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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Forty-eighth session

SUMMARY RECORD OF THE 28th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 26 August 1996, at 10 a.m.

Chairman: Mr. EIDE

later: Mr. LINDGREN ALVES

CONTENTS

GE.96-13802 (E)

CONTENTS (continued)

The meeting was called to order at 10.05 a.m.

DISCRIMINATION AGAINST INDIGENOUS PEOPLES (agenda item 14) (E/CN.4/Sub.2/1996/21 and Corr.1, 22 and 23, E/CN.4/Sub.2/1996/NGO/15, E/CN.4/Sub.2/1995/24)

1. Mrs. DAES (Chairman/Rapporteur, Working Group on Indigenous Populations), introducing the report of the Working Group on its fourteenth session (E/CN.4/Sub.2/1996/21), paid a tribute to Mr. Alfonso Martínez, Mr. Boutkevitch and Mr. Guissé for their active participation in the Group's work. A total of 721 persons had attended the fourteenth session, representing 44 Governments, 12 specialized agencies and 232 nations, communities and indigenous organizations, together with a number of experts. Twenty-two indigenous persons had been able to participate with the assistance of the United Nations Voluntary Fund for Indigenous Populations. She appealed to Governments to continue their contributions to the Fund.

2. The main agenda item, the evolution of standards concerning the rights of indigenous people, had included a sub-item entitled “Definition of the concept of indigenous peoples”. In that connection she had prepared a background paper on the question (E/CN.4/Sub.2/AC.4/1996/2). Most of the participants had agreed with her that it was neither desirable nor necessary to have a universal definition of indigenous people, at least for the present. A single definition could not capture the diversity of indigenous peoples worldwide. More importantly, the draft Declaration on the rights of indigenous peoples should be designed to fulfil the needs of those groups which all agreed, without question, were “indigenous”. The application of the Declaration would evolve in practice, as had the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Nevertheless, the Working Group had decided to continue consideration of the concept of indigenous peoples at its following session, and encouraged Governments, specialized agencies, indigenous peoples and non-governmental organizations (NGOs) to send it their comments on that essential question. The Working Group was available to assist the Working Group of the Commission on Human Rights with any information or clarification pertaining to the draft Declaration that it might need.

3. Under the agenda item entitled “Review of developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations, the Working Group had considered the question of the health of indigenous peoples, which was generally worse than that of the rest of the population, and alarming in certain regions, especially with regard to infant mortality, life expectancy and chronic illness. In that connection, many indigenous representatives had stressed that the health of indigenous people was closely linked to their ancestral lands. For example, loss of land could lead to a devastating change in nutrition. Dispossession of land could be regarded as an indirect threat to the lives of indigenous peoples. She was, however, pleased to report that some Governments were working hard to improve the health of indigenous peoples. She expressed appreciation to WHO for its active participation in the deliberations on the question, which the Working Group had decided to keep on the agenda for its fifteenth session.

4. The agenda for the fifteenth session would also have a new sub-item entitled “Indigenous peoples: environment and land”. The Working Group would be requesting relevant information from Governments, specialized agencies, UNEP, other intergovernmental organizations, NGOs and indigenous peoples' organizations. If the Sub-Commission approved, she would submit a working paper on indigenous land rights. The Working Group had also decided to recommend to the Sub-Commission that a study should be undertaken and a special rapporteur appointed to conduct a comprehensive study on indigenous land rights and the problems that existed in that regard.

5. The discussions on the permanent forum for indigenous people had been constructive and should be of great assistance to the Secretary-General's review of existing mechanisms, procedures and programmes for indigenous peoples, to be submitted to the fifty-first session of the General Assembly. Indigenous peoples and many States had expressed the view that the permanent forum should be established at the highest possible level within the United Nations system and should not be a replacement for the Working Group on Indigenous Populations. She noted that the Government of Chile had offered to host the second workshop on the possible establishment of a permanent forum.

6. The Working Group welcomed the comprehensive Programme of Activities of the International Decade of the World's Indigenous People, and wished to continue to cooperate with the Coordinator of the Decade, Mr. Fall, in the realization of the Programme. For the Decade to be a success, there should be more operational action and stronger political commitment by Governments, closer cooperation between the specialized agencies and indigenous peoples, and increased contributions by Governments and private entities to the Voluntary Fund for the Decade.

7. The General Assembly had identified the adoption of the draft United Nations Declaration on the rights of indigenous peoples and the further development of international standards for the protection and promotion of the human rights of indigenous peoples as the main objectives of the Decade.

8. Introducing her supplementary report on the protection of the heritage of indigenous people (E/CN.4/Sub.2/1996/22), she said that five years had elapsed since she had first been entrusted with the study by the Sub-Commission. Over that time, she had grown increasingly to share the frustration of indigenous peoples at the erosion of their cultures and the inaction of the international community. While indigenous languages continued to decline and disappear in most countries and while indigenous lands were also disappearing, particularly in countries which were privatizing their economies, there was - ironically - a growing demand, especially in the West, for indigenous art, crafts and, above all, traditional knowledge, medical and ecological. That demand was accelerating the exploitation and destruction of indigenous societies. The resulting injustice was fundamentally a legal problem, because few countries respected the right of indigenous peoples to withhold their cultural and scientific works from commercialization. Noting that numerous United Nations bodies and agencies working to protect the heritage of indigenous peoples had come into existence, she said that an inter-agency coordination mechanism must be established.

