

**REPORT OF INTERNATIONAL JURISTS
VISIT WITH HUMAN RIGHTS PETITIONERS
IN THE UNITED STATES
AUGUST 3 – 20, 1979**

REPORT AND FINDINGS

**PETITION FILED WITH U.N. COMMISSION ON HUMAN RIGHTS SUB-COMMISSION
ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES
PURSUANT TO ECOSOC RESOLUTION 1503 ON DECEMBER 11, 1978**

By: LENNOX S. HINDS, ATTORNEY FOR PETITIONERS

THE NATIONAL CONFERENCE OF BLACK LAWYERS

THE NATIONAL ALLIANCE AGAINST RACIST AND POLITICAL REPRESSION

UNITED CHURCH OF CHRIST – COMMISSION FOR RACIAL JUSTICE

INTERNATIONAL JURIST OBSERVERS:

MR. JUSTICE HARISH CHANDRA: INDIA

CHIEF JUDGE PER EKLUND: SWEDEN

RICHARD HARVEY: GREAT BRITAIN

IFEANYI IFEBIGH: NIGERIA

SERGIO INSUNZA BARRIOS: CHILE (In Exile)

THE HON. SIR ARTHUR HUGH MCSHINE, T.C., TRINIDAD-TOBAGO

BABACAR NIANG: SENEGAL

INTRODUCTION

On December 11, 1978, a petition was filed with the United Nations: Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities pursuant to ECOSOC Resolution 1503 (XLVIII) Procedure for dealing with Communications relating to Violations of Human Rights and Fundamental Freedoms and Resolution 1 (XXIV) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities¹ by Attorney Lennox S. Hinds on behalf of three petitioning organizations: The National Conference of Black Lawyers, The National Alliance Against Racist and Political Repression and The Commission on Racial Justice – United Church of Christ alleging a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms of certain classes of prisoners in the United States because of their race, economic status and political beliefs.

This submission of a petition to Secretary General Kurt Waldheim of the United Nations defined its purposes and detailed the rights violated in one hundred and twenty-eight (128) pages and included a voluminous appendix containing extensive documentation of the allegations of the petition.² The date of submission was coincident with the twenty-fifth anniversary of the signing of the United Nations Declaration of Human Rights. It is assumed that the Sub-Commission will consider the allegations of the petition at its regularly scheduled meeting in Geneva in August 1979.

The filing of the Petition caused deep interest and support in the United States among domestic organizations and individual citizens who sought to assist the petitioning organizations in encouraging United Nations inquiry on the allegations of the petition.

It was determined to invite a representative delegation of jurists and lawyers to the United States despite the meager economic resources of the petitioning organizations. The purpose of the delegation was to review the allegations of the petition, the documentation and the relevancy

¹ The complete text of these resolutions are annexed to this report as Exhibits A and B.

² The complete text of the petition and appendices in a revised form has been published in one volume under the title: Illusions of Justice: Human Rights Violations in the United States by Lennox S. Hinds, Esq. Order from: School of Social Work, The University of Iowa, Iowa City, Iowa 52242. Mail orders will be filled at the cost of \$5.00, U.S. mail costs included.

of the United Nations resolutions by arranging personal interviews with named prisoners and observations of conditions complained of so that these independent observers could determine if there were “reasonable grounds to believe that (the conditions of prisoners in the United States named in the petition) . . . reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms, including policies of racial discrimination. . . .” as enunciated in Sub-Commission Resolution 1 (XXIV) 1 (b) requiring referral by the Sub-Commission to the Commission on Human Rights for thorough study as provided in Resolution 1503 (XLVIII). To that end eight (8) jurists were invited to the United States during August 3 – 20, 1979 who attended seminars, visited with prisoners, human rights activists and lawyers, elected officials and officials of the United States Departments of State and Justice to make an independent determination of the reliability of the allegations of the petition in accordance with requested principles of human rights and in accordance with the criteria established by ECOSOC Resolutions 1503 (XLVIII) 27 May, 1970 and Resolution 1 (XXIV) 13 August, 1971.

Sponsors of the International Jurists Tour in the United States

The Petitioning Organizations

Commission for Racial Justice, United Church of Christ
National Alliance Against Racist and Political Repression
National Conference of Black Lawyers

Co-Sponsors

African National Congress of South Africa
American Baptist Church: National Ministries
Anderson, Jim,* – Southwest Joint Regional Board,
Amalgamated Clothing and Textile Workers Union
Black American Law Students Association of New York
Black Students Association of Webster College, Missouri
Christian Church Disciples of Christ
Church of Brethren – Washington Office
Congressman William Clay – United States Congress
Elmwood Park Tenants Association (Missouri)
Female Offenders Resource Center
W.H. and Carol Ferry
Henry Foner,* – Fur, Leather and Machine Workers Union Joint Board
Fund for Open Information and Accountability, Inc. New York
Paul E. Moore, Esq.* – Harlem Assertion of Rights
Kentucky Prisoners Support Committee of the Southern Coalition on Jails and Prisons
Lutheran Council in the United States of America
Lutheran Church, Missouri Synod; Board of Social Ministry and World Relief
National Committee to Free J.B. Johnson
National Committee to Support the Marion Brothers
National Council of Churches
National Lawyers Guild, Louisville, Kentucky Chapter

* Identification Purposes Only

National Lawyers Guild, New York City Chapter

National Moratorium on Prison Construction

Southern Christian Leadership Conference

St. Stephen's Episcopal Church

Team Defense, Atlanta, Georgia

United Methodist Church: Office of Urban Ministries – National Division, Board of Global
Mission and Section of Christian Social Relations – Women's Division – New York

United Methodist Church: Office of Urban Ministries – National Division, Board of Global
Mission and Section of Christian Social Relations – Women's Division –
Washington, D.C.

United Methodist Church: Office of Urban Ministries – National Division, Section of Christian
Social Relations – Women's Division – U.N. Office

United States Peace Council

United Presbyterian Church in the United States of America –N.Y.

Women for Racial and Economic Equality

World Peace Council

The Identities of The International Jurists:

The eight (8) invited Jurists were selected for professional standing in the international community, their demonstrated commitment to the fundamental principles of international human rights, prior experiences as legal advocates for human rights in their own societies and, to the extent possible in so small a group, geographical diversity.

The invited Jurists, their nation-states of origin and a short biographical sketch are as follows:

Professor A.K. ASMAL:³ SOUTH AFRICA (in political exile); Law Professor, Trinity College, Dublin, Ireland. International Law Specialist.

Mr. Justice HARISH CHANDRA: INDIA; Judge of the High Court of Delhi; First Standing Counsel of the Government of India (1975); Secretary General of the Indian Association of Lawyers; Member Secretariat, International Association of Democratic Lawyers.

CHIEF JUDGE PER EKLUND: SWEDEN; Division Head of the Court of Appeal, Gothenberg (until retirement 1979); Chairman, Swedish Association of Democratic Lawyers, Specialist in Political and Trade Union Freedom.

RICHARD HARVEY: GREAT BRITAIN; Barrister; Member, Executive Committee, British Section International Association of Democratic Lawyers, Specialist in Prisons and Southern African Affairs; Member, IADL Mission to Front Line States.

IFEANYI IFEHIGH: NIGERIA; Legal Practitioner before the Supreme Court of Nigeria; Former Cabinet Minister, Anambra and Imo States in charge of Education and Schools; International and Corporate Law Specialist.

SERGIO INSUNZA BARRIOS: CHILE (in political exile); Minister of Justice under President Salvador Allende; Past Editor “Revista de Derecho y Jurisprudencia”, official publication of the Chilean Tribunals of Justice and the Lawyers Bar Association of Democratic Lawyers. Active before international tribunals (UN Commission on Human Rights, General Assembly, ILO inter alia); President, Chile Anti-Fascista office (Berlin).

³ Unable to attend.

The Hon. SIR ARTHUR HUGH McSHINE, T.C.: TRINIDAD-TOBAGO; Chief Justice of The Court of Appeal (1962); Acting Chief Justice Supreme Court (1961–1962); Judge of the Supreme Court (1953); Acting Governor–General of Trinidad and Tobago (1970 inter alia); Member Boards of Directors; Member Government Committees: Legal Services – Trinidad-Tobago; and Professional Status of Appointees to Government Service.

BABACAR NIANG: SENEGAL; Practitioner, Member Senegal Bar Association; Senegal Association of Democratic Lawyers; Editor of Political Journal TAXAW; Human Rights advocate.

PURPOSES OF THE JURISTS' INQUIRIES IN THE UNITED STATES

The Jurists, based upon their observations and relevant information, will determine whether petitioners have made a Prima Facie⁴ case that the situations describe reveal a consistent pattern of gross and reliably attested violations of Human Rights sufficient to recommend to the Sub-Commission that The Commission on Human Rights be requested to undertake a thorough study and report and recommendations on the allegations of the Petition.

⁴ A Prima Facie Case in American jurisprudence and common law is: Such as will suffice until contradicted and overcome by other evidence. Pacific Telephone & Telegraph Co. v. Wallace, 158 Or. 210, 75 P.2d 942, 947. A case which has proceeded upon sufficient proof to that stage where it will support finding if evidence to contrary is disregarded. In re Hoagland's Estate, 126 Neb. 377, 253 N.W. 416.

A litigating party is said to have a prima facie case when the evidence in his favor is sufficiently strong for his opponent to be called on to answer it. A prima facie case, then, is one which is established by sufficient evidence, and can be overthrown only by rebutting evidence adduced on the other side. In some cases the only question to be considered is where there is a prima facie case or no. Thus a grand jury is bound to find a true bill of indictment, if the evidence before them creates a prima facie case against the accused; and for this purpose, therefore, it is not necessary for them to hear the evidence for the defense. Mosley & Whitley. And see State v. Hardelein, 169 Mo. 579, 70 S.W. 130; State v. Lawlor, 28 Minn. 216, 9 N.W. 698

BLACK'S LAW DICTIONARY (rev. 4th ed. 1968) at 1353.

INTERNATIONAL JURISTS

ITINERARY IN THE UNITED STATES

AUGUST 3 – 20, 1979

AUGUST 3, 1979

Arrival in the United States

AUGUST 4, 1979

INTERNATIONAL JURIST'S ORIENTATION SEMINAR

Sponsored by the Max E. & Filomen M. Greenberg

Center for Legal Education & Urban Policy

City College, New York

PROGRAM

Presentation of Jurists

Professor Haywood Burns

Director, Center for Legal Education

Greetings from Petitioning Organizations

Reverend Leon White

Commission for Racial Justice – United Church of Christ

Victor Goode, Esq.

National Director, National Conference of Black Lawyers

Prof. Angela Davis

Co-Chairperson, National Alliance Against Racist and Political Repression

The History and Status of the Petition Alleging Human Rights Violations in the United States
filed with the United Nations on December 11, 1978.

Lennox S. Hinds, Esq.

Attorney for the Petitioners

The United Nations as an International Court of Opinion –
The Applicability of ECOSOC Resolution XLVIII and Other U.N. Remedies

Michael Posner, Esq.

Executive Director – Lawyers Committee for International Human Rights

THE REPRESSION OF NATIONAL MINORITIES IN THE UNITED STATES

Councilman Gilberto Gerena-Valentin, Eleventh District, N.Y., N.Y.;

Prof. Angela Davis, Co-Chairperson, National Alliance Against Racist and Political Repression;

Antonio Bustamante, Esq., La Raza Legal Committee;

Bill Means, International Indian Treaty Council

QUESTIONS AND RESPONSES

L U N C H

CONDITIONS IN PRISONS

Dan Pachoda, Esq., American Corrections Association;

Dacajewiah, Akil Ajundi, Attica Brothers;

Michael Kroll, Coordinator, National Moratorium on Prison Construction

GOVERNMENTAL MISCONDUCT

The F.B.I.; Victims of COINTELPRO; Police Misconduct; Repressive Legislation

Esther Herst, Washington Coordinator, National Committee Against Legislative Repression;

Marshall Perlin, Esq., Fund for Open Information and Accountability, Inc.;

José Antonio Lugo, Esq., Center for Constitutional Rights

THE NEXT STEPS

Lennox S. Hinds, Esq.

Attorney for the Petitioners

AUGUST 5, 1979

Jurists and Escorts oriented to prison and prisoners visitation schedules.

(Jurists grouped in four different national tours.)

