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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Forty-ninth session

SUMMARY RECORD OF THE 28th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 25 August 1997, at 10 a.m.

Chairman: Mr. BENGOA
later: Mr. PARK
later: Mr. BENGOA

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GE.97-13820 (E)

The meeting was called to order at 10.20 a.m.

THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS:

(a) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

(b) APPLICATION OF INTERNATIONAL STANDARDS CONCERNING THE HUMAN RIGHTS OF DETAINED JUVENILES AND THE JUDICIAL PROTECTION OF CHILDREN

(c) GROSS AND MASSIVE VIOLATIONS OF HUMAN RIGHTS AS AN INTERNATIONAL CRIME

(d) JUVENILE JUSTICE

(agenda item 9) (continued) (E/CN.4/Sub.2/1997/19 and Add.1, E/CN.4/Sub.2/1997/20, 29, 32, E/CN.4/1998/5-E/CN.4/1997/39; E/CN.4/Sub.2/1997/NGO/7, NGO/8, NGO/20 and NGO/27)

1. Mr. JOINET, Special Rapporteur on the question of the impunity of perpetrators of violations of human rights (civil and political rights), introducing his final report (E/CN.4/Sub.2/1997/20), highlighted the changes that would be incorporated in a revised version of the report, which would be issued shortly (E/CN.4/Sub.2/1997/20/Rev.1). The changes were the results of wide-ranging consultations he had had since the beginning of the current session, especially with non-governmental organizations (NGOs). The revised version would be based on four proposals and two recommendations. The proposals were the right to know, the right to justice, the right to reparation and guarantees of non-repetition of violations. The recommendations were to create a legal framework to combat impunity and to adapt the title of “Human Rights Day” to include a reference to combating impunity. The latter change could be incorporated in proposals to commemorate the fiftieth anniversary of the Universal Declaration of Human Rights.

2. With regard to the section entitled “Definitions”, he remarked that the set of principles was not only intended as an instrument for human rights defenders but also as an aid for Governments, particularly for negotiators in periods of transition (called “reference periods” in the previous report (E/CN.4/Sub.2/1996/18)). To avoid any ambiguity, a more specific criterion was proposed, the “Process for the restoration of or transition to democracy and/or peace”. It was also proposed to classify as crimes, rather than human rights violations, acts carried out by armed non-State groups. The excellent working paper entitled “Terrorism and human rights” by Ms. Koufa (E/CN.4/Sub.2/1997/28) contained some very interesting developments in relation to that sensitive and complex question.

3. The most important changes involved principles that had been moved or cut out. Principle 19, entitled “Safeguards against the use of reconciliation or forgiveness to further impunity”, had been transferred to the preamble, because of its moral, rather than legal, nature. Principle 21, on the jurisdiction of international criminal courts, had been deleted as that subject was being considered by the General Assembly. Much of the section on the right to reparation, had been cut, to avoid duplication with the work of the Commission on Human Rights, which was considering the draft set of basic

principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law prepared by Mr. van Boven (E/CN.4/Sub.2/1996/17).

4. In other changes, of an editorial nature, principle 9 would be retitled "Guarantees for victims and witnesses speaking on their behalf". In the light of the traumas they had gone through, witnesses giving evidence on behalf of victims would only be called upon to give evidence on a voluntary basis. That guarantee would not be extended to witnesses giving evidence on behalf of defendants. The principle would also make special mention of the persecution suffered mostly by women, notably aggression and sexual violence, in accordance with the recommendation made by the Commission on Human Rights to all special rapporteurs. Principle 7, entitled "Definition of the Commissions' terms of reference", would specifically give the extrajudicial Commissions powers to visit premises (but not to search them), have those involved brought before a court (but not arrest them), obtain documents and, if necessary, call in the police. Following lengthy consultations with NGOs, an explicit link had been drawn between principle 28 ("Restrictions on the practice of amnesty") and principle 20 ("Duties of States with regard to the administration of justice"), to ensure that amnesty did not allow States to evade their duties.

5. The only addition was to correct an oversight in principle 11 ("Advisory functions of the Commissions"); the Commissions should also actively encourage their Governments to ratify international human rights instruments, if they had not already done so.