9. With regard to the draft Principles and guidelines for the protection of the heritage of indigenous people, which were contained in the annex to her final report (E/CN.4/Sub.2/1995/26), she had received useful comments from all the relevant bodies and organizations and from several Governments and indigenous organizations. She had also had the privilege of participating in several seminars, including one on cultural restoration held at the University of Saskatchewan, Canada, whose programme of action had called, in particular, for the speedy adoption of the above-mentioned draft Principles and guidelines. She had been particularly struck by the statement in the preamble to the programme of action that indigenous peoples had the responsibility to restore, maintain and strengthen their civilizations and their humanity. That statement stressed the responsibility, and not merely the rights of indigenous peoples, their "civilizations", a term referring less to tradition and more to creativity than the term "culture", and lastly their "humanity". Being human meant having an identity, being part of a civilization and, above all, having responsibilities and therefore a function and meaning in life. Protecting the heritage of indigenous peoples meant maintaining the meaningfulness of life for those peoples and was more central than life itself.

10. She summarized the additional conclusions and recommendations contained in her report. Overall, she had concluded that the guidelines she had proposed for the protection of the heritage of indigenous peoples were permitted and, to a large extent, required by recently-adopted international instruments in the fields of trade and the environment. There was also an urgent need to coordinate the complementary initiatives being taken by international bodies in the fields of the environment, trade and human rights. International environmental bodies were arriving at the same conclusion as herself, namely that the legal rights of indigenous peoples to their traditional knowledge were already recognized, at least in very general terms, in international law, and were consistent with the new international trade regime. The World Trade Organization had so indicated when it had adopted the Agreement on Trade-Related Intellectual Property Rights, in particular articles 1, 8, 27 and 39.2. The real problem was not one of legal incompatibility between her proposals and existing trade instruments, but a lack of communication and coordination among the various international bodies concerned with particular aspects of indigenous peoples' heritage. The Sub-Commission and the Centre for Human Rights could make an important contribution in that respect.

11. Thanks to its channels for collaborating with indigenous peoples, the Sub-Commission's Working Group on Indigenous Populations might, for example, provide assistance to the World Intellectual Property Organization in organizing its planned international symposium on the preservation and legal protection of folklore, and to UNESCO in preparing its planned biennial report on the status of protection of indigenous peoples' heritage worldwide. She hoped that UNESCO would organize meetings with indigenous educators, scientists and artists to refine the methodology used to collect and evaluate the information needed for future UNESCO reports. She would also like to see the parties to the Convention on Biological Diversity give the Executive Secretary adequate funding for research partnerships with indigenous peoples' own educational and scientific institutions. In view of the experience gained by the Working Group on Indigenous Populations over the past 15 years, a member of the Group might, with the authorization of the Economic and Social

Council, be entrusted with a continuing thematic rapporteurship on the heritage of indigenous peoples, the primary task being to ensure coordinated action with the full participation of indigenous peoples.

12. Mr. ALFONSO MARTINEZ, introducing his third progress report on the study of treaties, agreements and other constructive arrangements between States and indigenous populations (E/CN.4/Sub.2/1996/23), said that, because he had not received the necessary assistance in time, he had had to base his analysis essentially on data from 1993 and 1994. His final report, to be submitted in 1997, would bring those data up to date. The third progress report consisted of five chapters. Chapter I contained some general considerations on how indigenous people had lost their sovereignty and gradually been "domesticated". In preparing the chapter, he had made a distinction between Spanish and British colonization. Chapter II analysed the process of "domestication" of indigenous peoples in North America and described the legislative and legal measures connected with the process in the United States and Canada, two countries whose policies on the subject had been completely different. While the United States had put an end to the treaty policy it had followed from the outset with the indigenous peoples, Canada had continued to seek to negotiate and conclude agreements with them.

13. Chapters II and IV of the report dealt with the two variants of Spanish colonialism. As examples of the first variant, found in Central America, he had studied the very different cases of Nicaragua and Panama. The copious information on Nicaragua he had obtained in April 1996 from an eminent specialist on indigenous issues in Latin America, Mr. Augusto Willemsen Diaz, would be taken into account in his final report. To illustrate the second variant, which had been applied in the Southern Cone of Latin America, he had studied the case of the Mapuche, who had been treated differently according to whether they had been under Argentine or Chilean jurisdiction. In chapter V, the last chapter, he had studied the "constructive arrangement" concluded between Greenland and Denmark, and the "limitations" of the autonomy agreement which had been illustrated by the 1968 explosion, on Thule air base, of an American bomber carrying atomic bombs, an incident he had described at the end of the report.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES:

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

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

(c) INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS (agenda item 10) (continued)

(E/CN.4/Sub.2/1996/16-18, 19 and Corr.1; E/CN.4/Sub.2/1996/NGO/2, 4, 5, 11, 17, 26, 30 and 31)

14. Mr. SHIOKAWA (International Association of Democratic Lawyers) said that the Japanese Government did not sincerely regret what it had done between 1925 and 1945 but was in fact seeking to justify it. During those 20 years,

hundreds of thousands of people had been arrested, under a law limiting freedom of opinion, for opposing the policies promoted by the imperial regime and calling for peace and human rights. Approximately 2,000 people had died in prison, most under torture. An association had been established in 1968 calling for the Government to apologize and pay compensation to the victims. That the Government had not done to date.

