Distr.
GENERAL

E/CN.4/Sub.2/1993/SR.18
23 August 1993

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Forty-fifth session

SUMMARY RECORD OF THE 18th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 16 August 1993, at 10 a.m.

Chairman: Mr. AL-KHASAWNEH

CONTENTS

GE.93-14658 (E)

CONTENTS (continued)

The meeting was called to order at 10.15 a.m.

STATEMENT BY THE ASSISTANT-SECRETARY-GENERAL FOR HUMAN RIGHTS

1. Mr. FALL (Assistant-Secretary-General for Human Rights) said that circumstances beyond his control had unfortunately prevented him from being present at the opening of the Sub-Commission's session. On that occasion, Mr. Houshmand had transmitted the message which he had intended to make. He welcomed the opportunity, however, to address a body which constituted a vital cog in the United Nations machinery for promoting and protecting human rights. The professional qualifications of its members, the quantitative representation of States and the qualitative representivity of intergovernmental and non-governmental organizations made the Sub-Commission an effective forum not only for reflection and debate but also for action with a view to the elaboration of human rights standards, as well as for considering and averting human rights violations.

2. First of all, he wished to express his appreciation to the members of the Sub-Commission who had made such a valuable contribution to the preparations for the World Conference on Human Rights and the Conference itself, in which outstanding results had been achieved.

3. The current session was particularly significant in that it followed immediately on the World Conference and preceded the forty-ninth session of the General Assembly. It was also taking place in the International Year for The World's Indigenous People; the Year was expected to lead to a United Nations declaration on the rights of indigenous peoples. The draft universal declaration on indigenous rights which appeared on the Sub-Commission's agenda under agenda item 14, was therefore of extreme importance. It should provide the substantive intellectual framework for promoting indigenous rights of peoples at the international level, moulding a suitable legislative structure for those rights and opening the door to the standardization of ways and means of defending them.

4. He wished to reaffirm the importance of the other topics on the Sub-Commission's agenda as well as the willingness of the Centre for Human Rights to work in close cooperation with the Sub-Commission. The Sub-Commission was facing a new challenge, namely, that of its mandate. There was no doubt that the ideas put forward during the preparatory process prior to the World Conference for updating that mandate and possibly changing the Sub-Commission's composition to reflect better the active and statutory presence of indigenous peoples and to update the Sub-Commission's role vis-à-vis the Commission on Human Rights provided a basis on which to work towards the future and to pave the way for a new Sub-Commission.

5. It was somewhat ironic that, after the success of the World Conference on Human Rights, the forty-fifth session of the Sub-Commission was taking place in the midst of a financial crisis sweeping through the United Nations as a whole. The Centre for Human Rights was naturally affected and some of its activities had already been paralysed. Neither had the Sub-Commission gone unscathed, since several requests for additional meetings had not yet received a satisfactory response.

6. However, he wished to assure the Sub-Commission that despite the critical financial situation, he would spare no effort to ensure that as far as possible the session would take place in the best possible conditions. He also wished to assure the Sub-Commission that it could count on close cooperation with Conference Services, which were responsible for organizing any additional meetings.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

(a) QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECT TO ANY FORM OF DETENTION OR IMPRISONMENT;

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY;

(c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES; AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES;

(d) THE RIGHT TO A FAIR TRIAL

(agenda item 10) (E/CN.4/Sub.2/1993/19-21, 23, 24 and Add.1-2; E/CN.4/Sub.2/1993/NGO/2, 9, 14 and 15)

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS (agenda item 11) (E/CN.4/Sub.2/1993/25; E/CN.4/Sub.2/1993/NGO/15)

7. Mr. IBARRA (International Indian Treaty Council), speaking on item 10, said that his organization had as yet had no reaction to its repeated references to the imprisonment in the United States, since 1978, of the Indian chief, Leonard Peltier, following his illegal extradition from Canada. Lawyers as well as political and religious leaders in North America had expressed concern at the irregularities involved in the case.

8. A number of organizations, including his own, had taken advantage of the International Year for the World's Indigenous People to pursue a campaign for Leonard Peltier's release and had urged the competent United States authorities to free him as a humanitarian gesture of good-will.

9. His organization was also greatly concerned by the situation of political prisoners in East Timor and, in particular, that of Xanana Gosmao, the leader of the East Timorese resistance who had been arrested on 20 November 1992 by the Indonesian occupation forces and sentenced, on 17 May 1993, to life imprisonment. He had been held incommunicado beyond the permitted period and denied the right to a proper defence in his trial. International observers had not been admitted to the final stage of the case. Indonesian sources had hinted that Xanana would shortly be transferred to Jakarta.

10. Xanana Gusmao's trial represented only the tip of the iceberg of the repeated and systematic violations of human rights and fundamental freedoms of the peoples of East Timor during the past 18 years of Indonesian occupation. Deaths and disappearances had reduced the East Timorese population from 700,000 to 500,000 since the Indonesian occupation. The number of refugees was estimated at about 15,000. The Jakarta authorities had transferred more

than 150,000 Indonesians to East Timor. The discriminatory practices of the forces of occupation included: limitations on the access of East Timorese to university; obligatory use of the Indonesian language and prohibition of the Tetun language; the need for the East Timorese to have a special document to travel to the interior of their own country; reservation of public office to Indonesians. In the words of Monsignor Bello, Bishop of Dili, East Timor had become one huge prison.

11. The International Indian Treaty Council urged the Sub-Commission to adopt a resolution on East Timor in which it would express its grave concern at the systematic serious and repeated violations of human rights and fundamental freedoms and request the Jakarta authorities to comply with relevant United Nations resolutions on the question of East Timor, and to free Xanana Gusmao and all political prisoners. The Sub-Commission should also declare the applicability to East Timor of General Assembly resolution 1514 (XV).

12. Mr. MAMADOU (Movement against Racism and for Friendship among Peoples), speaking on item 10 (c), said that, in Mauritania, violations of human rights were inflicted not only on detainees but also on their families, so that, when the father of a family was arrested, all family property was confiscated by the State and the family was accordingly reduced to poverty and dependence. The house of Lieutenant B.A. Seydi had been ransacked immediately after his arrest and execution on 6 December 1987. Wives of detainees were dismissed from the public service notwithstanding the provisions of the Labour Code.

13. Such terrorism destroyed family bonds and had an impact on the education of black Mauritanian children. Teachers treated the children of Mauritanian negro detainees as the offspring of traitors and extremists. The previous year, the daughter of Djigo Tafsirou, a former minister and political detainee, who had died in prison as a result of cruel, inhuman and degrading treatment, had been refused admission to the sixth-year entrance exam.

14. In April 1989, Mauritania had taken advantage of a conflict with Senegal to deport more than 200,000 black Mauritanians who were members of the families of persons detained for their opinions. Those detainees continued to live in abject poverty in camps in Senegal and Mali.

15. On 29 May 1993, Parliament had adopted a law establishing a general amnesty for all members of the armed and security forces who had committed crimes relating to events between 1 April 1989 and 1 April 1992.

16. In 1986, the Mauritanian Government had arrested a number of black intellectuals for having published the Manifesto of the Oppressed Black Mauritanian exposing the policy of racial discrimination at all levels. Arrests, mock trials and heavy sentences had followed; torture during detention had led to the death of four black intellectuals including a former minister and a diplomat. In 1987 arrests affecting almost all black African families had been made on the pretext of a military plot.

17. In 1989 there had been a massive deportation of the black Mauritanian population to Senegal and Mali accompanied with its corollary of rape, murder,

torture and humiliation. Those were the crimes to which the amnesty law of 29 May 1993 applied. The Mauritanian Government had therefore officially recognized its serious and massive violations of human rights.

18. The impunity law had heightened tensions and conflicts between different elements of the country and had undermined the national unity which the Government claimed to be seeking. The families of victims had no national legal remedies against the authors of that genocide.