6. Mr. ARTUCCIO (International Commission of Jurists), speaking also on behalf of Amnesty International, the International Centre for Human Rights and Democratic Development, the Center for Justice and International Law, the Commission of Churches on International Affairs, the International Federation of Human Rights, the International League for the Rights and Liberation of Peoples and International Service for Human Rights, said that the set of principles contained in document E/CN.4/Sub.2/1997/20, after the changes outlined by the Special Rapporteur had been incorporated, provided an excellent basis for the formulation of guidelines to combat impunity. The NGOs on whose behalf he was speaking had agreed unanimously on the comments and suggestions they had put forward for the consideration of the Special Rapporteur, and hoped that they would be incorporated in the final text. One of their main requests was that the principles should be applicable in every situation, while some of the more specific ones should also be applicable where there was a transition from a dictatorial regime to a democracy. If the principles were interpreted as being limited to States in transition from a dictatorial regime to democracy and those States facing a process of national reconciliation, many situations of impunity would be excluded. The fight against impunity should not be restricted to such transitions, but should extend to all cases of impunity, including those in times of institutional normality.

7. He wished to emphasize the point about amnesties and similar measures of clemency to which the Special Rapporteur had referred. When human rights violations that constituted crimes were particularly serious or violated international law, no amnesty or similar measure could be declared until the

State had complied with its obligations under the relevant international human rights instruments and until the relevant jurisprudence had run its course. The State's obligations included investigating the facts, bringing the perpetrators of human rights violations to justice, and providing compensation to the victims or their families.

8. He urged the Sub-Commission to submit to the Commission on Human Rights a set of principles to combat impunity that were applicable in all circumstances. In revising those principles, the Special Rapporteur should take into account the comments of members of the Sub-Commission, States and NGOs. Such a set of principles, if endorsed by the General Assembly, would better equip States and the international community to combat impunity in all its forms and in all possible situations.

9. Mr. GUISSÉ said that the ongoing debate on the administration of justice in the Sub-Commission had not led to improvements in its day-to-day functioning. Indeed, the concept of “justice” had for many come to signify the exact opposite of what it was supposed to mean. He proposed to discuss the problem from the point of view of the independence of the judiciary from outside forces. Since the French revolution of 1789, basic law had provided the framework within which the institutions of the Republic functioned, with the separation of judicial and political power, neither of which was subordinated to the other. The law had quickly become the guarantor of individual freedoms, a role which required the total independence of the judiciary. Such a requirement appeared increasingly Utopian. Political forces, especially in newly created countries, controlled and exploited the justice system, beginning with the magistrates of the Public Prosecutor's Office who happily took their orders from the Ministry of Justice. Such complicity lay at the origin of the denial of the right to a fair trial. The written and spoken word were mere tools of political forces.

10. As for judges themselves, they needed to enjoy the utmost independence. Their traditional and constitutional role was to preserve the balance between society and the citizen on the one hand and the private individual on the other. If judges were to be independent of all political, financial and social forces, their careers could not be allowed to depend on political patronage. The international community and the United Nations should draw up a set of universally accepted principles to preserve the independence of the judiciary. As long as the career prospects of judges or civil servants depended on political patronage, it would be difficult, not to say impossible, for them to do other than serve their patrons.

11. Although legal provisions throughout the world decreed that justice was administered in the name of the people, it was the people who suffered from injustice and from the denial of justice brought about by financial or political forces.

12. Corruption was increasingly common in all economic systems, whatever their level of development. Corruption, in itself one of the major sources of human rights violations, also guaranteed impunity to those responsible for such violations. In some countries, religious and customary leaders had the power to intervene in and often determine the outcome of judicial proceedings before, during and after trials with no respect for due process.

13. The remedies of habeas corpus and amparo, family and medical visits and properly regulated pre-trial detention should be helpful elements in achieving a fair trial. Habeas corpus was an Anglo-Saxon institution which sought to guarantee individual freedom by offering protection against the threat of arbitrary arrest and detention; it should be widely applied in all democratic States subject to the rule of law. Amparo was a remedy which had developed later than habeas corpus and had a broader scope of application since it was not limited to detainees. The remedies of habeas corpus or amparo should, at least in theory, provide adequate guarantees for an individual prior to his trial. However, financial considerations could once again distort the balance of justice and the trial might be no more than a confrontation in which the party with the greatest financial resources was certain to win. To counteract such a situation, some States had enacted legislation to ensure that defendants who lacked resources were at least provided with legal services and aid. The effective realization of the right to a fair trial would require all States to demonstrate the political courage and will and a genuine desire to establish a State under the rule of law, with all that that implied.