	JURIST GROUP A	JURIST GROUP B	JURIST GROUP C	JURIST GROUP D
August 1979	Babacar Niang Richard Harvey Marlene Archer, Escort	Harish Chandra Per Eklund Philip John, Esq. Escort	Sir Arthur McShine T.C. John Garland, Esq., Escort	Sergio Insunza Ifeanyi Ifebigh Deborah Reyes, Escort
Fri. 3	Arrival in New York City			
Sat. 4	Orientation Seminar			
Sun. 5	Orientation			
Mon. 6	New Jersey	Chicago, IL	Atlanta, GA	“Olympic” Prison
Tue. 7	"	"	"	Kentucky
Wed. 8	"	Pine Ridge Reservation	"	Kentucky State Prison
Thu. 9	Napanoch (Sing-Sing)	Pine Ridge Reservation	Montgomery, AL	Montgomery, AL
Fri. 10	Alderson, WV	Sioux Falls, SD	"	Los Angeles, CA
Sat. 11	Charlotte, NC	Lincoln, NE	Baton Rouge, LA	"
Sun. 12	Charlotte, NC	St. Louis, MO	"	San Francisco, CA
Mon. 13	Raleigh, NC	Marion, IL	Jackson, MS	Kansas City, MO
Tue. 14	"	"	"	"
Wed. 15 Thu. 16 Fri. 17	State Department, Justice Department, Congressional Black Caucus, Presidential and Vice-Presidential Staff Washington, D.C.			
Sat. 18	Philadelphia: National Conference of Black Lawyers Convention			
Sun. 19	Return to New York City			
Mon. 20	D E P A R T			

ITINERARY STOP

Atlanta, Georgia
Baton Rouge, Louisiana
Alderson, West Virginia
Charlotte, North Carolina
Chicago, Illinois
Jackson, Mississippi
Kansas City, Missouri
Lake Placid, New York
Lincoln, Nebraska
Louisville, Kentucky
Montgomery, Alabama
New Jersey
Omaha, Nebraska
Pine Ridge Reservation
Raleigh, North Carolina
Marion, Illinois
St. Louis, Missouri
San Francisco, California
Sioux Falls, South Dakota

PRISON or PRISONER

Reidsville Defendants
Gary Tyler
Lolita Lebrón
The Charlotte Three
Statesville Penitentiary
The Pontiac Seventeen (Cook County Jail)
Republic of New Afrika Defendants
(Parchman Prison)
Oscar Collazo
Irvin Flores Rodriguez
Site of Olympic Prisons
David Rice (Wopashitwe Mondo Eyen
we Langa), John Rust
Eddyville Penitentiary
Johnny Harris (Imani), Oscar Johnson
(Gamba), (Atmore-Holman Prison)
Tommy Lee Hines
Sundiata Acoli, Gail Madden,
George Merritt, Assata Shakur
Ed Poindexter
Site of Wounded Knee
The Wilmington Ten
Fred Bustillo, Rafael Cancel Miranda,
Imari Obadele
J.B. Johnson
Eugene Allan, Ernest Graham,
Elmer "Geronimo" Pratt
Russell Means, Ted Means, Richard Marshall

INTERNATIONAL JURIST FINDINGS
ON ALLEGATIONS OF HUMAN RIGHTS VIOLATIONS IN THE UNITED STATES
CRITERIA FOR ENQUIRING INTO ALLEGATIONS OF THE PETITION

Our purpose has been to assist the Sub-Commission in following the procedures for dealing with the question of admissibility in accordance with the standards and criteria adopted by virtue of ECOSOC Resolution (XLVIII), 27th of May 1970 and Resolution 1 (XXIV) of the 13th of August 1971. We have therefore been concerned throughout our enquiry to observe the highest standard of objectivity and impartiality and to apply the basic principles of International Law to all issues of fact which we have had to consider.

In particular, we have been guided by the definition of fundamental human rights and freedoms delineated in the Universal Declaration of Human Rights, the International Convention on the Elimination of all forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the United Nations Standard Minimum Rules on the Treatment of Prisoners.

METHODS OF ENQUIRY

To accomplish the purpose in the time available, after initial joint examination of the Petition and ancillary documentation, we divided into four teams. Each team was accompanied in its extensive travels by an escort from the National Conference of Black Lawyers. We visited prisons and conducted exhaustive interviews with the majority of those whose cases are set forth in the Petition.

In addition, we took evidence from several other alleged victims of human rights violations similar to those complained of in the Petition. We were frequently assisted by the individual's attorney in matters of United States Federal and State Law and Procedure. In addition, we sought out and examined official government publications such as Criminal Justice Statistics, United States Congressional Reports, Prison Population Statistics and Building Programs, together with sworn Affidavits, trial transcripts and numerous court case documents and newspaper reports. Wherever possible, we sought to raise with prison administration authorities all matters of serious complaint.

Finally, we have drawn to the attention of the Federal Departments responsible for the various categories of complaint, those matters which appear to us to be principal concerns. A copy of this report is being sent to all appropriate departments.

FINDINGS

Our detailed enquiry has satisfied us individually and collectively that the Petitioners have made out a credible, reasoned and temperately-presented case. From our knowledge of and discussions with Petitioners we believe them to be motivated solely by sincere concern for minority groups of the United States on whose behalf they are well qualified to speak.

We find that a prima-facie case has been made out that there exists in the United States today a consistent pattern of gross and reliably attested violations of the human and legal rights of minorities, including policies of racial discrimination and segregation.

In reaching these findings we have at all times been conscious that individual cases of injustice occur in all systems of criminal justice. However, we find that, based upon all of the evidence we have examined, the number of factors shared commonly between individual cases and reliably attested documentary materials demonstrates a clear prima-facie case that patterns of violations exist which call for an immediate full enquiry under the authority of the Commission on Human Rights. We set out below the specific human rights violations we have found and situations we have personally investigated that exemplify the violations enumerated. We are not suggesting, however, that the persons named are the only ones so affected or that our list is exhaustive, but only that they are the specific members of the class of persons about whom we have had personal experience and who are suffering in the ways alleged in the Petition and in our findings. It seems fair to assume that many others can and should be added to our files.

Finally, it should also be noted that during our tours we met prisoners who are not specifically enumerated by name in the Petition but whom we believe to be properly included in the class as indicated. We have supplied the Sub-Committee specific information on these persons, not described in the Petition, for their use and consideration.

I. POLITICAL PRISONERS

We find that a prima-facie case exists, supported by clear and convincing evidence, in respect to the violations of human rights of prisoners who can be truly classified as political prisoners and who may be categorized as follows:

- (a) A class of victims of FBI misconduct through the COINTELPRO strategy and other forms of illegal governmental conduct who as political activists have been selectively targeted for provocation, false arrests, entrapment, fabrication of evidence and spurious criminal prosecutions. This class is exemplified by at least; The Wilmington Ten, The Charlotte Three, Assata Shakur, Sundiata Acoli,* Imari Obadele and other Republic of New Afrika Defendants, David Rice, Ed Poindexter, Elmer “Geronimo” Pratt,* Richard Marshall,* Russell Means, Ted Means,* and other American Indian Movement Defendants.

WILMINGTON TEN

The Reverend Benjamin Chavis (Hillsborough Correctional Center, North Carolina), eight other Black men and one white woman, all politically active in relation to school segregation and similar issues in Wilmington, North Carolina, were arrested over thirteen months after racist-provoked shootings and burnings there in February, 1972. Charged and convicted of conspiracy to burn property and to assault emergency personnel, they were sentenced to a total of 282 years.

One witness, Allen Hall, testified directly to the participation of each defendant in the offenses and he was partially corroborated by two others, Jerome Mitchell and Eric Junious. All three subsequently recanted their testimony. Such was the international outcry at the injustices in this case that Amnesty International declared the Wilmington Ten “prisoners of conscience” and the United States Justice Department took the unusual step of filing an amicus curiae brief on their appeal to the U.S. District Court for the Eastern District of North Carolina, Raleigh Division on 19th April 1979. This appeal has been denied.

* Not specifically named in the Petition.

We respectfully adopt the conclusions of the United States Justice Department that Allen Hall was “simply not a reliable witness”, and “the reliability of petitioners’ convictions must be questioned”.

Further apparently gross irregularities will be touched on later. (Findings II, III, IV and V)

CHARLOTTE THREE

Three Black activists, Dr. James Earl Grant, Jr., Thomas James Reddy, and Charles Parker were charged and convicted of unlawful burning of a stable three years after the occurrence of the incident. They were sentenced to 25, 20 and 10 years respectively.

At post-conviction hearings, it was established that the Justice Department and the Treasury Department had paid a total of \$4,000 to two highly unreliable witnesses—Theodore Alfred Hood and Walter David Washington—and had dropped serious felony charges against them in exchange for their incriminating testimony. These two witnesses were the only persons able to place the defendants at the scene of the fire, and they testified at the post-conviction hearing that their evidence at trial had been untrue.

The evidence in relation to Rev. Chavis and the Charlotte Three indicates FBI surveillance from 1968 onwards. During this period Mr. Chavis recalls:

“I was arrested over 30 times and charged with over 30 different charges and I have only been convicted on one occasion—the Wilmington Ten.”

Armed raids were carried out on the Defendant’s houses and they were subject to constant harassment.

We find it significant that in November of 1968 FBI Director Hoover was instructing the field officers to “fully capitalize” on differences between the Black Panther Party (BPP) and the United Slaves (U.S.) and to “submit imaginative and hard-hitting counter-intelligence measures aimed at crippling the BPP”. (Appendix IV 23). In that same month Rev. Chavis was forced to expel Hood and Washington from the Charlotte Black Panther Organization for bringing guns to meetings, urging violent activities and behaving provocatively.

The two responded by setting up another organization called United Souls (U.S.). The fact that two such men could subsequently bargain with prosecuting authorities for their freedom

and financial advantage causes us the deepest concern. The fact that both men also testified in another trial against Rev. Benjamin Chavis and Dr. Grant provides a vital link in the use by government agencies of these unreliable witnesses to discredit the leading political activists in the minority population of North Carolina.

We note that Amnesty International has, in our view with full justification, also proclaimed the Charlotte Three “prisoners of conscience.” The above and other evidence we have examined satisfy us that there is good reason to believe that governmental agencies, both State and Federal, were engaged in a protracted conspiracy to defame and politically discredit the above defendants between at least 1968 and 1972.

ASSATA SHAKUR (Clinton Reformatory for Women, New Jersey) and **SUNDIATA ACOLI** (Trenton State Prison, New Jersey), both political activists and former Black Panthers, were convicted of the murder of a New Jersey State Police officer and sentenced to life plus 24 to 32 years and life plus 40 years, respectively.

The police officer died in a shoot out which occurred on the New Jersey Turnpike on May 3, 1973. A companion of Ms. Shakur and Mr. Acoli was also killed. The evidence showed that Ms. Shakur was shot three times and could not have fired the fatal shot and that Sundiata Acoli was standing outside the car, unarmed, when the shooting started.

In their cases, the FBI, by use of widely disseminated photographs, reports and television broadcasts, made know that Assata Shakur could be shot on sight as she had been declared a dangerous criminal political activist.

During the tour, all Jurists have received abundant evidence of the many occasions the right of law enforcement officers to shoot to kill has been exercised with alarming lack of restraint.* (See also Appendix XII)

* It should be noted that during the Jurists’ tours, it was announced that the United States Justice Department had filed a suit against the Mayor and Police Department of City of Philadelphia for long standing “patterns and practices of brutality” against the community and most especially minority people.

When arrested, Ms. Shakur was shot three times. We understand that uncontested medical evidence showed her arms were raised in the air in a gesture of surrender at the time. No single crime of which she was accused except in New Jersey was ever proved against her.

In light of the declared aims of the FBI COINTELPRO, it appears to us that these cases were probably set up to provide the FBI with an excuse to eliminate them and those who might share their political views.

THE REPUBLIC OF NEW AFRIKA DEFENDANTS

One of the political responses by Black people in the 1960's to what seemed to them as racist and oppressive government policies and practices was the formation of organizations that advocated the establishment of a separate Black nation within the United States. Among such groups was the Republic of New Afrika (RNA).

This organization became almost from its inception a target of COINTELPRO activities. In August of 1971, the police and FBI agents conducted a raid on the official residence of the Provisional Government of the RNA in Jackson, Mississippi. A policeman lost his life in the attack and an FBI agent and policeman were wounded. An office of the RNA was also raided where the president of its government, Imare Abubakari Obadele I, two men and the female national minister of information were staying.

IMARI OBADELE (RNA 11): Control Unit, Marion Federal Penitentiary, Illinois. The Republic of New Afrika (RNA), which laid territorial claims to six states located in the southern part of the United States, was also a target of FBI outrages under the Hoover COINTELPRO plan.

Imari Obadele, as President of RNA, was the subject of innumerable documents and directives dispatched between field offices and FBI headquarters. Attempts were made to discredit him and create dissension among RNA members by suggesting, in an "anonymous" letter circulated to the "Brothers and Sisters", that Obadele was putting RNA funds to personal use.

In August 1971, a pre-dawn armed attack on two RNA locations by Mississippi police and agents of the FBI under the pretext of serving a warrant on two fugitives alleged to be in the RNA residence, resulted in the death of a policeman and injuries to an FBI agent and another policeman. The eleven persons arrested at the two locations included Obadele, who was not

present at the scene of the shooting. All were charged and subsequently convicted for murder and waging war against the State of Mississippi.