19. The United Nations had played an important role in the denunciation of apartheid in South Africa. The current situation in Mauritania was characterized by brutal discrimination against black Mauritanians who sought no more than respect for their rights and equality of status. It would be appropriate for the Sub-Commission to designate a special rapporteur on the issue.

20. Mrs. PEREIRA (American Association of Jurists) said that human rights could not exist except when the legal system was organized in such a way that those rights were protected by a legal procedure.

21. The obligation to bring a detained individual before a judge must be unconditional, automatic and implemented in the shortest possible time. That last phrase had been interpreted in different ways at the international level, varying between four days, in the view of the European Court of Human Rights, and six weeks for the Human Rights Committee. Bearing in mind that article 286 of the Argentine Code of Criminal Procedures stipulated a maximum delay of six hours and article 16 of the Constitution of Colombia provided for 36 hours, such international standards were to be regretted.

22. Detainees must also enjoy procedural safeguards such as the right to a personal hearing and the presence of a lawyer at the beginning of the period of detention. The new French Code of Criminal Procedure, adopted on 13 July 1993, represented a backward step in that it provided that persons arrested for acts related to terrorism or drugs could be held incommunicado and without the presence of a lawyer for 20 hours. The police were required to establish the facts and inform the court as soon as possible, without any precise definition of what that last phrase meant. For other infractions, such as extortion and aggravated assault, the incommunicado period could be stretched to 36 hours.

23. At the international level, most essential procedural guarantees were incorporated in conventional instruments; more specific codification was needed.

24. The right to habeus corpus was many-faceted. For example, a 1966 ruling in the United States made it possible for prisoners or other plaintiffs who considered that their rights had been prejudiced by a procedure at the State level could seek justice in a federal court.

25. On the issue of impartiality and independence, the need to prohibit special courts, particularly as used by military authorities against the civilian population, was essential. Periodic monitoring of the legality of detention was also essential, if necessary by use of a habeus corpus

procedure. Detainees should be fully informed of their rights in that connection; minimum rules had been stipulated by the General Assembly and by the Committee of Ministers of the Council of Europe. Remedies outside the prison administrative system must also be available, in order to minimize the risk of torture or other inhuman treatment; the habeus corpus procedure provided for in article 133 of the Constitution of Paraguay was a case in point.

26. All international instruments provided for the derogation of its obligations by the State in case of threat to the existence of the State but each of those instruments also contained a list of non-derogable rights. The Inter-American Court of Human Rights had found that non-derogable guarantees included habeus corpus, amparo and any procedure designed to protect rights and liberties, the suspension of which was not authorized by the Convention.

27. Her organization welcomed the jurisprudence of the Human Rights Committee which opposed any suspension of habeus corpus. It could not however agree with the view which the Special Rapporteur had expressed in document E/CN.4/Sub.2/1991/28.

28. Extensions by the executive authority of the period during which a detainee could be held during states of emergency represented a further threat to the rights of detainees. The legislation of a number of countries did not derogate from the right of habeus corpus but might authorize administrative detention without the intervention of judicial bodies. In such cases a judge ruling on a request for habeus corpus must decide on the legitimacy of the state of emergency and the relationship between the circumstances justifying the detention and those justifying the state of emergency. He should also be empowered to examine the place where the detainee was being held.

29. The American Association of Jurists urged the preparation of a draft declaration on the implementation of fundamental remedies for the protection of human rights and essential procedural safeguards. The Association had submitted practical proposals which were contained in document E/CN.4/Sub.2/1993/NGO/2.

30. Ms. CALANDRA (France-Libertées - Fondation Danielle Mitterand) speaking on item 10, said that her organization protested strongly against the sentence of life imprisonment pronounced against Xanana Gusmao, the leader of the Timorese resistance to the Indonesian occupation of East Timor.

31. Xanana Gusmao's efforts to resist the unlawful Indonesian occupation which contravened the most elementary principles of the Charter of the United Nations and of international law and flagrantly violated many resolutions adopted by the General Assembly and Security Council had led to his arrest and sentence. The court proceedings in Dili had also been characterized by many irregularities; the accused had been held incommunicado apart from one visit from the International Red Cross and some televised interviews for Indonesian propaganda purposes; he had never been allowed free choice of a lawyer; threats had been made against him, his parents and the witnesses for his defence; he had not been permitted to read his defence before the court.

32. Access to the court by journalists, diplomats and international observers had been severely restricted. Mr. Amos Wako, the personal envoy of the Secretary-General, had been accused of inciting the detainee to prepare a political defence.

33. Following the Dili massacre in November 1991 many Timorese had been detained for several months without charges being brought against them. Others had been placed in secret detention for weeks on end before the anniversary of the massacre as well as after the arrest of Xanana Gusmao. Finally, in a number of political cases, those accused had been held in secret for several months; they had been tortured and had not been given the right to consult a lawyer of their own choice.

34. In March 1993 the Commission on Human Rights had adopted resolution 1993/97 on East Timor which called upon Indonesia to release without delay all those in custody who were not involved in violent activities, to expand the access to human rights and humanitarian organizations and to allow visits by the Special Rapporteur on the question of torture and the Special Rapporteur on extrajudicial, summary and arbitrary executions as well as by the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances. That resolution had been ignored by the Indonesian Government.

35. In view of those continuing violations of human rights, her organization urged the Indonesian authorities to respect the provisions of the Fourth Geneva Convention on the prohibition of the removal of prisoners from their original place of residence as well as their undertaking to permit the access of the International Red Cross to East Timor.

36. During the preceding six months, the situation in Peru had deteriorated. Impunity and torture continued unabated. The Working Group on Disappearances, in document E/CN.4/1993/25, emphasized that Peru was the country with the largest number of detainee disappearances in the world.

37. The Executive had set up a legal framework to ensure total impunity; it nominated the majority of the judges of the Supreme Court and the Procurator General. It had suppressed the Court of Constitutional Guarantees, had authorized military tribunals to judge civilians accused of terrorism and prohibited the application of habeas corpus. It had virtually nullified the right to defence and had strengthened the powers of the military chiefs in the so-called zones of national emergency by elevating them above any civilian authority.

38. Her organization's misgivings concerning the reintroduction of the death penalty had unfortunately proved to be well founded. The Constitutional Commission of Congress was reported to have approved an article extending the application of the death penalty. If implemented, that measure would be a blatant violation of articles 4.2 and 4.4 of the American Convention on Human Rights which had been ratified by Peru.

39. Mr. PATTEN (National Aboriginal and Islander Legal Services Secretariat), speaking on item 10, said that the primary function of the Australian police forces, when founded within the various colonies after the 1830s, had been to

replace the military in the suppression of the fight by indigenous peoples to retain control of their lands. The police had taken part in the massacre of Aboriginal people and the kidnapping of children in order to deny them their indigenous heritage. In those areas of Australia where there was still a high Aboriginal population, there was a policy of over policing; the police were still used as an occupying army and perceived their role in that way. The situation had been amply demonstrated in a documentary entitled "Cop It Sweet" broadcast by the Australian Broadcasting Commission in September 1992. There had been an abject failure on the part of the police hierarchy to address in any meaningful way the issues raised in that programme.

40. All available evidence including the day-to-day experience of Aboriginal and Torres Strait Islander people endorsed the view that the attitudes demonstrated in "Cop It Sweet" were part of a wider and deeply entrenched police culture. Aboriginal children consistently reported that they had been physically abused by police and a number of studies had shown that there was identifiable police discrimination in the way Aboriginal juveniles were arrested and dealt with by the police.

41. It was proclaimed that the Australian judiciary was independent and administered justice fairly and impartially; it was the experience of Aboriginal and Torres Strait islander people that it failed that test, particularly at the lower levels of the judiciary.

