard Minimum Rules for the Treatment of Prisoners. The prison officials controlled the only source of light in his cell, in violation of article 11 (a) of the Rules, which stated that all cells should have windows. Leonard Peltier could shave and shower only when allowed to do so by his guards. He was allowed four one-hour visits per month, during which he was separated from his visitors by a concrete, glass and wire partition, and conversations were conducted by telephone. When she had visited her husband on 3, 4 and 5 January 1985, their conversation had been cut off several times, whereas other inmates were allowed to spend the whole day with their families in a large room. On the last occasion she had visited the prison with her children, she had been informed that for maximum security reasons, the children would not be allowed to see their father. Moreover, six months earlier, Leonard Peltier's adopted son had been allowed to see him.

51. Why was Leonard Peltier imprisoned in such inhuman conditions? Before it set itself up as a model for foreign countries, the United States should do what was needed at home. In conclusion, she requested the Commission to encourage those countries which had not yet done so to accede to the Standard Minimum Rules of Treatment of Prisoners. It would also be desirable for the Commission to review the implementation of the Universal Declaration of Human Rights and, in particular, articles 2, 5, 6, 7, 8 and 18.

52. Mr. DEHAVERNAS (Observer for Canada) said that the question of the human rights of all persons subjected to any form of detention itself had two facets. First, the Commission was concerned with the conditions leading to detention and with the application of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights which prescribed that "No person shall be subjected to arbitrary arrest, detention or exile". That problem was of the greatest concern to the Sub-Commission and the Commission. Second, account should be taken of the conditions of detention once an arrest had been made and of compliance with the International Covenant on Civil and Political Rights, articles 10 and 9 of which stated, respectively, that "All persons deprived of their liberty shall be treated with humanity" and that "All persons shall be informed of the reasons for their arrest and shall be brought to trial promptly".

53. The adoption, in 1984, by the General Assembly of the draft Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had been a major landmark. However, as the Acting Chairman had pointed out at the opening of the Commission's current session, the protection of detainees against torture and other forms of cruel or degrading treatment need not end with the adoption of that instrument. The Commission should therefore not hesitate to take further steps to protect the rights of prisoners and ensure compliance with the relevant international standards.

54. His delegation believed that the Commission should also continue to study the conditions or reasons which led to detention. The denial by the State of the individual's inherent right to express an opinion was one of the most frequent causes of arbitrary detention. Consequently, his delegation welcomed the fact that in resolution 1984/26, the Commission had expressed concern at the extensive detention in many parts of the world of persons who exercised the right to freedom of opinion and expression as affirmed in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. In the same resolution, the Commission had decided to review the matter at its forty-first session.

55. The Sub-Commission Working Group on Detention was dealing with a number of essential subjects and should provide the Commission with important recommendations and guidelines. In particular, Canada looked forward to its draft declaration against unacknowledged detention of persons whatever their condition, as well as the annual report on situations of siege or emergency, to be prepared in conformity with Sub-Commission resolution 1983/30 and Commission decision 1984/104. It hoped that the Sub-Commission would receive the first report on states of siege or emergency as soon as possible, in order to be able to decide what further action should be taken in that regard.

56. His delegation had listened with interest to a statement made by another speaker on the question of administrative and preventive detention. Since the Working Group on Detention was concerned with all aspects of detention, it might well study that practice and formulate appropriate recommendations.

57. The Working Group on Enforced or Involuntary Disappearances had given further proof of its ability in discharging a most exacting task. In resolution 1984/23, the Commission had encouraged the Working Group to visit those countries where a large number of "disappearances" were alleged to occur. The members of the Working Group had consequently visited Bolivia in October 1984 and were scheduled to visit Peru in the near future. One might hope that other countries would receive the Group, including El Salvador, Guatemala and the Philippines. His delegation also welcomed the fact that the Working Group had strengthened its procedures, particularly its "emergency procedure" when cases of disappearance were reported to it within a period not exceeding three months after they had occurred.

58. The Commission should spare no effort in assisting the Working Group to act effectively, possibly by renewing its mandate, first for a period of two years, until such time as the practice of "disappearances" had been eliminated. The Secretary-General should also continue to provide the Working Group with resources commensurate to its task.

VIOLATION OF HUMAN RIGHTS IN SOUTHERN AFRICA: REPORT OF THE AD HOC WORKING GROUP OF EXPERTS (agenda item 6) (continued)

59. The CHAIRMAN gave the floor to the representative of Senegal, who wished to make an urgent statement on behalf of the Group of African States.

