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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Decisions adopted by the Working Group on Arbitrary Detention

The present document contains several decisions adopted by the Working Group on Arbitrary Detention at its tenth session, held in September 1994. All statistical data concerning these decisions are included in the Working Group's report to the Commission on Human Rights at its fifty-first session (E/CN.4/1995/31, Annex III).

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Decision No. 10/1994 (Tunisia)

Communication addressed to the Government of Tunisia on 22 April 1994.

Concerning: Abderrahmane El Hani, on the one hand, and the Republic of Tunisia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. With a view to taking a decision the Working Group considers if the cases in question fall into one or more of the following three categories:

I. Cases in which the deprivation of freedom is arbitrary, as it manifestly cannot be linked to any legal basis (such as continued detention beyond the execution of the sentence or despite an amnesty act, etc.); or

II. Cases of deprivation of freedom when the facts giving rise to the prosecution or conviction concern the exercise of the rights and freedoms protected by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights; or

III. Cases in which non-observance of all or part of the international provisions relating to the right to a fair trial is such that it confers on the deprivation of freedom, of whatever kind, an arbitrary character.

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Tunisia. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made, the Government's reply and the comments made by the source.

5. According to the source, Abderrahmane El Hani, a lawyer, was arrested on 15 February 1994, although he had declared himself a candidate for the presidency of the Republic, and charged with maintaining an illicit association and disseminating false news, and then kept in custody pending trial.

6. In its reply, the Government confirms the nature of the proceedings, explaining that the first offence relates to the maintenance of a non-recognized party (Act of 3 May 1982, arts. 8 and 26) and that the second

involves violation of articles 50 and 51 of the Press Code, which forbid the "dissemination of false news liable to disturb public order". It adds that the charges against Abderrahmane El Hani have nothing to do with "the allegations that he had declared himself a candidate for the presidency of the Republic". Finally, it states, which the source does not deny, that he was released on 23 April 1994 pending trial (after being in custody for 72 days).

7. The Working Group, having considered the available information, is of the opinion that in the case in question no special circumstances would warrant its considering the nature of the detention of the person released.

8. The Working Group, without prejudging the nature of the detention, decides to file the case of Mr. Abderrahmane El Hani under the terms of paragraph 14 (a) of its methods of work.

Adopted on 27 September 1994.

Decision No. 11/1994 (Tunisia)

Communication addressed to the Government of Tunisia on 22 April 1994.

Concerning: Moncef Marzouk, on the one hand, and the Republic of Tunisia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Tunisia. The Working Group forwarded the Tunisian Government's reply to the source of the information, which submitted its comments on 4 August 1994. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made, the Government's reply and the comments made by the source.

5. According to the source, Moncef Marzouk, former President of the Tunisian Human Rights League, was arrested on 24 March 1994 and charged with "dissemination of false news liable to disturb public order and defamation of the judicial order" under articles 50 and 51 of the Press Code. In support of these charges, the Prosecutor produced an interview published in a Spanish newspaper. The accused contested the facts.

6. In its reply, the Government points out that, the facts having been established through the judicial procedure, Moncef Marzouk was released on 30 July 1994, i.e. after 110 days in custody, and discharged in the following circumstances:

(a) Contesting the source's allegations, the Government considers that it is inaccurate to suggest that Moncef Marzouk had denied the facts, inasmuch as it was established that he had in fact made statements to foreign journalists, but that one of them, from the newspaper Diario 16, might have distorted what he had said;

(b) This hypothesis proved in the end to be true, the newspaper having published on 13 May 1994 an article stating that "an unfortunate error crept into the interview with Moncef Marzouk, owing to the need to translate from English into French, and then from French into Spanish";

(c) Against this background, the lawyer, after sending a complaint to the newspaper on behalf of his client, handed the judge a copy of the correction published in return by the newspaper. The judge accordingly dismissed the case.

7. In the light of the above, the Working Group decides as follows:

> The Working Group notes the release of Moncef Marzouk with satisfaction. Nevertheless, in accordance with its methods of work, the Group decides that the detention of Moncef Marzouk for 110 days was arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. In consequence of the decision of the Working Group declaring the detention of Moncef Marzouk to be arbitrary, and taking into account the fact that he has been released, the Working Group requests the Government of Tunisia to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles contained in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 28 September 1994.

Decision No. 12/1994 (Tunisia)

Communication addressed to the Government of Tunisia on 22 April 1994.

Concerning: Ahmed Khalaoui, on the one hand, and the Republic of Tunisia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Tunisia. The Working Group forwarded the Tunisian Government's reply to the source of the information, which sent its comments on 4 August 1994. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made, the Government's reply and the comments made by the source.

5. According to the source, Ahmed Khalaoui, aged 50, teacher and trade unionist, was arrested on 4 March 1994 and accused of illicit distribution of leaflets (condemning the Hebron massacre), whereas he was peacefully exercising his right to freedom of opinion and expression. His application for release was rejected, and he is said to have been held in Tunis prison since 8 April 1994.

6. The Government, which confirms the date and circumstances of the arrest, gives the following explanations:

The leaflets, which the author produced at home, called for confrontation with all Jews, both in Tunisia and in other Arab countries, and a boycott of all conferences and scientific meetings attended by them.

He also advocated that there should be no economic or political dealings with Jews, stressing particularly the need for the Tunisian people to harass the Jewish community in Djerba.

It was in these circumstances that he appeared before the Tunis Correctional Court on 8 March 1994 for incitement of hatred between races, religions and peoples and for publication of leaflets liable to disturb public order.

After a series of postponements to 24 March, 31 March and 14 April, he was finally tried on 27 June 1994 and sentenced to two years' imprisonment and a fine of 1,000 dinars for incitement to racial hatred (Criminal Code, art. 52 bis) and to eight months' imprisonment for publication of leaflets and a fine of 100 dinars for violation of the provisions concerning statutory deposit (Press Code, arts. 12, 44 and 62).

7. In its comments on the Government's reply, received by the Working Group on 4 August 1994, the source expresses the view that "Ahmed Khalaoui is a political prisoner" and requests that he should be given a quick and fair trial "in accordance with the rules of international law".

8. In view of the foregoing, the Working Group considers, on the basis of the position adopted by the Human Rights Committee on 6 April 1983 (request 10/1981, JRT and WG. Party C. Canada), that the restrictions placed by Tunisian law on freedom of opinion in order to combat the dissemination of racist ideas or remarks - violently anti-semitic in the case in question - are compatible with the rules of international law, and in particular with articles 19 and 20 of the International Covenant on Civil and Political Rights, according to which:

> Article 19, paragraph 3: "The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
>
> (a) For respect of the rights or reputations of others;
>
> (b) For the protection of national security or of public order (ordre public), or of public health or morals."
>
> "Article 20, paragraph 2: "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

9. In the light of the above, the Working Group decides as follows:

> The detention of Ahmed Khalaoui does not fall into any of the three categories of the principles applicable in the consideration of the cases submitted to the Working Group, and in particular category II, inasmuch as incitement to racial hatred is an offence and not the expression of an opinion. The detention of Ahmed Khalaoui is accordingly declared not to be arbitrary.

Adopted on 28 September 1994.

Decision No. 13/1994 (Myanmar)

Communication addressed to the Government of Myanmar on 22 April 1994.

Concerning: Dr. Ma Thida, Dr. Aung Khint Sint, Moe Tin and Kyaing Ohn, on the one hand, and the Union of Myanmar, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of Myanmar. The Working Group transmitted the reply provided by the Government to the source and the latter has provided the Working Group with its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto, as well as the comments by the source.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Rapporteur of the Commission on Human Rights, Mr. Yokota, pursuant to Commission resolution 1992/58.

6. According to the communication, a summary of which has been transmitted to the Government:

(a) Dr. Ma Thida, aged 27, a female short-story writer and member of the opposition National League for Democracy and Dr. Aung Khint Sint, a doctor who has written on medical issues and an NLD MP were allegedly arrested on 7 and 3 August 1993, respectively, on charges under the Emergency Powers Act, and are being detained in Insein Prison in Rangoon. According to the source Dr. Ma Thida was convicted of endangering public tranquillity, of having contact with unlawful associations, and distributing unlawful literature. It was reported that Dr. Ma Thida and Dr. Aung Khint Sint were both sentenced on 15 October 1993 to 20 years in prison each. According to the source, precise details of the evidence used to convict them were not available. It was also reported that in the Insein Prison conditions are poor and a number of political prisoners have died from lack of medical attention.

(b) Moe Tin, journalist and poet as well as the literary advisor of Aung San Suu Kyi with the National League for Democracy, was allegedly

arrested in December 1991 and was believed to be detained in prison. According to the source he was detained solely because of his opinions. He was sentenced to four years in prison in July 1992.

(c) Kyaing Ohn, a former collaborator of "Bot athung" and member of the National League for Democracy and an elected member of parliament, was allegedly arrested in 1990 and was believed to be detained in prison. According to the source, the detainee was accused of being linked with the National League for Democracy. It was reported that he was sentenced to seven years hard labour on 17 October 1990.