ED POINDEXTER and DAVID RICE: in prison at Omaha, Nebraska and Lincoln, Nebraska, respectively.

Both men were convicted of first degree murder and are serving life sentences without the possibility of obtaining paroles. Their names appear on the FBI COINTELPRO documents as targets for surveillance because of their association with the Black Panther Party and their leadership roles in the National Committee to Combat Fascism (NCCF).

At the time of the bombing death of a policeman, whom they have been convicted of killing in August, 1969, police-Black community relations were strained because of the former's unrestrained lawlessness directed against the latter.

On the basis of the inadequate testimony connecting Rice and Poindexter with the crime and the illegal methods used in obtaining the evidence, it is unquestionable that both men were singled out and framed because of their political beliefs and involvement with an unpopular political group.

ELMER "GERONIMO" PRATT: in San Quentin Prison, San Francisco, California, serving life for murder since December, 1970.

In the climax of the attacks on the Black Panthers in Los Angeles, California, in 1968, directed in part by FBI agents under COINTELPRO, Geronimo Pratt as a BPP leader was arrested on numerous occasions as part of a pattern of police harassment. Today he finds it hard to remember whether he was arrested for murder on six, seven or eight occasions, but each time he was released shortly after for "insufficiency of proof". He was the first person picked up by the police in their search for the Manson "family" and again he was released. In the case for which he was sentenced, Mr. Pratt was accused of murdering a woman. Her husband described the assailant two months after the murder as being a tall, dark-skinned Black man. Mr. Pratt is short and light-skinned, but approximately two years after the killing, the husband identified him as the murderer.

His attorneys are investigating the possible psychological manipulation of the husband by the FBI in this matter and Mr. Pratt believes his case is one in which the CIA also played an active role.

TED and RUSSELL MEANS: Sioux Falls, South Dakota

The Means brothers, acknowledged AIM leaders (see Finding VI), were convicted in 1976 of rioting to obstruct justice because of an incident arising out of Native Americans' refusal to stand when a judge entered a South Dakota courtroom and the ensuing encounter with the police riot squad which was summoned to remove them from the courtroom. Ted Means was sentenced to two and a half years and Russell to four years of imprisonment.

The statute which was invoked was over 100 years old and had never been utilized by the State of South Dakota. It has since been repealed by the state legislature and thus, the Means brothers have been the first and last persons to be convicted under it.

I. POLITICAL PRISONERS

- (b) Persons convicted of crimes purportedly committed to advance their political beliefs in the need for the liberation of Puerto Rico from colonial status and who have been subjected to extraordinarily protracted sentences and unusually brutal conditions of confinement. (The Jurists note that in 1972, the Colonization Committee of the United Nations recognized the inalienable right of the people of Puerto Rico to self-determination and independence.) This class is exemplified by:
Lolita Lebrón, Oscar Collazo, Irvin Flores and Rafael Cancel Miranda.

The surviving imprisoned Puerto Rican Nationalists are:

- (i) **OSCAR COLLAZO** – Fort Leavenworth, Missouri
Serving life sentence, 29 years already served.
- (ii) **IRWIN FLORES RODRIGUEZ** – Springfield, Missouri
Serving 25–75 years, 25 years already served.
- (iii) **LOLITA LEBRON** – Alderson, West Virginia
Serving 16-50 years, 25 years already served.
- (iv) **RAFAEL CANCEL MIRANDA** – Marion Penitentiary, Illinois
Serving 25–75 years, 25 years already served.

Leaders of their people claiming independence for Puerto Rico, these prisoners participated in an armed action to demonstrate their political beliefs. For over a quarter of a century, in United States prisons, despite being consistently denied their rights to freedom of thought, expression and communication and suffering all kinds of degradation and violations of their human rights, they have held steadfast in their principles.

OSCAR COLLAZO and IRVIN FLORES are two Puerto Rican Nationalists who have served 29 and 25 years in prison respectively. On interview, they appear undaunted in their convictions. Their solidarity and commitment are expressed by their decision not to accept the conditional parole that has been offered to them. The condition being that they no longer act as free citizens for the independence of Puerto Rico. They steadfastly maintain that Puerto Rico has the right to self-determination as recognized by the United National General Assembly Resolution 1514(xv). They view the U.S. judicial system as a violation of international law in that they are prisoners of a battle for liberation.

Over the last quarter of a century, these political activists have been subjected to the hardest forms of imprisonment. They have endured protracted periods of isolation, based not on any infraction of prison rules, but solely on their political beliefs. They are viewed by the prison authorities as political activists and therefore their mail and visitation rights have been severely limited and at times completely suspended.

These arbitrary actions by prison officials are in clear violation of their human rights as guaranteed by the United Nations Standard of Minimum Rules on the treatment of prisoners. (Rule 6 – Basic Principles, Rule 20 and 31 – Discipline and Punishment, Rule 39 – Contact with the Outside World.)

They point out that the level of their treatment and their dedication to their struggle was exemplified by Andres Figueroa Cordero, the fifth imprisoned Puerto Rican Nationalist, who was released from prison on October 6, 1977. At the time of his release, Sr. Figueroa was terminally ill with cancer. The doctors estimated that he had but two months to live after he was finally diagnosed after years of complaining of his illness. Sr. Figueroa did live, however, for fourteen months after his release. During this time, all of his energies and efforts were committed to the struggle for Puerto Rican independence.

Oscar Collazo and Irwin Flores remain confident of their ultimate success and conduct themselves with the dignity and courageous determination of national leaders.

RAFAEL CANCEL MIRANDA

One of the four remaining Puerto Rican Nationalists incarcerated in U.S. prisons, Sr. Miranda, who was seventeen years old at his conviction, has completed 26 years of imprisonment, six of which have been spent at Alcatraz and ten at Leavenworth.

He was placed in the Marion Control Unit from its very inception because of his participation in two work stoppages as a means of protesting guard brutality visited upon a Chicano prisoner.

In his two years in the Control Unit, Sr. Miranda witnessed beatings of prisoners, tear gas attacks upon prisoners, the throwing of urine on prisoners by guards, suicides, denials of medical treatment, and innumerable other atrocities carried out by the prison authorities.

On three occasions when his wife visited him at Marion she was made to strip naked in the presence of male guards who were allegedly in search of contraband. Sr. Miranda's visitation list is restricted to those persons who knew him prior to his incarceration in 1954.

LOLITA LEBRON

Incarcerated at the Federal Women's Prison at Alderson, West Virginia, Lolita Lebrón concluded her interview with the jurists with the following remarks:

“We are a colonized people, oppressed and captive of the United States of America. Puerto Rican political prisoners are labeled terrorists.

I would like to state to mankind that on the 1st of March, 1954, as Puerto Rico defended itself with small armaments – pistols – the United States was shooting the greatest gun there is in the whole world. Yet for the United States there has never been a court of justice or judgment. There was no other alternative to bring to the attention of the world that Puerto Rico in reality is a colony of the United States of America.

Yet the USA committed one of the greatest crimes by using on the 1st of March, 1954 an attack on mankind with an H Bomb, contaminating 7,000 miles with radiation ...

Because the USA will never learn from its efforts, the Puerto Rican freedom fighters will never cease to fight for freedom ... There will not be a 51st state of the United States in Puerto Rico. We have decided to die rather than to become slaves of the United States empire ...

I am for a change in the systems of mankind. We can be free without bloodshed and I wish that may be so. Puerto Rico can become free by peaceful means – parliamentary ways and protest, but we must know the United States is at least opening its ears to the fact that Puerto Rico is going to be free.

We don't want another Cambodia in Puerto Rico, but we are willing to have anything that must happen in order to be free.”

SPECIAL NOTE ON THE PUERTO RICAN NATIONALISTS

A number of us have come from countries where people have gained independence from their colonial rulers and where national leaders who were kept in prisons yesterday are the leaders of their governments today. We must note that such casual treatment given to political leaders in prisons may prove to be not only myopic but ultimately costly to the United States.

The surviving Puerto Rican Nationalists have submitted a petition to the Secretary-General of the United Nations. The petition, entitled “Charges and Documentation of 25 Years of Human Rights Violations Against the Imprisoned Puerto Rican Nationalists, Prisoners of War”, was prepared for presentation to the United Nations Commission on Human Rights. The Jurists who visited the Puerto Rican Nationalists were presented with and have examined a copy of this petition.

The standing of these petitioners to present their case to the U.N. Commission on Human Rights can clearly be supported by the fact that all legal remedies available to them in the United States have been exhausted and that their prolonged imprisonment at this time is clearly excessive, punitive, and violative of Human Rights. Also to be considered is U.N. General

Assembly Resolution No. 1514 (XV) and subsequent resolutions which guarantee all countries the right to true self-determination.

The Puerto Rican Nationalists have been subjected to unprecedented treatment by the U.S. criminal justice system. They have spent in excess of 125 years in prison, and therefore should be immediately released.

I. POLITICAL PRISONERS

- (c) Persons who because of their racial and economic status are arbitrarily selected for arrest, indictment, and conviction and especially during periods of social unrest, i.e., George Merritt, Gail Madden and Gary Tyler.

TOMMY LEE HINES: (Montgomery, Alabama)

Serving a 30 year sentence for the alleged rape of a white woman in Decatur, Alabama, this 27 year old retarded Black man weighs 100 pounds and has an IQ of 36 and a mental age of six years or less. He is to be tried for two further charges of abduction and rape and in each case the alleged victim was larger than he, forcibly abducted and driven by care to a secluded place where she was raped.

At his first trial in Cullman, Alabama, the Judge refused to declare Mr. Hines incompetent, and, after Ku Klux Klansmen had paraded through the town calling for his conviction, the all-white jury convicted him. We understand the court proposes to proceed with his second trial despite the fact that his pending appeal raises serious doubts as to his competence to plead and other important factors which will bear on the remaining charges.

The racist atmosphere surrounding his conviction can be gauged from the fact that a Black minister who afterwards spoke against the conviction from the courthouse steps was himself abducted by KKK members and the Alabama Klan's second-in-command publicly boasted that the Klansmen took the Reverend Whitfield into some woods and whipped him. Rev. Whitfield declined to press charges, saying "it isn't the Christian thing to do".

During a thirty minute visit, Mr. Hines spoke a total of ten monosyllables in response to the Jurist's questions and he bore marks testifying to a recent sexual assault by other inmates

about which the Jurist was informed. His cell lies next door to that of the white power fanatic who threw a bomb into a Church in Birmingham, Alabama, killing four young girls in 1964.

Having regard to all of the improbabilities and apparent irregularities of this case, we must record our profound concern about the real opportunity for a fair trial under the miasma of racism and persecution in search of a scapegoat. We feel this case only serves as an extreme example of what is an all-too-common pattern.

GEORGE MERRITT and GAIL MADDEN

In the racially tense summer of 1967 at Plainfield, New Jersey, a policeman, John V. Gleason, was beaten to death after having pursued and critically wounded an unarmed Black youth.

Two months later, George Merritt and Gail Madden, together with dozens of others, were charged with the murder of the officer. Eventually forced into a group trial, they alone of the twelve defendants were convicted.

After three years in prison, the Appellate Division of the Superior Court of New Jersey unanimously reversed their convictions, ordering a re-trial on the basis that the “pressure to convict someone” was inherent in a mass trial. The court also held that the only “eye-witness” to testify against George Merritt was “unreliable” and his testimony “flimsy and questionable”.

The number of public demonstrations by the local Police Benevolent Association and frequency with which George Merritt has been characterized as a “cop-killer” suggest that he, facing his first criminal charge, was made a scapegoat. Neither Mr. Merritt nor Ms. Madden had any prior political involvement but their trial became political because of the prosecuting authority’s desire to find a culprit, however inadequate the evidence.

Mr. Merritt’s second trial conviction was unanimously reversed due to error at the trial court level violating the rules of evidence. A third trial with an all-white jury again resulted in conviction. This time the appellate court refused to interfere, although the same prejudicial evidence had again been admitted.

A petition for a writ of habeas corpus has been filed with the United States District Court of New Jersey alleging substantial violations of Federal constitutional rights by both prosecutor

and trial court and refusal by the State appeal courts to make any articulated determination with respect to those violations.

In our view, having discussed the matters alleged in detail with Mr. Merritt and his highly experienced trial attorney, there are substantial grounds for believing that he and Gail Madden were arbitrarily selected because of their racial and economic status.

GARY TYLER

This young Black man was convicted of murder on charges stemming from an incident associated with school integration. In October 1974, a school bus carrying Black students was surrounded by a brick and bottle-throwing mob of white youths and adults. A shot rang out and a 13-year-old white youth was killed. The police searched the bus and no weapon was found. Gary Tyler subsequently was arrested for disturbing the peace and later, at the age of 17, was charged and convicted of first degree murder. The only witness against Gary, a very young student, later admitted she lied under coercion by the prosecution.