14. In his introduction to document E/CN.4/Sub.2/1997/23, the Special Rapporteur on the human rights dimensions of population transfer had referred to the criminal responsibility of States. In the judicial system with which he himself was familiar, it would seem more appropriate to speak of a State's international responsibility to provide compensation for damage incurred within its territory. That compensation might include restitution or resettlement in the place which the victim had been obliged to leave. The Special Rapporteur had said that in the case of South Africa, such compensation would place an excessive burden on the new democratic Government. He found that disturbing since it seemed to guarantee impunity for all those who had committed human rights violations under apartheid. The fourth Geneva Convention provided a satisfactory legal solution to the problem by holding States responsible for human rights violations committed within their borders.

15. Mrs. GWANMESIA, speaking on agenda item 9 (b), said that the statement in Article 1.1 of the Charter of the United Nations that one of the purposes of the Organization was “to maintain international peace and security ... in conformity with the principles of justice and international law” did not exonerate any class of persons and meant that regardless of age, any perpetrators of acts of violence, aggression or breach of the peace, should be dealt with in accordance with the law. To achieve that goal, the first preambular paragraph of the Universal Declaration of Human Rights stated that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”, and the third preambular paragraph of that Declaration stated that “human rights should be protected by the rule of law”. Special safeguards for juveniles or children had been provided in 1924 by the Geneva Declaration of the Rights of the Child and in 1959 by the United Nations Declaration of the Rights of the Child; principle 2 of the latter stated that children should enjoy special protection and that their best interests should be the primary consideration in the enactment of laws for that purpose. Article 23, paragraph 4 of the International Covenant on Civil and Political Rights emphasized that States parties had a duty to ensure the protection of children after the dissolution of marriage, and article 24 of that Covenant guaranteed children the right to protection by their families, society and the

State, including the right to registration of their birth and to a name and nationality. Article 10 of the International Covenant on Economic, Social and Cultural Rights established that protection and assistance should be accorded to the family as the fundamental group unit of society and that States should be responsible for the education of dependant children. It also stipulated that marriage could be entered into only with the free consent of the intending spouses, that mothers were entitled to special protection during pregnancy and after childbirth, including paid leave for working mothers, and that children must be protected from economic and social exploitation, including a minimum age of employment. The Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, adopted by General Assembly resolution 41/85 (1986), stated that children should not be placed under the care of foster parents or adopted except in the unavoidable absence of parental care.

16. Most countries had endeavoured to incorporate the provisions of all those international instruments into their domestic law. Why, then, were there still cases of traditional practices affecting the health of women and children? Why were there still reports of the commercial sexual exploitation of children, the existence of street children and hazardous child labour, as revealed by the UNICEF report entitled The State of the World's Children 1997? Why were children still involved in armed conflicts? It was clear that incorporation of international instruments into domestic law did not guarantee their implementation.

17. Turning to agenda item 9 (d), she said that since she would be presenting a working paper at the next session, she would like to give a résumé of what juvenile justice entailed. She noted that, even before the adoption of the United Nations Standard Minimum Rules for Administration of Juvenile Justice (Beijing Rules) in 1985 and of the Convention on the Rights of the Child in 1989, many States had adopted legislation to assist judges in trying cases involving children, minors, juveniles or infants. Article 1 of the Convention on the Rights of the Child defined a minor as anyone under the age of 18. However, subdivisions within that category must be established in considering the actus reus and the mens rea of a child involved in the commission of an offence as a means of allowing the court to decide whether the offender should be sentenced to prison, correctional school or probation. The cooperation of welfare and probation officers was essential in providing judges with information on the child's background. Last, there was a need for juvenile courts since the exposure of juvenile first offenders to hardened adult criminals would eliminate any opportunity for their reform or rehabilitation and since children were at risk of torture from adult criminals.