7. In its reply, the Government of Myanmar, while citing a different sentence for Ohn Kyaing from that provided by the source, holds that none of the persons in question has been arbitrarily detained. They were all convicted, following perfectly legal actions and a proper trial, under section 5 (j) of the Emergency Provisions Act for having broken the law, in particular, either by reproducing or distributing seditious books and pamphlets published by terrorist groups with the aim of creating unease and bringing the Government and the armed forces into discredit (in the case of Ma Thida and Ohn Kyaing), or (in the case of Tin Moe) by printing literature directed against the Government and the army in the magazine Pay Hpoo Hlwar, of which he was the editor. However, it will be noted that according to the Government of Myanmar, in addition to the term of 7 years' imprisonment, Ohn Kyaing was also sentenced to 10 years' imprisonment at a later trial for involvement in the drafting, by the National League for Democracy (the opposition), of a leaflet entitled "The three paths to power". In the case of Dr. Aung Khint Sint, the Government merely states that he was prosecuted and tried by a civil court, which found him guilty without giving further details, and that it consequently considers that a judgement made by a court legally constituted in a State Member of the United Nations should not be called into question on the pretext of investigating arbitrary detention.

8. As can be seen, and as regards the substance of the matter, the Government of Myanmar does not deny that the detention of the above-mentioned persons is connected solely with their activities in opposing the current regime in that country, and there is nothing to indicate that in taking those actions they resorted to or incited violence. What they are ultimately accused of is having freely and peacefully exercised their right to freedom of opinion and expression guaranteed under article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. It is no accident that the Working Group has already had occasion to note in its earlier decisions (59/1992 Nay Min, 38/1993 Win Tin and seven others) that it was emergency legislative provisions, and particularly section 5 (j), which were cited against them, as occurs each time that proceedings are instituted against members of Parliament, political leaders, writers, journalists and so on.

9. In the light of the above the Working Group decides:

> The detention of the above-mentioned persons, is declared to be arbitrary being in contravention of article 19 of the Universal Declaration of Human Rights, and article 19 of the International Covenant

on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

10. Consequent upon the decision of the Working Group declaring the detention of Dr. Ma Thida, Dr. Aung Khint Sint, Moe Tin et Kyaing Ohn to be arbitrary, the Working Group requests the Government of Myanmar to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 28 September 1994.

Decision No. 14/1994 (Mali)

Communication addressed to the Government of Mali on 22 April 1994.

Concerning: Major Lamine Diabira, Lieutenant Fadio Sinayogo, Warrant Officer Class 1 Kaka Koureissy, Sergeant Bo Dabo, Lieutenant Amadou Diallo, Lieutenant Mamadou Zoumana Konaté, Staff Sergeant Baba Traoré and Sergeant N'Golo Diarra, on the one hand, and the Republic of Mali, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than 90 days since the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Mali. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the communication from the source, a summary of which was transmitted to the Government, Major Lamine Diabira, a former Minister of Territorial Administration in the Transitional Government of Lieutenant Colonel Amadou Toumani Touré, was arrested on the night of 14-15 July 1991 and accused of plotting a coup d'état. The other soldiers mentioned above were arrested at the same time, or shortly afterwards, on the grounds that they were implicated in the same failed coup. After being arrested, some of them were taken to Djikoroni paratroop base near Bamako, while others were taken to Ségon military base, where they were kept incommunicado and without being charged for nearly six months (although under Malian law they ought to have been brought before the judicial authorities within 48 hours of their arrest). In June 1993, Major Lamine Diabira and the other soldiers were charged under articles 41 and 42 of the Malian Criminal Code, with conspiracy and attempting to overthrow the Government.

6. From the facts reported above, it can be said that the persons in question were held without charge, and for six months incommunicado, from their arrest in July 1991 until June 1993, when they were officially notified of a charge of conspiracy and attempt to overthrow the Government. Their detention is thus evidently arbitrary, since it violated article 9 of the

Universal Declaration of Human Rights, article 14.3 (a), (b) and (c) of the International Covenant on Civil and Political Rights, to which the Republic of Mali is a party, and Principles 11 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

7. In the light of the above, the Working Group decides as follows:

> The detention of the above-mentioned persons from their arrest to the date on which they were charged in June 1993 is declared to be arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights, article 14.3 (a), (b) and (c) of the International Covenant on Civil and Political Rights, to which the Republic of Mali is a party, and accordingly falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group. With regard to their detention beyond that period, the Working Group has not had enough information from the Government or the source to be able to take a decision as to whether it is arbitrary or not.

8. Having declared the detention of the persons in question to be arbitrary, the Working Group requests the Government of Mali to take the necessary steps to remedy the situation in order to bring it into conformity with the rules and principles contained in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 28 September 1994.

Decision No. 15/1994 (South Africa)

Communication addressed to the Government of South Africa on 22 April 1994.

Concerning: Nathaniel Ngakantsi and Johannes Setlae, on the one hand, and the Republic of South Africa, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days from the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of South Africa. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the communication, a summary of which has been transmitted to the Government:

(a) Nathaniel Ngakantsi, executive member of the African National Congress, was allegedly arrested without charge in Bophuthatswana and had been held in incommunicado detention following his arrest on 31 December 1993. According to the source, the detention is part of a pattern of harassment of non-violent political activists involved in voter education work prior to South Africa's first non-racial elections in April 1994. It was reported that the lawyers for the detainee were informed by the police that the detainee would appear at the magistrates' court on the morning of 5 January 1994, but his lawyers failed to find him that morning. However, they were informed that the detainee had made a confession to the magistrate the previous day. The police apparently left the court shortly thereafter with the detainee, who in fact had not made a statement to the magistrate. It was reported that Nathaniel Ngakantsi was being held under the terms of Section 25 of Bophuthatswana's Internal Security Act which allows police to hold a detainee for at least 14 days or for a further period of up to 90 days with higher authorization. The police have the right to deny lawyers or anyone else access to the detainee.

(b) Johannes Setlae, aged 26, member of the African National Congress, was reportedly arrested by the Bophuthatswana police on 12 January 1994. He

was believed to be detained incommunicado at Mmabatho police station under Section 25 of Boputhatswana's Internal Security Act. According to the source Johannes Setlae was detained after the police broke up a voter education meeting arranged by the members of the local ANC youth league. One policeman reportedly hit the mother of Ofentse Kogotsitse, the local president of the south league and she fell down. This apparently prompted Johannes Setlae to throw an empty bottle at the police. Then Johannes was reportedly assaulted and arrested by the police. According to the source his lawyer had been denied so far the right to visit him and no information was available about his state of health following his alleged beatings. The source expressed fears the he may be denied proper medical care and may be further assaulted while he remained in incommunicado detention. The concerns were increased by a report that, earlier on 12 January, the Bophuthatswana security police threatened to "eliminate" one of the meeting organizers and others involved in political activities.

6. The facts set out above show that the detention of Nathaniel Ngakantsi and Johannes Setlae is based solely on that fact that as non-violent political activists and members of ANC, they had become involved in voter education work leading up to the first non-racial elections in South Africa in April 1994, whereas these actions constituted no more than the free and peaceful exercise of their right to freedom of opinion, expression and assembly. To this is added the fact that no charges have been brought against them since their arrest, apparently under section 25 of the Bophuthatswana Internal Security Act, authorizing the police to deny lawyers and all other persons access to those under arrest. Lastly, it will be noted that, according to the source, pressure has been brought to bear on Nathaniel Ngakantsi to prompt him to confess, and that the state of health of Johannes Setlae, who was ill-treated by the police at the time of his arrest, offers grounds for serious concern, the more so since, having been held incommunicado, he has never been able to receive appropriate care.

7. In the light of the above the Working Group decides:

> The detention of Nathaniel Ngakantsi and Johannes Setlae is declared to be arbitrary being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights, and articles 14-3 (a), (b) and (c), 19 and 21 of the International Covenant on Civil and Political Rights and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Nathaniel Ngakantsi and Johannes Setlae to be arbitrary, the Working Group requests the popular Government now in place since April 1994, to take note of this decision, in the light of the fact that the detentions occurred prior to the formation of the popular Government, and take such appropriate steps as it considers necessary to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 28 September 1994.

Decision No. 16/1994 (Israel)

Communication addressed to the Government of Israel on 18 July 1994.

Concerning: Sha'ban Rateb Jabarin, on the one hand, and the State of Israel, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. The Working Group welcomes the cooperation of the Government of Israel which forwarded its response to the allegations made concerning Sha'ban Rateb Jabarin. The Working Group transmitted the response of the Government to the source. The latter provided the Working Group with its comments. The Working Group believes that it is in a position to take a decision in the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. Certain pertinent facts may be stated. As far back as 7 July 1992 the Chairman of the Working Group had sent an urgent appeal to the Minister for Foreign Affairs of Israel following which Mr. Jabarin was released on 10 July 1992. Later, he was again arrested and detained without charge. On 4 May 1994 a letter was addressed by the Chairman of the Working Group to the Permanent Representative of Israel to the United Nations office at Geneva. The office of the Permanent Representative later informed the Working Group that Mr. Jabarin was released from administrative detention on 5 May 1994. Since he was again allegedly detained on 21 June 1994 yet another communication was addressed by the Chairman of the Working Group to the Minister for Foreign Affairs for information concerning his situation and the legal basis of his detention. In the said communication an appeal was also made to the Government of Israel, in a purely humanitarian spirit, to consider Mr. Jabarin's release from prison and for the Government to do its utmost to guarantee Jabarin's right to liberty and security.