An all-white jury deliberated only two hours before finding Gary Tyler guilty. He was given the mandatory death penalty and sent to death row. The Louisiana death penalty was found unconstitutional and Gary's sentence has been reduced to life.

In each of the above cases, people who had no political background appear to have been selected for prosecution on the basis of race and economic status. All white juries predominate and racist political pressure is applied to ensure the conviction of a scapegoat out of a desire to placate the appetite for vengeance in the white community. We find that these cases represent a class of people who have no hope of justice at the first instance and little or no prospect of speedy or effective remedy on appeal and we urge the United Nations to investigate the institutionalized racism which produces this sad state of affairs.

I. POLITICAL PRISONERS

(d) Person who after conviction and incarceration, because they become advocates for prison reform and spokespersons for the grievances of prisoners as a class, are selected for additional criminal prosecution and unusually brutal conditions of confinement. This class is exemplified by: The Napanoch Defendants*, Reidsville Brothers*, The Eddyville Defendants*, Johnny (Imani) Harris, Oscar (Gamba) Johnson*, Ernest Graham*, John Rust*, The Marion Brothers, Albert Johnson, Ike Taylor*, David McConnell*, and other Pontiac Brothers*.

THE NAPANOCH DEFENDANTS

The Napanoch defendants, currently housed in Sing Sing, New York State, spent three and a half years combating the brutality and racial persecution inflicted by self-confessed Ku Klux Klan members in Napanoch prison. Typical KKK activities outside prisons were repeatedly enacted inside, with firebombings of cells and cross burnings by Klansmen in uniform.

As a result of their constant petitions and public exposure of fifteen KKK prison employees, including State Grand Dragon Earl J. Schoonmaker, certain defendants were thrown into the “hole” and had visiting privileges revoked.

Protests against other prison conditions, including overcrowding, vermin-infested food and racially selective enforcement of prison rules consistently went unheeded.

On August 8, 1977, mounting pressure culminated in a rebellion in which several wings of the prison were seized, together with 15 hostages. Despite provocative attacks by the prison’s special assault squad (CERT), no deaths or significant injuries resulted and the state regained its prison on the promise of satisfying certain grievances, including a full investigation of conditions at Napanoch.

These promises have been abrogated and instead members of the prisoners’ negotiating team, responsible for maintaining discipline and ensuring hostages’ safety during the rebellion, were shipped to Sing Sing, the only New York State prison with a higher percentage of Black

* Not specifically named in the Petition.

guards than white. They see this as a deliberate attempt to muzzle their exposure of KKK activities.

Ten of them have been selected for indictment on charges ranging from contraband to riot in the first degree with the possible additional sentence to life imprisonment. The selection appears to them to have been based on their degree of political articulateness rather than any direct acts.

On May 3, 1979, the first of them, Felix Castro, was tried and convicted by an all-white jury, one of whom had been a campaign organizer for the prosecuting District Attorney. We find it particularly unusual that the judge permitted the District Attorney to interrupt defense counsel's closing speech on sixty occasions and to have sustained his objections fifty-seven times.

Most disturbing of all is the recent New York State Court of Appeals ruling in Curle v. Ward, in June 1979, holding that a member of the KKK should be allowed to hold a position as sensitive as that of a prison guard. With all respect to the American Civil Liberties Union and the Court, it appears to us that this cannot safeguard a prisoner's right under Rule 6 of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

THE EDDYVILLE DEFENDANTS find themselves in a situation similar to that of the Napanoch Defendants. They too are inmates who were singled out for harsh treatment because they became politically active while in prison campaigning against cruel and unusual punishment.

REIDSVILLE DEFENDANTS

Prior to 1978, Reidsville Prison was the scene of continual racial strife. The facilities were segregated and the living conditions of Blacks were inferior to those of white inmates. Tension was created between the Black and white inmates by the racist attitudes and activities of the guards. These activities included the placing of a white prisoner in a cell with several Black prisoners to be raped and communicating the occurrence of the rape to the white inmates. Subsequently, ten Black unarmed inmates and forty white armed inmates were placed in the yard and three Black inmates were killed. Terror was so rampant that inmates had to institute a twenty-four hour watch for their own protection.

Finding these circumstances unbearable, some Black inmates formed the Inmate Unity Committee. They invited white inmates to a meeting and a coalition of Black and white prisoners was organized. Some of the Reidsville Brothers were elected as representatives. After the forming of this coalition, the rate of incidents dropped dramatically. Terror subsided and the twenty-four hour prison watch was no longer necessary. The committee then began to organize around prison conditions.

From its inception, the guards protested the organizing of IUC. The warden, however, favored it, as he could see the decrease in violence. The guards continued their resistance, threatened to strike and hired a lawyer to block the development of the IUC. Under heavy pressure, the warden retracted his position of supporting the IUC. The guards made a concerted effort to destroy the IUC and isolate its leaders.

On July 23, 1978, the Black inmates rose up in rebellion, demanding an end to:

1. Guard brutality;
2. The arming of white inmates by the guards;
3. The degrading living conditions;
4. The non-nutritious food.

The prisoners presenting these demands were unarmed and there were no hostages involved. The administrative answer to these demonstrations was the calling in of State Troopers. As inmates were lining up to present their demands, the guards and troopers opened fire, leaving one guard and two white inmates dead. Two Black inmates were later killed by white inmates. After the rebellion, the prison was “locked down”. This lock-down lasted five weeks. Inmates were only allowed out of their cells for meals, a few at a time. Exercise, visitation rights, showers and work details were suspended.

The prisoners that we talked to stated that for five days after the rebellion, Black prisoners were beaten day and night to get them to incriminate someone in the deaths. Six indictments against the group of Black prisoners who became known as the “Reidsville Brothers” were filed. No white prisoners were indicted.

The Reidsville Brothers have been locked in administrative segregation in one-man cells for the past two and a half years. They are allowed out of their tiny cells for only one-half hour a day. We were able to interview four of the six inmates.

DWIGHT LINDSEY

He is currently serving a fifteen year sentence for robbery and kidnapping a drug dealer in his community. Mr. Lindsey is a Vietnam veteran who returned to the U.S. with a drug problem. He was an elected leader of the Reidsville Prison Inmate Unity Committee that was organized to stop the racial violence among the inmates.

To date, Mr. Lindsey is the only one of the Reidsville Brothers who has gone to trial, and he has been convicted of murder.

FOREST JORDAN

He is currently on trial for the murder of the white prison guard and two inmates that occurred during the Reidsville rebellion. He as a leader of the Inmate Unity Committee and is greatly respected by prisoners for his refusal to be intimidated from protesting prison conditions.

MOSES EVANS

He also has been indicted for the deaths that occurred during the Reidsville rebellion. He had filed a successful lawsuit that resulted in desegregation of the inmates. He was also a leader in the Inmate Unity Committee and received beatings because he spoke up about prison conditions.

JAMES COLLINS

His original conviction is still the subject of legal proceedings which he has pursued vigorously on the grounds that he and two other Black men were forced to give a burglary confession at gunpoint by the police. That activity resulted in prison official singling him out as a trouble maker. At the time of the Reidsville rebellion, he had been in Reidsville Prison for three weeks. He is under indictment for the deaths that occurred during the rebellion. On March 8, 1979, he was stabbed in the chest by a white inmate while in his cell. He has received little or no treatment for his wound. The Jurist noted during his August 7, 1979 visit that Collins' wound was not completely healed and appeared to be infected.

JAMES ANDREW JOHNSON

He is currently under indictment for the deaths at Reidsville. He was a leader in the Inmate Unity Committee. He spoke of the atmosphere of terror that exists at Reidsville.

The conditions in which the Reidsville Brothers find themselves illuminate the pattern and practice of singling out leaders and potential leaders and subjecting them to cruel and unusual punishment due to their political activities. Their treatment and conditions echo that of the Attica defendants described in the Petition. The substandard physical conditions and brutality of Reidsville and the treatment of prisoners who protest against them is unfortunately commonplace according to our observations.

JOHNNY "IMANI" HARRIS

In 1970, Johnny Harris moved with his family into an all-white neighborhood in Birmingham, Alabama, and was treated to garbage on their doorstep, paint and acid on their car and Ku Klux Klan literature slipped under their door. When the family refused to be intimidated, the police became involved and Harris was arrested for four robberies and rape. His court appointed lawyer, who never once visited him before the trial, convinced Harris to plead guilty because of the allegedly overwhelming evidence the state had. Harris thought he was pleading guilty to one charge and found he had pleaded "to all of them". He received five consecutive life sentences.

While in Atmore Prison, where inmates faced inhuman conditions, Harris became active in the Inmates for Action (IFA) and participated in a partially successful strike. Harris, like other prisoners, continued to protest conditions and in 1973 he was charged with attempted escape and placed in the segregation (isolation) unit. On January 18, 1974, guards from the nearby Holman Prison entered the segregation unit with bloody uniforms, beat an IFA member and states, "We ought to kill these revolutionary n-----s the way we killed Clancy". Fearing attack, the inmates took two guards hostage and freed other segregation unit inmates. When the Warden arrived, George "Chagina" Dobbins, IFA Chairman, informed him that their sole demand was to see members of the press, clergy, legislative and prison administration to expose the beatings and conditions. The Warden's response to Chagina was "you are a dead man" and a few minutes later, lead a shooting attack against the unarmed inmates in which a guard hostage died. Harris and several other inmates were indicted for the murder. Subsequent to the attack, three Black

inmates, including Chagina, were either “found dead or murdered”. No one was ever charged with their deaths.

Harris was convicted of participating in the rebellion and under an old pre-Civil War aiding and abetting statute, sentenced to death row.

OSCAR “GAMBA” JOHNSON

He is twenty-eight years old. He is presently serving a 148-year prison sentence in Atmore Prison in Montgomery, Alabama. He was originally convicted of attempt to rob at the age of sixteen. It was his first felony conviction and he received a seventeen year sentence. He was a leader of the IFA at Atmore and is one of the Atmore-Holman Brothers. The length of the sentence he is now serving is a result of the January 18, 1974 demonstration at Atmore Prison.

Mr. Johnson has been subjected to continual isolation. He is in a small cell without light, there is no bed, and no sanitary facilities. He is forced to urinate and defecate on the floor.

ERNEST GRAHAM and EUGENE ALLEN (Soledad Prison, California)

They began working together in prison for amelioration of prison conditions. Graham was serving an indeterminate sentence for a minor robbery. Allen had been convicted of a first-degree murder in the California Youth Authority, where he was committed following the death of his parents, and sentenced to a seven-year-to-life term. Three months after the two joined forces in August 1973, a white guard was found dead and Graham and Allen, both Black, were blamed. Prison guards warned they would eliminate the two if the courts failed to impose the death penalty. In reviewing their case, the California Supreme Court overturned the death sentence imposed by the lower court, basing its decision on the blatant exclusion of Black jurors from the trial. The two men, 25 and 23 years old, have been in solitary confinement for five and a half years.

JOHN RUST

At Nebraska Penal Complex in isolation on death row for offenses of murder and robbery, John Rust has been deprived of bed, blankets and hot water for protesting against poor prison conditions.

PONTIAC (ILLINOIS) BROTHERS

The Jurists visited Albert Johnson, David McConnell and Ike Taylor, three of seventeen prisoners who have been indicted in connection with an uprising at the Pontiac Correctional Facility which occurred on July 22, 1978. The “Pontiac 17” defendants each face fifteen counts of murder for the deaths of three white prison guards, and fourteen assorted counts which include attempted murder, aggravated battery and mob action.

The rebellion, according to the prisoners, was the culmination of sustained racist and brutal administrative practices by prison authorities, the overcrowding of the facility, the unsanitary conditions which prevailed, and the failure of the prison officials to alleviate these unbearable conditions even after these were brought to their attention on innumerable occasions.

CONCLUSIONS

Our observations force us to conclude that the circumstances of the above class of prisoners illuminate a pattern and practice of singling out leaders who attempt to organize for prison reform and subjecting them to cruel and unusual punishment solely because of their political activity while in prison. Many of the physical conditions violate the U.N. Standard Minimum Rules for the Treatment of Prisoners, and the persistent pattern of brutalization and denial of due process is in clear violation of human rights.

II. ABUSE OF CRIMINAL PROCESS

We find that racism and abuse of political power have, in many instances, so tainted criminal proceedings that the minimum internationally recognized standards of due process have been denied certain accused. This class is exemplified by: Assata Shakur, Wilmington Ten, Charlotte Three, J.B. Johnson, Gail Madden, George Merritt, Felix Castro, Gary Tyler, and Johnny (Imani) Harris.

Jury Selection

The famous maxim that Justice must not only be done but must also appear to be done, cannot be emphasized enough. Looked at in this light, the trial of Blacks by all-white juries is hardly a circumstance which can inspire belief in the possibility of obtaining justice. This is all the more so when experience shows that all-white juries often, if not invariably, return the verdict of “guilty” when trying Blacks.