15. On another matter, the Japanese Government was seeking to suppress references in textbooks to the crimes committed by the Japanese army, namely, the widespread forcible prostitution of women. His organization welcomed the fact that the Special Rapporteur on Violence against Women, Mrs. Coomaraswamy, had stressed in her report (E/CN.4/1996/53/Add.1) the need for school curricula to be changed in order to reflect historical reality. It asked the Sub-Commission to monitor the Japanese textbook screening system, which represented a violation of freedom of expression and information.

16. Mrs. PARES (International Educational Development) said that legislation in Mexico had considerably increased the powers of the Public Prosecutor's Office, which was responsible both for investigating offences and for conducting criminal proceedings, to the extent that judges were often reduced to ratifying decisions taken by the Office. Owing to lack of resources and competent personnel, the defence was often in a weak position in relation to the prosecution. That was particularly true in the case of court-appointed lawyers, whose independence was compromised because they were paid by the courts.

17. The judiciary was also subjected to political pressure, as attested by the February 1995 arrest of 20 or so presumed Zapatistas; their detention and trial had involved various violations of the law which had been duly reported by the National Human Rights Commission. Most of those detainees had been tortured. Furthermore, they had been arrested without a warrant and had not been defended by a lawyer of their choice, and those who had been found guilty had been convicted on the basis of evidence that was inconsistent and in some cases absurd, when not completely fabricated. There was no doubt that the Government had used those so-called trials to influence the negotiations with the EZNL (Zapatista National Liberation Army).

18. To remedy that situation, there was an urgent need to guarantee the independence, impartiality and effectiveness of the judiciary, to reform the Public Prosecutor's Office in order to ensure that it functioned with due respect for human rights and legal standards, to grant the national human rights commissions full autonomy and the power to take binding decisions, and to release the presumed Zapatistas immediately.

19. Mr. BHAT (International Islamic Federation of Student Organizations) said that the entire territory of Jammu and Kashmir was a prison where the Indian army, paramilitary forces and special task forces dishonoured, maimed, tortured and murdered thousands of innocent people, with complete impunity, under the emergency legislation applicable throughout the territory. For example, the Armed Forces Special Powers Act of 1990 authorizd the army to arrest anyone without a judicial warrant and, if necessary, kill anyone who broke the law (sect. 4). It also provided that no prosecution could be instituted against anyone who had acted in exercise of powers conferred by the

Act (sect. 7). Many Kashmiris were being held without trial under the 1978 Jammu and Kashmir Public Safety Act, in contravention of the International Covenant on Civil and Political Rights. In occupied Jammu and Kashmir, neither judges nor lawyers were assured of their safety. Three prominent lawyers, Mr. Jaleel Andrabi, Mr. Abdul Qadir Sailani and Mr. Mohammad Hussain, and a human rights activist, Mr. Mohammad Subhan, had recently been killed.

20. In view of that situation, his organization urged the Sub-Commission to send a fact-finding mission to occupied Jammu and Kashmir and to request that the war criminals who were torturing and killing thousands of innocent people with complete impunity should be brought before an international tribunal.

21. Mrs. DEGENEF (Disabled People's International) said it was deeply regrettable that neither the report on the question of the impunity of perpetrators of violations of human rights (E/CN.4/Sub.2/1996/18) nor the report containing the revised set of basic principles and guidelines on the right to reparation of victims of gross violations of human rights and humanitarian law (E/CN.4/Sub.2/1996/17) recognized violations of human rights against disabled detainees. Since the adoption of the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care in 1991, there had been no follow-up activities in that field. The Principles were totally unknown in most countries. Many countries had no laws regulating the forced institutionalization of disabled persons, and decisions were left to the medical profession, without legal review. If such laws existed, they rarely met international human rights standards. Neither were there any regulations or programmes on reparation and compensation for disabled persons who had been detained without review of their medical condition, had received no treatment or insufficient treatment, had been compulsorily sterilized or sexually exploited, or had been the victims of medical experimentation. Such violations occurred not only in poor countries, but also in countries which called themselves developed. The previous week her organization had organized the first European Conference of Disabled Women on Self-Determined Living in Munich, where serious violations of the rights of institutionalized disabled women had been reported.

22. Her organization also wished to draw attention to the issue of medical experimentation without benefit to the affected disabled person, in the name of scientific and technological progress. The Council of Europe's draft Convention on bioethics permitted such human rights violations, in breach of article 3 of the Universal Declaration of Human Rights and Principle 1 of the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care. Her organization vigorously protested against those and similar utilitarian provisions of the draft Convention and requested the Sub-Commission to undertake an in-depth study on human rights violations against detained disabled persons. It also urged the Sub-Commission to initiate programmes and activities which ensured the promotion and implementation in all United Nations Member States of the Principles for the Mentally Ill and the Standard Rules on the Equalization of Opportunities for Persons with Disabilities.