6. The source describes Sha'ban Rateb Jabarin as a Palestinian para-legal and human rights activist. He was allegedly arrested without a warrant on 10 March 1994 by the IDF or the GSS. The arresting authorities allegedly searched the detainees' house for 40 minutes prior to his arrest, without informing him of the reasons for his arrest. Apparently pursuant to Military Order 378, six months' administrative detention was imposed on Mr. Jabarin. Date of the issuance of the order remains undisclosed. Without being charged with any offence Mr. Jabarin was initially, allegedly, detained at the Hebron Central Prison whereafter he was transferred to the Juneid Central prison in

Nablus. The source alleges that the reason for his detention was his alleged involvement in the writing of a publication dated December 1993 on violence by Jewish settlers in the Hebron area. The source also alleged that no judicial or other procedures exist to challenge the legality of the arrest or detention as military courts refuse to hear judicial proceedings in the nature of habeas corpus or amparo. Regarding a detainee making an appeal against the order to an Appeal's Committee, it was alleged that relevant rules of evidence and Procedure, and the restrictions on the powers of the Appeal's Committee it was difficult to effectively challenge the order. It was alleged that such orders were rarely set aside in appeal. The source maintained that Mr. Jabarin was detained for his non-violent activities in the exercise of his right to freedom of expression and opinion.

7. In response to the communication of the Working Group dated 4 May 1994, the Government on 26 May 1994 informed the Working Group that Mr. Jabarin stood already released. Apparently he had been released on 8 May 1994. As he was again detained on 21 June 1994, the Working Group sent its communication of 18 July 1994 to which the Government sent its response on 3 August 1994. In this response the Working Group was informed that Mr. Jabarin was held in administrative detention from 10 March 1994 until 8 May 1994. The Government strongly denied that Mr. Jabarin was an innocent man, devoting his efforts to al-Haq, an organization which is engaged in the field of human rights. The Government stated that Mr. Jabarin had never been detained for his work with al-Haq. According to the Government Mr. Jabarin has been for many years a senior member of the Popular Front for the Liberation of Palestine (PFLP), a terrorist organisation committed to using violence in order to bring about the destruction of the State of Israel. The Government also maintained that since the Israeli-Palestinian Declaration of Principles was signed in September 1993, PFLP's declared objective has been to derail the peace process by acts of terror. The Government is allegedly in possession of substantial evidence to the effect that, in his capacity as a senior operative of the PFLP Mr. Jabarin has been and continues to be connected with the violent activities of the PFLP.

8. Yet Mr. Jabarin has never been brought to trial. It is alleged that since 1979. Mr. Jabarin has been detained seven times for his alleged terrorist activities. Failure to bring him to trial on six of the seven occasions, the Government explains, is its concern for the lives and welfare of several of the material witnesses. For this reason Mr. Jabarin has been periodically and for a limited period of time been under administrative detention. In doing so, the Government seeks to exercise its legal rights under article 78 of the Fourth Geneva Convention and article 87 of the Security Provisions Order 1970. Once, however, in 1985, Mr. Jabarin was brought to trial without endangering witnesses. He was apparently convicted for recruiting new members for the PFLP and for arranging guerilla training outside of Israel. He was apparently sentenced to 24 months' imprisonment, 9 months of which were served and 15 months suspended.

9. The Government contended that Mr. Jabarin has not discontinued his terrorist involvement and maintains his position in the leadership of the PFLP. The Government admits that he was arrested on 21 June 1994 and was

placed in administrative detention for six months. He cannot be brought to trial as that would, the Government maintains, endanger the safety of material witnesses were they to give evidence.

10. The source was given an opportunity to respond to the Government's letter, which it did on 11 August 1994. The source took the position that Israel had chosen to criminalize membership of the PFLP, a Palestinian political party; that for charging Mr. Jabarin for criminal activities the Government is obliged to bring him to trial. The source also questions the applicability of Article 78 of the Fourth Geneva Convention as a means to justify Mr. Jabarin's administrative detention. Article 87 of the Security Provisions Order is also inapplicable according to the source, as it can be used only as a preventive measure and not for acts which constitute breaches of law.

11. From the above it clearly emerges that the Israeli Government has chosen to detain Mr. Jabarin only because it considers it inadvisable to bring him to trial for fear that the lives of material witnesses will in the process of giving evidence, be endangered. Individual liberty cannot be sacrificed for the Government's inability either to collect evidence or to present it in an appropriate form. On its own showing the Government had in the past as also on 21 June 1994, in placing Mr. Jabarin under administrative detention, did not do it as a preventive measure. Such exercise of power is colourable: not for the purpose intended.

12. The issue becomes all the more significant as the source has not traversed the allegation of the Government that the PFLP is a terrorist organisation, committed to using violence in order to bring about the destruction of the State of Israel. If that be so and if the Government is in possession of substantial evidence of Mr. Jabarin's involvement in terrorist activities, the Government is obliged to charge and bring Mr. Jabarin to trial in the event it chooses to arrest him. The Government cannot be allowed to use the power of administrative detention to achieve the purposes that it wishes to achieve, without a formal trial. In this fashion the exercise of the power of administrative detention is not preventive but punitive. Reliance by the Government on article 78 of the Fourth Geneva Convention and article 87 of the Security Provisions Order is also unjustified. The latter can only be used as a preventive measure, not for committing an offence for which a person can be charged and tried. As far as the provisions of the Fourth Geneva Convention are concerned, article 6 provides that in case of Occupied Territories, the applicability of many provisions of the Convention, including article 78, ceases one year after the general close of military operations. Thus article 78 cannot provide a justification for Mr. Jabarin's administrative detention.

13. In the light of the above the Working Group decides:

> The detention of Mr. Sha'ban Rateb Jabarin on all previous occasions when he was not brought to trial and since 21 June 1994 is declared to be arbitrary being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 of the

International Covenant on Civil and Political Rights and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

14. Consequent upon the decision of the Working Group declaring the detention of Mr. Jabarin to be arbitrary, the Working Group requests the Government of Israel take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 28 September 1994.

Decision No. 17/1994 (Peru)

Communication addressed to the Government of Peru on 20 September 1993.

Concerning: Ricardo Domingo Briceño Arias, on the one hand, and the Republic of Peru, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. The Working Group also notes that the Government concerned has informed the Group that the above-mentioned person is no longer in detention.

4. The source was requested for further information or confirmation of what was stated by the Government, but no reply has been received.

5. In the context of the information received, the Working Group, having considered the available information, is of the opinion that no special circumstances warrant consideration by the Group of the nature of the detention of the person released.

6. The Working Group, without prejudging the nature of the detention, decides to file the case of Ricardo Domingo Briceño Arias in accordance with the terms of paragraph 14 (a) of its methods of work.

Adopted on 28 September 1994.

Decision No. 18/1994 (Peru)

Communication addressed to the Government of Peru on 20 September 1993.

Concerning: Enriqueta Laguna Villafranco, on the one hand, and the Republic of Peru, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. The Working Group also notes that the Government concerned has informed the Group that the above-mentioned person is no longer in detention.

4. In the context of the information received, the Working Group, having considered the available information and taking into account the fact that the charge of arbitrariness made in connection with the deprivation of liberty refers to the absence of proof and not to some of the forms of arbitrary detention covered by its methods of work, is of the opinion that no special circumstances warrant consideration by the Group of the nature of the detention of the person released.

6. The Working Group, without prejudging the nature of the detention, decides to file the case of Enriqueta Laguna Villafranco in accordance with the terms of paragraph 14 (a) of its methods of work.

Adopted on 28 September 1994.

Decision No. 19/1994 (Brazil)

Communication addressed to the Government of Brazil on 22 April 1994.

Concerning: Francisco de Asís Pinto de Nascimento, Salvador Murao de Souza, Estevao Alberto Rocha da Silva, Manoel Privado, Francisco Souza Lacerdo, Alciro José Ferreira, Raimundo Francisco do Nascimento, Raimundo Pereira da Silva, Lindomar Gomez, Fransisco Dos Reis Dos Santos Chaves, and three unidentified minors, on the one hand, and The Federative Republic of Brazil, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than 90 days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Brazil. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The Working Group considers that:

(a) According to the allegation, Francisco de Asís Pinto do Nascimento, Salvador Murao de Souza, Estevao Alberto Rocha da Silva, Manoel Privado, Francisco Souza Lacerdo, Alciro José Ferreira, Raimundo Francisco do Nascimento, Raimundo Pereira da Silva, Lindomar Gomez, Fransisco Dos Reis Dos Santos Chaves, and three unidentified minors, all workers from the camp, were detained on 21 March 1994 by the military police in the municipality of Eldorado do Carajás. The 10 adults are reportedly being held at regional police headquarters in Marabá, where the first three were allegedly beaten, while the three minors are said to be in the custody of the court in the township of Curionópolis. The reason for the adults' arrest was given as the fact that they trespassed on the Abaeté plantation, which borders the camp; however, according to the allegation, the detentions are actually part of harassment measures against peasants and trade-union leaders. It also states that Francisco de Asís Pinto do Nascimento is the director of the Union of Rural Workers of Eldorado do Carajás and that Alziro José Ferreira is the son of Amaldo Delcidio Ferreira, who, while President of the same trade union, was shot to death by a gunman on 2 May 1993.

(b) The Government has provided no information whatsoever regarding the facts.