The composition of juries is an important area where discrimination against Blacks and other minorities can be practiced and a statement made at a Panel on July 18, 1973, by Gene McNary, St. Louis County Attorney, dealing with the J.B. Johnson case may well be symptomatic of the practices of this kind of discrimination. We quote him:

Maybe Blacks are eliminated because they are Black, because most clients are citizens of St. Louis County, where almost all Black citizens live. If we have a Black victim, on one hand, then we will keep a Black as a juror. If we believe a man, as prospective juror, because he's Black will side with a Black defendant, we will take him off the jury.

In almost every case of political prisoners investigated under categories I (a) and (c), the prosecuting attorney consistently used the power of peremptory challenges to exclude all Blacks from the jury. In many instances judges acceded to a prosecutor's challenge "for cause" when the juror was Black but denied defense challenges to white jurors even where some admitted membership in the Ku Klux Klan (the Charlotte Three and Wilmington 10 trials).

At the trial of Assata Shakur in Middlesex County, New Jersey, a National Jury Project survey showed 70% of potential jurors thought her guilty before trial. 90% had heard the FBI publicity on her case; nevertheless, 50% still said they thought they could give her a fair trial. The judge refused to order a change of venue and prohibited questions about what jurors had heard and read of the case. By contrast, the prosecutor successfully challenged for cause any Black juror who was even related to any person recorded on his files or ever having been arrested.

During Felix Castro's trial (Napanoch defendant, see above), the prosecuting attorney told the press he had challenged Black jurors:

"Because obviously the KKK is going to be a key defense issue and I wouldn't want to see minority jurors subjected to undue pressure from their own ethnic group."

The hollowness of this reasoning is echoed by the Judge's refusal to allow the defense to raise the issue of provocation from Klan prison guards.

In the trial of Johnny (Imani) Harris (Atmore-Holman defendant, see above), while Blacks made up 15.2% of Baldwin county's population, they made up only 7.7% of the jury "pool" for selection purposes. It appears that the pool is filled with the names of persons "known" to the jury commissioners. The commissioners have testified that they know very few Black people apart from their own and their white friends' domestic workers and employees.

George Merritt, tried three times in relation to the death of a police officer (see findings I (c)), has had two Black jurors as compared to thirty-four whites.

The first Wilmington 10 jury was empanelled in June 1972 and the Judge allowed any juror who admitted bias to leave the court. The prosecutor, James T. Stroud, had exhausted his peremptory challenges and the panel comprised ten Blacks and two whites. Mysteriously, the prosecutor became ill during the night before the jury was to be sworn in and his immediate superior declined the Judge's request to take over the case.

Reluctantly, the Judge dismissed the jury and declared a mistrial. The prosecutor then requested a special judge and Judge Robert Martin, a man with a reputation in the community as a racist, was appointed to the case in September 1972, and he permitted whites to remain on the panel after stating that they believed the accused to be guilty. He also refused to unseat a Klan member who said he would be sure to give them a fair trial. The prosecutor used thirty-nine peremptory challenges to remove Blacks and the empanelled jury comprised ten white and two Blacks, the latter elderly and economically dependent on whites.

Asked what reason he knew of for James T. Stroud's illness, the Reverend Ben Chavis replied:

"What made Stroud sick was seeing ten Black people on the jury. He was seen walking the streets of Wilmington the next day".

Prosecutorial Misconduct

In a disturbing number of cases, the jurists received evidence of conduct falling so far below what are generally recognized standards of fair prosecution as to be highly reprehensible.

One of the most flagrant is the purchase of testimony with cash, presents and grants of immunity, which occurred in the Charlotte 3 and Wilmington 10 cases. In the context of the dubious character of the witnesses concerned and an admission that the prosecution had

“coached” them intensively, and their subsequent recantation, such conduct appears to us little short of bribery (see Appendix A125-53).

In both of these cases the prosecution also withheld evidence which would seriously have affected the jurors’ deliberations.

Charlotte 3

Prosecution in this case took place three years after the incident had occurred. From the time of its occurrence, there had been no investigation that the parties brought to trial were under investigation. This fact made it virtually impossible for the accused to gather alibi witnesses. There was also no actual physical evidence presented at trial. Testimony was given that the investigators went the next day and took a photograph of the incendiary device. This photograph was taken in 1968 and even at that time was only an approximation of actual occurrences, as the incendiary device was placed back in position by the investigation team after having been moved by them the previous day. When the trial took place in 1972, this “evidence” had been lost.

The prosecution withheld evidence by refusing to disclose in full to the defense the details of the deal made with prosecution witnesses despite the prosecutor undertaking to the court that he would do so.

Wilmington 10

Here the prosecution failed to make known the fact that there were deals made with the chief state’s witnesses. The witnesses with whom deals were made were the only witnesses to place defendants near the scene of the fire. In view of the fact that the deal was not known to the jury, this would amount to withholding of evidence.

George Merritt

The sole state witness insisted on the stand that he had given the police an oral statement on July 24, 1967 identifying the defendant as one of the assailants. The officers with whom the witness allegedly spoke never made a record of the interview. The prosecutor indicated in the presence of the jury that he was unable to find the documentation in his file; however, he suggested that it did exist. It was only after close of testimony that the prosecutor admitted that a record of this interview did not exist, and it was clear that he had known this throughout.

J.B. Johnson

Mr. Johnson's first conviction was overruled on appeal due to the deliberate withholding of exculpatory evidence from the defense.

In Missouri State Prison we met J.B. Johnson. He had been arrested in 1970 and charged as an accomplice in a jewelry store robbery which resulted in the death of a policeman. Mr. Johnson denied any involvement in the crime, but was sentenced to ninety-nine years and a day for his supposed participation in the robbery and murder.

An examination of Johnson's case is illuminating on the discriminatory application of the law. The sole eyewitness to the crime was unable to identify Mr. Johnson in the police line-up. He identified another man. The man who had already been convicted of the murder stated in a sworn affidavit that he did not know Mr. Johnson. Other facts that are suggestive of injustice are that several days after his arrest, according to police testimony, they had found two rings from the jewelry store in his shoe. A fingerprint which was said to be J.B.'s was found on a jewelry box which Mr. Johnson said the police had given him to look at.

J.B. Johnson was tried twice. During the first trial while on bail, he was a constant subject of harassment from the police. He says that the police threatened to shoot him if he was acquitted. He was arrested seven consecutive times and was told by the police that whenever they saw him on the street he would be arrested and held for twenty-four hours.

Each time J.B. Johnson was tried and convicted by an all-white jury. The eyewitness, who could not identify Mr. Johnson, said that "all colored people look alike". During his summation to the jury in the first trial, the prosecutor justified this wrong identification by saying: "Let's face it, to many of us, they do look alike". During the second trial the prosecutor made the following remark: "J.B. Johnson must be guilty since the jury in the first trial found him guilty".

Exclusion of Evidence

In at least two cases which the jurists examined we were surprised by the apparent denial of the right to call relevant and available evidence.

During the trial of Assata Shakur at Middlesex County in 1977, her original counsel was granted court funds to obtain ballistic and other forensic evidence. The attorney died suddenly

during the trial, and after a month's delay new counsel was briefed. At this point it appears the judge rescinded his decision on the grounds that her defense had delayed obtaining the evidence. When the defendant's friends raised funds to pay for a ballistics expert, the trial judge ruled before the closing of all the evidence that it was too late for this witness to testify.

In the trial of Felix Castro, the Judge refused to admit any evidence of events within Napanoch Prison such as might tend to show Mr. Castro's preparedness to use reason rather than force to remedy prison injustices and held that all evidence prior to the actual days of the prison rebellion was inadmissible. Mr. Castro's legal advisors were unable to obtain the basis of this ruling.

We find these allegations disturbing since, if true, they may have deprived the jury of evidence which may have materially affected their considerations.

Prejudicial Publicity

It is a matter for concern that the prejudicial atmosphere generated by media coverage of cases appears to have had adverse consequences and we received several instances of jurors stating that from what they had read in the press they believed the accused to be guilty. Upon assuring that they could put such prejudice out of their minds and give the accused a fair trial, they were allowed to hear the case.

The principle that justice must be even to be done seems to have been seriously damaged in the cases of Sundiata Acoli, Assata Shakur, George Merritt, Gail Madden, the Napanoch Defendants, the Charlotte 3 and the Wilmington 10, and the case of Tommy Lee Hines.

Cases were also encountered where the conduct of the court appointed trial lawyer at first instance may well have prejudiced the accused's right to a fair and full hearing. We wish to state a principle that when the offense alleged is of a serious nature, it is part of the right of an accused person to be granted the best legal assistance.

III. SENTENCING

We find that when defendants belong to the racial minority groups, there is a prima facie case that the pattern of sentencing is so unconscionably punitive as to violate the internationally accepted human rights of all prisoners to an opportunity for rehabilitation and reintegration into their communities; and/or that the sanction of imprisonment is imposed so disproportionately

that minority groups in the community become the majority groups in prisons. Cases considered include Johnny (Imani) Harris, Walter Chapman, Barbette Williams, Oscar (Gamba0 Johnson, Sundiata Acoli, Assata Shakur, and Rev. Benjamin Chavis.

Under the first heading we would include the following prisoners serving sentences in excess of life imprisonment:

Johnny (Imani) Harris, Atmore-Holman Prison, under sentence of death together with five life sentences consecutive upon one another.

Walter Chapman, Angola Prison, serving a total of 205 years.

Barbette Williams, Angola Prison, serving 150 years.

Oscar (Gamba) Johnson, Atmore-Holman Prison, 148 years.

Sundiata Acoli, Trenton Prison, Life + 24–30 years.

Assata Shakur, Clinton Prison, Life + 28–33 years.

Any such sentence appears to us to violate human rights since it denies the right of all prospect of re-integration into society to many people who have become politically undesirable to the government. In these circumstances we have been repeatedly struck by the moral courage with which many of those we have seen are facing the most oppressive sentences. We cannot believe these people to be incapable of rehabilitation.

Many other cases come to our attention where sentences had been passed and two extremes were related to us by the Reverend Benjamin Chavis:

“In my time in prison I have met a boy of 14 and a man of 100, just sentenced to 15 years”.

In a country where a boy of 14 can be given a 48-year sentence for armed robbery and where the ratio of prisoners to every 100,000 people, on any day (as opposed to Great Britain, with the highest West European incarceration rate of approximately 82 per 100,000) we find the element of racism in the generally heavy sentencing pattern to be strongly marked.

The most recently available analysis of incarceration ratios between Blacks and whites, published in Prison Law Monitor (Volume 1, Number 9, March 1979) by Frank Dunbough, indicates that, while whites are incarcerated at a rate of 43.5 per 100,000, the rate for Blacks is

367.5 per 100,000. Every state in the United States imprisons at least three Blacks for every one white, and in 13 of the states, ten Blacks are imprisoned for every one white. We also received evidence that overall, Blacks receive sentences 20% longer than whites, so the problem is increasing annually.

As lawyers and judges concerned with sentencing processes, we are aware of the dangers of comparing one sentence with another, but the analysis of comparative sentences at page 156 of the Appendix demonstrates how selective the Court's approach was in sentencing the Charlotte Three. The general severity of sentences in political cases was very noticeable, particularly when the Judge who sentenced Rev. Chavis to 29–34 years claimed he was being merciful.

Another aspect of the racism inherent in sentencing was highlighted by the Assistant Warden of Trenton State Prison, New Jersey. He confirmed that police and court discretion in prosecution sentencing were significant factors in producing the disproportion of minorities in prison. This and the setting of unreasonably high bail bonds for poor and minority prisoners are supported by statistics from the Department of Justice Census of Jails and Survey of Jail Inmates 1978 (see also Petition Appendices III, 1 and 2, and XI, 1–12).

Perhaps the clearest example of judicial evaluation of the relative importance of Black and white lives is reflected in the “Death Row” population of the prisons. 54% are white and 41% Black. However, the taking of a Black life, even by another Black, is statistically one tenth as likely to be punished by death as the taking of a white life. Yet a Black who took a white life is five times as likely to receive the death penalty as a white doing the same thing. No white has ever been sentenced to death for murdering a Black person, and no white has ever received the death sentence for rape—again a great contrast to the sentencing of Blacks.

CONCLUSION

We are driven to the conclusion that racist criteria play a significant role in the pattern of sentencing in the United States and that no judicial or other remedy appears likely to reverse this worsening process. We therefore urge the United Nations to inquire fully into this evidence.