60. Mr. SENE (Senegal), speaking on behalf of the Group of African States, recalled that, during the discussion of the human rights situation in southern Africa, a number of delegations had emphasized the scope of the repression carried out by the opponents of apartheid against everyone struggling for the triumph of the ideals of peace, freedom and dignity. Even as he spoke, freedom fighters, trade unionists, students, clergymen, the civilian populations of the black townships, the militants of the United Democratic Front, blacks, whites, Christians, Muslims and Hindus, were being horribly persecuted. The dramatic events occurring in the black townships

around Cape Town - and spreading to other cities in South Africa - were a striking illustration of the arrogance and obstinacy with which the authorities in Pretoria were persisting in their practices, which were contrary to the values universally recognized in all civilized countries. That was irrefutable proof of the determination of the apartheid régime to reinforce the repressive apparatus it had directed against the black populations and of the sinister intent behind the so-called "constitutional reforms", which were no more than legal devices designed to consolidate the bases of the apartheid system. The Group of African States had therefore felt it necessary to alert the members of the Commission and all peace- and justice-loving men of good will, all civilized nations and international public opinion to the deterioration of the human rights situation in South Africa. It was the Group's fervent hope that the Commission would give its unanimous support and the attention of the international press would be drawn to a short declaration it wished to make, reading:

"It is with horror and stupefaction that we have observed the recent escalation in the atrocities committed by the racist Government of South Africa, both in South Africa and in Namibia, against peaceful opponents of apartheid.

The Commission unreservedly condemns the massacres of peaceful demonstrators and the systematic detention of opponents of apartheid. It likewise condemns the systematic deportation of Africans evicted from so-called 'white' areas.

In this regard, the Commission has been particularly shocked by the following circumstances:

- (i) In the past week alone, the racist security forces killed no fewer than 13 Africans who were resisting enforced displacement;
- (ii) During the same period, a number of outstanding opponents of apartheid, including Albertina Sisulu, Cassin Soloojee, the Reverend Frank Chikane and Ishmael Mohammed, were arrested and charged with treason, while in Namibia 28 other persons were being held without trial;
- (iii) During the month of January 1985, Thomas Nkonor died in detention in Namibia, after five days in prison.

These massive, flagrant and systematic violations of the most fundamental human rights are an affront to the conscience and dignity of humanity.

Moreover, they confirm the Commission in its conviction that South Africa's proclaimed process of "liberalization" is no more than a front to mislead international public opinion.

We therefore demand the immediate cessation of these atrocities and earnestly appeal to the international community to take effective measures to deal with the present situation".

61. The CHAIRMAN expressed, on behalf of the Commission, his concern at the information brought to his attention. He felt sure the Commission would wish to endorse the sentiments expressed in the statement by the Group of African States.

62. He therefore invited it to strive with even greater determination to restore justice and respect for human rights so as to end the indescribable suffering endured by human beings in Africa as a result of the policy of apartheid.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR: (agenda item 10) (continued) (E/CN.4/1985/26; E/CN.4/1985/25 and Add.1-4; E/CN.4/Sub.2/1983/30)

- (a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT (A/39/662; A/Res.39/46)
- (b) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES (E/CN.4/1985/15/Add.1; E/CN.4/1985/NGO/10 and 23)

63. The CHAIRMAN gave the floor to the Observer for Israel, who wished to make a "combined" statement.

64. Mr. DOWER (Observer for Israel) said that he wished, first of all, to reaffirm that the Government and people of Israel totally condemned any form of torture or ill-treatment inflicted on defenceless prisoners or detainees. Any infringement of human dignity, or of the physical or moral integrity of any human being was completely unacceptable and inconceivable in an open, democratic and humanist society. Such was the case in Israeli society, and 37 years of war, 37 years of encirclement and boycott, 37 years of unremitting struggle against the most abject terrorism, had in no way affected that eternal verity.

65. All prisons and all detention centres throughout Israeli territory were subject to an extremely strict inspection system set up by the State Inspector, the Ministry of Justice and the prison authorities themselves. The least accusation of misuse of power or of ill-treatment of any prisoner, whether Jew or Arab, led immediately to a thorough investigation by the various police and legal authorities, at various levels. The results of such inquiries were almost always negative. In the very rare cases where the complaints proved to be justified, or where the least doubt lingered, the accused persons were brought before the courts, tried and punished, if they were found guilty.