(c) The allegation does not provide precise information as to the reasons for the detention, but an interpretation of the motives behind it, and simply states that the detainees deny having trespassed on the land.

(d) Under these circumstances, it is not possible for the Working Group to adopt a decision until it receives further information.

6. In the light of the above the Working Group decides:

The case remains pending for further information.

Adopted on 28 September 1994.

Decision No. 20/1994 (Mexico)

Communication addressed to the Government of Mexico on 22 April 1994.

Concerning: José Francisco Gallardo Rodríguez, on the one hand, and Mexico, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred in the country in question.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than 90 days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Mexico. In the absence of any cooperation of that Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The Working Group considers that:

(a) According to the complaint, José Francisco Gallardo Rodríguez, Brigadier-General in the Mexican Army, was arrested on 9 November 1993 and accused of having misappropriated and caused damage to Army property in 1989; he was absolved of these charges by an internal order but was nevertheless kept in detention; he was also accused of defamation and other offences against military honour. The facts, according to the complaint, have their origin in a letter that General Gallardo sent to the Secretary for National Defence and other authorities and the publication of an article in which he called for the appointment of an Ombudsman in the army. In the army General Gallardo rose rapidly in rank as a result of his professional and academic training, and he brought various actions against the State, all of which he won. He is being detained in the military prison of Camp No. 1 (Federal District).

(b) The Government of Mexico has failed to provide any information to the Group, which could therefore adopt a decision immediately. However it will refrain from doing so owing to the absence of any items of evidence submitted by the defence. Specifically, it is unclear which court is trying the case, why he is allegedly being kept in detention despite the fact that

the charges of misappropriation and damage of Army property have been dropped, whether the proceedings instituted in respect of these offences also covered the charge of defamation and offences against military honour, how far these proceedings progressed, whether they were instituted in a civil or military court, whether the defendant was able freely to choose his counsel, etc.

6. In view of the above, the Working Group decides:

The case remains pending for further information.

Adopted on 28 September 1994.

Decision No. 21/1994 (Peru)

Communication addressed to the Government of Peru on 20 September 1993.

Concerning: Julio Rondinel Cano, on the one hand, and the Republic of Peru, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government of Peru in respect of the case in question. With the expiration of more than 90 days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Peru. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. Before taking a decision, the Working Group decided to request supplementary information from the Government concerning certain important legal aspects. Although more than four months have elapsed since its request, the Government has not provided such information.

6. Additional information was also requested of the source, which informed it that Mr. Rondinel, after being unjustly deprived of his liberty for 34 months, was released on 7 April 1994.

7. The Working Group considers that:

(a) According to the complaint, Julio Rondinel Cano was arrested on 19 June 1991 by the National Police of Peru in the street. He was charged with having participated in a demonstration by the Shining Path terrorist group with which, according to the police, he has links - a fact that the detainee has denied ever since the day of his arrest.

(b) Initially he was charged by the Third Criminal Division of Lima with disturbing the peace, an offence covered by article 319 of Peru's Penal Code. The proceedings, which had already begun were suspended by Decree-Law No. 25.475, and had to be re-initiated or resumed on the basis of its provisions.

(c) In the absence of any information from the Government following two requests, the Working Group will have to take a decision based solely on the information and documents furnished by the source.

(d) Although the person concerned has been released, the Group can, in accordance with its methods of work, pronounce itself on the arbitrariness of a detention, on a case-by-case basis.

(e) The Working Group, in accordance with its mandate and methods of work, can only decide whether a detention is arbitrary or not in the cases indicated in paragraph 3 of this decision, namely, 1. where there is no legal basis for the detention; 2. where the arrest took place as a result of the legitimate exercise of some of the rights mentioned therein; and 3. where the rules of due process have been so seriously violated as to render the detention arbitrary.

(f) The first ground for finding the detention arbitrary must be rejected because the detention was validated, according to the source itself, by a judicial order issued by the fourteenth Lima Court of Investigation, proceedings having been instituted before the Third Division of the Lima Criminal Court.

(g) The second ground must also be discarded since the detention has not been associated with the legitimate exercise of any of the rights mentioned in paragraph 3, subparagraph II.

(h) Specifically, the complaint alleges that: (1) the proceedings have now been suspended for over 18 months on the basis of the fifth transitional provision of the Decree-Law referred to above; (2) the detainee has not been released on bail; (3) the court which is to hear the case has not yet been designated; (4) the person concerned is innocent of the charges brought against him; and (5) proof of participation is not genuine, so that the Group is requested "to review the evidence on which the charges are based".

(i) Suspension of the proceedings for such a long period, failure to designate the court that is to hear the case and the legal impossibility of arranging release on bail constitute violations of the rights contained in articles 9, 10 and 11 of the Universal Declaration of Human Rights, articles 9.1, 9.2, 9.3, 9.4, 14.1, 14.2, 14.3 (a) and (c) of the International Covenant on Civil and Political Rights, and Principles 11, 36, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, inasmuch as these provisions proclaim the right to personal freedom, presumption of innocence, trial without undue delay, and release on bail, since pre-trial detention should not be the general rule.

(j) This failure to ensure the impartiality of the proceedings is so serious that it makes Mr. Rondinel's detention arbitrary.

(k) However, the request that the Working Group should declare the detainee innocent and review the evidence on which the charge is based is well outside the terms of its mandate.

8. In the light of the above, the Working Group notes with satisfaction that Mr. Rondinel Cano has been released. However, and in accordance with its methods of work, the Working Group decides:

> The detention of Julio Rondinel Cano between 19 June 1991 and 7 April 1994 is declared to be arbitrary, being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, to which Peru is a party, and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

9. Consequent upon the decision of the Working Group declaring the detention of the person concerned to be arbitrary, and bearing in mind that he has been released, the Working Group requests the Government of Peru to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 September 1994.

Decision No. 22/1994 (Peru)

Communication addressed to the Government of Peru on 20 September 1993.

Concerning: Luis Alberto Cantoral Benavides, on the one hand, and the Republic of Peru, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government of Peru in respect of the case in question. With the expiration of more than 90 days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Peru. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The Working Group considers that:

(a) According to the complaint and accompanying documents, Luis Alberto Cantoral Benavides was arrested at his home in Lima on 6 February 1993 by the National Anti-Terrorist Directorate (DINCOTE) and charged with treason before the military court. The reason for his arrest, according to the source, was his close acquaintanceship with José Antonio Cantonal Benavides, against whom a detention order had been issued for alleged terrorist activities. It is said that he was tortured on DINCOTE premises.

(b) He was acquitted of the charge of treason by the military court which nevertheless referred him for trial to the ordinary courts "because the records contained proof and reasonable circumstantial evidence suggesting that he could be held responsible for the offence of terrorism. This judgement of the military court, a court martial, was handed down on 2 April 1993, but so far no proceedings have been initiated before the ordinary courts.

(c) The Working Group, in a desire to obtain further details about the situation, requested the Government, by letter dated 19 May 1994, to clarify certain legal aspects. Over four months have elapsed and the Government has failed to comply with this request.

(d) Since proceedings against Luis Alberto Cantoral Benavides were to have been initiated before an ordinary court we requested the Government for information on this point. The Government would undoubtedly have informed the Working Group whether proceedings had commenced. In the absence of such information the Working Group assumes that they have not begun and will accordingly take a decision on this basis.

(e) The Working Group, in accordance with its mandate and methods of work, can decide whether a detention is arbitrary or not only in the cases indicated in paragraph 3 of this decision, namely, (1) where there is no legal basis for the detention; (2) where the arrest took place as a result of the legitimate exercise of some of the rights mentioned therein; and (3) where the rules of due process have been so seriously violated as to render the detention arbitrary.

(f) The first ground for finding the detention arbitrary must be rejected because the detention was validated, according to the source itself, by a judicial order, proceedings have been initiated before the Lima Military Court, at which time the detainee had been at the disposal of a judge of an ordinary court.

(g) The second ground must also be discarded since the detention has not been associated with the legitimate exercise of any of the rights mentioned in paragraph 3, subparagraph II.

(h) Specifically, the complaint alleges the following: (1) Undue delay in bringing proceedings for the offence of terrorism before the ordinary court, since the records required to carry out a review of the court martial's acquittal decision were in the possession of the Supreme Council of the military courts system; and (2) the innocence of the detainee for want of proof of his participation in terrorist acts - what evidence there is being unacceptable since it was obtained by torture.

(i) The excessive delay in the initiation of proceedings for the offence of terrorism constitutes a violation of the rights set out in articles 9, 10 and 11 of the Universal Declaration of Human Rights, articles 9.1, 9.2, 9.3, 9.4, 14.1, 14.2, 14.3 (a) and (c) of the International Covenant on Civil and Political Rights, and Principles 11, 36, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment inasmuch as these provisions proclaim the right to personal freedom, presumption of innocence, trial without undue delay, and release on bail since pre-trial detention should not be the general rule.

(j) This failure to ensure the impartiality of the proceedings is so serious as to make the detention arbitrary.

(k) However, the request that the Working Group should declare the detainee innocent and review the evidence on which the charge is based is well outside the terms of its mandate.

6. In the light of the above, the Working Group decides:

(a) The detention of Luis Alberto Cantoral Benavides is declared to be arbitrary, being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights to which Peru is a party and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) The Group further decides to bring the allegations made by the source to the attention of the Special Rapporteur on the Question of Torture.