18. Mr. BENNETT (Afro-Asian Peoples' Solidarity Organization) said that when human rights violations of citizens took place, it was because elements within the State apparatus misused the powers bestowed upon them under the laws. Democratic societies, however, provided the necessary checks and balances to enable victims to have recourse to legal channels. States by their very nature, were answerable to the international community, but non-State actors had increasingly become prosecutor, judge, jury, jailor and often executioner. Hostage-taking was the terrorist's way of administering justice, and hostages were, in effect, detainees not of law, but of causes and ideologies, who had

committed no crime, except that of being at the wrong place at the wrong time and had no legal channels through which to plead their case. Moreover, for every foreign tourist whose plight was known to the international community, there were many innocent unknown men and women caught up in terrorist violence whose kidnapping, torture and death was never publicized. For every foreign terrorist kidnapped in Kashmir by mercenaries and terrorists trained in Pakistan, there were numbers of ordinary Kashmiris who had been kidnapped, held hostage and often killed by different armed opposition groups, whose actions were not circumscribed by any laws of justice or humanity.

19. It was time for the international community to develop laws for terrorist groups to follow. Perhaps a parallel international system needed to be set up to monitor the actions of those groups in the same way as the actions of States were monitored. He welcomed the latest Amnesty International release on the activities of armed militants in Kashmir, which had highlighted the absence of humanitarian sentiments amongst such groups, that over the years had made a mockery of the entire concept of justice and human rights and, ironically, sought to have their own human rights protected under the very institutions of democracy that they had targeted.

20. Mr. SAITO (International Association of Democratic Lawyers) said that the Government of Japan had never issued an apology or paid compensation to the Japanese people who had been oppressed between 1925 and 1945 and whose advanced age left them little time to await a remedy. He urged the Sub-Commission to recommend that the Japanese Government should apologize and pay compensation to the victims of its wartime oppression.

21. Mrs. WARZAZI, speaking on a point of order, complained that NGOs were making essentially the same statement on every agenda item and asked the Chairman either to stop them from speaking or to require them to restrict their comments to the agenda item under discussion.

22. The CHAIRMAN reminded NGOs that their statements must fall under one of the four subparagraphs of agenda item 9.

23. Ms. DUCOTTET (International Prison Watch), speaking on agenda item 9 (b), said that while her organization welcomed the fact that increasing numbers of States had adopted basic regulations to guarantee the human rights of detainees, those commitments must not be reduced to mere statements of intent. Some States ratified international instruments in order to gain respectability, yet failed to implement them; a glaring example in that regard was article 37 (c) of the Convention on the Rights of the Child, which guaranteed the rights of children in detention. That Convention was one of the most widely ratified United Nations instruments, yet many countries continued to detain children under the same conditions as adults, denying them the supervision and medical care required by their circumstances.

24. In Chad, children shared cells with adults and consequently were subjected to the same deplorable conditions and regulations. Bongor prison, with a capacity of 120 persons, housed up to 500 inmates. The treatment of minors was particularly alarming in view of the fact that Chad had ratified the Convention on the Rights of the Child.

25. In Pakistan, even in prisons where children and adults were not assigned to the same cells, there was frequent contact between them in the common areas. Consequently, that situation enabled child detainees to be sexually abused. Children were subjected to police violence and arbitrary detention of minors was common, especially since the police considered detention to be an effective means of preventing street children from begging. Traditional customs and lack of financial resources also hindered the separation of children from adults in detention, and corrupt prison authorities took advantage of that situation to profit from the prostitution of child detainees or to offer them the possibility of buying their freedom in exchange for sexual favours.

26. In Honduras, the detention of children and adults in common cells continued despite condemnation by the Inter-American Commission on Human Rights and the Honduran Supreme Court. What was worse, the transfer of 600 children to child detention centres had resulted in numerous escapes; in one such case, escaping children had been fired on and killed.

27. Mr. MARCELLI (International Educational Development) said that members of his organization, while serving as election observers in Mexico in July 1997, had taken the opportunity to investigate the arbitrary arrest of 32 Cholo Indians, who had been protesting against the previous arbitrary arrest and detention of 38 members of their community. The Assistant Secretary of State of Chiapas had denied them permission to visit the prisoners, giving conflicting reasons for his refusal. It had been possible, however, to obtain a written statement from the prisoners, who called on the international community for assistance. A recent visit to Mexico by the Special Rapporteur on the question of torture had been cut short before he could visit those and other prisoners in Chiapas. His organization urged the Sub-Commission, Governments and other NGOs to investigate the situation of political prisoners in Mexico.