23. Mr. VO VAN AI (International Federation of Human Rights-FIDH) said that truth, justice and reparation were the three pillars of the fight against impunity, which often occurred in the context of internal conflicts and

dictatorial regimes, but was also present in countries considered to be democracies. In many such countries, the State too often agreed to legal or extrajudicial mechanisms that enabled the perpetrators of human rights violations to keep their jobs within the State apparatus, and judges' efforts to elicit the truth and sentence the guilty to penalties proportional to the seriousness of their crimes were too often thwarted by the Executive. In that connection, FIDH had strong reservations about the concept of a "reference period" in Mr. Joinet's report on the impunity of perpetrators of violations of civil and political rights (E/CN.4/Sub.2/1996/18). On the other hand, it commended the Special Rapporteur's decision to take into account the proposals of several NGOs to the effect that the Principles should apply to mass or systematic violations of human rights, as the two concepts described very different situations, and to expand them to cover all serious violations of human rights.

24. FIDH considered that the general amnesty laws adopted in Peru in respect of State officials who had committed serious human rights violations in the context of the efforts to combat subversion gave rise to intolerable impunity. It also denounced the persistent impunity in Guatemala where, despite formal commitments by the Government as part of the Comprehensive Agreement on Human Rights of March 1994, none of the notorious criminals of the 1980s had stood trial for his crimes.

25. FIDH also wished to express concern at the maintenance of the state of emergency and emergency legislation in Ireland and Northern Ireland. It requested the Sub-Commission to invite the Governments of the United Kingdom and Ireland to repeal that legislation and give priority attention to respect for human rights in their peace negotiations.

26. FIDH remained deeply concerned at the deplorable conditions of detention of prisoners of opinion in Viet Nam and at the brutal forced repatriation of boat people. Some of those who had been forcibly repatriated were also at risk in their home country because of their opinions or human rights activities. FIDH strongly opposed the conviction of three people in Hanoi on 22 August 1996 for simply making a peaceful appeal for democratic reforms.

27. FIDH denounced the current deterioration in the administration of justice in Egypt. In June 1995, the Court of Appeal in Cairo had declared Professor Abou Zaid an apostate on the ground that his writings undermined the holy character of the Koran, and had dissolved his marriage. The Court of Cassation, against all expectations, had rejected the parties' appeal against the Court of appeal decision. It seemed that even the personal lives of Egyptian intellectuals were at risk if their writings did not obey the dictates of the radical Islamists.

28. Mr. Lindgren Alves took the Chair.

29. Mr. TUFAIL (World Muslim Congress) said that the guarantees governing detention and trial contained in article 21 of the Indian Constitution were not respected in India, where the rule of law had been replaced by State terrorism. Detention without trial, inhuman conditions of detention, custodial killings and trials of civil disputes by military and paramilitary forces were common occurrences throughout the country.

30. According to the Indian Constitution and laws, India had no sovereignty over occupied Jammu and Kashmir, yet even to talk or write about the promises made by the Indian Prime Minister concerning Kashmiri rights was punishable with a life sentence under the Terrorist and Disruptive (Prevention) Activities Act of 1987. Jammu and Kashmir had become a concentration camp guarded by 700,000 members of the military and paramilitary forces. No person apprehended was produced before the courts; there were no investigations and no trials, and lawyers were arrested and tortured. As a judge of the High Court at Srinagar had stated, there were hundreds of cases of illegal detention, and the court had been made helpless by the law enforcement agencies. For all those reasons, the World Muslim Congress requested the Sub-Commission to send a Special Rapporteur to India and Kashmir.

31. Mrs. GARSTANG (Liberation) expressed her organization's concern at the human rights abuses against detainees and the prolific use of emergency legislation worldwide, especially in Turkey, India and the United Kingdom.

32. In Turkey, the 1991 Anti-Terror Law defined a terrorist as anyone who questioned the territorial integrity of the Turkish State, resulting in the detention of journalists, politicians and human rights activists.

33. In India, sweeping powers of arrest and detention and authority to shoot to kill had been granted to security forces in regions where the Government was involved in political disputes with minorities. The Indian Constitution allowed the central Government to dismiss regionally-elected state governments and impose "presidential rule" in regions where it perceived a threat to the security of the nation. When a State imposed emergency legislation on a region, the Sub-Commission should look for evidence of a genuine commitment on the part of that State to settle the disputes through negotiation. That did not appear to be the case in the north-eastern states and Punjab.

34. Some 18 months after the IRA had declared a cease-fire in Northern Ireland, her organization remained concerned that none of the emergency legislation had been repealed. The police had powers to detain suspects for seven days without producing them before a court. Liberation was also concerned about the use of plastic bullets by the security forces. In the United Kingdom there seemed to be a growing tendency to resort to the use of national security legislation in order to deport residents whose presence jeopardized the United Kingdom's political or trade relations. The impotence of the United Kingdom's judiciary in such cases seriously undermined its independence.