7. Consequent upon the decision declaring the detention of the person concerned to be arbitrary, the Working Group requests the Government of Peru to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 September 1994.

Decision No. 23/1994 (Peru)

Communication addressed to the Government of Peru on 20 September 1993.

Concerning Ciriaco Gutiérrez Quispe, Justino Curro Gutiérrez, Justo Chipana Maldonado and Rafael Curro Gutiérrez, on the one hand, and the Republic of Peru, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than 90 days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The Working Group considers that:

(a) According to the complaint, Ciriaco Gutiérrez Quispe, Justino Curro Gutiérrez, Justo Chipana Maldonado and Rafael Curro Gutiérrez were arrested by members of the Huantane Infantry Battalion No. 21 of the BIM on 8 April 1992 because of their alleged connection with the Shining Path faction of the Peruvian Communist Party and their alleged responsibility for the murder of Daniel Curro Chambi, Mayor of Ayrampuni, on 21 May 1989. No further information is provided.

(b) In the absence of any information from the Government, the Working Group will have to take a decision based solely on the information and documentation provided by the source.

(c) In view of the paucity of information, the Working Group asked the source for further particulars. More than four months later, the source has not replied.

(d) The Group also requested information from the Government concerning legal aspects with a bearing on the cases, but this has not been forthcoming either.

(e) In accordance with its mandate and methods of work, the Working Group can only pronounce on the arbitrariness or otherwise of detention in the cases indicated in paragraph 3 of this decision, in other words: (i) where there is no legal basis for the detention; (ii) where the detention has occurred as a result of the legitimate exercise of some of the rights mentioned therein; and (3) where the rules of due process have been so seriously violated as to render the detention arbitrary.

(f) The first ground for finding the detention arbitrary must be discarded, since according to the source itself the detention has been validated by a judicial order and criminal proceedings have been instituted in Puno, although the communication does not specify which is the investigating or trial court.

(g) The second ground must also be set aside, since the detention has not been associated with the legitimate exercise of any of the rights mentioned in paragraph 3, subparagraph II.

(h) In this case it is alleged that: (1) there has been an undue delay in the proceedings, which have already been in progress for more than two years, and there is a complaint over their continuation pending before the Supreme Court; (2) the prisoners are innocent of the charges against them; and (3) there is inadequate proof of their involvement.

(i) The very protracted nature of the proceedings is a violation of the rights provided for by articles 9, 10 and 11 of the Universal Declaration of Human Rights, articles 9 (1), (2), (3) and (4) and 14 (1), (2), (3) (a) and 3 (c) of the International Covenant on Civil and Political Rights, and Principles 11, 36, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, inasmuch as these provisions proclaim, inter alia, the right to personal freedom, presumption of innocence, trial without undue delay and release on bail, as well as declaring that pre-trial detention must not be the general rule.

(j) The above-mentioned breaches of the rules relating to a fair trial are so serious as to render the detention arbitrary.

(k) On the other hand, the request that the Working Group should declare the prisoners innocent, pronounce on the evidence of the indictment and resolve the alleged contradictions between police affidavits and statements by judges and prosecutors falls completely outside its mandate.

6. In the light of the above the Working Group decides:

> The detention of Ciriaco Gutiérrez Quispe, Justino Curro Gutiérrez, Justo Chipana Maldonado and Rafael Curro Gutiérrez is declared to be arbitrary being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the

International Covenant on Civil and Political Rights, to which Peru is a party, and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

7. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of Peru to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 September 1994.

Decision No. 24/1994 (Peru)

Communication addressed to the Government of Peru on 20 September 1993.

Concerning Carlos Florentino Molero Coca, on the one hand, and the Republic of Peru, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than 90 days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Peru. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The Working Group considers that:

(a) According to the complaint and the copious accompanying documentation, Carlos Florentino Molero Coca, a social sciences student at San Marcos University, was arrested on 30 April 1992 because of his alleged membership of the Shining Path organization of the Peruvian Communist Party. He was tried by a "faceless" court and sentenced to 12 years' imprisonment.

(b) The complaint alleges that: (a) the prisoner is innocent, on the basis of the fact that the 43rd Government Procurator's Office in Lima holds the evidence for the prosecution to be insufficient; (b) the offence for which he was convicted is not the same as the one with which he was charged; in connection with this defect, the Working Group, in the absence of any reference in the complaint, infers that the rules held to have been infringed are those laid down in articles 9 (2) and 14 (3) (a) of the International Covenant on Civil and Political Rights; (c) an appeal for the judgement to be set aside, lodged with the Supreme Court of the Republic on 18 December 1992, has not yet been settled; and (d) the trial was conducted by a "faceless" court, although no claim is made in this connection.

(c) The Group requested the source to update the information and asked the Government to clarify some legal aspects with a bearing on a decision on the matter. Four months later, neither the source nor the Government has answered the Group.

6. In the light of the above, the Working Group decides to keep the case pending while awaiting further information under paragraph 14 (c) of its methods of work.

Adopted on 29 September 1994.

Decision No. 25/1994 (Peru)

Communication addressed to the Government of Peru on 20 September 1993.

Concerning: Luis Enrique Quinto Facho, on the one hand, and the Republic of Peru, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than 90 days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Peru. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The Working Group considers that:

(a) According to the complaint and the copious accompanying documentation, Luis Enrique Quinto Facho, together with his pregnant live-in companion, a brother of hers, a nephew and two other persons, were arrested at the former's house by Technical Police officers on 6 November 1992. A few days beforehand, the police had searched the house without finding anything suspicious, yet on the day of the arrest, they claimed to have found three explosive devices, two segments of fuse and subversive pamphlets. The accused were charged with belonging to the Shining Path organization of the Communist Party. They are currently being prosecuted for offences against public tranquillity (terrorism) under case No. 183-93. Although a copy of the prosecutor's report of 17 February 1993 is attached, there is no indication how far the case has progressed. It is contended that Quinto Facho is innocent of the charges.

(b) It is alleged that Quinto Facho was physically and psychologically tortured on DINCOTE (anti-terrorist police) premises.

(c) In the absence of any information from the Government, the Working Group will have to take a decision based solely on the information and documentation available.

(d) In accordance with its mandate and methods of work, the Working Group can only pronounce on the arbitrariness or otherwise of detention in the cases indicated in paragraph 3 of this decision, in other words: (1) where there is no legal basis for the detention; (2) where the detention has occurred as a result of the legitimate exercise of some of the rights mentioned therein; and (3) where the rules of due process have been so seriously violated as to render the detention arbitrary.

(e) The first ground for finding the detention arbitrary must be discarded, since according to the source itself the detention has been validated by a judicial order issued by the Lima Court of Investigation, and the relevant proceedings have been initiated. Indeed, at the current stage of the proceedings, the Government Prosecutor has already been heard.

(f) The second ground must also be set aside, since the detention has not been associated with the legitimate exercise of any of the rights mentioned in paragraph 3, subparagraph II.

(g) It is not for the Working Group to assess the adequacy of the evidence adduced during the proceedings, except in so far as there may have been a refusal to admit evidence (for instance, if the accused has not been allowed to present his own witnesses or to examine witnesses for the prosecution, in accordance with article 14 (3) (e) of the International Covenant on Civil and Political Rights), a refusal which has not been alleged. The Group cannot declare a convicted person innocent.

(h) There has been no allegation of any procedural defect deriving from a possible infringement of the international rules governing due process.

(i) On the basis of the information provided, it is not possible to decide whether the detention was arbitrary or not.

6. In the light of the above the Working Group decides:

(a) To keep the case pending while awaiting further information under paragraph 14 (c) of its methods of work.

(b) To transmit this case to the Special Rapporteur on the Question of Torture in the light of the allegations made in the communication.

Adopted on 29 September 1994.

Decision No. 26/1994 (Colombia)

Communication addressed to the Government of Colombia on 12 November 1993.

Concerning: Fidel Ernesto Santana Mejía, Guillermo Antonio Brea Zapata, Francisco Elías Ramos Ramos and Manuel Terrero Pérez, on the one hand, and the Republic of Colombia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of Colombia. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. The Working Group considers that:

(a) According to the complaint, the Dominican citizens Fidel Santana M., Guillermo A. Brea Zapata and Francisco E. Ramos R. were arrested at Ibagué, Colombia, on 2 October 1992 and Manuel Terrero was arrested on 13 October 1992. The communication states that the four Dominican citizens had been invited to Colombia to attend a scientific seminar on "The Americas: past, present and future" and that, following this meeting, they made contact with a number of persons in political, trade union and social circles. They also expressed interest in contacting guerrilla organizations and indigenous organizations. On 2 October 1992 the three first-mentioned persons were arrested by the Colombian Army and subjected to various (unspecified) forms of torture, and on 6 October 1992 they were taken to Bogotá, where an order was issued for their release. This decision was not carried out. On 22 October 1992 they were transferred to the Model Prison together with Terrero, who had been arrested on 13 October 1992.

(b) Since that time, they have been under trial by the "Public Order Court" which, according to the complaint and the accompanying information, "does not recognize the right to a defence and the principle of holding proceedings in public and creates secret judges, secret prosecutors, secret witnesses, secret evidence and secret experts; there is no adversary procedure, neither counsel for the defence nor the accused is allowed to address the court personally, evidence may be concealed, no time-limit is set for completion of the examination proceedings, it is forbidden to photocopy the file and the lawyer has to confine himself to reading it and then

presenting the case for the defence in writing rather than orally". The charges against the prisoners are rebellion and conspiring to commit an offence. According to the source, release cannot be granted unless it is confirmed by a court of appeal.

