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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-second session

SUMMARY RECORD OF THE 22nd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 15 August 2000, at 3 p.m.

Chairperson: Mr. RODRÍGUEZ-CUADROS
(Vice-Chairperson)

later: Ms. MOTOC
(Chairperson)

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GE.00-15086 (E)

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In the absence of Ms. Motoc, Mr. Rodríguez-Cuadros, Vice-Chairperson, took the Chair.

The meeting was called to order at 3 p.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

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

(d) JUVENILE JUSTICE

(e) PRIVATIZATION OF PRISONS

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

(agenda item 9) (continued) (E/CN.4/Sub.2/2000/43; E/CN.4/Sub.2/2000/CRP.3; E/CN.4/Sub.2/2000/NGO/11, 18 and 20; E/CN.4/2000/60 and Add.1; A/54/177; A/RES/54/156)

1. Ms. HOUBEN (International Commission of Jurists) said that an independent judiciary and bar were critical to the protection of human rights, but the operation of the judiciary in many countries suffered from systematic deficiencies and hundreds of lawyers and judges suffered reprisals for carrying out their professional duties. In Colombia, at least 31 judges and prosecutors had been the target of physical attacks, threats and intimidation, and many other persons associated with the administration of justice had been harassed.

2. The rule of law demanded that the perpetrators of human rights violations should be held accountable for their actions. However, State officials who were complicit in the commission of human rights violations continued to be granted impunity. In Brazil, Peru and Algeria, the law and common practice inhibited prosecutors, judges and lawyers from pursuing justice. In Chad, no action was taken against members of the security forces who committed human rights violations. In Senegal, the judge investigating charges of torture against the former dictator Hissène Habré had been dismissed. In Chile, despite the welcome decision of the Supreme Court of Justice to strip Senator Augusto Pinochet of his parliamentary immunity, the 1978 amnesty and the trial of civilians before military courts were still obstacles to justice.

3. In Turkey, the lack of an adequate system of justice led to impunity for State officials who committed acts of brutality and torture. However, military judges had been removed from State security courts, pre-trial detention periods had been reduced and the penalties for members of the security forces convicted of involvement in torture had been increased.

4. Her organization had called on the Palestinian Authority to abolish State security courts and to limit the jurisdiction of military courts strictly to trying military personnel for offences committed in the performance of military duties. Palestinian civilians were also tried in Israeli military courts in the West Bank and Gaza, and military courts in Egypt, Peru and Ecuador continued to try civilians.

5. In Colombia, the special court system extended the definition of terrorism to repress legal forms of political opposition and precluded the identification of prosecution witnesses.

6. In the light of the foregoing considerations, her organization supported the recommendation of the sessional working group on the administration of justice that a study should be prepared on the administration of justice by military tribunals.

7. Mr. ANWAR (World Federation of Democratic Youth) said that, in recent years, there had been serious human rights violations in the cities of Sindh province in southern Pakistan. Since its inception, Pakistan had been dominated by the Punjabi ruling oligarchy, with the Punjabi army always calling the tune. The Mohajirs had been and continued to be subjected to ethnic cleansing, extrajudicial executions, unlawful arrests, torture, evictions, involuntary disappearances and discrimination in the area of representation.

8. Since 1992, the Pakistan army had been engaged in the ethnic cleansing of the Mohajirs, irrespective of whether or not an elected Government was in power. More than 17,000 Mohajirs had been extrajudicially executed during the operation and thousands more languished in jails, including four provincial parliamentarians and the former Mayor of Karachi. Thousands of families had been forcibly displaced and there were at least 28 cases of involuntary disappearances.

9. The Mohajirs and Sindhis of Sindh province and the Baluchis and Pashtuns of Baluchistan province wanted the freedom to shape their own destiny, although they did not wish Pakistan to suffer a repeat of the tragic experiences of the former East Pakistan. He appealed to the Sub-Commission to urge the Government of Pakistan to put a stop to violations of the human rights of the various ethnic and linguistic groups in its country.