35. In many countries, the impartiality of the judiciary was severely compromised by political pressure. In certain regions of India, for instance, the pattern of harassment and disappearance of human rights activists and lawyers continued, in some cases with the apparent complicity of the courts. It was also clear that states of emergency were not always declared but were sometimes exercised de facto in some countries. The use of emergency legislation for long periods in countries such as India and the United Kingdom reflected the inability of those States to find realistic political solutions to their problems; the Sub-Commission should therefore look at ways of discouraging them from relying on such measures to avoid political solutions.

36. Mrs. HUTZINGER (France-Libertés - Fondation Danielle Mitterrand) said that more than 10,000 political prisoners were still being detained in Turkey; international public opinion had been aroused when hundreds of prisoners had gone on hunger strike for 69 days to protest at prison practices. Arrest and prosecution for "crimes of opinion" were on the rise in Turkey, and the Government pointed to the minimal changes made in article 8 of the anti-terror legislation as an example of significant progress. In addition, the state of emergency in force since 1978, which had introduced a permanent state of discrimination, had been extended in 10 Kurdish provinces. In view of such systematic violations of human rights, the Sub-Commission should decide to appoint a special rapporteur on the question.

37. The state of emergency was being maintained in Bahrain, and serious human rights violations were continuing. Since the previous session of the Sub-Commission, 132 sentences had been handed down by the State Security Court against persons who had not been assisted by a lawyer of their choice. Ill-treatment and torture continued to be common practice in detention centres. In addition, the friends and relatives of avowed or alleged opponents of the regime were regularly harassed. In view of that situation, her organization urged the Sub-Commission to intervene in order to secure authorization for international observers to visit the prisons and meet detainees' relatives.

38. Despite heavy criticism, Iran continued to flout its citizens' basic human rights and freedoms. The situation of thousands of political prisoners was desperate: they were subjected to deplorable conditions of detention, torture and summary executions. For example, Kazem Mirzal, imprisoned since 1994 for belonging to the Democratic Party of Kurdistan of Iran, had recently died under torture in prison. It should be pointed out in that connection that Iran had still not signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In that context, her organization requested the Sub-Commission to intervene in order to enable the Special Representative on the situation of human rights in the Islamic Republic of Iran to visit the whole of the country to study the situation of minorities, in particular the Kurds.

39. Her organization also wished to draw the Sub-Commission's attention to the increase in arbitrary arrests in Ethiopia, and appealed for 1,600 young Saharans, who had gone to Rabat to demand to be allowed to exercise their social rights, been detained in a sports complex and then been escorted home, not to be subjected to reprisals.

40. Mr. TRAMBOO (International Human Rights Association of American Minorities - IHRAAM) said that the greatest threat to judicial independence came not only from the executive and legislative branches but also from organized crime, powerful business circles and multinational corporations. The situation of the newly emerging democracies was of particular concern, since in some of those countries Governments unjustifiably interfered with the judiciary.

41. A classic example was the Indian administration's deliberate interference with the judiciary in Jammu and Kashmir. Mr. Noor Mohammad Kalwal had been arrested in October 1991 and regularly shifted from one

detention centre to another, living in miserable conditions. Mr. Kalwal had made various applications for release and finally been granted bail by a Jammu and Kashmir court. He had not been released, however, and when the High Court had looked into his case, it had directed the state government to produce him before the Court. The government had refused the Court's order, and nearly one year later the Advocate-General had indicated that Mr. Kalwal's case had been referred to a so-called “screening committee”. Surprisingly, the High Court had accepted the government's plea, and the matter was still being considered by the committee. No judicial remedy was available to Mr. Kalwal. There were hundreds of Kashmiris languishing in Indian prisons, unable to exercise the remedy provided by the Indian legal system. The Special Rapporteur should attend to cases like that of Mr. Kalwal, and the Sub-Commission should make adequate resources available to the Special Rapporteur to enable him to do his job more effectively.

42. Mr. CHERNICHENKO said that he had listened to several statements by NGOs and wondered whether they did not in fact relate to agenda item 6. In addition, the Special Rapporteur was being asked to look into specific cases, which was completely at variance with his mandate. Similarly, the Sub-Commission was only responsible for examining individual complaints in the framework of the procedure governed by Economic and Social Council resolution 1503 (XLVIII). He hoped that the NGOs would take those points into account in their statements.

43. Mr. KIRKYACHARIAN (Movement against Racism and for Friendship among Peoples - MRAP) said that numerous States resorted to ostensibly legal measures in order to get rid of their opponents.

44. MRAP endorsed the demands contained in the copious file of documentation on prisons in Turkey, which the Association for the Prevention of Torture had prepared and submitted to the members of the Sub-Commission. MRAP also believed that it would be to Tunisia's credit to hold a public retrial of a lawyer, Najib Hosni, whose case was of concern to a number of jurists throughout the world. Similarly, the measures taken by Morocco to put an end to a dubious past were very positive, but the question of the Saharan prisoners should be settled quickly. MRAP was also concerned at the situation in Indonesia, where the Constitution in force did not recognize the independence of the judiciary and where activists from the small Popular Democratic Party, which was not recognized by the authorities, were being arrested and harassed because of their contacts with, in particular, Amnesty International, Australian trade unions and Indonesian opposition members residing in Europe. He invited a witness of the situation in Iran, Mr. Mesdagi, to continue his organization's statement.