42. There was strong anecdotal and other evidence to suggest that sections of the magistracy had been used as part of the machinery to suppress Aboriginal people. The Royal Commission into Aboriginal Deaths in Custody report for Western Australia had referred particularly to the discriminatory practices of justices of the peace and had recommended that they should be phased out. In western New South Wales it had been found that, when a system of visiting magistrates was used in place of permanent magistrates, the rate of imprisonment of Aboriginal people had been drastically reduced. One reason had been that the visiting magistrate did not feel the need to reflect the community view of the dominant culture when dispensing justice and thus could act more fairly. The systematic attacks by individual police and their associations and the media on magistrates who were perceived to be soft on Aborigines represented pressure to toe the line of law and order.

43. His organization was as concerned at the extent of the racism of the judiciary as it was at its refusal to acknowledge that such racism existed and to take steps to overcome it.

44. The practices used by the police and the judiciary had resulted in Aboriginal people being among the most criminalized and imprisoned people in the world. Aboriginal and Torres Strait Islander people accounted for 30 per cent of all persons imprisoned in any year, although they comprised only about 1 per cent of the adult population. They were 35 times more likely to be imprisoned than the non-Aboriginal population and over 30 times more likely to be arrested. Since the completion of the work of the Royal Commission into Aboriginal Deaths in Custody, the rate of imprisonment had not decreased, but had, instead, increased in all states (with the exception of Queensland). In New South Wales there had been an increase of 72 per cent. The pattern of imprisonment began with children: in New South Wales

over 25 per cent of juveniles in custody were Aboriginal - in Western Australia the figure was over 70 per cent. The juvenile justice system was being used for the purpose of separating Aboriginal children from their families and communities, whereas once it had been the function of Aboriginal Welfare and Protection Boards. With regard to the role of the prison system, the policies of the past had proved so successful in the denial of the rights of Aboriginal and Torres Strait Islander people and in wreaking havoc on their culture and society, that the Government of Australia sought to continue such policies. Nowhere was that better illustrated than in the administration of the prison system. For many people, imprisonment had become part of the right of passage to adulthood. People were being torn from their families and communities and therefore denied access to their culture, their land, and the very basis of their existence.

45. In Australia, Governments spoke of "self-determination" when justifying policies which affected the Aboriginal and Torres Strait Islander people. However, although they used the same words as those people, the Governments did not speak the same language. The states sought merely to indigenize the system, to make those people turnkeys. Under such policies, they became the lackeys for the colonial Power but were still denied the right to regulate their own lives and to administer their own justice within their communities.

46. Imprisonment was particularly harsh on women and children. In most states, women's prisons and juvenile institutions were located in capital cities, so denying them any real prospect of access to their families and communities. That played a major role in the breakdown of families, and thus further contributed to the breakdown of communities.

47. With regard to the role of Government, its involvement in the administration of justice was obvious - the Government had the responsibility for the policies and practices that had affected the Aboriginal and Torres Strait Islander people.

48. However, Governments also had another responsibility, namely to provide the resources whereby indigenous people could fight to achieve justice. In Australia, there was a system of Aboriginal legal services (most were members of NAILSS) which had been in existence for more than 20 years. Their funding was provided through the Aboriginal and Torres Strait Islander Commission, which was a statutory body. As a result of the Royal Commission into Aboriginal Deaths in Custody, there had been a welcome increase in funding for Aboriginal legal services. However, an analysis of its funding, as compared with the funding of non-Aboriginal legal services showed an unacceptable level of discrimination. The total funding for the non-Aboriginal legal services in the 1992/93 financial year was in the order of $205 million, while the funding for the Aboriginal legal services was approximately $31 million. When one compared the workload of each of the systems, it was quite evident that the funding of the Aboriginal legal services would need to be increased by at least 100 per cent to put it on an equal footing. Such discrimination in funding restricted and curtailed the ability of the services adequately to represent Aboriginal people and to fight against human rights abuses.

49. Thus, there was no real encouragement to believe that the Government of Australia had a genuine commitment to the concept of self-determination and the protection of human rights, either in its domestic or foreign policies.

50. In May 1993, Xanana Gusmao, the resistance leader of East Timor, had been sentenced to life imprisonment after a trial which all observers concluded had been fatally flawed and politically manipulated by the army of occupation. Indonesia had occupied and invaded East Timor in breach of international law and the Charter of the United Nations. In spite of the repeated affirmations by the General Assembly and the Security Council of the right of the people of East Timor to self-determination, Indonesia dared to challenge the entire international community and put on trial the leader of an indigenous movement that was fighting for self-determination.

51. The Aboriginal and Torres Strait Islander people of Australia felt that the Australian Government's failure to take appropriate action against Indonesia and adequately to support the indigenous people of East Timor was but a reflection of its own attitude to the indigenous people of Australia and identification with Indonesia as a colonizing Power.

52. Human rights abuses in Australia were part of an historical continuum and only through the implementation of a strong and effective declaration of the rights of indigenous peoples could there be any hope of achieving an end to such abuses and recognition of indigenous people's right to self-determination.

53. Ms. RISHMAWI (International Commission of Jurists), speaking on agenda item 11, said that fundamental human rights and liberties could only be preserved in a society where the judiciary and the legal profession enjoyed freedom from interference and pressure. The involvement of the United Nations in monitoring judicial and legal independence needed to be emphasized.

54. The fifth annual report of the Centre for the Independence of Judges and Lawyers (CIJL) entitled Attacks on justice, clearly demonstrated that in too many countries of the world, violence against judges and lawyers continued to escalate. That violence had been carried out not only by Governments, but also by opposition groups, landowners, and guerrilla and paramilitary groups. The report catalogued the cases of 352 jurists in 54 countries who had suffered reprisals for carrying out their professional functions. Of those, 32 had been killed, three had "disappeared", 34 had been attacked, 81 had received threats of violence, 95 had been detained, and 107 had been professionally sanctioned. The report also analysed various legal systems and assessed their level of respect for judicial and legal independence.

55. A particularly sad event had been the death of Orton Chirwa on 20 October 1992. He had been the first African barrister in Malawi and had died in his cell after 11 years in prison. Mr. Chirwa and his wife, the first Malawian woman lawyer, had been unfairly tried before a traditional court for opposing the regime of life-President Banda.

56. The report had found that in Colombia alone, 18 judicial officers had been killed, 10 had received death threats, seven had been kidnapped and three had been tortured. Colombia had traditionally experienced widespread violence. Although the Government of Colombia had set up several supervisory and investigative organs during the previous two years, attacks against judges and lawyers continued to occur with impunity.

57. In Haiti, pro-democracy lawyers and judges had been tortured, attacked and killed. The CIJL sincerely hoped that the United Nations plan to restore democracy in Haiti would help to pull the judiciary out of that tragic phase.

58. Death threats against human rights lawyers had increased, in particular, in Northern Ireland. Thirty-nine lawyers had been subjected to threats and intimidation by the police in 1993, as opposed to 11 such reported cases in 1992. The CIJL had to withhold the names of the lawyers for fear of reprisals. The failure of the Government to resolve the case of Patrick Finucane, a leading human rights lawyer murdered in February 1989, was a reason for continued concern over the safety of those lawyers. Jurists also received threats in Sri Lanka, Argentina and Brazil.

59. Furthermore, in Mauritania, 23 defence lawyers were being subjected to harassment by the Government, including excessive taxation and the severing of contracts with governmental bodies, because they were fighting against the impunity granted to several military officers who had been involved in executing more than 500 black Mauritanians between 1989 and 1992.

60. In Turkey, lawyers who associated with the People's Legal Aid Bureau were being detained and tried. The CIJL was observing the trial of four such lawyers. The United Nations Working Group on Arbitrary Detention had considered that the detention of several lawyers in Turkey had been arbitrary. Lawyers affiliated to the Turkish Human Rights Association were also targeted. The Chairman of the Association, lawyer Metin Can, had been killed in February 1993. Jurists were also arbitrarily detained in Nigeria, Cameroon, Ghana and Indonesia.