66. Cases of that type occurred almost everywhere, and even in countries which, like Israel, in the vanguard when it came to showing exemplary respect for human dignity. The French press, for instance, described such cases as bavures or excesses, because they were committed by isolated officials who misused the powers conferred on them by the competent authorities. Such excesses were, fortunately, very rare in Israel and were invariably repressed and punished with the greatest severity. Consequently, to accuse Israel of systematically ill-treating prisoners was proof of dishonesty, and even abuse of trust. His delegation had spoken at some length in connection with the report on the conditions of detention in Faraa prison which had been prepared by Law in the Service of Man, a non-governmental organization claiming to be non-political and completely dedicated to its humanitarian purposes, and distributed to the Commission through the intermediary of the International Commission of Jurists. It would not therefore hark back to the concealed motivations of the authors of the report, their questionable reliability, the synchronization of the statements, the curious procedure and the facts as they were in reality. The report complied with none of the essential criteria governing credibility, either in researching the facts, assessing them and drawing conclusions or in the way in which it had been brought to public attention. However, the Government of Israel, as ever, would do its duty.

67. His delegation was firmly convinced that human rights knew no frontiers. They were the prerogative of mankind as a whole. Everyone, regardless of race, nationality, religion, sex, age, ideology or colour had the inalienable right to enjoy all the human rights prescribed in all the international human rights instruments and to be protected effectively by the international community. The

power struggle between States, political and economic considerations, ideological affinity, community of interest, or the relative importance of countries on the international scene must not and could not in any way affect that established principle. All men were equal and should be treated as such, not only in words but also in deeds. The community of nations ought to study with equal interest and concern all human rights violations, regardless of the country in which they were perpetrated. It could only forfeit its moral authority if, under pressure from certain forces, it merely dealt with real or imaginary cases reported in the interests of those forces and, usually, for political rather than humanitarian ends.

68. In taking the floor on the current item, his delegation wished to raise harrowing and widespread problems which were dismissed with impatience and anger at each of the Commission's sessions, although all the members of the Commission, without exception, were aware, in all honesty, that they were real and that those who invoked them based themselves on tangible and irrefutable evidence.

69. His delegation wished to draw attention once more to the horrifying situation obtaining in prisons and detention centres in Syria, a country which was a member of the Commission, but where all humanitarian rules were constantly and systematically flouted and where cynicism and cruelty were taking on dimensions which the Syrian authorities no longer troubled to camouflage. He quoted an extract from the 1984 Amnesty International annual report on Syria, which described the inhuman conditions of detention of prisoners of opinion in Syrian prisons: protracted detention without a trial, summary proceedings, non-existence of legal guarantees, during trials held before military and State security courts, use of torture by the security forces, "disappearances" and death sentences. The evidence was undeniable, and was confirmed by the Swiss Association for the Defence of Political Freedoms and Personalities in Syria, whose report, published in May 1984, described in detail the acts of torture perpetrated against prisoners in Syria: the sensitive parts of the body were burned with lighted cigarettes; after prisoners had been forced to drink diuretic liquids, their genital organs were bound to prevent them from urinating; boiling liquids and electric shocks were used; prisoners were even dragged after a car driven at high speed, until they died He also referred the members of the Commission to the work published in Arabic in 1983 by the information office of the Muslim Brotherhood on the tragedy of Hamat, containing facts, names, places and documented descriptions of terrible crimes.

70. With all due deference to the Syrian delegation, which would certainly complain loudly of slander and dishonesty, brandishing the many human rights instruments of which Syria was a signatory, recalling that Syria sat on the Commission and stressing its total attachment to the cause of human rights, the countless reports published each year on the situation in Syria by various organizations dedicated to the defence of human rights spoke for themselves. It was time that the Commission considered the file in order to induce Syria, that "paragon" of human rights, not merely to sign international human rights instruments but also and above all to comply with them and to apply them to its own citizens.

71. Syria, however, was not the only Arab country where peaceful citizens disappeared without trace and where thousands of human beings huddled in prisons and detention camps, delivered into the hands of torturers of the very worst kind, who acted openly, without fear of punishment or even criticism. The Centre for Human Rights had all the relevant reports by humanitarian organizations, and it would certainly have the 1984 report published in Paris by the Association for the Defence of Human Rights and Democratic Freedoms in the Arab World. He quoted an extract from the appeal made the previous year by the Chairman of that Association, Mr. Abbas Aldbais, to draw attention to the fate of missing persons

in the Arab world of whom there were, according to his estimates, at least 5,000, among the Lebanese and Palestinians, as well as in Saudi Arabia, Iraq, Morocco, Syria and the two Yemens.

72. It was high time the international community faced up to the fact that fundamental humanitarian laws should be applied without any discrimination and for the Arab countries to understand that they could no longer mislead everyone and hold back from setting their own countries in order. They could not continue cynically and with impunity to lecture others on ethics when they themselves flouted the elementary rights of their citizens and treated them with a cruelty and despotism which knew no bounds. His delegation was perfectly well aware that once again the "doctrine of the Arab family" would be invoked, according to which what Arabs did to other Arabs was solely the business of the Arabs themselves and as long as Arabs only oppressed, tortured and abducted brother Arabs, the rest of the world should keep quiet. However, his delegation refused to remain silent, since blood had the same colour and human suffering knew no boundaries. It would continue to take advantage of every opportunity to raise the problem of the torture and disappearances in Arab countries; in the belief that, by so doing, it was merely discharging its duty. Sooner or later, political and economic considerations notwithstanding, the enlightened world would wake up and take the necessary action.