IV. PRISON CONDITIONS

We find that there is clear and convincing evidence which we have observed that the treatment and conditions of prisoners in the United States are in violation of the U.N. Standard Minimum Rule on the Treatment of Prisoners to an extent warranting and requiring a United Nations investigation. We are particularly concerned with violations of Rule 6 Basic Principle; Rules 10–14 Accommodations; Rule 15 Personal Hygiene; Rule 20 Food; Rule 21 Exercise and Sport; Rule 22 Medical Services; Rule 30 and 31 Discipline and Punishment; Rule 33 Instruments of Restraint; Rule 35 Information to and Complaints by Prisoners; Rule 39 Contact with the Outside World; Rule 41 Religion; Rule 77 and 78 Education and Recreation; Rule 79–81 Social Relations and After Care.

We conclude that the pattern of these violations is such that in many prisons they amount to a systematic policy of repression with few if any rehabilitative features. Some examples of specific violations are listed below.

RACIAL SEGREGATION

Evidence was provided to the Jurists from sources in the United States Justice Department that at least eight pending United States federal cases filed in the courts since 1977 allege a continuing pattern and practice of racial segregation. In six of these cases, the United States Justice Department appeared as Plaintiff and in one other as Amicus Curiae.

Defendant prison authorities from the States of Oklahoma, Mississippi, Texas (two cases), Louisiana (two cases), Ohio and Illinois do not appear to have denied the evidence of such segregation.

We find it highly disturbing that the most recent court order had to be made on 13 July 1979, enjoining the administration of the Columbus Correctional Facility, Ohio from continuing the practice of racial segregation and from the use of cruel and unusual punishment. (Stewart et al. v. Rhodes et al., U.S. District Court, Southern District Ohio, East Div. Columbus)

The continuation of such a manifest violation of human rights until so recently causes us concern that, despite the efforts of the U.S. Justice Department, those responsible for prison administration must be continuing these illegalities and we would urge the United Nations to investigate this possibility.

SOLITARY CONFINEMENT

One of the worst cases is that of ASSATA SHAKUR, who spent over twenty months in solitary confinement in two separate men's prisons subject to conditions totally unbecoming any prisoner. Many more months were spent in solitary confinement in mixed or all-women's prisons.

Presently, after protracted litigation, she is confined at Clinton Reformatory for Women in maximum security. She has never on any occasion been punished for any infraction of prison rules which might in any way justify such cruel or unusual punishment.

Petition Appendix VIII, 1-83 refers to this and other abuses.

OSCAR (GAMBA) JOHNSON

Serving a 148-year sentence in Atmore Prison, Montgomery, Alabama, he states he has spent five years in continuous and indefinite isolation in a small cell without light, bedding or sanitary conditions. He is forced to urinate and defecate on the cell floor.

For participating in a prison rebellion, his original sentence of 16 years was increased so excessively. Because he organized a prisoners' protest against jail conditions, he has been further punished by this isolation torture.

FRED BUSTILLO

Has been subjected, for the last thirteen months, to the tortures of the "Control Unit" at Marion, Illinois. Held incommunicado in an 8 x 20 foot cell for all but one-half hour each day, this leading figure in the struggle for human rights for prisoners is deprived of all but the "privilege" of clean clothes twice each week.

His correspondence is restricted and only non-contact visits are permitted him. He must, however, submit himself to degrading rectal searches in order to avail himself of visitation rights.

Fred Bustillo has been committed to the control unit because he allegedly conspired to kill prison authorities. The Disciplinary Committee before which he appeared refused to state the source of the allegations on the grounds that prison security might be affected. His appeals to the regional and national Federal authorities have been fruitless.

“BEHAVIOR MODIFICATION UNITS”

This and similar euphemisms for indefinite isolation (sometimes total, at others in small groups) of a class of prisoners with whom disciplinary problems are anticipated, but have not actually occurred, constitutes a widespread pattern of violations of the rights of poor and minority prisoners on political and other grounds.

MARION COUNTY FEDERAL PENITENTIARY, ILLINOIS

The Federal government started the experiment in behavior “modification” fin 1972 in order to break a work stoppage, and the Jurists who visited found the unit used as a catchment center for state and federal prisoners outspoken in their criticisms of the American government and the repressive practices which abound within the prison system.

Marion is a maximum security Federal Prison built in 1963 and, with its mechanized towers and repeated layers of barbed wire, gives the appearance of a concentration camp. It houses four to five hundred prisoners, half of whom are Black and a quarter of whom are Chicano. The prison has a notorious wing called the “Control Unit” which specializes in exceptionally harsh treatment of prisoners. More than the prison itself, the Control Unit is impenetrable because outside access to it is denied almost as a rule. We were denied access to it in spite of the Bureau of Prisons in Washington having been consulted. Earlier, a group of Clergymen tried to visit it, but in vain.

Numerous complaints about the demeaning, degrading and dehumanizing treatment given to prisoners at this prison and particularly those committed to the “Control Unit” were made to us. These included solitary confinement for 23 hours a day, frequent beatings by guards, slave camp conditions of work, shake-ups and searches, including those of visitors, covering every part of the body, the anus included, often leading the inmates either to commit suicide or to resort to desperate steps, like being killed in seeking to escape.

In the absence of a full statement of facts from the other side, we would have refrained from coming to any definite conclusions, but the following other material was placed before us.

1. Report of official investigation of alleged incidents of beatings and throwing urine by guards at the inmates, etc. made in August 1976.

2. Resolution adopted at the 12th General Synod of the United Church of Christ in Indianapolis in June 1979. We quote from one of the findings of the official report:

“On March 1, 1976, while officers W.L. Ford and E.L. Middleton were serving the evening meal, emotionally disturbed prisoners LaCount Bly, Reg. No. 87076-132, confined in H Unit, threw liquid appearing to be urine and feces on Ford, and partially on Middleton. Ford reacted by obtaining a cup of urine and throwing the same on LaCount Bly. A disciplinary report had been prepared by both Officers Ford and Middleton.

However, the report did not indicate the action of Ford. On interview Ford readily admitted the action and his opinion that an Officer should not be subject to such abuse. Middleton’s statements confirmed that of Ford. Both officers advised the investigators that a container or containers of urine were then kept in a cabinet in the office on the range for such purposes. However, neither officer had utilized it in this manner previously or subsequent to this incident.”

We further quote from the above Resolution:

“WHEREAS Federal Judge James Foreman has stated, in part, in his 1978 Bono v. Saxbe decision that this control unit has been used to “silence prison critics ... and religious leaders ... economic and philosophical dissidents”; and

WHEREAS a group of prisoners who have been held in this solitary confinement unit (hereafter called the control unit) at the Marion Federal Prison, have filed a class action suit challenging the constitutionality of the control unit; and

WHEREAS the Marion control unit represents an experimental model for similar units being opened in both state and federal prisons; and

WHEREAS the class action suit against the control unit is on appeal in the Seventh Circuit Court of Appeals; and

WHEREAS a national inter-faith religious delegation, including representatives from the United Church of Christ, the Disciples of Christ, the Roman Catholic Church, the United Methodist Church and other denominations and faiths, wish to visit the prisoners in the control unit but have been refused by prison authorities.

THEREFORE the Twelfth General Synod, acting out of strong biblical, ethical, and historical concern for the rights and humanity of prisoners, reaffirms its support for the efforts of the Marion prisoners to close the control unit and end the practice of indefinite solitary confinement at the Marion Federal Penitentiary, and

The prison has been described as “the end of the line of the end of the line” and we have no hesitation in saying that it appears to be the embodiment of a systematic pacification of its inmates and deserves immediate fuller investigations”.

ANGOLA STATE PENITENTIARY, LOUISIANA

Further examples of such inhumane forms of isolation were found at Angola Prison where, despite a court order restraining the prison from using light-excluding doors, these doors remain attached to the cells at “Camp J,” and the Jurists who visited found credible evidence to suggest that the court order was not being complied with. Total isolation in total darkness can only be considered a cruel and unusual punishment.

JOHNNY (IMANI) HARRIS and GARY TYLER

Both men have spent five years in cells 5 x 8 feet for twenty-three and a half hours a day with no determination how long this isolation will last.

EDDYVILLE PENITENTIARY, KENTUCKY

At Eddyville State Penitentiary, Louisville, Kentucky, the administrative segregation unit has been the subject of a report in 1975 to the Kentucky State Governor’s Select Advisory Committee on Prisons. The report stated in part:

“Long term segregation in the special control unit contributes to the incidence of suicide. Better procedures must be established to ensure that

punishments are never unfair or excessive or detrimental to the mental, emotional or physical health of the inmates.”

Our interviews with prisoners Narvel Tinsley and Gary Daily suggest little or no improvement since 1975.

The Jurists were provided with a file of 27 affidavits filed in cases of prisoners’ actions against the prison authorities. In the principal action, Kendrick v. Carroll, the United States Justice Department is acting as Amicus Curiae. The affidavits and the Eddyville inmates interviewed by the Jurists testify to a catalogue of gross violations of human rights committed against prisoners in the segregation unit by unwarranted shacklings, gassings, beatings, abuse, denial of medical facilities, threats and other numerous allegations.

ELMER “GERONIMO” PRATT

After seven and a half years in isolation in San Quentin Prison, California, Mr. Pratt’s attorneys finally succeeded in their petition for a court order to release him into general population.

Mr. Pratt says he won the issue because:

“The officials had no other basis with the exception of political reasons. We are arguing that I have been kept in isolation because they don’t want me to maintain contact with the Black community and the officials want to prevent me from politicizing the other prisoners.”

He testified further to the institutional racism and political victimization used to generate tension where violence explodes occasionally into killings.

TRENTON STATE PRISON, NEW JERSEY

The philosophy underlying Trenton State Prison’s Management Control Unit (MCU) is in part “to neutralize the more violently oriented revolutionary and terrorist factions which regularly find their way into our correctional system”. (Trenton State Prison Superintendent Annual Report to year ending June 30, 1978.) The report further indicates that the “Vroom Readjustment Unit” on the grounds of Trenton Psychiatric Hospital is used for incarceration for “serious breaches of institutional discipline”.

Neither unit offers prisoners a set of rules of behavior by which they may hope to regain admission to general population, although the Assistant Warden, when asked, “Would a prisoner be told there is never a question of his being released from the MCU?”, replied: “I’m not sure such language would be used”.

In contrast with this statement, Jurists examined the affidavit of an attorney for Sundiata Acoli (a/k/a Clark Squire) dated May 21, 1979 in which she swore that Trenton Prison’s Superintendent told her: “He will never get out of MCU. I have nightmares about Clark Squire getting out of MCU.”

Given the sentence he is serving, Mr. Acoli could therefore be condemned to spend the rest of his life in conditions of severe physical and psychological privation, despite the fact that when he was housed in general population he was never found guilty of any infraction.

The prisoners held in maximum security units gave evidence which tends to support the view that such units, whose populations are almost exclusively Black, are designed to break the prisoner physically and psychologically rather than to channel his or her energies along constructive paths such as those presently prevailing in Rahway Prison, New Jersey. All the indications are that prisoners are victimized on a racially and politically selective basis to prevent the articulation of legitimate grievances.

In our view, the extent and consistent pattern of these violations demand an immediate full scale inquiry by the United Nations into the policy and practice of Behavior Modification Units, bearing in mind in particular U.N. Standard Minimum Rules 6, 10–15, 20, 22., 30, 31, 33, 35, 39, 41, 77–81.

MEDICAL MALTREATMENT

Between her frequent periods of isolation, Assata Shakur became pregnant while in prison. That this should have embarrassed the authorities is understandable, but she testified that on three occasions the medical treatment accorded to her seriously endangered that pregnancy. Firstly, in Morris County Jail, New Jersey, when she started to bleed and vomit at the second month of her term, the prison doctor told her: “If you see a lump in the toilet that will be your baby.” She was transferred to a hospital only after her attorneys produced medical testimony in court.

At Middlesex County Jail, N.J., she was given a tablet different in appearance from her daily vitamin tablet. When she insisted on finding out its purpose, she discovered it was a laxative strong enough to cause an abortion.

While on Rikers Island, New York, and suffering from hay fever, she was prescribed antihistamine. A prison medical book she consulted listed the drug as contraindicated for pregnant women. When she pointed this out to the prison doctor who had told her it was safe, the book was withdrawn from circulation.

These allegations are not directly corroborated and so can only be judged on the basis of the temperate way in which they were related. The baby was born healthy and there appears no other reason for fabricating such charges. When weighted together with the substantial number of allegations of over-prescription of heavy sedatives and psychotropic drugs, we can only observe that a most disturbing pattern of medical abuse is suggested and that we feel these are matters which should receive close and urgent investigation. Petition Appendix VII, 1-7 refers to medical maltreatment in the case of Reverend Benjamin Chavis.

The frequency with which Jurists encountered allegations not only of medical incompetence and denial of facilities but also of experimentation with and over-prescription of psychotropic or heavily sedative drugs disturbs us greatly. We are unable to pronounce reliably on these allegations since we lack the qualifications and opportunity to investigate and observe fully. Nevertheless, we were impressed that an enquiry across the whole range of Federal and State prisons should examine quantitatively and qualitatively the drug and other treatment afforded in the light of Rule 22 (Medical Services), Rules 30 and 31 (Discipline and Punishment), and Rule 33 (Instruments of Restraint) of the U.N. Standard Minimum Rules.

