



**Economic and Social  
Council**

Distr.  
LIMITED

E/CN.4/Sub.2/1996/L.10/Add.5  
29 August 1996

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS  
Sub-Commission on Prevention of  
Discrimination and Protection  
of Minorities  
Forty-eighth session  
Agenda item 22

DRAFT REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION  
AND PROTECTION OF MINORITIES ON ITS FORTY-EIGHTH SESSION

Rapporteur: Ms. Lucy Gwanmesia

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\* E/CN.4/Sub.2/1996/L.10 and Addenda contain the draft chapters of the report relating to the organization of the session and the various items on the agenda. Resolutions and decisions adopted by the Sub-Commission, as well as draft resolutions and decisions for action by, and other matters of concern to, the Commission on Human Rights, will be contained in documents E/CN.4/Sub.2/1996/L.11 and Addenda.

V. REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH  
WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

1. The Sub-Commission considered item 4 at its 15th to 18th, 20th, 34th and 35th meetings on 15, 16, 19, 20 and 29 August 1996.
2. For the documents issued under this item, see annex ... to the present report.
3. At its 15th meeting, on 15 August 1996, the Special Rapporteur on traditional practices affecting the health of women and children, Ms. Halima Embarek Warzazi, presented her final report (E/CN.4/Sub.2/1996/6).
4. At its 17th meeting, on 16 August 1996, Mr. Osman El-Hajjé introduced his working paper on democracy and the establishment of a democratic society (E/CN.4/Sub.2/1996/7).
5. In the general debate on item 4, statements 1/ were made by the following members of the Sub-Commission: Mr. Ali Khan (17th, 18th), Mr. Alfonso Martínez (16th, 17th, 18th), Mr. Bengoa (16th), Mr. Boutkevitch (16th), Mr. Chernichenko (18th), Ms. Daes (18th), Mr. El-Hajjé (17th, 18th), Mr. Guissé (18th), Ms. Gwanmesia (18th), Mr. Joinet (15th), Mr. Khalifa (17th, 18th), Mr. Lindgren Alves (18th), Mr. Maxim (18th), Ms. Mbonu (17th), Ms. Palley (18th), Ms. Warzazi (18th), Mr. Weissbrodt (17th), Mr. Yimer (15th) and Mr. Yokota (17th).
6. Statements were made by the observers for Peru (17th, 18th) and for the Joint United Nations Programme on HIV/AIDS (UNAIDS) (18th).
7. Statements were also made by the following non-governmental organizations: African Commission of Health and Human Rights Promoters (18th), Inter-African Committee on Traditional Practices Affecting the Health of Women and Children (15th), Movement against Racism and for Friendship among Peoples (20th), Pax Christi International (20th), World Federalist Movement (18th).
8. At its 17th meeting, on 16 August 1996, the Chairman read out the following statement on the situation of human rights in Cyprus on behalf of the Sub-Commission:

"1. The Sub-Commission on Prevention of Discrimination and Protection of Minorities deplores the violent clashes that took place in Cyprus during a demonstration on 11 April 1996 and a peaceful demonstration on 14 August 1996.

"2. The Sub-Commission regrets very much the death of two unarmed Greek Cypriot young men and the injuring of many other persons, including

United Nations peace-keepers, as a result of the Turkish forces allowing armed Turkish Cypriot civilians to pass through the United Nations buffer zone where they clashed with the demonstrators.

"3. The Sub-Commission regrets the non-implementation of its resolutions on Cyprus, relating to the return of refugees and displaced persons to their homes in safety and the full restoration of human rights."

Human rights and HIV/AIDS

9. At its 34th and 35th meetings, on 29 August 1996, the Sub-Commission considered draft resolution E/CN.4/Sub.2/1996/L.21, sponsored by Mr. Bossuyt, Ms. Daes, Mr. El-Hajjé, Mr. Hatano, Mr. Joinet and Mr. Lindgren Alves. Mr. Bengoa, Mr. Fix Zamudio and Ms. McDougall subsequently joined the sponsors.