45. Mr. MESDAGI (Movement against Racism and for Friendship among Peoples - MRAP), a former political prisoner who had spent 10 years in Iranian prisons, read out a letter from one of his former fellow prisoners, Mr. Kalany, addressed to Mr. Copithorne, the Commission's Special Representative on the situation of human rights in Iran. In the letter Mr. Kalany said that he had met Mr. Galindo Pohl, the former Special Representative, in January 1990. Following that meeting he had been arrested by the regime's agents and imprisoned for 24 months, during which the people interrogating him had told him that the Special Rapporteur could do nothing

for him. He had been released and then re-arrested in June 1993 for having links with the Mujahidin. His trial had lasted only 20 minutes, and a few days later he had been notified of his sentence: death by hanging. In November 1995, he had been given permission to see his family before the death sentence was carried out. His execution and that of a fellow-prisoner had been postponed because the human rights situation had been under investigation by various United Nations bodies and because the Commission's new Special Representative had been about to visit Tehran. Through his letter, on behalf of 11 other people sentenced to death and about to be executed, Mr. Kalany had appealed for help to the United Nations and all people who defended human rights and freedom throughout the world.

46. He informed the Sub-Commission that Mr. Kalany had been executed on 22 June 1996.

47. Mr. CHOEPHEL (International Association of Educators for World Peace) considered it essential to promote and protect the rights of detainees, and particularly political prisoners; Governments systematically abused their rights, with the sole aim of undermining their dignity and their cause. In Tibet, for example, 14 Tibetan political prisoners had died while in custody in prisons and labour camps described by the Chinese authorities as “special schools in which systematic and regular education on law, ethics and the philosophy of life is carried out along with basic education and vocational training”. According to reports from Tibet and testimony of former prisoners, custodial deaths in Tibet were the result of the routine use of torture, unhealthy prison conditions, the denial of adequate medical treatment and food, forced extraction of blood and mandatory labour. The Chinese authorities had so far failed to give any information about those deaths and no investigation had been carried out.

48. Two United Nations bodies, the Committee against Torture and the Committee on the Elimination of Racial Discrimination, had expressed concern about conditions of detention in Tibet. Custodial deaths in Tibet were the result of a harsh crackdown on “suspect” individuals or groups, in other words guilty of expressing their political or religious views. Examples were the eleventh Panchen Lama, a musician and a young monk who had been arbitrarily detained and about whom no information was available. A political prisoner in Tibet could sometimes be held for over a year without anyone's knowledge and certainly without publicity, as China considered attempts to gather information about prisoners and prisons to be a violation of State security, which was punishable by death.

49. Mr. Eide resumed the Chair.

50. Mr. KAVOUSI (International Falcon Movement - Socialist Educational International) said that he was a former political prisoner in Iran and had been subjected to physical and psychological torture for 10 years in two prisons in Tehran. Members of his family had also been arrested and tortured. He had witnessed the massacre of political prisoners in Evin prison in August and September 1988. After release, he had been kept under surveillance and in July 1995, fearing for his life because of his resistance activities, he had taken refuge in Turkey. While his case had been considered by UNHCR, he had been arrested by the Turkish police, handed over to Iranian border guards and

again imprisoned in Iran. During his captivity, international organizations and political personalities, UNHCR, the International Committee of the Red Cross and special rapporteurs of the Commission on Human Rights had acted on his behalf. The Iranian authorities had pressured him into signing a prepared statement admitting that he had been manipulated and forcibly recruited by the People's Mujahidin opposition movement before returning him to Turkey. In Turkey, the Iranian regime's security agents had confiscated his passport and threatened to send a copy of his statement to the Special Representative of the Commission on Human Rights on Iran and to other international organizations. After explaining his case to UNHCR and completing the relevant legal procedures, he had managed to obtain political refugee status in Sweden.

51. He drew the attention of the members of the Sub-Commission, government representatives and NGOs to the new ploy being used by the Iranian authorities to discredit opposition movements and deceive human rights organizations and United Nations bodies.

52. Mr. VIDYSEKHAR (International Institute for Peace) said that, regrettably, Governments in some countries continued to ignore the laws, rules and procedures which governed the administration of justice and the human rights of detainees. In Pakistan, thousands of persons were being held without charge or trial and tortured in custody. In 1995, 130 people had been hanged in public, and there had been over 1,800 politically-motivated murders. The Human Rights Commission of Pakistan had submitted many reports of police brutality but little or no action was taken by the authorities. The number of people killed in the context of ethnic and sectarian tension was also on the rise. There were many children in prison, and freedom of the press existed in name only.

53. In Sindh Province, and in Karachi in particular, the situation was no less serious than that in some of the countries in which the Security Council had intervened. Hence there was an urgent need to put an end to extrajudicial executions in Sindh, to restore the Mohajirs' civil rights and to strengthen the judiciary, whose role was crucial in all countries where innocent people were made to suffer at the hands of unpunished criminals. The courts were the chief custodians of the law and human rights.