28. Since the last session of the Sub-Commission, more than 100 Kashmiris had died in custody in India-occupied Kashmir, their bodies showing indications of severe torture. Hundreds more had been arrested and their whereabouts were uncertain. The people of Kashmir had been promised a plebiscite to determine their political status by the Security Council and the United Nations Commission on India and Pakistan in a series of resolutions, the first of which dated from 1949. The current crisis in Kashmir and the systematic arbitrary arrest and torture of Kashmiri people by Indian forces was due to the failure to implement those resolutions. His organization urged the Sub-Commission to call on the Security Council to enforce its resolutions on Kashmir and to demand the withdrawal of all Indian military forces from Kashmir.

29. Mr. Park took the Chair.

30. Mr. PÉREZ (American Association of Jurists) said that his organization was relatively satisfied with the latest version of the proposed set of principles for the protection and promotion of human rights through action to combat impunity prepared by the Special Rapporteur on impunity (civil and political rights) for incorporation in document E/CN.4/Sub.2/1997/20. He suggested, however, that the phrase “non-governmental organizations able to

show proof of long-standing activities for the protection of the victims concerned" in principle 18 should be replaced by the phrase "any person or institution with a reliable knowledge of the facts". In principle 22, he suggested that the phrase "international punitive system" should be amended to read "international punitive legal system" and that the phrase "to which the concept of frontiers is alien" should be deleted. In principle 33, he suggested adding, after "on the part of the State", the phrase "and jointly on the part of the perpetrators, accomplices and abettors of the violation", and deleting the final phrase "and the possibility of seeking redress from the perpetrator".

31. The principles had not addressed the question of impunity of transboundary and international violations of human rights. Examples of transboundary or extraterritorial violations were: coordinated repression by authoritarian regimes in the southern cone of Latin America in the 1970s, when kidnappings and murders were perpetrated in neighbouring countries; United States paramilitary activities in Nicaragua; the United States invasion of Panama. International violations of human rights were those committed during Security Council operations conducted under the United Nations flag or delegated to a coalition of States, for example the destruction of non-military infrastructure and the killing of 200,000 civilians in Iraq during the Gulf War and the indiscriminate bombardment of the civilian population, breaches of the Geneva Conventions and the torturing and killing of civilians in Somalia. His organization suggested that two additional articles should be inserted in the principles to cover such violations.

32. Mr. NOVIKOV (International Federation of Human Rights Leagues) said that an independent judiciary was virtually non-existent in Belarus. Judges were repeatedly warned to abide scrupulously by all presidential decrees and were removed from office if they failed to comply. Under the latest presidential decree, private lawyers were compelled to work under the control of the Ministry of Justice and subjected to repeated rigorous investigations.

33. In relative terms, Belarus had one of the largest prison populations in the world. The legal nine-month period of pre-trial detention was blatantly ignored. Prison conditions were inhumane and no organization had ever been given permission to visit the infamous Grodno prison, which housed between 400 and 600 inmates. Prisoners were also held in the Chernobyl contamination zone. The country's single prison hospital in Minsk was appallingly overcrowded and lacked the most basic necessities. His organization called on the Sub-Commission to condemn unequivocally the human rights situation in Belarus.

34. In Tunisia, political opponents of the regime, trade unionists and human rights defenders continued to be submitted to pressure and harassment by the authorities. Only one of 10 Tunisian human rights defenders invited by the European Parliament to attend a meeting two months previously on the human rights situation in Tunisia had been allowed to leave the country. They had been detained following unfair trials. A political opponent of the regime had died in prison the previous month following a hunger strike undertaken in protest at his unlawful detention. Prisons were overcrowded. The inmates suffered from malnutrition and were frequently subjected to torture and ill-treatment. Political prisoners were treated as ordinary offenders.

35. His organization urged the Sub-Commission to condemn human rights violations in Tunisia and to recommend appropriate action by the Commission under its thematic special procedures.

36. His organization also drew attention to blatant violations of the right to reparation by the military justice system in Peru. One year previously, the Human Rights Committee had recommended to the Peruvian authorities that they should establish an efficient system for compensating victims of human rights violations. No significant step had been taken to implement that recommendation to date. His organization urged the Sub-Commission to adopt a resolution condemning human rights violations in Peru.

37. Ms. HURTADO (Indigenous World Association) said that Andean indigenous communities and peasants were frequently the victims of unfair judicial proceedings because of the absence of local legal facilities and pressures on court officers to find them guilty. Members of indigenous communities had been arrested and tortured to extort confessions of membership of subversive groups merely in order to demonstrate the effectiveness of the armed forces.