10. Mr. El-Hajjé orally proposed to revise operative paragraph 3 by deleting, at the end of the paragraph the words "in particular with respect to women, children, indigenous peoples, minorities, refugees, migrants, sex workers, men who are homosexual, injecting drug users and prisoners".

11. In this connection, Mr. Joinet proposed to replace the deleted words at the end of operative paragraph 3 by the phrase "des personnes subissant des conditions économiques, sociales et juridiques défavorables". The proposal was subsequently withdrawn.

12. Mr. Joinet also proposed to replace, in the fourth preambular paragraph the words "que les femmes, les enfants, les peuples autochtones, les minorités, les réfugiés, les migrants, les personnes qui se livrent au commerce du sexe, les hommes qui sont homosexuels, les utilisateurs de drogues" by "que d'une part les femmes, les enfants, les peuples autochtones, les minorités, les réfugiés, les migrants, les personnes qui se livrent au commerce du sexe, d'autre part les hommes qui sont homosexuels, ainsi que par ailleurs les utilisateurs de drogues". In addition, the deletion of the words "ne jouissent pas pleinement de leurs droits fondamentaux" in the fourth preambular paragraph after the words "parce qu'elles".

13. Ms. McDougall proposed to amend operative paragraph 3 by replacing the words "women, children, indigenous peoples, minorities, refugees, migrants, sex workers, men who are homosexual, injecting drug users and prisoners;" by "persons suffering from disadvantaged socio-economic or legal status;".

14. Mr. Lindgren Alves proposed to revise the fourth preambular paragraph to read as follows: "Recognizing that groups such as women, children, indigenous peoples, minorities, refugees, migrants on the one hand, homosexuals on the other hand, as well as sex workers, injecting drug users and prisoners are more vulnerable to the risk of HIV infection".

15. Statements in connection with the proposed revisions and amendments were made by Mr. Ali Khan, Mr. Bengoa, Mr. Chernichenko, Ms. Daes, Mr. El-Hajjé, Mr. Guissé, Ms. Gwanmesia, Mr. Hatano and Ms. Mbonu.

16. Ms. McDougall proposed to revise the fourth preambular paragraph to read as follows: "Recognizing that women, children, indigenous peoples, minorities and such groups as refugees, migrants on the one hand, and on the other hand homosexuals, sex workers, injecting drug users and prisoners are more vulnerable to the risk of HIV infection because they have limited or no access to education, health care and social services, and that they suffer disproportionately from the economic and social consequences of the HIV/AIDS epidemic,". In connection with this revision, Ms. Warzazi proposed to replace the word "because" by "when".

17. Mr. Bengoa, Mr. El-Hajjé, Mr. Joinet and Mr. Lindgren Alves made statements in connection with the above proposals. Mr. El-Hajjé subsequently withdrew as sponsor.

18. Mr. Lindgren Alves then requested a roll-call vote on the draft resolution, as originally submitted. At the request of Ms. Warzazi, a separate vote by show of hands was taken in connection with the phrase "lack of full enjoyment of their fundamental rights and to" in the fourth preambular paragraph. The Sub-Commission decided to delete that phrase by 11 votes to 4, with 6 abstentions.

19. The draft resolution, as amended by the vote, was adopted by roll-call vote by 13 votes to 2, with 6 abstentions.

20. For the text of the resolution, see chapter II, section A, resolution 1996/... .

Recognition of gross and massive violations of human rights as an international crime

21. At its 35th meeting, on 29 August 1996, the Sub-Commission considered draft decision E/CN.4/Sub.2/1996/L.36, sponsored by Mr. Ali Khan, Mr. Bengoa, Mr. Boutkevitch, Ms. Daes, Mr. Diaz Uribe, Mr. El-Hajjé, Mr. Fix Zamudio, Mr. Guissé, Ms. Gwanmesia, Mr. Hatano, Mr. Khalifa, Mr. Lindgren Alves, Mr. Maxim, Mr. Mehedi, Mr. Park, Ms. Warzazi, Mr. Weissbrodt and Mr. Yimer.