54. Mrs. RUPPRACHT (International Progress Organization) said it was regrettable that certain States continued to violate the guarantees contained in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights concerning the rights of detainees and the administration of justice. Such violations had led the Security Council to take firm steps in the former Yugoslavia and Rwanda. There were other States which were committing atrocities, but no action had been taken against them so far.

55. In Pakistan, for example, laws were enacted mostly by presidential ordinances rather than by acts of Parliament. One hundred and twenty-seven ordinances had been issued in 1995 alone. Atrocities against women continued, and victims of rape in custody found it difficult to obtain redress. Razia Masih, who had been arrested in August 1995, had been raped in custody by three police officers. Under pressure from the police, the doctor had

refused to issue a medical certificate to support the victim's allegations, and the culprits had gone unpunished. The United Nations Convention on the Rights of the Child was also shown scant regard by the Pakistan authorities. The situation was so serious that Amnesty International had published a report on the issue and urged the Government of Pakistan to abolish the death penalty for children, in accordance with Pakistan's obligations under the Convention. Fundamental freedoms were also denied to ethnic minorities, and religious intolerance had become a hallmark of the State. There had been reports of religious fanatics carrying out executions themselves. Under pressure from fundamentalists, the Government had gone back on its own proposal for procedural changes in the blasphemy laws to prevent abuses. Where the law was not allowed to take its course and the verdict of the judiciary was not honoured, human rights could not be protected.

56. Mr. FRITZMER (Observer for Haiti) said that popular resistance and international pressure had forced totalitarian Governments to yield power to legitimate leaders in several countries. Those new leaders, however, often inherited a social and political situation that entailed contradictions and was therefore difficult to manage. The two most common questions were how to meet the people's demands for combating impunity and how to guarantee that the judiciary functioned properly and independently when its members still had ties with the social and political groupings of the old regime. Those were some of the problems Haiti had been facing since 15 October 1994, when the rule of law had been restored. During the 28 years of the Duvalier dictatorship, the judiciary had been completely subservient. Despite the current Government's efforts, Haitian justice was still fraught with corruption and ineffectiveness, a situation that led to impunity. The victims of the military coup d'état in 1991 were still awaiting compensation for the physical, mental and material injury they had sustained.

57. The National Commission on Truth and Justice, established on 17 December 1994, had on 6 February 1996 submitted a report containing victims' testimony, a list of persons accused of violations and a set of recommendations. The recommendations had not yet been implemented because of the internal factors he had mentioned earlier and the Haitian judicial system's lack of means and resources. In addition, the documents of the FRAPH terrorist organization and the files of the former army had not been returned to the Haitian Government, despite the recommendation of the independent expert on the situation of human rights in Haiti.

58. The internal legal instruments needed for the effective administration of justice existed in his country but would have to be modernized and properly implemented. The Government was determined to thoroughly reform the judicial system but did not have sufficient means and resources to do so. For that reason, as the independent expert had stressed, the process of judicial reform under way in Haiti must be given priority in bilateral and multilateral assistance programmes.

59. Mrs. PEREZ DUARTE (Observer for Mexico) said that on the initiative of the President of Mexico, the Congress of the Union had adopted constitutional reforms on the administration of justice, with a view to strengthening the autonomy of the judiciary and reaffirming the role of the Supreme Court of Justice of the Nation as a court empowered to rule on the constitutionality of

laws. A Council of the Judiciary had also been established, with responsibility for administrative functions and the selection of judges and magistrates. For the first time in the country's history, the members of the Supreme Constitutional Court were being elected by the Senate, which constituted a further guarantee of the autonomy of the judiciary. Also on the initiative of the President, reforms had been made in the Public Prosecutor's Office, representing an important step forward in combating impunity, corruption and injustice. After a visit to Mexico in July 1996, the Inter-American Commission on Human Rights had commended the measures taken by the Office of the Government Procurator of the Federal District to purge the police forces and raise the level of professionalism of its members. The Attorney-General of the Republic had dismissed 737 federal employees, 17 per cent of whom had been police officers.

60. The federal Government was seeking to identify the difficulties facing indigenous populations in the administration of justice and take measures to protect their rights. Through the indigenous affairs programme, the National Human Rights Commission was giving special attention to communities who were the most vulnerable to human rights violations because of their marginality and poverty. At the current session certain speakers had referred to incidents that had occurred during the Chiapas conflict. In that connection, the National Human Rights Commission had made three recommendations concerning alleged violations against a number of individuals, the competent authorities had accepted those recommendations and the appropriate administrative proceedings had been instituted.

61. The people arrested in February 1995 had been tried at first instance under Mexican law and two of them, Javier Elorreaga and his co-defendant, had been found not guilty at second instance. Hence the judiciary was acting in conformity with the law and independently of any political considerations. She was obliged to make that point because of the remarks of one NGO, the International Educational Development Humanitarian Law Project, which had not only repeatedly cast doubt on the independence and impartiality of the administration of justice, but also criticized the activities of the armed forces and the allocation of government expenditures. Slanderous allegations were not likely to lead to dialogue and peace. Her delegation considered that NGOs which used international human rights bodies for political propaganda were distorting the principles and objectives of those bodies and also discrediting themselves.