38. Prisoners at the Marina de Guerra naval base were “buried alive” in tiny underground cells with no lighting. Other prisons were appallingly overcrowded. The inmates were deprived of basic health facilities and adequate nutrition. According to the National Human Rights Coordinator of Peru, prisoners serving sentences for terrorism and treason were particularly badly treated.

39. Under the permanent state of emergency, the State imposed its own form of terrorism, violating the rights of the civilian population. The Government's anti-terrorist legislation breached the minimum rules set forth in international treaties and resulted in the imprisonment of persons who were not members of armed organizations. Such persons were sentenced by “faceless” military courts and deprived of the right to a defence.

40. Her organization urged the Sub-Commission to adopt a recommendation concerning the dispatch of experts to Peru to investigate human rights violations in indigenous and peasant communities and to visit the country's prisons. It supported the request by the American Association of Jurists to send two members of the Sub-Commission to Peru to investigate the circumstances leading to the death of a member of the Supreme Court and 16 other persons in April 1997. Lastly, it requested the Sub-Commission to call on the Peruvian Government to hold new trials with impartial judges so that all those who had been unjustly charged and sentenced could be unconditionally released.

41. Mr. MOKBIL (War Resisters' International) said that the security police in Yemen broke into private houses and arrested young people without arrest warrants. In the past four weeks, some 120 individuals had been arbitrarily detained. The detainees, mostly politicians, journalists, lawyers, artists and businessmen, were tortured, humiliated and denied access to their families, lawyers and medical assistance.

42. Human rights violations and arbitrary arrests had been documented in a report by Amnesty International dated 27 March 1997. The European Parliament had passed a resolution on 10 April 1997 calling on Governments to put pressure on the Yemeni authorities to end violations and to abide by the country's international undertakings. The House of Commons in the United Kingdom had expressed serious concern, in motion No. 303 of 24 July 1997, at continuing arbitrary arrests, the detention of political prisoners, unfair trials and torture, and restrictions on freedom of speech and press freedom.

43. It was not enough to discuss human rights violations in Yemen under Economic and Social Council resolution 1503 (XLVIII). The Chairman and members of the Sub-Commission must take preventive active to safeguard prospective victims.

44. Mr. MESFIN (International Movement for Fraternal Union among Races and Peoples) said that the collapse of the judicial system in Ethiopia was almost complete. The Prime Minister himself had publicly castigated the entire legal profession. He had been responsible for the dismissal of the best trained and most experienced judges and prosecutors and their replacement by persons of lower calibre. The police consistently refused to obey court orders: many prisoners were still in jail despite court orders for their release. The number of prisoners was increasing daily and most of them never appeared before a court. Habeas corpus had been suspended by administrative fiat.

45. The regime's trained and equipped assassination squads in police garb had been responsible for the brutal murder in May 1997 of a member of the Executive Committee of the Ethiopian Human Rights Council.

46. The regime was also promoting ethnic hatred and antagonism between different language groups. The resulting damage to the Ethiopian social fabric and the free hand given to a select few had led to widespread corruption. While the majority of Ethiopians languished in extreme poverty, members of the ruling group were becoming instant millionaires.

47. Street vendors, particularly newspaper vendors, were harassed. The homes of poor people were bulldozed on the pretext that they were built illegally. Shop rents were increased by exorbitant amounts and sealed without a court order when the owners protested.

48. His organization requested the Sub-Commission to appoint a special rapporteur to investigate the situation in Ethiopia.

49. Mr. SLOAN (International Service for Human Rights) said that the lack of a United Nations declaration on the rights of human rights defenders, combined with oppression and impunity, meant that human rights defenders were among the most vulnerable people in the world. Defenders trained by his organization had been killed, tortured or harassed by their own Governments in India, Burundi, Colombia, former Zaire, East Timor, Tunisia and other parts of the world. Moreover, the culprits in such cases were not accountable for their violations of national and international law.

50. Unfortunately, the relevant working group of the Commission on Human Rights had failed to reach agreement on a declaration on the rights of human rights defenders. One or two States had held up agreement on certain articles, often attempting to dilute existing human rights standards under international law.