(c) In its report, the Government states that the above-mentioned persons are being tried for the alleged offences of rebellion and impairment of national integrity by the Regional Judge of Santa Fé, Bogotá. On 10 February 1994 an order was issued for the opening of the proceedings under the charge formulated by the Regional Prosecutor's Office on 9 December 1993. In drawing up the indictment, the Prosecutor's Office considered, in accordance with article 441 of the Code of Criminal Procedure, that the existence of the act was demonstrated and that the responsibility of the accused was involved. From this it is deduced that "at no time have these Dominican gentlemen been unlawfully deprived of their freedom; on the contrary, they have been tried in accordance with the procedures applicable to all trials and with due respect for their rights and safeguards, both constitutional and legal".

(d) It should be pointed out that, in its reply, the Government does not specify the acts which serve as the basis for the indictment, nor does it deny or dispute that the indictment is based on the attempt to establish contact with indigenous or guerrilla organizations, as claimed in the communication.

(e) In this connection, it is the Group's understanding that the acts on which the indictment of rebellion and impairment of national integrity are based are those indicated in the communication.

(f) It has been argued that the rules of due process have been violated through the existence of proceedings in which much of the evidence presented was secret, as also were the judge and the prosecutor.

(g) In the Working Group's view, it is reasonable for legislation to establish adequate arrangements to ensure due protection for magistrates administering justice. These measures necessarily include those laid down by certain bodies of legislation in order to keep the judge's identity confidential.

(h) If these exceptional measures are accepted, however, an effort has to be made to ensure their compatibility with the international rules concerning due process of law. In this connection, an accused person - and, indeed, any judiciable person - is entitled to be tried by an independent and impartial tribunal. If the State grants the judge the privilege of keeping his identity confidential, it should take some additional action to avoid a situation in which the judge is not independent and impartial, not only in the abstract but also for the specific case dealt with. In the present instance, there is no evidence of such action having been taken.

(i) However, it is not enough for the judge to be impartial and independent. The proceedings themselves must be conducted with due safeguards, inter alia, that the accused should be given a public hearing with due guarantees. In addition, he is entitled to have "adequate time and

facilities for the preparation of his defence" and to "examine, or have examined, the witnesses against him". None of these rules can be observed if the identity of the witnesses is also kept secret and if their testimony is not public.

(j) The claims regarding the fact that the trial is being conducted by writing without the lawyer or the accused being entitled personally to address the court cannot be entertained. Neither the Universal Declaration nor the International Covenant on Civil and Political Rights makes oral proceedings an attribute of due process of law, and written proceedings can very well provide the accused with sufficient guarantees.

(k) The considerations set out in paragraphs (h) and (i) above indicate infringements of the rules of due process of law which, in the Group's view, are such as to render the detention arbitrary, in accordance with the provisions of category III of the Group's methods of work.

6. In the light of the above the Working Group decides:

> The detention of Fidel Ernesto Santana Mejía, Guillermo Antonio Brea Zapata, Francisco Elías Ramos Ramos and Manuel Terrero Pérez is declared to be arbitrary being in contravention of articles 9 and 11 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights, to which the Republic of Colombia is a party, and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

7. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of Colombia to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 September 1994.

Decision No. 27/1994 (Tajikistan)

Communication addressed to the Government of Tajikistan on 22 April 1994.

Concerning: Mir Baba Mir Rahim, Ahmad Shah Kamil and Khayriddin Kasymov, on the one hand, and the Republic of Tajikistan, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than 90 days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Tajikistan. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The communication, a summary of which has been transmitted to the Government, concerned Mir Baba Mir Rahim (or Mirrakhimov) former Director-General of the Tajik Radio-Television, Ahmad Shah Kamil (or Kamilov), former Director of the Tajik national Television and Khayriddin Kasymov, a television journalist. Mir Rahim was arrested in Ashkhabad, in Turkmenistan; Kamil and Kasymov were arrested in Osh in the south of Kyrgyzstan. All three, as well as other television journalists, were reportedly arrested on 10 December 1992, date of the entry of government troops into Dushanbe, by local authorities and then handed over to the Tajik authorities. They were said to be held, without trial, in Prison No. 1 in Dushanbe (known as Sledizator SIZO). It was not known whether the three journalists had been officially charged, but according to the source they were accused of "conspiring against the Government in view of overthrowing it with the help of the media". Kasymov and Kamil were also accused of intending to pass "stolen" information to the West. The source reported that, when they were arrested, these journalists had in their possession video cassettes of incidents indicating the implication of the new Tajik authorities in cases of killings and torture. According to the source, their detention without trial for over one year may be related to that fact. It was further alleged that the detained journalists have been denied access to a lawyer. According to the source, a variety of reports state that Khayriddin Kasymov was beaten while being interrogated. His nose and many teeth were broken. He was given no

legal or medical assistance. The source states that a variety of information concurs in indicating that the three journalists were beaten during interrogation.

6. It is apparent from the above that Mir Baba Mir Rahim, Ahmad Shah Kamil and Khayriddin Kasymov have been kept in detention since 10 December 1992 solely for having peacefully exercised their right to freedom of opinion and expression, a right guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, and specifically their right to enjoy the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in print, in the form of art, or through any other media of their choice. There is nothing to prove that their activities fall within the framework of the permissible restrictions which must be provided by law and must be necessary for respect of the rights or reputations of others or the protection of national security or of public order or of public health or morals.

7. In the light of the above the Working Group decides:

> The detention of Mir Baba Mir Rahim, Ahmad Shah Kamil and Khayriddin Kasymov, is declared to be arbitrary being in contravention of article 19 of the Universal Declaration of Human Rights, and article 19 of the International Covenant on Civil and Political Rights, to which the Republic of Tajikistan is a Party as a former Republic of the USSR, and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of Tajikistan to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 September 1994.

Decision No. 28/1994 (Islamic Republic of Iran)

Communication addressed to the Government of the Islamic Republic of Iran on 22 April 1994.

Concerning: Manouchehr Karimzadeh, on the one hand, and the Islamic Republic of Iran, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than 90 days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Islamic Republic of Iran. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the communication, a summary of which has been transmitted to the Government, Manouchehr Karimzadeh, a cartoonist for the scientific revue "Farad", was allegedly arrested on 11 April 1992 for having illustrated an article criticizing the state of sport in Iran. He was being detained in Evin Prison. According to the source, Manouchehr Karimzadeh was accused of "blasphemy" and insulting the memory of the founder of the Islamic Republic, Imam Khomeini. It was reported that he was sentenced to one year in prison and fined 500,000 Rials (US$ 350) on 16 September 1992, a judgement which was repealed on 14 May 1993 by the Supreme Court. However, in mid-October 1993 he was sentenced to 10 years in prison.

6. It appears from the facts as described above that Manouchehr Karimzadeh is being kept in detention since 11 April 1992 solely for having exercised pacifically his right to freedom of opinion and expression, a right guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

7. In the light of the above the Working Group decides:

The detention of Manouchehr Karimzadeh is declared to be arbitrary being in contravention of article 19 of the Universal Declaration of Human Rights, and article 19 of the International Covenant on Civil and

Political Rights, to which the Islamic Republic of Iran is a Party and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned person to be arbitrary, the Working Group requests the Government of the Islamic Republic of Iran to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 September 1994.

Decision No. 29/1994 (Republic of Korea)

Communication addressed to the Government of the Republic of Korea on 22 April 1994.

Concerning: Lee Kun-hee and Choi Chin-sup, on the one hand, and the Republic of Korea, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than 90 days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Republic of Korea. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The communication, a summary of which has been transmitted to the Government, concerned the following persons:

(a) Lee Kun-hee, a 27-year old Democratic Party worker (main opposition party) was allegedly arrested without warrant by 7 or 8 officials of the Agency for National Security Planning (ANSP) on 26 September 1992. He was accused of passing information about the 1992 national defence budget to Hwang In-uk, knowing that he was a North Korean agent and that the information would be passed on to North Korea. This information, however, had previously been published and was available to the general public. Lee Kun-hee was reportedly also accused of possessing pro-North Korean literature and a video which praises the North Korean leader, President Kim Il Sung. On 15 January 1993, Lee Kun-hee was sentenced to three years' imprisonment under the National Security Law and the Military Secret Protection Law for giving State secrets to North Korea.

(b) Choi Chin-sup, aged 33, a journalist working for the "Mal" monthly journal, who was allegedly arrested by four officials of the ANSP on 14 September 1992. It was reported that Choi Chin-sup was charged with belonging to an "anti-State" organization, a pro-reunification group called the "1995 Committee". In 1991, it was renamed the Patriotic League, but Choi Chin-sup was apparently no longer a member at the time of his arrest. Choi Chin-sup was also charged with publishing information praising

North Korea. On 24 February 1993, Choi Chin-sup was reportedly sentenced to three years' imprisonment under the National Security Law, for belonging to an "anti-State" organization and for producing and disseminating material in support of North Korea. It was alleged that in both cases the following elements relating to the rights of detained persons to a fair trial had not been respected:

> On 6 October 1992, the ANSP reported that it had uncovered the largest spying organization in South Korea since the 1950s. A large exhibition was set up by the ANSP at the Seoul Railway Station, with posters of some defendants, including Lee Kun-hee and Choi Chin-sup, who were labelled as "spies". However, the defendants had neither been charged nor tried at this time.
>
> Both men were allegedly severely ill-treated: Lee Kun-hee was allegedly deprived of sleep and beaten during his interrogation. Choi Chin-sup was allegedly beaten, stripped naked and forced to stand in the same position for long periods of time during his interrogation. Both were also denied access to their families and lawyers.