RACIST PERSECUTION

Both Sundiata Acoli and Assata Shakur testified to having been incarcerated in maximum security together with white supporters of fascist views, in what appears to have been an attempt to provoke racist violence. Prison authorities can hardly be unaware of the dangers inherent in such practices.

Statesville (Illinois) prisoners testified to numerous instances of persecution of the 85% Black population, and even more disturbing was the case of Napanoch Prison, New York, where

some of the overwhelming majority of white guards were self-admitted members of the Ku Klux Klan. The toleration of provocative and brutal behavior by such persons towards the prisoners appears to us to contravene the non-discrimination guarantees of Rule 6 of the U.N. Standard Minimum Rules.

SYSTEMATIC BRUTALITIES

Behavior such as is evidenced by Appendix XIV, page one, was testified to as occurring on a widespread and racially and politically selective scale by Sundiata Acoli, Assata Shakur, the Napanoch Defendants, Lolita Lebrón, Rev. Ben Chavis and the Eddyville Defendants. Cruel and unusual punishments are evidenced by the case of Stewart v. Rhodes (see above under Segregation) in a manner which the Jurists consider most disturbing and which calls for full and immediate investigation.

FOOD

Rules 20 and 41 of the U.N. Standards seem frequently to have been infringed by the repeated serving of pork to persons known by the authorities to be Muslims.

EDUCATION AND RECREATION

While recording that few prisons appear to be giving sufficiently serious attention to these vital rehabilitative functions, we record two specific instances which appear to typify the lack of administrative concern in many establishments.

Assata Shakur, housed in Alderson Women's Prison, West Virginia, a prison with a "progressive" reputation, related that the maximum security unit gave classes in "office skills". The material value of this training is limited by the complete absence of typewriters or business machines.

The Assistant Warden at Trenton State Prison, New Jersey, when asked about educational facilities, replied: "There is one teacher who comes on a regular bass". Sensing that this sounded somewhat evasive, the Jurist asked, "What does 'regular' mean, one lesson for one hour each week?" "Considerably shorter", came the reply.

PRISONERS' COMPLAINTS

We were forcibly struck by either the absence or ineffectiveness of grievance procedures for inmate, particularly those in maximum security conditions. The Federal and State prison administrations in many instances do not seem to have learned anything from the events at Attica and, indeed, it appears that many seem to regard the mere articulation of a complaint as a disciplinary offense. This has already, in our view, led to the creation of a new category of political prisoner and we have presented our findings in relation to them above. We could only mention here, in the interests of fairness and objectivity, the important and progressive developments at Rahway Prison where George Merritt and other inmates work from offices with telephones to the outside world, running educational and advisory programmes for youths in trouble in the outside community.

This contrasted totally with most of the other institutions we visited in providing prisoners with reasonable channels to air and resolve grievances.

FORCED AND SLAVE LABOR

In concluding this section of our report we must refer to an extraordinary statement which was made in the hearing of all the Jurists by a legislative aide to a U.S. Congressman, and it was that, "Prisons are a large industry in the United States. The business of holding people in prison is a business". In view of this statement, it must be concluded that arrests, trials, length of incarceration, and appeals would all be clouded and colored by such a philosophy. Indeed, every action would be based and calculated to obtain more and more prisons and prisoners to make that business profitable. This we found to be exemplified in the prisons in Georgia, Alabama, Louisiana and Mississippi, where it was the boast of the prison authorities that prison labor, exploited as it was, is extraordinarily cheap, plentiful and long lasting; and further, it brought profits in the case of one prison in excess of one million dollars in one year from cotton, animal husbandry and soybeans.

In our view, this type of labor is tantamount to a slave condition which borders on a contravention of the 13th Amendment, Section 1 of the United States Constitution. We strongly advocate that the Sub-Commission give to the Petition its earnest and most serious consideration.

The North Carolina roads, reputed to be the best in the United States, are kept in such good repair by prisoners earning forty cents a day. The days of the chain gain are scarcely over.

SUMMARY

Coming as we did from diverse countries to one of the most economically developed countries in the world, it is a shock to all of us to have to report on the gross nature and widespread extent of the violations of human rights which we have examined. Having perused a multitude of prisoners' petitions, affidavits and court decisions, we can only conclude that the difficulties put in the way of a prisoner's right to humane treatment are only very occasionally removed by the intervention of the Justice Department or the courts. Behind the few cases where prisoners manage to get their grievances heard by a court must lie hundreds and probably thousands who lack the ability, knowledge or facilities to obtain redress.

We therefore urge the United Nations to act on their behalf and to investigate the violations evidenced to us by the representatives of this class of poor and minority prisoners who form the overwhelming proportion of inmates.

V. APPELLATE REMEDIES

We find that there have been instances where legal remedies, while ostensibly available to politically unpopular and racial minority prisoners, have been so tainted with racism and political abuse of the law and/or so unreasonably delayed, that they are rendered illusory and ineffective as avenues of redress. This class is exemplified by: The Wilmington 10, Charlotte 3, and George Merritt.

Only a procedure which does not impose an excessive burden and can be rapidly determined can furnish an effective remedy to the appellant suffering a violation of human rights committed within the limits of the criminal case.

If the putting into action of a certain proceeding is too financially burdensome to be within reach of the victim or if its duration can be considerably lengthened by procedural initiatives taken by the state respondents, it will be difficult to consider that the judicial system offers an effective remedy.

In this regard, two cases are particularly significant:

1) The case of the Wilmington 10, whose provisional freedom bail depended upon an exorbitant cash payment of \$500,000.00.

2) The case of George Merritt, whose conviction was twice declared invalid by the Appellate courts of New Jersey, who was twice bailed and twice re-convicted and who is still imprisoned awaiting the outcome of his third appeal, twelve years after he was first arrested.

If the victim is refused without just reason, the opportunity to review pertinent documents, circumstances or facts which supply him information which is indispensable or particularly useful to directly intervene in the proceeding whose issue is or could be a determinant in the success or failure of his own appeal, it would be difficult to admit that he had an effective remedy. The Wilmington 10 were condemned on the basis of allegations of witnesses who had negotiated their testimonies and had received rewards that had been promised them. After sentencing, these witnesses affirmed under oath that their original testimony was false. In spite of this and the strong argument on their behalf in the Department of Justice's Amicus Brief, the Wilmington 10 could not obtain a favorable review of their trial or their appearance in court at the time of the re-hearing.

The Charlotte 3 faced similar injustices and similarly delayed refusals to redress. The appeal judge in the Wilmington 10 case, having spent two and one half years considering the appeal, has taken a virtually unprecedented step of himself filing a motion to strike out their appellate petition to a higher court.

In this case and that of the Charlotte 3 it is most surprising that no measures were taken either to prosecute the witnesses who committed perjury or, at least in the case of James Stroud, prosecutor in the Wilmington 10 case, to investigate his questionable conduct. Quite the reverse happened, since the then president of the United States, R.M. Nixon, elevated Stroud to the position of U.S. Attorney for the Eastern District of North Carolina, a position he lost after the president's resignation.

The Puerto Rican Nationalists, Sundiata Acoli, Johnny (Imani) Harris and all those mentioned under the heading of excessive sentences (Finding III) are without meaningful recourse to the appellate courts to reduce their sentences and in many cases it is recognized that the courts present no avenue of hope to the political prisoner. Accordingly, political channels are more frequently being pursued by way of petitioners for pardon to State Governor or United

States President, in frank recognition that the issue may be one on which only a politician has the ability to pronounce. A token reduction in sentence followed the Wilmington 10's petition to North Carolina Governor Hunt.

CONCLUSION

We present the above examples of this class of case fully recognizing that appeal procedures in many countries take longer to be concluded than the original trial. However, a significant number of other prisoners we interviewed testified not only to manifest injustices during their trials (see Finding II) or excessive sentences (Finding III), but have also presented strong evidence to suggest a degree of political and/or race bias governing the consideration of their appeals.

In this latter regard, we note with considerable surprise that, in the State of North Carolina at least, a Supreme Court Judge is appointed through political channels and need have no legal or judicial training whatsoever. The office is frequently a political reward and holders include, inter alia, a former used car salesman. This identity between judiciary and politics appears to be highly regrettable in the context of cases such as the Wilmington 10.

These conditions appear without remedy within the United States and we accordingly request the United Nations to investigate and report on these findings.

VI. NATIVE AMERICANS

We find that sufficient evidence exists to establish a prima-facie case that the United States government has, throughout its history, pursued a policy of systematic extermination of the Native American peoples. Most recently, these acts of aggression have been focused on the leaders and members of the American Indian Movement who oppose these policies. We, therefore, urge that the United Nations institute a full investigation into these allegations of the crime of genocide.

While the attacks on the leaders of the American Indian Movement could well have been listed under Findings I (a), II, III and V, and while many Native Americans could be considered under I (c), we feel it necessary to set a section apart in this Report to express the depth of our concern for the plight of these peoples.

Having regard to the fact that your Sub-Commission is already seized of this issue by virtue of the Petition lodged on behalf of the International Indian Treaty Council, we would respectfully adopt the allegations and recommendations contained therein. We will therefore limit our own observations on this most serious human rights issue to the following brief report from the Jurists who visited the Pine Ridge Reservation and Sioux Falls, South Dakota. Further substantiating evidence is to be found in Appendix X to the present Petition.

Native Americans, who constitute less than 1% of the population and who are the original inhabitants of America, who were colonized by the Europeans coming to the shores of America, have established a case of genocide against them reminiscent of the 1951 U.N. Petition filed by Paul Robeson and William Patterson under the heading "We Charge Genocide". The Native American experiences with the United States Government further demonstrate the violation, indeed abrogation, of at least 400 treaties by the government of the United States, and a failure on its part to settle disputes by negotiation. The leaders of the Native Americans and of the American Indian Movement have thus posed the most far reaching challenge to the legal validity of the United States of America as now constituted and to its ownership of vast tracts of land acquired in violation of treaties duly negotiated and executed. They have established a sufficient claim to justify payment of reparations to reduce the legal injury arising out of such violations and other equitable and legal remedies. Nevertheless, an estimated 75% suffer from malnutrition, 75 to 80% unemployment and a 44 year life expectancy, where whites expect 74 years.

We were informed that the government of the U.S.A. has not only ignored demands made by Native Americans, but has continued a policy of systematic extermination of the Native Americans, which may well result in a permanent solution to this problem.

We visited the Indian Reservations in South Dakota and found a whole people living so completely in isolation as if condemned to perpetual solitary confinement. We heard accounts of daily harassment of Native Americans by the F.B.I. from numerous people we met and found a painful sense of despondency among ordinary people whose grievances were not only ignored, but whose harassment was officially and governmentally encouraged.

It is with this background in mind that it is necessary to see the cases and convictions of Richard Marshall, Russell Means, Ted Means, Leonard Peltier and many other leaders of the American Indian Movement (AIM). Without going into the details of their cases, we consider it

necessary to take the prosecution and conviction of the Means Brothers as an example and to point out certain features of it.

The prosecution of the Means Brothers and several others arose out of an incident where, during a court trial, the person sitting in the courtroom did not pay their respect by standing when the judge entered the courtroom. This angered the judge and he returned to his chamber. On the second occasion when this “insolence” was repeated, the judge ordered the courtroom cleared by the riot squad of the police. A melee ensued and some window panes were broken. Thereupon, the Means Brothers were prosecuted under an act of rioting to obstruct justice.

We were informed that, in nearly 150 years since this act was placed on the statute books, this was the first instance of its application. The act was repealed in 1976. The prosecution of the Means Brothers is therefore, not only the first prosecution but also the last under it. Upon conviction, sentences of two and a half years and four years were imposed on Ted and Russell Means respectively, based on police witnesses in preference to the testimony of five Bishops who were eyewitnesses. After Ted Means was sentenced, he was offered a reduction of sentence from 30 months to 18 months if he complied with conditions, one of which was that he agree not to participate in the activities of the American Indian Movement. He refused the condition.

Quite apart from the serious doubts raised in our minds about the real purpose of prosecuting the leaders of AIM (particularly in view of 12 trials previously directed unsuccessfully against Russell Means), we cannot but express surprise at the aforesaid conditional offer made by the court which seeks to take away the fundamental rights guaranteed by the First Amendment to the U.S. Constitution.

We were also made aware of the plans for uranium mining in the Native American territory of the Black Hills, which Native Americans are opposed to, and which constitutes a serious hazard to health and life in the entire area.

CONCLUSION

We urge the United Nations to investigate speedily and thoroughly these well-attested allegations since there is no possible channel of remedies for the Native Americans to pursue in the United States given present governmental attitudes.