10. Mr. GRAVES (Interfaith International) said that Morocco had been occupying Western Sahara since 1975, violating the right of colonized peoples to self-determination and independence. Thousands of Saharans had been victims of abduction, torture and other serious abuses and arbitrary actions on the part of the Moroccan authorities. Despite the United Nations presence in the territory, persecution of civilians continued. The current year had seen a number of arbitrary arrests in El Aaiun and even of Saharan students in Rabat and Marrakesh.

11. In Sri Lanka, where emergency regulations had been in place for 20 years, the wide powers accorded to the security forces had resulted in torture, disappearances and deaths in custody.

12. His organization urged the Sub-Commission to monitor the situation in Bahrain to determine whether the Government was upholding its promise to investigate anomalies in the administration of justice. The international community was still awaiting the return of a constitutional parliamentary democracy in that country.

13. Ms. SHAH (Muslim World League) said that arbitrary arrests, torture and extrajudicial and summary executions were the norm in the Indian-occupied valley of Kashmir. Where families could not afford to bribe prison officials or pay expensive lawyers, young men were kept in subhuman conditions in prisons, where the Indian security forces were allowed to detain them without giving any reason. Some young men would simply disappear without trace, while others would be described by the Indian authorities as having been killed "in a police encounter" or "while trying to escape".

14. She asked the Sub-Commission to call on the Indian Government to bring before the local courts the cases of all prisoners that had been arbitrarily arrested, to allow the Special Rapporteurs on torture and on extrajudicial, summary or arbitrary executions to visit Jammu and Kashmir, and to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

15. Mr. ORELLANA (Latin American Human Rights Association) said that the indigenous peoples of Colombian Amazonia were on the verge of extinction as a result of the violence associated with the State security forces, paramilitary and other armed groups, drug traffickers and common criminals. Those responsible for the violence considered the disappearance of many indigenous peoples in Colombia as mere "collateral damage". The massacre of 13 members of the Coreguaje indigenous people was only one of many such.

16. Indigenous peoples were also subjected to forcible recruitment, the occupation of their ancestral lands and reservations, the use of their women and children for intelligence-gathering purposes, torture, extrajudicial executions and the desecration of their holy places. The fighting prevented them from carrying out their traditional activities and was forcing them to flee their ancestral lands and head for the cities, where their specific cultural characteristics were lost.

17. As Mrs. Daes had pointed out on several occasions, their ancestral lands were of great spiritual value to indigenous peoples and were vital to their survival. Their situation was made even worse by the widespread use of chemicals to destroy illegal crops, especially in the Putumayo region.

18. She asked the Working Group on Indigenous Populations to visit Colombia as a matter of urgency to bear witness to the genocidal situation faced by the indigenous peoples in the midst of the armed conflict there.

19. Ms. ELLAHI (Bunyad Literacy Community Council) said that under Pakistan's 1973 Constitution, the judiciary was independent and separate from the executive branch of the Government. Nevertheless, the parallel judicial system and the frequent changes to the judicial system brought about by changes of Government were a hindrance to the administration of

justice. Although the death penalty for juveniles and the use of bar fetters had been abolished, the juvenile system of justice in Pakistan still did not meet the requirements of the Convention on the Rights of the Child.

20. While challenges in the Sharia courts to laws protecting women's rights in respect of maintenance, dower and dowry had been largely unsuccessful, laws discriminating against women were still on the statute book and should be repealed to bring Pakistani legislation into line with the Convention on the Elimination of All Forms of Discrimination against Women.

21. The laws enacted by India to deal with the situation in Jammu and Kashmir were in serious contravention of its obligations under the International Covenant on Civil and Political Rights. The intent of the Armed Forces (Special Powers) Act was quite clearly to grant immunity to government officials for violations of human rights carried out while engaged in so-called internal security operations. As Amnesty International had pointed out, the gap between constitutional and legislative protection in India and the reality on the ground was wide and exacerbated by a slow legal process. Moreover, many of those attempting to seek legal redress for human rights violations were subjected to harassment and intimidation.