6. Article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights guarantee the right to freedom of opinion and expression. The question remains whether the restrictions placed on this freedom by national legislation correspond to article 19, paragraph 3 (b) of the Covenant. In the absence of information supplied by the Government, the Working Group considers that Mr. Lee and Mr. Choi did not employ, propagate or prepare for violence; nor, according to the same source, did they transmit to others secret information or information that could represent a threat to national security, since the Government has not specified the secret material in question or the reason for which it was considered to constitute a State secret.

7. In the light of the above the Working Group decides:

> The detention of Lee Kun-hee and Choi Chin-sup is declared to be arbitrary being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, to which the Republic of Korea is a Party and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of the Republic of Korea to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 September 1994.

Decision No. 30/1994 (Republic of Korea)

Communication addressed to the Government of the Republic of Korea on 3 August 1993.

Concerning: Hwang Suk-Yong, on the one hand, and the Republic of Korea, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of the Republic of Korea. The Working Group transmitted the reply provided by the Government to the source that had submitted the information and the latter has provided the Working Group with its comments. In order to obtain additional information, on 25 May 1994 the Working Group requested the Government of the Republic of Korea to communicate to it the text of the court judgement concerning Hwang Suk-Yong. The Working Group noted with concern that to date the Government has not supplied this document. It notes with regret that the spirit of cooperation displayed in the Government's first reply (20 October 1993) has been called into question by the lack of subsequent reactions.

5. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto, as well as the comments provided by the source.

6. According to the communication, a summary of which has been transmitted to the Government, Hwang Suk-Yong, aged 50, a writer, was reportedly arrested on 27 April 1993 at Seoul Airport by officials of the Agency for National Security Planning (ANSP) and remained in detention ever since. It was reported that Hwang Suk-Yong travelled to North Korea in 1989 and subsequently went into self-imposed exile to avoid arrest in the Republic of Korea, and that he was arrested upon his return to Seoul from the United States of America. According to the source, Hwang Suk-Yong has been detained solely due to his non-violent exercise of his rights to freedom of expression and association.

7. In its reply of 20 October 1993, five days before Hwang Suk-Yong was convicted, the Government of the Republic of Korea confirmed that he had been arrested on 11 June 1993 under the National Security Act, on the following charges:

(a) Five unlawful visits to North Korea, during which he met members of the North Korean intelligence agency, to which he transmitted information regarding the domestic situation in the Republic of Korea.

(b) The handing over of $250,000 by a high-ranking North Korean official to assist anti-South Korean organizations based in the United States.

(c) Illegal dissemination of North Korean propaganda hostile to the South.

The Government maintains that State terrorism is an instrument of North Korean foreign policy; but it does not indicate in what respect Hwang Suk-Yong's activities can be described as terrorism. Nothing in the text of the Government's reply testifies to violence perpetrated, premeditated, advocated or upheld by Hwang Suk-Yong. The Government's explanations concerning the scope of the National Security Law, protecting society against "illegal acts such as a violent attempt to overthrow the Government", do not as they stand appear to apply to the case of Hwang Suk-Yong, since the Government does not accuse him of such a violent attempt. The Government also considers that the proceedings against the accused are moving forward properly, without any violation of national legislation guaranteeing the right to a fair trial. The Government concludes by emphasizing that other institutions should not interfere in this matter.

8. The source states in its comments of 17 January 1994 that on 25 October 1993 Hwang Suk-Yong was sentenced to eight years' imprisonment by the court of first instance. It indicates (without specifying the figure of $250,000) that the money represented copyright fees for the film which was made of his book Jankilsan. The source adds that Hwang Suk-Yong, who was interrogated for the first 17 days of his detention by ANSP, complained of having been deprived of sleep, interrogated for long periods and threatened.

9. The Working Group considers that the grounds for the detention and conviction of Hwang Suk-Yong lie in the personal contacts he has had with individuals originating from North Korea with the aim of publicly advocating dialogue with North Koreans.

10. The Working Group recalls that article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights guarantee the right to freedom of opinion and expression, with the proviso that restrictions of this freedom set out in national legislation must correspond to article 19, paragraph 3 (b) of the Covenant. The Government of the Republic of Korea has not proved that Hwang Suk-Yong used, advocated or premeditated violence; it does not even accuse him of having transmitted secret information or information likely to threaten national security. The Working Group does not regard the mere affirmation that Hwang Suk-Yong had contacts with the North Korean intelligence services as sufficient in itself to establish that Hwang Suk-Yong violated the law setting out restrictions necessary for the protection of national security.

11. In keeping with international standards relating to human rights, the international community has a duty to ensure the application of human rights in national legislation in conformity with international standards, their

practical application and their evolution on the national and international levels. The Working Group on Arbitrary Detention is but one of many examples of machinery working in the cause of human rights.

12. It is apparent from the above that Hwang Suk-Yong was sentenced solely for having exercised his right to freedom of opinion and expression, which is guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. It is also apparent that there is nothing to indicate that in doing so he had recourse to violence, incited violence or caused any threat to national security, public order or public health or morals and thereby violated a national law stipulating permissible restrictions aimed at the protection of those values.

13. In the light of the above the Working Group decides:

> The detention of Hwang Suk-Yong is declared to be arbitrary being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, to which the Republic of Korea is a Party, and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

14. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned person to be arbitrary, the Working Group requests the Government of the Republic of Korea to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 September 1994.

Decision No. 31/1994 (Indonesia)

Communication addressed to the Government of Indonesia on 22 April 1994.

Concerning: Nuka Soleiman, on the one hand, and the Republic of Indonesia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than 90 days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Indonesia. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. Nuka Soleiman is a university student and Chairman of the human rights organisation Yayasan Pijar. He was sentenced to four years in prison by the District Court of Central Jakarta on 24 February 1994 for criticizing President Soeharto and for calling on him to accept responsibility for human rights violations committed under his rule. He was charged under article 134 of the Indonesian Criminal Code, under which insulting the head of State is an offence punishable by up to six years in prison. According to the source, the trial failed to meet international standards of fairness. In particular, the source alleges that the trial was marked by an atmosphere of intimidation due to the presence of military and political security and to the fact that access was strictly controlled. The source also questions the independence of the Court given the fact that the Court agreed to hear testimony of only 1 of 17 witnesses requested for by the defence.

6. Nuka Soleiman in criticizing the Head of State was merely exercising his right to freedom of expression and opinion guaranteed under article 19 of the Universal Declaration and article 19 of the International Covenant on Civil and Political Rights. The charge and prosecution under article 134 of the Indonesian Criminal Code and the consequent imposition of the sentence was therefore unwarranted. The trial of Nuka Soleiman also seems to have been conducted in an atmosphere not conducive to a fair trial. The presence of

military and political security coupled with the fact that access to the Court was strictly controlled makes the entire proceedings suspect. The decision of the Court to allow only 1 of the 17 witnesses requested for by the defence suggests the pre-determined nature of the proceedings.

7. In the light of the above the Working Group decides:

> The detention of Nuka Soleiman, is declared to be arbitrary being in contravention of articles 9, 19 and 20 of the Universal Declaration of Human Rights, and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Nuka Soleiman to be arbitrary, the Working Group requests the Government of Indonesia to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 September 1994.

Decision No. 32/1994 (Indonesia)

Communication addressed to the Government of Indonesia on 22 April 1994.

Concerning: Cheppy Sudrajat, on the one hand, and the Republic of Indonesia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than 90 days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Indonesia. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. Cheppy Sudrajat, a farmer from Rancamaya village in the Bogor of West Java, organized a peaceful protest against a real estate and golf course development in the Ciawi district of Bogor regency. For this, on 11 October 1993, he was sentenced to 10 months' imprisonment.

6. In organizing a peaceful protest Cheppy Sudrajat was doing no more than exercising his right to freedom of expression and opinion guaranteed under article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. He could neither have been prosecuted nor punished for this. Any punishment to the exercise of a guaranteed right, in such circumstances, would be arbitrary.

7. In the light of the above the Working Group decides:

The detention of Cheppy Sudrajat, is declared to be arbitrary being in contravention of article 19 of the Universal Declaration of Human Rights, and article 19 of the International Covenant on Civil and

Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Cheppy Sudrajat to be arbitrary, the Working Group requests the Government of Indonesia to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 September 1994.

Decision No. 33/1994 (Tunisia)

Communication addressed to the Government of Tunisia on 12 November 1993.

Concerning: Tawfik Rajhi, on the one hand, and the Republic of Tunisia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of Tunisia. The Working Group has forwarded the reply of the Government of Tunisia to the source of the information, which has so far not responded. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. According to the source, Tawfik Rajhi, a 32 year-old academic, was arrested on 26 July 1993 and held incommunicado for 23 days, during which time his family received no information concerning his place of detention (the maximum legal duration of custody is 10 days).