61. Judicial dismissals and removal from office were also a frequent occurrence. In Guatemala, as a result of President Elias's coup d'état in May 1993, the justices of the Supreme Court had been placed under house arrest. The Supreme Court and the Congress had then been dissolved. Due to domestic and international pressure, Guatemala had elected a human rights lawyer as its new Head of State. The justices of the Supreme Court had returned to their offices. Judicial officers were dismissed or removed from office also in Albania and Argentina. Honduras subjected some of its judges to governmental pressure.

62. The February 1993 presidential elections had posed an unprecedented challenge to judicial neutrality in Senegal. Justice Kéba Mbaye, the President of the Constitutional Court had resigned and the Vice-President had been assassinated, apparently by the opposition.

63. The Islamic Republic of Iran and several other countries in the Middle East did not permit women to enter the judiciary. Sudan dismissed women judges.

64. Structural defects in legal systems continued to hinder legal and judicial independence. The United Nations Basic Principles on the Role of Lawyers stated that Lawyers were entitled to form and join self-governing professional associations. However, in several countries, lawyers were prevented from enjoying that right. In Sudan and Syria there were restrictions imposed by not only the Executive, but also by the ruling party. The majority of lawyers had boycotted the elections on 11 March 1993 of the Sudanese Bar due to restrictions imposed by the Registrar of Trade Unions. Syrian lawyers were prohibited from freely joining Arab or international jurists' organizations without permission from the Ba'ath Party. Human rights lawyers continued to be imprisoned in those countries.

65. In the Israeli-occupied West Bank, Palestinian lawyers were not allowed to organize themselves in a recognized independent bar association. Since 1967, the Israeli Military Officer in Charge of the Judiciary had continued to select, promote and dismiss judges. Human rights lawyers continued to suffer from the sweeping power granted to Israeli soldiers to restrict freedoms.

66. In many countries, judicial independence was undermined by the creation of special courts to deal with terrorism and violent political opposition. The Governments of those countries claimed that special courts speeded up the judicial process and provided greater protection for judges. As stated in article 5 of the United Nations Basic Principles on the Independence of the Judiciary, tribunals that did not use the duly established procedures in the legal process should not be created to displace the jurisdiction belonging to the ordinary courts. Justice required that every person should be entitled to a fair and public hearing by a competent, independent and impartial tribunal.

67. In Algeria, in addition to military courts, anti-terrorism legislation of 30 September 1992 created special courts which were presided over by civilian judges appointed by the President of the Republic. It was of particular concern that the courts held in camera trials. Not only were the names of the judges not released, but the anti-terrorism legislation made it a crime to indicate their identities. Thus, there was no way to ensure that the trials were conducted by qualified, independent and impartial judges.

68. Similarly, in Peru, recently defined crimes of treason and terrorism were tried by hooded judges in secret military tribunals using summary proceedings. In Colombia, judges in special courts were given anonymity, and trials were closed to the public.

69. Those examples illustrated the importance of continued United Nations involvement in the protection of jurists. Through the reports of Mr. Joinet, the Special Rapporteur on the independence and impartiality of the judiciary, the Sub-Commission had demonstrated that monitoring the measures affecting judicial and legal independence was a key component of human rights protection. Now that the Sub-Commission had completed its study of the matter, it should recommend to the Commission on Human Rights, that it appoint a thematic rapporteur on the independence of the judiciary and the legal profession.

70. Mr. MANNA (International Federation of Human Rights), speaking on agenda items 10 and 11, said that the IFHR continued to be extremely concerned by recurrent human rights violations committed in the context of states of emergency. The IFHR and its Syrian branch, the Organization of Committees for the Defence of Democratic Freedoms and Human Rights (CDF) recalled that in Syria, the state of emergency had been in place for more than 30 years.

71. Under the state of emergency, 15 human rights activists, members of the CDF, had been detained for 20 months for having tried to win respect for fundamental freedoms. In an effort to draw attention to their plight, on 10 August 1993 they had gone on a hunger strike which would last for the duration of the forty-fifth session of the Sub-Commission.

72. The IFHR and the CDF had been the first organizations to inform the international community, on 25 June 1992, of the outcome of the most important trial in Syria since its independence. Five hundred political prisoners had, for over a year, been brought before the State Security Court which was considered by the IFHR and CDF as a "model" of arbitrary justice. Communists, Baathists, Nasserians, Kurdish nationalists, private individuals and five CDF activists had been brought before the court which on 17 March 1992 had not hesitated in sentencing 10 human rights activists to between 5 and 10 years' imprisonment.

73. The IFHR and the CDF had also revealed that Mr. Ayman Daghastani had, on 24 June 1993, been sentenced to 15 years' forced labour simply for having been found reading a prohibited newspaper. According to Amnesty International which had been present at the opening of the trial, Mr. Daghastani had been held since September 1987 simply on those grounds.

74. During the same trial, 24 political prisoners had been sentenced to terms of between 10 and 15 years' imprisonment. The Attorney-General had, moreover, called for the death sentence for approximately 100 political prisoners.

75. The IFHR and CDF would like the Special Rapporteurs on states of emergency and on the independence and impartiality of the judiciary to continue to look into the situation. They called on the Sub-Commission to condemn Syria for its systematic violations of human rights, in particular in the sphere of the administration of justice. The organizations were impatiently awaiting the somewhat delayed implementation of the mandate of the new Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. The situation in Syria was undoubtedly an example of the violation of those rights in view of the inordinate restrictions in place in a society which called itself "democratic".

76. The IFHR and the League for the Defence of Human Rights in the Islamic Republic of Iran were extremely concerned by the continued repression by the authorities against women in that country.

77. In recent times a vast campaign of repression had recently been launched against women accused of failing to respect the Islamic code of conduct and moral order. According to Iranian daily newspapers, approximately 1,000 women had been arrested. Some of them had been sentenced to be flogged.

78. On 30 July 1993, the head of the Judiciary, Ayatollah Mohammad Yazdi had officially recommended that the Government should dismiss women from their employment if they failed to respect the Islamic dress code.

79. On 1 August 1993, the Iranian Parliament had refused single, women medical students authorization to go abroad to continue their specialized studies. The reason given was the existence abroad of fatal diseases, such as AIDS.

80. Those measures and practices were in addition to the already extremely discriminatory legislation in force. For example girls were considered as having reached the age of majority at nine years of age and could be married if their parents so decided. To be more precise, parental authority lay with the father. In the event of his death, authority was passed on to the girl's paternal grandfather. As a result, a child's mother was deprived of any rights concerning her children.

81. The Government of the Islamic Republic of Iran continued both to threaten and make attempts on the life of its opponents outside the country. Since 30 August 1992, several Iranian dissidents had been murdered abroad. In France, Switzerland and Germany, it was almost certain that such assassinations had been carried out on the direct orders of Iranian authorities. It was beyond doubt that the murderers of Mr. Abdol Rahman Gassemlou, in Vienna, had been able to leave Austria with the assistance of the Iranian Embassy.

82. Those assassinations, in addition to the death sentence passed on Salman Rushdie and the crimes which had thus ensued, constituted a transfer of oppression to outside the country, to silence any opposition.

83. The Sub-Commission should condemn, as vehemently as possible, those fundamental violations of human rights which thus far had been committed with total impunity.

84. The IFHR also wished to draw the attention of the Sub-Commission to the situation of persons who had disappeared in Morocco, concerning which it had undertaken an investigative mission, together with the Lawyers' Committee for Human Rights. Information from extremely reliable concordant sources had been gathered with regard to the death during detention of missing military personnel at Tazmamart prison, other than those among the group of 28 prisoners released in 1991 as well as concerning the fact that a number of civilian and military persons who had disappeared (in particular Mr. Rouissi, Mr. Ouzzane and Mr. El Manouzi) might still be alive.