22. The decision was adopted without a vote. For the text of the decision see chapter II, section B, decision 1996/116.

Traditional practices affecting the health of women and children

23. At its 35th meeting, on 29 August 1996, the Sub-Commission considered draft resolution E/CN.4/Sub.2/1996/L.38, sponsored by Mr. Alfonso Martínez, Mr. Ali Khan, Mr. Bengoa, Mr. Bossuyt, Mr. Boutkevitch, Mr. Chernichenko, Ms. Daes, Mr. Diaz Uribe, Mr. El-Hajjé, Mr. Fan Guoxiang, Mr. Fix Zamudio, Ms. Gwanmesia, Mr. Guissé, Mr. Joinet, Mr. Khalil, Mr. Lindgren Alves, Mr. Maxim, Ms. Mbonu, Ms. McDougall, Mr. Mehedi, Ms. Palley, Mr. Park, Ms. Warzazi, Mr. Yimer and Mr. Yokota.

24. The resolution was adopted without a vote. For the text of the resolution, see chapter II, section A, 1996/... .

Human rights and terrorism

25. At its 35th meeting, on 29 August 1996, the Sub-Commission considered draft resolution E/CN.4/Sub.2/1996/L.40, sponsored by Mr. Chernichenko, Ms. Daes and Mr. El-Hajjé. Mr. Boutkevitch, Ms. Gwanmesia, Mr. Ibarra, Mr. Lindgren Alves, Mr. Maxim, Mr. Mehedi and Ms. Palley subsequently joined the sponsors.

26. Ms. Warzazi proposed to amend the draft resolution by deleting operative paragraph 3.

27. Mr. Joinet proposed to insert, in operative paragraph 3, after the word "rédiger", the phrase "en conformité avec le principe 2 de la résolution 1992/8 de la Sous-commission sur ses méthodes de travail". The amendment was accepted by the sponsors.

28. Mr. Mehedi proposed to:

(a) Replace, in the seventh preambular paragraph, the word "massacrés" with the word "égorgés" or "mutilés", and to replace the word "circonstance" with the word "raison";

(b) Replace, in operative paragraph 1, the words "et la sécurité" by "la paix et la sécurité internationale". The sponsors agreed to drop the word "massacrés" and to accept the other amendments made by Mr. Mehedi.

29. In connection with operative paragraph 1, Ms. Warzazi proposed to replace, after the word "terrorism", the words "as human rights violations aimed at the destruction" by the phrase "regardless of their motivation, in all its forms and manifestations, wherever and by whomever committed, as acts

of annihilation", in accordance with operative paragraph 1 of Commission on Human Rights resolution 1995/43. The amendment was accepted by the sponsors.

30. Ms. Warzazi also agreed to retain operative paragraph 3 with the deletion of the phrase "conformément à la résolution 1995/43 de la Commission des droits de l'homme" after the word "Décide". The proposal was accepted by the sponsors.

31. Statements in connection with the draft resolution and proposed amendments and revisions, were made by Mr. Chernichenko, Ms. Daes, Mr. El-Hajjé, Mr. Guissé, Mr. Joinet, Mr. Lindgren Alves and Mr. Mehedi.

32. The draft resolution, as amended, was adopted without a vote. For the text of the resolution see chapter II, section A, resolution 1996/... .