22. Mr. HUSSAIN (Observer for Pakistan) said that, at the Pakistan Convention on Human Rights and Human Dignity held in April 2000, the Chief Executive of Pakistan had announced a package of 18 initiatives, including a nationwide ban on the use of bar fetters, the operationalization of the Women in Distress Fund (which would be used to improve conditions for women in prison and protection houses and to provide legal aid to women in distress), the creation of an independent national human rights institution, the creation of a fund for the rehabilitation of released bonded labourers, and reform of the police system and improvements in conditions of detention. Under the latter initiative, a sustained effort had been made to improve the physical environment in jails, more than 20,000 detainees convicted of petty crimes had been released and special attention was being devoted to improving the conditions of detention of women and children.

23. On 1 July 2000, the Government had finally promulgated the Juvenile Justice System Ordinance which, most notably, raised the age of applicability of the death penalty to 18 years, in accordance with article 37 of the Convention on the Rights of the Child. The Ordinance also contained the following provisions: every child accused of an offence or who was the victim of an offence would have the right to legal assistance at the expense of the State; separate juvenile courts were to be created; joint trials of adults and juveniles were prohibited; strict guidelines were established for the working of the juvenile courts, including a ban on spectators at trials of children; no details of cases could be publicized that might lead to the identification of the child, unless specifically allowed by the juvenile court; every effort was to be made to release a child accused of an offence on bail, unless to do so would expose the child to danger or association with a criminal; and no child could be ordered to labour during the time spent in detention or be handcuffed, put in fetters or given any corporal punishment while in custody.

24. Pakistan had an independent, powerful and vigorous judiciary to ensure the initiatives he had just outlined had the desired effect. The judiciary enjoyed the right to take cognizance of any question which it believed demanded its intervention and, despite the proclamation of a state of emergency, continued to enjoy the freedom to interpret the Constitution and to uphold the

fundamental rights of the people. The superior courts had the power of judicial review to judge the validity of any act of the Government, and in fact a number of decisions in cases instituted by the Government had gone against it. Such an independent, powerful and responsible judiciary was vital for the promotion and protection of all human rights. Moreover, being aware of the adage that justice delayed was justice denied, the Chief Justice of Pakistan had taken steps to speed up significantly the process of the delivery of justice, particularly in the superior courts.

25. Mr. HUSSEIN (Observer for Iraq) said that, for the past decade, his country had continued to suffer from the international crime of gross and massive violation of human rights, because of the continued imposition of sanctions, which amounted, inter alia, to a policy of starvation, thus violating the basic right to life. The action being waged against Iraq violated numerous international instruments, including the Geneva Conventions and the Convention on the Prevention and Punishment of the Crime of Genocide, as well as resolutions adopted by the Commission on Human Rights.

26. The United States of America and the United Kingdom, by persisting in the enforcement of those sanctions and in continuing air raids, whose targets had included even food stores, had contributed to the death and injury of hundreds of thousands of Iraqi citizens. It was ironic that those two countries were still condemning the deeds of the former Nazis while deploying tactics and weapons, including the use of enriched uranium, far worse than anything the Nazis had ever employed.

27. Mr. MIRONCHIK (Observer for Belarus) said that, pursuant to his country's Constitution, no one could be subjected to cruel, inhuman, or degrading treatment or punishment, including forced medical or other treatment, and that any transgressors would be subject to the country's criminal laws. At the Sub-Commission's previous session his delegation had stated its Government's readiness to withdraw its reservations to article 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and, as stated at the current session during discussion of agenda item 2, Belarus had initiated measures accordingly.

28. The requisite parliamentary and related procedures might be somewhat lengthy and complex, but there was no desire by the authorities to delay the withdrawal of reservations. Indeed, the law drafted with a view to the withdrawal had been agreed to almost unanimously by both houses of parliament, not a single vote had been cast in opposition, and the bill had been signed by the President of the Republic on 20 July last. The mass media had kept the public fully informed during all stages of the procedure. Thus the dual purpose of adopting a sound, well-thought-out decision and keeping the citizens fully informed of it and of their enhanced rights under an international instrument of the United Nations had been achieved.