85. The IFHR believed that the Moroccan authorities should finally tell the truth and say whether the disappeared persons were still alive or dead. Those who were still alive, should be released immediately by the authorities.

86. Furthermore, they owed compensation for the great harm caused to the victims and their families. For instance, the requests that the high costs of medical treatment for the former Tazmament prisoners should be covered had so far met with silence on the part of the authorities.

87. The Moroccan authorities had repeated to the representatives of the IFHR their promise to look into the fate of at least 17 disappeared persons included in a list which had been drawn up in particular by the IFHR branch, the Moroccan Human Rights Organization. Those promises followed on the heels of others previously made to different organizations. They had still not been kept. It was obvious, however, that the authorities were in a position to confirm or deny the death of most of the disappeared persons.

88. Thus, the IFHR called upon the Sub-Commission to adopt measures aimed at inducing the Moroccan authorities to comply with their international commitments as soon as possible.

89. Ms. LI (International Federation of Human Rights) continuing the statement, said that the IFHR often voiced its concerns about the systematic violation of human rights by the authorities in the People's Republic of China. The serious violations committed in the framework of the administration of justice had once again been emphasized in the report of the second Australian human rights delegation which had been published on 6 May 1993 and in the report drawn up following the mission led by Lord Howe which had been published on 29 June 1993.

90. Practices which were totally incompatible with international instruments were prevalent. They included, pre-trial detention, expedited procedures for sentencing, labour rehabilitation camps, the death sentence and administrative detention. During pre-trial detention, there was no habeas corpus procedure and the detainee was denied the right to consult a lawyer before being notified of the charge being made against him. That practice was one of the causes of the widespread use of torture in detention centres. Expedited procedures for sentencing were applied for many crimes and offences, including those punishable by the death penalty. Under such procedures, the charge could be communicated only three days before the trial and any appeal had to be lodged within three days after the trial. The most common punishment handed out by Chinese courts was detention in labour re-education camps. Such punishment was also meted out for "offences of opinion". It was estimated that approximately 16 million persons were imprisoned in such camps (Lao-Gai). With regard to the death penalty, in 1992, at least 1,079 persons had been executed, which meant that the Government of China had the dubious distinction of holding the world record for the number of death sentences carried out in 1992. During the first five months of 1993, at least 300 persons had been executed. In May 1993, the Chinese delegation at the Committee against Torture had refused to provide figures on the number of executions despite the Committee's requests.

91. With regard to administrative detention, the report compiled by Lord Howe showed that in 1988, 1.5 million persons had been subjected to such detention under the so-called "shelter and investigation" ("Shourong Shencha") system, the rules of which were confidential and outside the control of the Government Procurator's Office.

92. The city of Beijing was one of the contenders vying for the Olympic Games in the year 2000. The slogan used to support its application spoke of "An open China for the year 2000". The IFHR had welcomed that declaration of intent on the part of the Chinese authorities, and consequently, had launched

a campaign to ensure that the openness proclaimed by the authorities came about. The IFHR had also called on the International Olympic Committee (IOC) to make its decision on the holding of the Olympic Games in Beijing conditional on the introduction of a system of administration of justice which respected international standards, with the release of political prisoners and the closing of the so-called "Lao-Gai" labour re-education camps. On 23 September 1993, the IOC should make its decision public. If by that time, the openness promised had not been achieved, it should be concluded that Beijing would not be ready to host the Olympic Games and the international community should draw its own conclusions.

93. At previous sessions, both the Sub-Commission and the Commission on Human Rights had called on the Government of Indonesia to honour its commitments undertaken in the forty-eighth session of the Commission on Human Rights. So far, no progress had been registered.

94. The people of Timor who had been given heavy sentences for their participation in peaceful demonstrations in Dili on 12 November 1991 and in Jakarta had not been released "without delay" as requested by the Sub-Commission and the Commission. On the contrary, visits by family members and the International Red Cross had been obstructed. Several prisoners had even been transferred to other islands which meant that not only were they being sentenced to a term in prison but also to deportation.

95. It should be remembered, that the military personnel responsible for the summary execution of more than 200 peaceful demonstrators would have been given only light sentences.

96. Furthermore, despite the appeals of both the Sub-Commission and the Commission that prisoners brought to court should have access to proper legal representation and a fair trial, the indications were that unfair trials were the general rule. The most famous case was that of Xanana Gusmao, the leader of the Timor resistance who, for example, had been given a lawyer who had links with the military information services. The IFHR was also concerned by the fact that many detainees were never brought before the courts. Their plight remained even more uncertain than that of prisoners who had been sentenced, as there was no official register of their detention. Many of them were put into military units or subjected to all sorts of torture and maltreatment until they died. The Sub-Commission had called on the Government of Indonesia to provide information on the fate of persons who had disappeared. The Indonesian authorities who had admitted that 91 persons had disappeared, while failing to identify them, had since declared that 31 of them had returned home but still refused to give their names. It should be recalled that the Working Group on Enforced and Involuntary Disappearances had provided the Government with a list of names of more than 200 persons who were presumed missing. It had to be recognized that thus far, such requests had not met with a satisfactory response and the exhortations of the Sub-Commission and the Commission had been in vain.

97. Mr. ESHAGI (International Falcon Movement) said that since the early 1980s tens of thousands of political prisoners had been summarily and arbitrarily executed in the Islamic Republic of Iran. Political detainees had been held in unlimited pre-trial detention, widespread torture had gone

unchecked and summary trials before the clerical judges of Islamic Revolutionary Courts in complete disregard for the guarantees of due process of law had been the norm.

98. The Iranian authorities publicly declared that international human rights standards had no relevance in the Islamic Republic. Their deliberate non-compliance with international standards was manifested in the new Islamic Punishments Act which had been given final approval in April 1993. Despite the recommendations of the United Nations Special Representative, various United Nations bodies and resolutions, the new law provided a range of cruel, inhuman and degrading punishments. The long list of crimes punishable by death had not been curtailed to the most serious crimes. A wide range of physical punishments leading to the death, mutilation or defamation of victims, such as stoning, amputation and crucifixion and various forms of talion and retribution were retained. Undefined crimes categorized as "corruption on earth" and "warring against God" which were mainly invoked against political prisoners, were still on the statute books and were punishable by death. Murder was still treated as a private matter to be sanctioned by retribution by the victim's next-of-kin or by the acceptance of blood money. The act stipulated that testimony by women in some cases was not valid and in other cases only pairs of women could replace one of the several men required as witnesses, and furthermore the blood money for a Muslim woman was half that for a Muslim man. The act also held children criminally responsible from an early age, so that at the age of nine a girl could be subject to the cruel punishments provided by the new penal code.

99. With regard to the independence and impartiality of the judiciary, students and teachers from religious seminaries with only a brief judicial in-service training could be appointed as judges. The Government's policy was that all such positions should eventually be occupied by clerics in order to "purify" the guardianship of "divine" jurisprudence. Such judges presided over the Islamic Revolutionary Courts which had jurisdiction over most offences, offences which carried the death penalty.

100. In a state of emergency such as that following the widespread civil unrest in spring 1992, the minimal requirements for the qualifications of judges were overlooked in favour of rapid penal remedies and the quick and summary execution of a number of innocent protesters with the hope of suppressing all further manifestations of dissent and discontent.

101. In that system judges did not and should not enjoy security of tenure. They could be dismissed at the discretion of the Head of the Judiciary who was himself appointed every five years by the Leader. The limits of crimes, punishment and criminal responsibility were deliberately kept unclear. On that basis the massacre of political prisoners could be ordered and collective death sentences pronounced on persons and groups in absentia, such as that passed on the Mojahedin in its totality. The execution of thousands of members of the Mojahedin had been confirmed in the book Death plus 10 years by Roger Cooper, published in 1993.