73. His delegation was knowingly laying itself open to the charge of subjectivity, and of being a killjoy. But it was doing so, even though the long list of alleged crimes attributed to Israel by the unhealthy imagination of certain delegations might be lengthened to include the crime of "high treason", in other words, the crime of daring to speak out against the revolting doctrine of the "Arab family".

74. Mr. CHERNICHENKO (Union of Soviet Socialist Republics), speaking on a point of order, said that he would like some explanation on the "combined statement" which the observer for Israel had just made and, for all that, was still making. He could appreciate that a delegation might make a statement of that kind in order to deal with different agenda items, but in that instance, the Commission was considering only one agenda item.

75. The CHAIRMAN said that the Secretariat would take up the question put by the representative of the USSR. For the time being, he wished to state that, according to the practice followed hitherto by the Commission, an observer was entitled to make an initial statement lasting 15 minutes on each agenda item, and a second statement lasting 10 minutes, or to incorporate the time assigned to it for speaking in order to make a single "combined" statement.

76. Mr. SAKER (Syrian Arab Republic), speaking on a point of order, said that he would like to have explanations from the Secretariat on how the order of statements was established and how the floor was given to a speaker. He noted that the observer for Israel had taken the floor prior to other speakers preceding him on the speakers' list prepared by the Secretariat. He hoped that the order of statements would be respected henceforth.

77. Mr. MAUTNER-MARKOF (Secretariat) said that the order given in the speakers' list was generally followed. However, that order might be changed when delegations due to speak decided to take no further part in the deliberations, when they decided to switch with other delegations or when a delegation was not present when the time came for it to take the floor.

78. Mr. RODLEY (Amnesty International) stressed that the Commission, was, unfortunately, only too familiar with the problem of torture and other cruel, inhuman or degrading treatment. Political prisoners and persons suspected of having committed offences were arrested and subjected to every possible form of physical and psychological coercion, in order to force "confessions" and information from them or merely to terrorize and intimidate them. Every day, everywhere, agents of the State responsible for enforcing the law themselves violated that law at the expense of those in their custody, using techniques that were sometimes primitive and sometimes highly sophisticated. Arrest and arbitrary detention, particularly incommunicado detention, merely made it easier for such excesses to take place.

79. Such practices had naturally alarmed the international community, and the United Nations had responded by drawing up standards, in the form of international instruments, the most important of which had been the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the General Assembly had adopted in 1975. The General Assembly had subsequently adopted codes of ethical principles relevant to law enforcement officials and medical personnel, and currently had before it draft principles to protect the rights of prisoners.

80. The adoption, on 10 December 1984, of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was a major landmark, in the sense that its very existence confirmed that torture, defined not only as a violation of human rights but also as a crime committed by individuals, was unlawful in international law. Twenty-two States had signed the Convention, which would enter into force only when 20 States had ratified or had acceded to it. It was important that all States should be directly bound by each of the obligations set forth in the Convention and, with that in view, the Commission should urge Governments to ratify the Convention, without reservations, as soon as possible.

81. Amnesty International was aware that sometimes constitutional, legislative and consultative processes did not allow a State to accede to a particular international instrument immediately and, consequently, the Convention might not be universally applicable in the near future, and detained persons would still be in danger of torture. Consequently, the Commission ought not to neglect the immediate problem of torture and other cruel, inhuman and degrading treatment or punishment on the pretext that a Convention had been adopted on the issue. Amnesty International welcomed the opinion expressed by the Chairman of the fortieth session of the Commission at the opening of the current session that the Commission could and should take immediate action to help to save prisoners from torture, and recalled that the Assistant Secretary-General for Human Rights, introducing the item at the Commission's last session, had noted that it might be appropriate to consider setting up machinery to investigate acts of torture, along the lines of the machinery established in connection with "disappearances" and summary and arbitrary executions. Amnesty International urged the Commission to take advantage of the opportunity to set up an organ which would be responsible for the problem of torture and ill-treatment; it would thus help to promote respect for the rules which it had sought to elaborate.

82. Mr. SAKER (Syrian Arab Republic) inquired whether he might speak in exercise of the right of reply at the current meeting. If not, he reserved the right to exercise it at the following meeting.

83. The CHAIRMAN proposed that unless the Syrian delegation objected, it should exercise its right of reply at the following meeting.

The meeting rose at 6.10 p.m.