29. Belarus had submitted to the Committee against Torture a regular periodic report, due to be considered next October, and hoped that the Committee's recommendations would refer, inter alia, to the enjoyment of its citizens' rights under article 20 of the Convention. Belarus was also collaborating with the Commission's Special Rapporteur on the question of torture, whose interim report would be disseminated to all the country's law-making and law-enforcement bodies. His Government awaited with interest the Special Rapporteur's findings.

Statements equivalent to the right of reply

30. Mr. SALAMA (Observer for Egypt), said that his delegation refuted the accusations made by several NGOs concerning the case of Dr. Sadim Ibrahim and the situation of the Copts in Egypt. Egyptian law, like that of practically all countries, provided that any person subject to investigation was innocent until proved guilty. Dr. Ibrahim had been arrested provisionally, and later released; any charges would be made against him only when the Public Prosecutor had completed his investigations; and any proceedings would be conducted fairly, before an independent court. In that connection, further legislative measures to enhance the administration of justice had been passed the previous June and were already being implemented, the Constitution having been amended accordingly.

31. The allegation regarding the Coptic community was utterly without foundation. Representatives of the Copts had themselves declared that they did not consider themselves in the category of a minority and failed to recognize any so-called problems of the sort alleged.

32. Mr. AL DORAYBI (Observer for Yemen) said that the organization that called itself Liberation continued, using utterly unreliable sources, to denigrate his country, whose experience was unique in the region. The judiciary was fully independent, trade union officials were freely elected, and progressive laws had been promulgated. There was freedom of opposition in Yemen, although the so-called opposition referred to consisted of mercenaries, based outside the country, being used for subversive aims. The Government, contrary to the claims that it failed to deal with human rights violations, investigated any allegations in that regard unfailingly and promptly.

33. Mr. AKSEN (Observer for Turkey), said he wished to reiterate, in view of the comments made by Ms. Hampson, what his delegation had said during the consideration of agenda item 2. Under Turkish legislation, instances of torture and ill-treatment were subject to prosecution. In 1999, 110 investigations had been initiated; 127 new files had been opened about allegations against law-enforcement personnel, 17 of whom had been prosecuted. A law that had entered into force on 5 December 1999, to replace a law of 1913, had introduced new measures to avoid impunity for civil servants. Such measures reflected the Government's determination to comply fully with its national and international commitments in that regard. Although some might deem the new law inadequate, the significant improvement that it represented could not be denied.

34. Mr. HASBI (Observer for Indonesia), referring to the observations made by Mr. Pinheiro on legal proceedings relating to human rights violations in East Timor and Aceh, said that the situation in East Timor had already been considered by the Commission on Human Rights, which had adopted a decision on the topic; his Government planned to submit a progress report on the situation to the Commission at its next session. The matter was not, therefore, one for the Sub-Commission.

35. With regard to the situation in Aceh, the strongly prevailing view among the authorities and the public at large was that any proceedings should be suspended until the establishment of a national human rights court, which was expected to be complete in the near future.

36. His delegation regretted Mr. Pinheiro's comments on the country's legal system. The Government was committed to abolishing impunity, and would welcome an opportunity to discuss the matter.

37. The Government deeply regretted the reported disappearance of the human rights activist and Chairperson of the International Forum of Aceh, Mr. Hamzah, reported by Mr. Weissbrodt, and was fully committed to a thorough investigation of the circumstances.

38. Mr. DUONG CHI DUNG (Observer for Viet Nam), said that, once again, the International Federation of Human Rights Leagues had misinformed the Sub-Commission with regard to the situation in his country. It was his Government's consistent policy to promote and protect fundamental rights and freedoms in all spheres, including religious freedom and freedom of the press, in practice as well as in terms of laws and policies. Arbitrary arrest and detention were prohibited in Viet Nam; no one could be arrested without a decision issued by the People's Court or authorized by the People's Procurate. The Decree No. 31/CP that had been mentioned was of a different nature and had nothing to do with arrest and detention.