6. Tawfik Rajhi was allegedly sentenced on 31 August 1993 to two years' non-suspended imprisonment and two years' administrative supervision for belonging to an unauthorized organization (the Islamist Al-Nahda movement).

7. According to the source, no evidence was produced in court concerning Mr. Rajhi's membership of that movement and he was not charged with violence or incitement to violence. Rajhi is said to have told the court that, during his incommunicado detention, he had been ill-treated and compelled to sign a statement while ignorant of its content. It is reported that no investigation into his allegations was ordered by the court.

8. In its reply, the Government confirmed Mr. Rajhi's arrest, which it says took place on 11 August 1993 (and not, as the source claims, on 26 July 1993). Mr. Rajhi was brought before the Government Procurator's office in Tunis on 18 August, charged and committed the same day under article 30 of the Associations Act, which provides that "anyone participating in the direct or indirect maintenance or re-establishment of associations recognized as not existing or dissolved shall be punished by a term of one to five years' imprisonment and/or a fine of 100 to 1,000 dinars".

9. According to the Government, Tawfik Rajhi joined the unrecognized Al-Nahda movement in 1982, participated in the Congress of that movement in 1986 and in 1990 was the instigator of the policy of nationwide violence practised by that movement.

10. For these acts, he was finally sentenced on 31 August 1993 to two years' non-suspended imprisonment and two years' administrative supervision. On 8 October 1993 this sentence was upheld by a decision of the Tunis Court of Appeal, which did, however, reduce the two-year prison term to one of eight months.

11. The Government emphasizes that Mr. Tawfik Rajhi was assisted by lawyers of his choosing, both at the first instance and the appeal stages, that the hearings, including those before the court of appeal, were always held in public and that foreign lawyers were admitted to the hearings as observers.

12. By letters of 1 June and 20 July 1994, the Government indicated that Tawfik Rajhi had been released on 11 April 1994, the date of completion of the sentence, and that he had left Tunisia for France, where he is now living.

13. After examining all the information available to it, the Working Group is of the opinion that there are no special circumstances in the case which warrant consideration by the Group of the nature of the detention of the person released.

14. The Working Group, without prejudging the arbitrariness or otherwise of the detention, decides to file the case of Mr. Tawfik Rajhi under paragraph 14 (a) of its methods of work.

Adopted on 30 September 1994.

Interim decision No. 34/1994 (Indonesia)

Communication addressed to the Government of Indonesia on 6 December 1993.

Concerning: Xanana Gusmao, on the one hand, and the Republic of Indonesia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of Indonesia. The Working Group transmitted the reply provided by the Government to the source, which has forwarded its comments in response. The Working Group believes that though it is not in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto the special features of this case require the Working Group to take an interim decision as indicated hereinafter.

5. Certain relevant facts may be stated. Xanana Gusmao was allegedly arrested on 20 November 1992. He was charged with leading an armed rebellion against the Indonesian Government, disrupting national stability and with illegal possession of fire arms in alleged violation of article 1 (1) of Law No. 12 of 1951. After being tried in Dili, East Timor from 1 February to 21 May 1993 Xanana Gusmao was sentenced by the Dili District Court to imprisonment for life. He was found guilty of attempted putsch (art. 106 of the Indonesian Penal Code (IPC)), of armed rebellion (art. 108 IPC) and conspiracy to commit a crime as stated in articles 104, 107 and 108 of the IPC.

6. It is alleged that Xanana Gusmao was held in secret military custody for 17 days before the International Committee of the Red Cross (ICRC) representatives were permitted to see him. During Gusmao's interrogation no lawyer was allegedly allowed access to him. This is apparently in violation of article 54 of the Indonesian Code of Criminal Procedure. It is further alleged that through the Indonesian Legal Aid Foundation (LBH) obtained on 22 December 1992, a power of attorney from Gusmao's family sources, the authorities prohibited the LBH access to him. In his defence statement, Xanana Gusmao reportedly stated that his defence advocate, Mr. Sudjono, had been appointed by the Strategic Military Intelligence Agency (BAIS); that he

himself wished to be represented by the LBH; that his letter appointing the LBH was intercepted by the military authorities and that he was forced to withdraw it and to give a letter appointing Mr. Sudjono as his defence advocate.

7. As regards the trial itself it was alleged that at the concluding stages of the trial, the Court interrupted Gusmao soon after he started reading out his defence statement in Portuguese, despite the presence of interpreters in the Court. He was allegedly prevented from speaking in his own defence. It is further alleged that several witnesses for the prosecution were persons under detention, either awaiting trial or convicted for their role in the November 1991 demonstrations in Dili which led to suspicions that they may have been testifying under pressure, intimidation in fear of reprisal against their relatives or themselves, making their testimonies less reliable. Those awaiting trial were said to be in a particularly delicate position, since their statements in Gusmao's trial could be used against them in their own trial.

8. The Government in its response of 26 January 1994 maintained that the allegations submitted to the Working Group were untenable. According to the Government, while awaiting trial, Xanana Gusmao was treated with consideration in a manner consistent with international standards. The Government's position is that when two legal aid organizations offered their services to Mr. Gusmao he turned them down, accepting instead the services of Mr. Sudjono of the Indonesian Advocates Association. Mr. Sudjono who acted as Mr. Gusmao's defence counsel was apparently assisted by two other lawyers and a legal adviser who is a specialist in criminal law. It is also stated that during the trial Mr. Sudjono had been given full access to meet Mr. Gusmao.

9. The Government maintains that at the trial Mr. Gusmao was allowed to read his own defence before the Court. The interruption in the reading of the statement was because the Court viewed it as not being relevant to the legal argument. The position of the Government is that what may be stated before the court as part of the defence of the accused is what is termed as a "legal defence" and not any statement which may be called a defence statement. Such a statement must satisfy all the elements of a defence statement before being allowed to be read as a defence statement. The Court, however, is said to have considered Mr. Gusmao's defence statement before giving its verdict. The allegation that several witnesses for the prosecution had testified under pressure was also denied by the Government. During cross-examination of these witnesses Mr. Gusmao is alleged to have admitted responsibility for various crimes, including murder and robbery committed by him and his men, as well as for illegal possession of arms.

10. The Government concludes that Xanana Gusmao's trial was carried out in full conformity under the Indonesian applicable laws. That it was fair and in accordance with the existing criminal procedure. There is, according to the Government, no legal basis for questioning the verdict of the Indonesian tribunal. Though Mr. Gusmao had a right of appeal to a high court, he chose not to avail of the right and instead appealed to the President for clemency which the Government informs was granted by reducing his prison sentence from life imprisonment to 20 years in accordance with article 14 of the Indonesian Constitution of 1945 and Law No. 3/1950.

11. The source whose comments were sought in the Government's response reiterated its earlier position. In support thereof it is alleged that Xanana Gusmao was not permitted to be represented by a lawyer of his choice, the Indonesian Legal Aid Foundation. The LBH lawyers were apparently not permitted to visit him, despite having been given a power of attorney by his relatives. In a letter he wrote to the LBH on 30 November 1993 he is said to have stated "I was prohibited from accepting your offer of assistance". He is said to have accepted LBH's offer, which is said to have been retained by the authorities. Mr. Sudjono who ultimately defended Mr. Gusmao is said to have been appointed six days before the trial. Inadequate translation services apparently handicapped his defence. Not being fully conversant with either the Indonesian language or English, he could only understand in a general way the defence mounted by Mr. Sudjono. Even the clemency was apparently not sought by Mr. Gusmao, but by Mr. Sudjono without his instructions. The conduct of Mr. Sudjono, his defence lawyer, has also been questioned by Mr. Gusmao, alleging that he and the prosecution were hand-in-glove.

12. Considering the nature of the allegations made and the response of the Government, it is difficult for the Working Group to find a certain set of facts which can be said to be undisputed. The Working Group cannot be persuaded to proceed to arrive at a decision merely on the basis of suspicion. There is no mechanism available within the Working Group to ascertain the veracity of the allegations made or for that matter to doubt the truthfulness of the Government's response. In this situation, any decision by the Working Group would have to be based on assumptions, conjectures and surmises. The communications of Xanana Gusmao subsequent to his trial and conviction if their contents represent the correct state of affairs, give rise to misgivings which can only be resolved pursuant to a detailed investigation. Individual liberty is too precious to be jeopardized by obfuscating issues by allegations and denials. It is therefore imperative that the true facts be investigated. For that the cooperation of the Government of Indonesia is essential. We are sure that it will on its part have no hesitation to permit the Working Group to ascertain the true and correct facts.

13. It may be recalled that the Commission on Human Rights, by its resolution 1993/97, urged, inter alia, the Government of Indonesia to invite the Special Rapporteur on the question of torture, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances to visit East Timor and to facilitate the discharge of their mandates, and that, of the four above-mentioned mechanisms, only the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has so far been invited by the Government of Indonesia to visit East Timor.

14. It is therefore desired that the Government of Indonesia be requested to permit a visit by the Working Group to Indonesia and East Timor to enable it to ascertain the facts, in cooperation with the Government of Indonesia for the purpose of arriving at a decision in the case of Xanana Gusmao. This will be a step in the direction of enabling the Working Group to fulfil its mandate and report to the Commission about the nature of Xanana Gusmao's detention.

Adopted on 30 September 1994.