Democratic society

33. At its 35th meeting, on 29 August 1996, the Sub-Commission considered draft resolution E/CN.4/Sub.2/1996/L.43, sponsored by Mr. Ali Khan, Mr. Bengoa, Mr. Boutkevitch, Mr. Chernichenko, Ms. Daes, Mr. Diaz Uribe, Mr. Fix Zamudio, Mr. Guissé, Ms. Gwanmesia, Mr. Hatano, Mr. Khalil, Mr. Maxim and Mr. Mehedi, which read as follows:

"1996/... Democratic society

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

Bearing in mind the fulfilment of its mandate as defined in various resolutions of the Economic and Social Council and of the Commission on Human Rights,

Pursuing the objectives set forth in the Charter of the United Nations, namely to establish conditions under which justice and equal rights for men and women can be maintained, and to promote social progress and better standards of life in larger freedom,

Bearing in mind the indissoluble links between the principles enunciated in the Universal Declaration of Human Rights and the foundations of any democratic society,

Aware that implementation of the principles of the Universal Declaration of Human Rights, such as the principles of human dignity, freedom of opinion, freedom of association and freedom of expression and the right of participation, takes place through the establishment of a democratic society,

Bearing in mind that the Vienna Declaration and Programme of Action (A/CONF.157/23), adopted on 25 June 1993 by the World Conference on Human Rights, state in part I, paragraph 8, that democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing,

Taking account of the World Plan of Action on Education for Human Rights and Democracy, adopted by the International Congress on Education for Human Rights and Democracy held at Montreal from 8 to 11 March 1993,

Taking account also of General Assembly resolution 49/30 of 7 December 1994 entitled 'Support by the United Nations system for the efforts of Governments to approach and consolidate new or restored democracies' and recognizing the importance of the Managua Declaration and Plan of Action adopted by the Second International Conference of New or Restored Democracies held in Managua from 4 to 6 July 1994,

Considering that democracy best serves to facilitate individual and collective expression of freedom of opinion,

Reaffirming that in a democracy the widest participation in the democratic dialogue by all sectors and actors of society must be promoted in order to come to agreements on appropriate solutions to the social, economic and cultural problems of society,

Taking account of the fact that freedom of opinion and expression is reflected in a democratic society through an electoral system which allows all tendencies, interests and feelings to obtain representation at the level of the executive and legislative power and, therefore, at all levels of power,

Fully aware that the creation of conditions for a democratic society is essential for the prevention of discrimination and the protection of minorities,

Taking account of Commission on Human Rights resolution 1995/60 of 7 March 1995, in which the Commission recommended that the Sub-Commission should discuss at its next session ways and means of overcoming obstacles to the consolidation of democratic societies, taking into account the relation between democracy, development and human rights,

Having considered the subject of democratic society at its forty-eighth session,

Having taken into consideration the working paper E/CN.4/Sub.2/1996/7 presented by Mr. Osman El-Hajjé, in conformity with its decision 1995/116 of 24 August 1995,

Recommends that the Commission on Human Rights should appoint Mr. Osman El-Hajjé as Special Rapporteur of the Sub-Commission to identify and list obstacles to democracy, classify them by category of rights and propose solutions for their elimination, and that he should submit a preliminary report on the subject to the Sub-Commission at its forty-ninth session in 1997;

Recommends that the Commission on Human Rights should adopt the following draft resolution:

'The Commission on Human Rights, taking into consideration resolution 1996/... of ... August 1996 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, approves the recommendation that it should appoint Mr. Osman El-Hajjé as Special Rapporteur to identify, inter alia a list of obstacles to democracy, classify them by category of rights and propose solutions for their elimination, and that he should submit a preliminary report on the subject to the Sub-Commission at its forty-ninth session in 1997, and requests the Secretary-General to provide the Special Rapporteur with the assistance he needs to perform his task.'

34. At the proposal of the Chairman, and in accordance with its decision 1996/113 of 29 August 1996, the Sub-Commission decided to replace the draft resolution with a draft decision.

35. Statements in this connection were made by Mr. Alfonso Martínez and Mr. Weissbrodt.

36. The draft decision was adopted without a vote. For the text of the draft resolution, see chapter II, section B, decision 1996/117.

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