102. Since the present regime in Iran had taken power in February 1979, members of the Bar had been discouraged from defending prisoners in trials. In 1982 the Prosecutor General had said that lawyers could only defend

political prisoners if they believed that their clients were guilty and should base their case on demands for clemency without questioning their clients' guilt. Since 1980 lawyers had not been allowed into Islamic Revolutionary Courts and some other courts, including civil ones, had forbidden defence counsels. In 1981 the Government had taken over the Central Bar Association, placing one of its supporters in charge of it and arresting those members who had not gone into hiding. In the previous 14 years not one defence lawyer had been briefed by the Islamic Revolutionary Courts to defend a person liable to be sentenced to death.

103. Since 1979 more than 100,000 political prisoners had been killed in cold blood in prisons throughout Iran by order of Islamic Revolutionary Courts. Trials had been held illegally, in camera, without the observance of due process of law, or the observance of the presumption of innocence and proper investigation and more importantly, in the absence of defence lawyers. According to laws and international norms and standards pertaining to fair trials, trials held in the absence of defence counsels were illegal with no judicial impact. The killings of political prisoners were therefore premeditated murder in the first degree and those who had ordered the extrajudicial killings and carried them out should be brought to trial for their crimes against humanity.

104. Mr. GUISSE said that the concept of a fair trial should cover the trial from the preliminary investigations to the implementation of the sentence. At all those stages, the right to a fair trial was ensured by legal and judicial guarantees. The legal guarantees were essentially preventative being contained in legislation and covering all those responsible for rendering justice. Judicial guarantees were repressive and were intended to sanction any defects in the proceedings.

105. The right to a fair trial, as described above, applied to all forms of legal proceedings, be they criminal, civil or social. However, it was not enough to formulate a right, it was essential to put it into practice. The exercise of the right to a fair trial required economic and financial resources. The combination of fees to be paid to legal professionals and indirect taxes meant that for many individuals justice was an inaccessible luxury.

106. Some States had developed mechanisms to mitigate the cost of going to law and included the court-appointed lawyers, the fast-disappearing provision of legal assistance and the presence of lawyers at police stations.

107. Court-appointed lawyers were intended to put defence counsels at the disposal of the accused. However, they were often inexperienced trainees since low rates of pay did not attract fully qualified lawyers.

108. Legal assistance concerned the civil and commercial courts and was designed to provide information and assistance to individuals.

109. Lastly, there was the demand for the presence of lawyers in police stations, which together with the process of habeas corpus, would not only help to combat torture, summary execution and enforced disappearances but would also consolidate the right to a fair trial.

110. The right to a fair trial was only possible when the judiciary was truly independent, a fundamental principle based on the separation of powers. Judges should be independent of political power and of financial power.

111. Therefore, in order for the right to a fair trial to be applied some safeguards should be provided. The appointment and promotion of judges should be carried out by independent bodies and not by those in political power. Judges should be protected from financial pressure by being paid accordingly and given the respect due to them. Physical protection should be afforded judges, their families and their property since in many countries they were under threat.

112. Mr. LESTOURNEAUD (International Union of Lawyers), speaking on agenda item 11, said that once again his organization regretted the growing number of individual and collective violations of the human rights of judges and lawyers in the exercise of their functions. The latest report of the Centre for the Independence of Judges and Lawyers cited inadmissible violations committed in 54 countries, over 90 per cent of which had ratified one or several United Nations human rights instruments. In the course of the preceding year assassinations, disappearances, arbitrary arrest, violent attacks, threats and other forms of pressure had all been recorded.

113. The International Union of Lawyers, which intervened each time a lawyer was prevented from doing his or her job or an individual's right to be defended by a lawyer was not respected, had requested several Governments to respect the Basic Principles on the Independence of the Judiciary which had been adopted by the United Nations. Details of the interventions were contained in the 1992/1993 report of the Union's "Defence of the Defence" Commission.

114. Among the States mentioned in the two reports, about 15 of them had ratified the Optional Protocol to the International Pact on Civil and Political Rights which provided for the Human Rights Committee to receive and consider communications from victims of violations of those rights.

115. The international community and the Sub-Commission in particular should continue to encourage the ratification of international instruments and the acceptance of the right of individuals to address the various committees but it had now become a priority for the international community to act to protect the independence of the judiciary, as stipulated in paragraph 27 of the Vienna Declaration and Programme of Action.

116. In conclusion, the International Union of Lawyers thanked the Special Rapporteur for his efforts in favour of greater independence of the judiciary under agenda item 11. It hoped that that theme would be included on the Commission's 1994 agenda and further hoped that a resolution or recommendation to that end would be adopted in the present session of the Sub-Commission.

117. Mr. PRINCEN (Liberation), speaking on agenda item 10, said that he was the Chairperson of the Indonesian Institute for the Defence of Human Rights and had helped to found Infight, the Indonesian Front for the Defence of Human Rights. On three previous occasions he had been prevented from attending the Sub-Commission's session because he and many of his friends representing the

dissident voices in Indonesia had been blacklisted and could not leave the country without special permission or have their opinions published in it. He was Dutch-born but had joined forces with the Indonesian people when he had deserted the Dutch army in 1946. He had been refused a visa to enter the Netherlands because he was considered to be a "traitor" there.

118. His Institute had been founded in 1966 by several Indonesian lawyers to uphold and restore respect for the law and human rights in Indonesia at a bleak period when more than 1 million people had been slaughtered by army death squads and groups operating at the instigation and with the protection of the army. His had been the very first organization to speak out against those killings and to call for independent investigations. At that time, hundreds of thousands had also been detained and held without trial by the authorities, which had used the spectre of communism to justify their campaign. Although the untried political prisoners had been released, many thousands of them were still suffering from discrimination, with special initials on their identity cards preventing them from enjoying many civil rights. They had to report to the local and military authorities, and all their activities were controlled. Even their children were excluded from enrolling at higher educational institutes.

119. Since 1975, when Indonesian troops had invaded and illegally annexed East Timor, his Institute had consistently condemned human rights violations against the people of East Timor, where an estimated one third of the population had lost their lives as a result of the war. East Timor was an endless story of violent violations of human rights. Despite the Indonesian Government’s claims to the contrary, the spirit of resistance among the common people there was not diminishing. The latest atrocity had been the grossly unfair trial of their leader, Xanana Gusmao. According to reports from Jakarta, the President had reduced his life sentence to 20 years’ imprisonment, although he should never have been tried by an Indonesian court in the first place. In his defence plea, which he had not been allowed to read in court, he had recalled that the Charter of the United Nations provided the best reference point for the theory of people’s liberation and the formation of nations. He and many other East Timorese languished in prisons, and the continued presence of the Indonesian occupation forces pushed people to the ultimate resort of armed as well as peaceful resistance, for which they were being punished very harshly. The most recent example had been the Santa Cruz massacre of November 1991.

120. Another region in the archipelago where Indonesian troops were wreaking death and destruction against a defenceless population was Aceh. The Legal Aid Institute, on whose Board of Trustees he sat, had carried out thorough investigations of human rights violations there and was convinced that a huge wave of extrajudicial killings, "disappearances", arbitrary detentions without trial, torture and unfair trials had occurred. In one case, an alleged member of Free Aceh had had his stomach torn open by troops while he was still alive. There was a pressing need for United Nations officials to carry out detailed and scrupulous investigations in Aceh.

121. In Indonesia there were no free and independent political parties, no political rights, no freedom of association, and all members of Parliament were screened by the army for their political reliability and loyalty to the regime. His own attempt to create an independent trade union had not been allowed.

122. It was also highly regrettable that more advanced countries like Sweden and Finland had ignored article 14 of the Universal Declaration of Human Rights by refusing asylum to seven young East Timorese, who were now under his personal protection.