62. Mr. SAMIR KOUBAA (Observer for Tunisia) said that, given the totally unfounded allegations made by a number of NGOs against Tunisia, it should be explained that the trial to which they had referred was an ordinary trial with no political overtones and absolutely no connection with the defendant's human rights activities. The defendant had enjoyed all the legal guarantees available under Tunisian legislation, in conformity with the international human rights instruments to which Tunisia had acceded. It was regrettable that the representative of one of those NGOs was ignoring the non-exhaustion of internal remedies, exploiting the matter for subjective and personal reasons, and abusing the procedures established by the United Nations system.

63. In the case in question, the defendant had made a statement, reported by AFP on 13 March 1996, expressing confidence in Tunisia's institutions and

system of justice. In addition, the observer for the International Commission of Jurists who had attended the trial had written that, despite the failure of the accused to obey instructions to make no political statements, the defendant had at no time been interrupted by the Court, the judge had not interrupted the defendant's lawyers and the Procurator-General had called for a penalty proportional to the offence. The trial had been conducted with complete equity and transparency.

64. Under the leadership of President Ben Ali, since 7 November 1987 Tunisia had been affirming its commitment to establishing the rule of law and a democratic society and promoting its citizens' individual and collective political, economic, social and cultural rights. In addition to ratifying the international human rights instruments, promulgating legislation and establishing structures for the protection of human rights, the Government had endeavoured to incorporate a "human rights" element into the curricula of all educational establishments and law-enforcement training institutions. There were over 6,000 non-governmental associations working in support of human rights. In the social sphere, a national solidarity fund had been established to implement programmes for providing the inhabitants of remote areas with a satisfactory standard of living. President Ben Ali had also reaffirmed his commitment to the effective administration of justice by recommending the implementation of the decisions recently taken by the Council of the Judiciary to accelerate judicial proceedings and provide for a system of release on bail.

65. Tunisia's achievements had earned it the esteem of several international agencies, including IMF, the World Bank and UNDP, and the progress it had made, despite a difficult environment and economic situation, sharply belied its detractors' remarks.

66. The CHAIRMAN invited governmental observers to speak in exercise of their right of reply.

67. Mr. OLADEJI (Observer for Nigeria) referred to criticisms levelled against his country by an NGO, Pen International, concerning the conditions under which four journalists had been tried for an attempted coup d'état. Those journalists had been tried under the laws of Nigeria on charges of being accessories to an attempted coup d'état, found guilty and sentenced accordingly. He wondered why the NGO had chosen to publicize only the case of those journalists whereas other persons had been involved in the trial. Should journalists be treated differently from other people? His Government believed in the principle of equality of citizens before the law, regardless of their calling, race, tribe or religion.

68. Mr. BUI QUANG MINH (Observer for Viet Nam) said that the charges levelled against his country by the International Federation of Human Rights on behalf of the "Viet Nam Human Rights Committee" were motivated by political considerations and hatred rather than the protection of human rights. Such allegations were repeatedly made, year after year, by Vietnamese abroad who had worked for the barbarous and unpopular former regime in South Viet Nam, which had been overthrown by the Vietnamese people in 1975. More than 20 years later, when the country had unquestionably developed economically and hundreds of thousands of people were enjoying the Vietnamese Government's

policy of reconciliation and working together as a nation, it was deeply regrettable that some people continued to sabotage the revival process currently under way, His delegation rejected those false allegations, which he was certain would not deceive the international community.

69. Mr. MAHDI AL-HADDAD (Observer for Bahrain) rejected the allegations made by the NGO France-Libertés: Fondation Danielle Mitterrand, which seemed to have completely forgotten the latest plot against Bahrain by the Hezbollah party. The Bahrain authorities reaffirmed their commitment to the promotion of human rights.

70. Mrs. JANJUA (Observer for Pakistan) said that some NGOs, which obviously had ties to the Indian Government, were making completely unjustified charges against her Government. While human rights were being systematically violated in Kashmir and while, as Amnesty International had reported, citizens in India were dying under torture in police custody with no judicial proceedings being instituted against the culprits, it was inadmissible that NGOs in the pay of the Indian Government should persist in attacking her country.

71. Mr. BEBARS (Observer for Egypt), referring to the remarks made by the representative of the International Federation of Human Rights about the situation of Mr. Abou Zaid, said that the judiciary was fully independent in Egypt; the Egyptian Constitution stipulated that the law was supreme and the State must obey it. The judicial apparatus consisted of a two-tiered system of jurisdiction: the courts of first instance and the Court of Appeal. Concerning the trial in question, it should be noted that Mr. Abou Zaid's wife had led him away from the Muslim religion and that he had been convicted in accordance with the Shariah, which governed marriages between Muslim men and non-Muslim women. The Court of Appeal had rejected Mr. Abou Zaid's appeal. In January 1996, a law had been adopted facilitating access to the courts by private individuals who considered that their rights had been violated.

The meeting rose at 1.10 p.m.