VII. OLYMPIC PRISON

We are particularly disturbed to find that the United States Olympic Committee, the United States Bureau of Prisons and other governmental agencies are intending to house Winter Games 1980 Olympic athletes in a newly constructed prison in Lake Placid. It is not our purpose to investigate the suitability of such accommodations for athletes**, however, our visit to this site has satisfied us that the site is totally inappropriate for a prison due to the isolation, hostile climatic environment and the great distance from the site from any urban center from which its poor minority inmates may be expected to come, thus causing excessive hardships to them and their families.

The locale of this Lake Placid Prison, in upstate New York, is far removed from any sizeable city and with poor communication facilities rendering almost impossible any contact by prisoners with the outside world. It is significant that this prison, 300 miles away from New York City, will serve as a huge corrective prison for young offenders eighteen to twenty-five years of age from the New York City, New York and Boston, Massachusetts areas convicted of federal crimes. Blacks, Hispanics and other minorities from large urban areas who comprise a disproportionate percentage of prison population can be expected to be the majority of prisoners confined there. Lake Placid, by reason of its being situated in a remote, white, rural area, will typically be staffed by white guards, a situation which will inevitably exacerbate racial tensions within the prison.

Thousands of Americans have protested this decision of the Federal Bureau of Prisons and the United States Congress on this after-use of the Olympic Village to no avail.

Indeed, when the Jurists met, the Chief Counsel to the House of Representatives Judiciary Committee's Sub-Committee on Courts, Civil Liberties and the Administration of Justice, confirmed that the local Congressmen who had arranged the financial appropriation for building the prison had been constitutionally enabled to do so without any consultation with the Sub-Committee of the Judiciary which would have overall responsibility for the prison's administration.

** The Jurists take note that many responsible organizations have called on U.N. member states to boycott the games if the prison is so used.

The Chief Counsel said that it was “a bureaucratic rather than a democratic decision” since once the finance had been organized there was effectively no constitutional means of reversing the decision.

Sixty-two Northern New York State Protestant, Roman Catholic and Jewish Clergymen have issued a “Statement of Conscience” which we reproduce in its entirety for the Commission’s consideration.

As persons who have worked for years with prison inmates and their families back home we, the undersigned North Country clergy, wish to take our stand against the use of the Winter Olympic dormitories near Lake Placid as a medium security federal prison for youths 18–25 when the Olympic games conclude in 1980.

Even the Federal Bureau of Prisons admits that the location, 300 miles from New York City, the chief source of inmates, violates its own requirement for putting such facilities near the inmates’ homes, social resources, families, and clergy. It admits that it would never have chosen Lake Placid, so far away from New York City, but that arrangements in Congress were made and it accepted them.

We protest the inhumane location. Forty percent of federal prisoners are non-white; most are not sentenced for crimes of violence; most are from poor families, and Lake Placid is hard to reach even for the well to do. For the mothers, fathers, wives, ministers, and priests who will try to visit the inmates it will be virtually impossible, given their weekly income, the expense of getting to the prison and remaining overnight, and even giving up work time to go.

We know that policies which are morally wrong are usually financially expensive in the long run. The grotesque after-use of the Lake Placid Olympic dormitories makes a mockery of the games themselves, which are supposed to exemplify fair play, brotherhood, and good will. Even the Russians are building 1980 Summer Olympic dormitories which will be converted into a housing project after the games at Moscow, and even America’s Olympic Committee Secretary-General F. Don Miller, declared the Moscow facilities “the best village I have ever seen”.

Could not the Lake Placid dormitories have been used for some fine purpose such as a sports training center, housing, or some health building

purpose? These, too, would provide jobs for the North Country. It is not too late now to change our governmental policy and we ask that it be done. It is never too late to do the right thing.

When all Americans learn about the Lake Placid Olympic prison arrangement, and they will, they will not be proud. As North Country clergy, we call upon the Lake Placid community, our Congress and the Carter administration to reverse this inhumane decision. We ask that hearings be held in Congress to determine just how this arrangement came to be and how it can be changed. We ask the members of our congregations to sensitize themselves to the inhumane implications of this issue.

In the Scriptures we read: "I was in prison and you visited me." These words will seldom be fulfilled at Lake Placid. We abhor the corruption of the high ideals toward which the Olympics and this nation strive.

All domestic remedies have failed to deter U.S. authorities from this use of the Olympic Village and we have been asked to raise it before the International Community.

Therefore, we respectfully recommend that the Sub-Commission on Prevention of Discrimination and Protection of Minorities refer the Petition and our Report to the Commission on Human Rights so that an ad-hoc committee may be immediately appointed to investigate these well-attested human rights violations.

August 18, 1979

/s/ Harish Chandra

Mr. Justice Harish Chandra, India

/s/ Per Eklund

Chief Judge Per Eklund, Sweden

/s/ Richard Harvey

Richard Harvey, Great Britain

/s/ Ifeanyi Ifebigh

Ifeanyi Ifebigh, Nigeria

/s/ Sergio Insulza Barrios

Sergio Insulza Barrios, Chile (In Exile)

/s/ Arthur Hugh McShine

The Hon. Sir Arthur Hugh McShine,
T.C., Trinidad-Tobago

/s/ Babacar Niang

Babacar Niang, Senegal

INTERNATIONAL JURIST OBSERVERS

EXHIBIT A

Sub-Commission on Prevention of Discrimination and Protection of Minorities, Resolution 1 (XXIV), U.N. DOC. E/CN.4/1070 at 50-51 (1971).

Question of the violation of human rights and fundamental freedoms, including politics of racial discrimination and segregation and of apartheid in all countries, with particular reference to colonial and other dependent countries and territories

The Sub-Commission on Prevention of Discrimination and Protection of Minorities

Considering that the Economic and Social Council, by its resolution 1503 (XLVIII), decided that the Sub-Commission should devise appropriate procedures for dealing with the question of admissibility of communications received by the Secretary-General under Council resolution 728 F (XXVIII) of 30 July 1959 and in accordance with Council resolution 1235 (XLII) of 6 June 1967,

Adopts the following provisional procedures for dealing with the question of admissibility of communications referred to above:

(1) Standards and criteria

(a) The object of the communication must not be inconsistent with the relevant principles of the Charter, of the Universal Declaration of Human Rights and of the other applicable instruments in the field of human rights.

(b) Communications shall be admissible only if, after consideration thereof, together with the replies if any of the Governments concerned, there are reasonable grounds to believe that they may reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of *apartheid* in any country, including colonial and other dependent countries and peoples.

(2) Source of communications

(a) Admissible communications may originate from a person or group of persons, who, it can be reasonably presumed, are victims of the violations referred to in subparagraph (1) (b) above, any person or group of persons who have direct and reliable knowledge of those violations, or non-governmental organizations acting in good faith in accordance with recognized principles of human rights, not resorting to politically motivated stands contrary to the provisions of the Charter of the United Nations and having direct and reliable knowledge of such violations.

(b) Anonymous communications shall be inadmissible; subject to the requirements of subparagraph (2) (b) of resolution 728 F (XXVIII) of the Economic and Social Council, the author of a communication, whether an individual, a group of individuals or an organization, must be clearly identified.

(c) Communications shall not be inadmissible solely because the knowledge of the individual authors is second-hand, provided that they are accompanied by clear evidence.

(3) *Contents of communications and nature of allegations*

(a) The communication must contain a description of the facts and must indicate the purpose of the petition and the rights that have been violated.

(b) Communications shall be inadmissible if their language is essentially abusive and in particular if they contain insulting reference to the State against which the complaint is directed. Such communications may be considered if they meet the other criteria for admissibility after deletion of the abusive language.

(c) A communication shall be inadmissible if it has manifestly political motivations and its subject is contrary to the provisions of the Charter of the United Nations.

(d) A communication shall be inadmissible if it appears that it is based exclusively on report disseminated by mass media.

(4) *Existence of other remedies*

(a) Communications shall be inadmissible if their admission would prejudice the functions of the specialized agencies of the United Nations system.

(b) Communications shall be inadmissible if domestic remedies have not been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged. Any failure to exhaust remedies should be satisfactorily established.

(c) Communications relating to cases which have been settled by the State concerned in accordance with the principles set forth in the Universal Declaration of Human Rights and other applicable documents in the field of human right will not be considered.

(5) *Timeliness*

A communication shall be inadmissible if it is not submitted to the United Nations within a reasonable time after the exhaustion of the domestic remedies as provided above.

EXHIBIT B

Economic and Social Council Resolution 1503 (XLVIII), 48 U.N. ESCOR (No. 1A) at 8, U.N. Doc. E/4832/Add.1 (1970):

Procedure for dealing with communications relating to violations of human rights and fundamental freedoms

The Economic and Social Council,

Noting resolutions 7 (XXVI) and 17 (XXV) of the Commission on Human Rights and resolution 2 (XXI) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,

1. *Authorizes* the Sub-Commission on Prevention of Discrimination and Protection of Minorities to appoint a working group consisting of not more than twenty-five members, with due regard to geographical distribution, to meet once a year in private meetings for a period not exceeding ten days immediately before the sessions of the Sub-Commission to consider all communications, including replies of Governments thereon, received by the Secretary-General under Council resolution 728 F (XXVIII) of 30 July 1959 with a view to bringing to the attention of the Sub-Commission those communications, together with replies of Governments, if any, which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms within the terms of reference of the Sub-Commission;

2. *Decides* that the Sub-Commission on Prevention of Discrimination and Protection of Minorities should, as the first step in the implementation of the present resolution, devise at its twenty-third session appropriate procedures for dealing with the question of admissibility of communications received by the Secretary-General under Council resolution 728 F (XXVIII) and in accordance with Council resolution 1235 (XLII) of 6 June 1967;

3. *Requests* the Secretary-General to prepare a document on the question of admissibility of communications for the Sub-Commission's consideration at its twenty-third session;

4. *Further requests* the Secretary-General:

(a) To furnish to the members of the Sub-Commission every month a list of communications prepared by him in accordance with Council resolution 728 F (XXVIII) and a brief description of them together with the text of any replies received from Governments;

(b) To make available to the members of the working group at their meetings the originals of such communications listed as they may request, having due regard to the provisions of paragraph 2(b) of Council resolution 728 F (XXVIII) concerning the divulging of the identity of the authors of communications;

(c) To circulate to the members of the Sub-Commission, in the working languages, the originals of such communications as are referred to the Sub-Commission by the working group;

5. *Requests* the Sub-Commission on Prevention of Discrimination and Protection of Minorities to consider in private meetings, in accordance with paragraph 1 above, the communications brought

before it in accordance with the decision of a majority of the members of the working group and any replies of Governments relating thereto and other relevant information, with a view to determining whether to refer to the Commission on Human Rights particular situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights requiring consideration by the Commission;

6. *Requests* the Commission on Human Rights after it has examined any situation referred to it by the Sub-Commission to determine:

(a) Whether it requires a thorough study by the Commission and a report and recommendations thereon to the Council in accordance with paragraph 3 of Council resolution 1235 (XLII);

(b) Whether it may be a subject of an investigation by an *ad hoc* committee to be appointed by the Commission which shall be undertaken only with the express consent of the State concerned and shall be conducted in constant co-operation with that State and under conditions determined by agreement with it. In any event, the investigation may be undertaken only if:

- (i) All available means at the national level have been resorted to and exhausted;
- (ii) The situation does not relate to a matter which is being dealt with under other procedures prescribed in the constituent instruments of, or conventions adopted by, the United Nations and the specialized agencies, or in regional conventions, or which the State concerned wishes to submit to other procedures in accordance with general or special international agreements to which it is a party.

7. *Decides* that if the Commission on Human Rights appoints an *ad hoc* committee to carry on an investigation with the consent of the State concerned:

(a) The composition of the committee shall be determined by the Commission. The members of the committee shall be independent persons whose competence and impartiality is beyond question. Their appointment shall be subject to the consent of the Government concerned;

(b) The committee shall establish its own rules of procedure. It shall be subject to the quorum rule. It shall have authority to receive communications and hear witnesses, as necessary. The investigation shall be conducted in co-operation with the Government concerned;

(c) The committee's procedure shall be confidential, its proceedings shall be conducted in private meetings and its communications shall not be publicized in any way;

(d) The committee shall strive for friendly solutions before, during and even after the investigation;

(e) The committee shall report to the Commission on Human Rights with such observations and suggestions as it may deem appropriate;

8. *Decides* that all actions envisaged in the implementation of the present resolution by the Sub-Commission on Prevention of Discrimination and Protection of Minorities or the Commission on Human Rights shall remain confidential until such time as the Commission may decide to make recommendations to the Economic and Social Council;

9. *Decides* to authorize the Secretary-General to provide all facilities which may be required to carry out the present resolution, making use of the existing staff of the Division of Human Rights of the United Nations Secretariat;

10. *Decides* that the procedure set out in the present resolution for dealing with communications relating to violations of human rights and fundamental freedoms should be reviewed if any new organ entitled to deal with such communications should be established within the United Nations or by international agreement.