123. Mr. BANDIER (International Association of Educators for World Peace), speaking on agenda item 10, said that during the past six years his organization had received reports of Tibetan detainees who had been maimed and of others who had died as a consequence of torture in Chinese prisons, as well as testimonies by former political prisoners from Tibet who had described inhuman and degrading prison conditions. His organization had studied detention cases in Tibet which showed that the right to a fair trial was completely ignored when the Chinese "legal system" was implemented, the role of the "judges" being restricted to passing sentences determined by the political authorities. Under the Chinese rule in Tibet prisoners were not informed of the grounds of their arrest and of their right to legal remedies. Arrest warrants were rarely issued or produced. The authorities declared a person in custody arrested only after several days, months or even years. During the period of the initial detention there was no question of informing the family, since the detained person was "legally" not arrested.

124. The People's Republic of China was responsible for the deaths of millions who had succumbed to atrocities inside its prisons and labour camps, most of them unknown to the world. Nobody had been punished for that. The Government continued to pursue an indoctrination system through its "reform through re-education" and "reform through labour" programmes, and the ability of prisoners to remain sane was questionable. Article 2 of the Chinese Penal Code stated that the purpose of the Penal Code was "to use penalties and punishments against every counter-revolutionary and penal crime to defend the dictatorship of the proletariat". That meant that prisoners in Tibet and China were interrogated, tortured and, at times, summarily executed if they did not kow-tow to the dictates of the Communist Party.

125. In the Chinese legal system the most basic safeguard - the right to be presumed innocent until proved guilty beyond reasonable doubt - did not exist. Sentences imposed on political prisoners were often excessively severe in relation to the alleged offence. Prisoners were often detained for an extended period without charges and were seldom brought before a court of law. His organization therefore urged the Sub-Commission to pay serious attention to the violations of human rights occurring in the prisons, labour camps and "courts" of the Chinese authorities in Tibet, where human rights violations had been taking place without international scrutiny for the past four decades and still continued. Furthermore, during the past 43 years no independent visitors had been permitted to make a free study of prison conditions in Tibet.

126. He wished to mention cases of Mr. Gendum Rinchen, Mr. Lobsang Yonten, Mr. Tsetan Dorje, Mrs. Damchoe Palmo and Mr. Lobsang Gyaltsen from among those arbitrarily arrested during the past seven months in Tibet. He also wished to mention the incommunicado detention of Mrs. Dolma, Mr. Jamphel, Mr. Kunchok Tenzin, Mr. Tenpa Sonam, Mr. Lhodoe, Mr. Sonam Tsering, Mr. Bagdro and Mr. Dorjee in Maldro Gungkar district since April and May 1993. His organization urged the Chinese delegation to provide detailed information on the well-being of those prisoners of conscience to the Sub-Commission and to the United Nations special rapporteurs and working groups without further delay. Of an estimated 150 to 200 persons arrested during the past seven months, not a single one had been brought to trial. Moreover, one of the detainees, Damchoe Palmo, was reported to have lost her unborn child while in custody, as a result of brutal treatment for refusing to confess.

127. The use of torture had been frequent in Tibet, as Amnesty International had reported in 1992. Moreover, many prisoners were forced to perform hard labour or were subjected to solitary confinement. They were compelled to attend indoctrination meetings, denied adequate medical attention, given uneatable meals, and made to live in squalid, cold and damp cells. Political prisoners like Lobsang Tenzin, Tenpa Wamgdrak, Tenpa Phuljung and Gyathar reportedly suffered from symptoms of blindness and rheumatism due to squalid and damp prison-cell conditions.

128. The administration of justice by the Chinese authorities in Tibet fell far short of international standards, the entire objective of the Chinese legal system being to extract confessions from prisoners rather than to administer justice. For example, defence pleas, when permitted, were restricted to appeals for mitigation of punishment rather than for pleading innocence.

129. Ms. CRAMER (International Progress Organization), speaking on items 10 and 11, recalled that in previous statements to the Sub-Commission and the Commission on Human Rights, the International Progress Organization (IPO) had dealt with abuses in the judicial system of the United States of America, notably in the case of the philosophical political opposition movement associated with Lyndon H. La Rouche. For more than four and a half years now, Mr. La Rouche had been in prison after being sentenced in a trial that had provoked international protests by eminent jurists and other personalities. So far all efforts to remedy the situation had failed, despite comprehensive documentation of Mr. La Rouche's and his associates' innocence and documentation of massive governmental and prosecutorial misconduct. The Fourth Circuit Court of Appeals in Richmond, Virginia, had so far taken no action on the appeal filed against the denial of a "2255" motion for a new trial by Judge Albert V. Bryan, the same judge who had originally sentenced Mr. La Rouche and several of his associates. The "2255" motion had been accompanied by six volumes of evidence newly discovered after trial, showing that the prosecution had conducted and participated in a conspiracy with others to wrongfully convict Mr. La Rouche and his co-defendants by engaging in outrageous misconduct, including financial warfare.

130. A cornerstone in the "2255" motion had been the ruling of a leading bankruptcy court in 1989, stating that in bringing forth involuntary bankruptcy proceedings against organizations and publishing entities

associated with Mr. La Rouche, the Government had acted "in objective bad faith" and had committed "fraud on the court". That ruling had been affirmed on appeal. However, during trial, in a motion in limine, the judge had prevented the defence from even mentioning the fact that it had been the Government which had brought about the bankruptcy proceedings which had led to the organizations' and companies' inability to repay loans taken. The continued inaction of the Fourth Circuit Court of Appeals was a proof that the pattern of gross violations of due process was being continued.

131. Approximately 270 parliamentarians from 25 countries had signed a joint appeal to President Clinton to free Mr. La Rouche. Two Italian parliamentarians had personally intervened with the United States Embassy in Rome and demanded that justice be done and that Mr. La Rouche be set free. The former President of Argentina, Arturo Frondizi, had written an open letter to President Clinton calling upon him to exhaust all available means to settle Mr. La Rouche's case once and for all and thus give him back his freedom. However, the expectations that the new United States administration would do away with the pattern of misconduct perpetrated in the judicial system had so far not been fulfilled, as other cases also clearly demonstrated.

132. IPO appealed to the Sub-Commission to see to it that all necessary steps were taken immediately to remedy the situation. That was made even more urgent by the fact that Mr. La Rouche would be 71 years old on 8 September 1993, and the long period of incarceration presented a serious threat to his overall life-expectancy. Furthermore, extremely long sentences had been imposed on several of his associates. One of them, Michael Billington, who had been sentenced with Mr. La Rouche to three years in Federal prison, which he had served until the Spring of 1991, had even been sentenced by a Virginia State court to 77 years in prison on the basis of the same evidence and the same witnesses as in the Federal case. His colleague, Anita Gallagher had been sentenced to 39 years, her husband Paul to 34 years, Lawrence Hecht to 33 years, Donald Phau to 25 years and Rochelle Ascher to 10 years.

133. On 1 December 1989, Michael Billington had been sentenced by a Virginia State court for an alleged "securities fraud" in an alleged amount of $76,000. The funds in question had been political loans for campaigns and publishing projects. At sentencing, the prosecutor had stated in court that the sentence was intended to be "a message to those other people ... and to everybody affiliated to that organization out there raising funds". Never before had there been any ruling that the political loans at issue were "securities". Such a ruling had been made only one month after Billington and others had been arrested, and the political motive behind the arrests could hardly be more obvious. In the course of his trial, Billington had, by order of the court, been subjected to a psychiatric examination for his insistence on his constitutional right to a trial by jury. The pattern of legal abuse had been intensified by the behaviour of his own lawyer, who had changed sides and allied himself openly with the prosecution. The judge had outrageously denied him the possibility of changing lawyers during trial. During the entire time of the competency proceedings and trial, Billington had been held in solitary confinement in a cell measuring 3 x 4 metres for more than 100 days.