51. The Sub-Commission must take immediate action against the related phenomena of oppression of human rights defenders and impunity, first by endorsing the completion of an acceptable draft declaration on human rights defenders before the fifty-fourth session of the Commission on Human Rights. Secondly, the Sub-Commission should recommend to the Commission the appointment of a special rapporteur on human rights defenders to monitor the situation throughout the world, receive individual complaints, request information from States, visit countries and report to the Commission.

52. A workshop on impunity organized jointly by his organization, the World Council of Churches and the International Commission of Jurists in 1996 had concluded that it was important to establish national, regional and international machinery to judge the conduct of those accused of the worst violations. The Sub-Commission must therefore start work on proposing judicial procedures to bring certain human rights violators to justice. His organization urged the Sub-Commission to put its influence behind the work to finalize a draft Statute for an international criminal court which would be submitted to a conference of plenipotentiaries in Rome in June 1998.

53. Mr. SHIMOJI (International Institute for Peace) said that his organization was concerned at the growing tendency to deny detainees the right to a fair trial, particularly as a manifestation of discrimination based on religion and belief. At the dawn of the twenty-first century, when the expansion of education and communications should have increased nations' appreciation of different cultures, ideologies of racial purity were again surfacing, and individuals were being imprisoned without proper trial on the basis of their beliefs, race or cultural background. The 1996 report of the Human Rights Commission of Pakistan detailed a number of cases in which people were not only detained but also tortured merely because they had a different faith or belief. That phenomenon had a multiplier effect. Individuals of one religion or race persecuted in one country sought their revenge in other countries where their oppressors were in a minority. The vicious cycle of action and reaction continued, leaving whole segments of society oppressed in many countries.

54. Ms. AVELLA ESQUIVEL (Women's International Democratic Federation) said that her organization continued to receive information concerning violations of the human rights of detainees in Turkey. Kurdish women detainees were systematically raped, and detainees in prisons tortured. The Police Academy in Istanbul provided instruction in torture techniques, and had abducted women for use as victims in practical demonstrations of those techniques. On his next mission to Turkey, the Special Rapporteur on the question of torture should investigate the degrading treatment to which detainees were subjected in that country.

55. In Peru, a new prison had been opened at Challapalca, more than 4,600 metres above sea level. Conditions were so subhuman that even some of

the prison warders had refused to work in such conditions. Those attempting to visit detained relatives risked death from the intense cold. Political opponents of the Fujimori regime were systematically detained. The same was true of Colombia, where more than 20 members of the political opposition in the Urabá region had recently been sentenced to long terms in prison. In Mexico, too, detainees were routinely tortured. A 16-year-old, Erich Cárdenas, had died of his injuries in the Laredo Tammaulipas police cells, after having been unlawfully detained on 4 January 1997. All those countries had supposedly democratic regimes.

56. Mr. EIDE deplored the fact that the Sub-Commission had insufficient time in which to give proper consideration to the wealth of studies and reports submitted under agenda item 9. In view of that time constraint, he would single out the tenth annual report on states of emergency (E/CN.4/Sub.2/1997/19 and Add.1), which reflected a number of important developments in the international community. In recent years, the idea had become established that the state of emergency was an institution of the rule of law and that, as such, it must satisfy certain conditions and requirements ensuring legal guarantees to safeguard human rights in situations of crisis. Another noteworthy conquest had been the harmonization of the rules of international humanitarian law with the law of international human rights and recognition of the complementary nature of the protection they offered. In section II of his report, Mr. Despouy, the Special Rapporteur, set out the principles governing states of emergency: legality, which implied the necessary pre-existence of norms which governed the state of emergency, and the existence of both internal and international monitoring mechanisms which verified its conformity with those norms; proclamation; notification; time limitation; exceptional threat; proportionality and non-discrimination; as well as the importance of the non-derogability of a number of human rights.

57. Section IV discussed the main anomalies in the application of states of emergency: de facto states of emergency; states of emergency not notified; perpetuation of states of emergency; the increasing sophistication and institutionalization of states of emergency; and the accompanying breakdown of the institutional order. Of particular importance was the analysis of the impact of states of emergency on institutions and on the rule of law, contained in section V: the escalation of generalized violence; their devastating impact on the enjoyment of economic, social and cultural rights; and their impact on vulnerable groups such as refugees, journalists, trade-union leaders, human rights workers, children, and especially street children.