134. The Virginia case agent in cases against Michael Billington and other La Rouche associates had been caught out on tape lying to prospective witnesses in order to elicit fraudulent testimony. The lead investigator had admitted to having been engaged in multiple illegal searches to construct the trail of false evidence. Part of that information had come to light in the course of court proceedings for an attempted kidnapping of another La Rouche associate, Louis Du Pont Smith, heir to the Du Pont fortune.

135. The trial judge in Billington's case and other Virginia cases had admitted in court to having ex parte communications with a private agency, the Anti-Defamation League of B'nai B'rith about the alleged "cult" nature of the philosophical movement, a slanderous allegation circulated to secure unopposed persecution of an undesired political opponent. Published writings of Lyndon La Rouche and his imprisoned associates gave testimony of the intellectual strength and unbroken spirit that had characterized the "La Rouche Movement" during the more than 20 years of its existence. IPO urged the Sub-Commission to engage immediately in a thorough and impartial investigation of the case so that justice could be done to the victims of the politically motivated persecution and so that the authority of the United States of America as a country respecting international human rights standards could be upheld.

136. Mr. URATA (Crime Prevention and Criminal Justice Branch, United Nations Office at Vienna) congratulated the Centre for Human Rights on the successful conclusion of the World Conference on Human Rights held at Vienna. The Crime Prevention and Criminal Justice Branch stood ready to assist in implementing the relevant aspects of the Vienna Declaration and Programme of Action, especially those relating to the administration of criminal justice.

137. While most United Nations activities in crime prevention and criminal justice had human rights aspects, many instruments developed under the United Nations human rights programme were closely related to the administration of justice. For example the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and other instruments were of mutual concern to the human rights and crime prevention programmes and their implementation was being enhanced through close cooperation between them. That applied in particular to the human rights advisory services programme, in which the crime prevention programme was frequently involved. Thanks were due to the Sub-Commission for taking the initiative with a view to improving coordination and cooperation between the two programmes.

138. The newly established Commission on Crime Prevention and Criminal Justice had held its second session at Vienna in April 1993. The human rights programme had made an essential contribution, as in the past. On the recommendation of the Commission, the Economic and Social Council, at its most recent session, had adopted nine significant resolutions. In them, the Council had reaffirmed the priority themes for the period 1992-1996, which were national and transnational crime, organized crime, economic crime, including money laundering, and the role of criminal law in the protection of

the environment; crime prevention in urban areas, and juvenile and violent criminality; and efficiency, fairness and improvement in the management and administration of criminal justice and related systems.

139. The programme was being reoriented towards operational activities and technical assistance to developing countries and the new democracies in eastern and central Europe and other regions. Efforts were being focused on the promotion of effective and fair criminal justice systems based on the rule of law, taking appropriate account of United Nations norms, standards and model treaties. The programme devoted great attention to helping States, upon request, in legislative and criminal justice reform and the elaboration and implementation of criminal codes and international treaties and conventions such as the development of a convention on mutual assistance in criminal matters and the formulation of a protocol on extradition to that convention. One of the major projects to be undertaken by the programme related to legislative and judicial reform in the Russian Federation. Other areas of priority concern for the programme were the effective planning and formulation of national policies regarding crime prevention and criminal justice strategies, as well as the organization of training courses and seminars for criminal justice personnel and the establishment of information networks and databases on crime issues.

140. As for the use and application of United Nations standards and norms in the field of crime prevention and criminal justice, the Economic and Social Council had requested the Crime Commission to establish, at its third session, an open-ended in-sessional working group to discuss how to promote their use and application, particularly with regard to the Standard Minimum Rules for the Treatment of Prisoners, the Code of Conduct for Law Enforcement Officials, together with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, and the Basic Principles on the Independence of the Judiciary. The Council had further requested the Secretary-General to commence, without delay, a process of systematic information-gathering.

141. The third session of the Commission on Crime Prevention and Criminal Justice was scheduled to be held at Vienna from 25 April to 6 May 1994. It would have to review priority themes, including the role of criminal law in the protection of the environment, violence against women, and preparations for the World Ministerial Meeting on Organized Crime, as well as technical cooperation, United Nations standards and norms in the field of crime prevention and criminal justice, preparations for the Ninth Congress on the Prevention of Crime and the Treatment of Offenders, and cooperation and coordination of activities in crime prevention and criminal justice.

142. The Economic and Social Council had also approved the following provisional agenda for the Ninth Congress, as finalized by the Commission on Crime Prevention and Criminal Justice at its second session: (1) international cooperation and practical technical assistance for strengthening the rule of law: promoting the United Nations crime prevention and criminal justice programme; (2) action against national and transnational economic and organized crime, and the role of criminal law in the protection of the environment: national experience and international cooperation;

(3) criminal justice and police assistance: management and improvement of police and other law enforcement agencies, prosecution, courts, corrections, and the role of lawyers; and (4) crime prevention strategies, in particular as related to crimes in urban areas and juvenile and violent criminality, including the question of victims: assessment and new perspectives.

143. The Council had further endorsed the programme of work for the Ninth Congress, including the holding of six workshops on: (i) extradition and international cooperation: exchange of national experiences and implementation of relevant principles in national legislation; (ii) mass media and crime prevention; (iii) urban policy and crime prevention; (iv) prevention of violent crime; (v) environmental protection at the national and international levels: potentials and limits of criminal justice; and (vi) international cooperation and assistance in the management of the criminal justice system: computerization of criminal justice operations and the development, analysis and policy use of criminal justice information. Five regional preparatory meetings for the Ninth Congress would be held at Bangkok, Thailand; at Addis Ababa, Ethiopia; at Vienna, Austria; at Santiago, Chile; and at Amman, Jordan. The Governments of Egypt and Tunisia had extended generous offers to host the Congress, so it would be held for the first time in the African region.

144. The crime prevention and criminal justice programme was also organizing an ad hoc expert meeting on model legislation to foster reliance on model treaties at Vienna, an ad hoc expert meeting on more effective forms of international cooperation against transnational crime, including the protection of the environment, at Vienna; an international conference on money-laundering and controlling the proceeds of crime at Courmayeur, Italy; and the United Nations World Ministerial Conference on Organized Transnational Crime, at Venice. The active participation of the human rights programme in all meetings of special interest to it would be greatly appreciated.

HUMAN RIGHTS AND DISABILITY (agenda item 12) (continued)

145. Mr. DESPOUY, speaking on item 12, said that at last the report he had prepared as Special Rapporteur on human rights and disability (E/CN.4/Sub.2/1991/31) had been published, two and a half years after it had been submitted. A way should be found to speed up publication of such documents since it was important for them to be up to date.

146. In the course of preparing his report he had been surprised by the absence of coordination between United Nations bodies which were directly or indirectly connected with human rights and disability. If a draft resolution was submitted on the subject, it should include a request for the Secretary-General to provide information on the coordination of efforts in that field. The lack of coordination was a cause for serious concern and should be assessed without delay.

147. On a more positive note, the report had been widely distributed, particularly in the developed countries, and had been well-received by the media. He had observed that in some countries the report had served as the basis for the implementation of national policies towards the disabled, for instance in Paraguay it had provided the legal framework for legislation.

148. The NGOs had put in a great deal of work locally complementing the efforts of the United Nations. Financial and technical support had been provided so that the disabled themselves could put their own case.

149. Some of the topics covered in the report had regional resonance, for instance, in Latin America the issue of legal impediments had raised considerable interest. Disabled persons did not just have a problem with the recognition of their rights but with the implementation of those rights. In some places the law itself was an obstacle, for instance in some countries in Latin America the teaching profession was closed to the disabled, although that was now the subject of many reports and studies in the region.

150. In conclusion the subject of human rights and disability was discussed biennially under agenda item 12. It might however be a good idea to include it as a sub-item under the agenda item "Protection, promotion and restoration of human rights at national, regional and international levels", since then it could be discussed every year.

The meeting rose at 12.55 p.m.