58. He endorsed the Special Rapporteur's recommendations, particularly those addressed to the Commission (paras. 188 and 189) and to the Sub-Commission (paras. 190 and 191). With regard to the elaboration of minimum humanitarian norms (para. 189), a group of experts including Mr. Despouy and himself had for some years been involved in developing a set of minimum humanitarian standards applicable in all situations, which were now under consideration by the Commission. In view of the nature of current conflicts in many parts of the world, it was to be hoped that progress would be made on that issue. Also relevant in that regard was the proposed study on human rights and terrorism. Overreaction to opposition movements by Governments under states of emergency

could lead to escalating violence and terrible human rights violations, as in Rwanda, Bosnia and Herzegovina and elsewhere, and he thus welcomed the Special Rapporteur's discussion of that issue in his report.

59. Lastly, he welcomed the recommendations contained in paragraph 190, that the Sub-Commission should maintain the study of the question of human rights and states of emergency as one of the highest priority items on its agenda, and appoint another of its members to prepare the annual list of States that had proclaimed, extended or lifted a state of emergency, until such time as the Commission appointed a special rapporteur. The Sub-Commission must not allow such an important issue to be dropped, merely on the grounds that Mr. Despouy had so expertly completed his assignment.

60. Mr. LINDGREN ALVES said that Mr. Despouy's work on states of emergency was of great importance, not only for its relevance to human rights questions, but also for its political implications. In his introductory statement, Mr. Despouy, the Special Rapporteur, had made particular reference to developments over the past two decades regarding states of emergency in Latin America. Those developments were worth emphasizing, for although Latin America continued to experience very serious human rights problems, at the political level it was perhaps the only region of the world to have shown positive trends towards protection of human rights over those two decades, setting an example that other regions would do well to follow.

61. The Special Rapporteur had also provided a very pertinent summary of trends in the international community's perception of human rights and in its monitoring of their implementation. At a time when internal conflicts were becoming more significant than international conflicts, the question of states of emergency perhaps assumed greater importance than it had done 20 years previously. It was thus important to pay close attention to the Special Rapporteur's work, and to ensure that the annual list of States which, since 1 January 1985, had proclaimed, extended or terminated a state of emergency continued to be produced year by year - whether by another member or, perhaps, by the secretariat.

62. Observers and members alike should also pay close attention to the Special Rapporteur's conceptual analysis of international trends in the perception of human rights. He had been apprehensive, even shocked, to note that, during the consideration of draft resolutions on the situation of human rights in specific countries, many members had maintained that those draft resolutions encroached upon States' sovereignty. As independent experts, members must unite in affirming that human rights issues had ceased to be the exclusive prerogative of States and were now a legitimate area of international concern. That position had been set forth in innumerable international instruments, most recently in the Vienna Declaration of 1993; yet, when confronted with a draft resolution or even a statement in the Sub-Commission concerning human rights situations that warranted international attention, States that had subscribed to that Declaration claimed that their sovereignty was under attack.

63. In conclusion, he said that it was a pity that, thanks to the hectic nature of its final week's proceedings, the Sub-Commission was yet again unable to devote sufficient time to consideration of all the reports under

agenda item 9. He wished to suggest that, at its next session, the Sub-Commission should take up consideration of that agenda item at an earlier stage in its proceedings, thereby allowing time for proper consideration of an item that lay at the heart of the human rights debate.

64. Mr. Bengoa resumed the Chair.

65. Ms. McCONNELL (North-South XXI) said that, although lifted intermittently in the 1970s, a state of emergency had been in effect in Sri Lanka since the 1950s. Under the Prevention of Terrorism Act in force since 1979, the military had the power to destroy the corpses of people they had killed. Emergency regulations were supposed to be short-term measures, but had several times been renewed in Sri Lanka to assist in the genocide of the Tamil people. Impunity was rife. In September 1990, 148 Tamil youths had been killed by the army while in custody. Twenty-two Special Task Force officers had been arrested, but were now back in active service. Many other violations of human rights by the country's armed forces had been ignored by the Sri Lankan Government, which used the Emergency Regulations to keep such cases from the public eye. Countless tragedies met with no condemnation from the international community, thanks to Government denial and news censorship.

66. Her organization urged the Sub-Commission to express concern at the widespread incidence of impunity of perpetrators of gross and systematic violations of human rights in Sri Lanka, and at the use of the Emergency Regulations and the Prevention of Terrorism Act to help continue the genocide of the Tamil people.

The meeting rose at 1 p.m.