39. Mr. BENTALL (Observer for the United Kingdom), said, with regard to the statements by the observer for Iraq under agenda item 9 and some other agenda items, that he would make available to the members of the Sub-Commission an aide-mémoire on behalf of his Government and that of the United States of America.

40. Mr. HUSSEIN (Observer for Iraq) said that the sufferings of the Iraqi people, to which he had referred in his earlier statement, because of the embargo imposed and the air raids carried out by the United States and the United Kingdom, called to mind the sufferings of native Americans in the United States, and of immigrants and asylum-seekers in the United Kingdom, because of those two countries' repressive policies.

41. Mr. JOINET said that the Sub-Commission had played a pioneering role in the campaign against impunity for acts in violation of human rights, through the administration of justice at national and international levels alike. A number of recent events, particularly in Latin America, seemed to have vindicated that approach.

42. In Uruguay, the new Government had set up a commission of inquiry to look into cases of enforced disappearances. The President of the Human Rights Commission of the Brazilian Congress had visited Paraguay in order to examine the evidence against General Stroessner, currently in exile in Brazil, and had then asked the Federal Prosecutor to institute proceedings against him. In Argentina, the former dictator Videla, had been rearrested, following a court decision on non-applicability of the statute of limitations in respect of the kidnapping of children of disappeared persons. He was to be tried by an ordinary court, not a military one. In Chile, as a result of action involving the extraterritorial competence of some non-Chilean courts, General Pinochet could finally be brought to justice in his own country.

43. In another important development, the Security Council, had decided to establish an independent ad hoc tribunal, at the request of the Government of Sierra Leone, to try rebels

accused of war crimes and crimes against humanity, stating that the amnesty measure contained in the Lomé Agreement of July 1999 did not apply to crimes of genocide, to war crimes or to other grave violations of international humanitarian law.

44. With regard to the recently established International Criminal Court in Rome, it was disappointing that, of the 98 original signatories, only 14 had ratified the requisite instrument, whereas at least 60 ratifications were required before the Court could begin to function. It might be several years, therefore, before the Court could become fully operational. Hence the importance, in the interim, of the part played by the universal competence clauses and the rules of national extraterritorial competence.

45. With regard to human rights defenders, he deplored the assassination of Mr. Bonnambalam, a Sri Lankan human rights lawyer whom he had met during the Sub-Commission's previous session. Other cases for concern were the vicious slander campaign being waged by military circles against Mr. Gallón Giraldo, Director of the Colombian Commission of Jurists, and the disappearance of Mr. Pedraza. He urged the Chairperson to request the Secretary-General's special representative, to be appointed by the Commission on Human Rights, to look into those cases.

46. Ms. Motoc took the Chair.

47. Mr. GOONESEKERE drew attention to some of the problems posed by the administration of justice at a time of national crisis. His own country, Sri Lanka, had been faced with such problems for a number of years. Having inherited a criminal justice system based on the United Kingdom model, it attached great importance to the principle that a person was to be presumed innocent until proven guilty beyond all reasonable doubt. Law-enforcement officers tended to have reservations about that principle, because they felt it was an impediment to the punishment of criminals. Moreover, when members of the security forces were accused of torture and other illegal activities, human rights organizations were, quite rightly, eager to see them punished.

48. The question arose, however, whether persons who had allegedly committed gross abuses of human rights were entitled to the same guarantees as other offenders. The rule that statements taken from accused persons by police officers were inadmissible as evidence had been amended to allow consideration of statements made to a senior police officer but the amended rule was not being applied by the Sri Lankan courts. It was also a matter of principle that there should be no derogation from the application of ordinary law in times of crisis. But when persons who were thought to have been guilty were acquitted, there was a public outcry on behalf of the victims and the question of impunity arose.

49. On one occasion, a senior army officer in charge of a camp from which a number of persons, including schoolchildren, had disappeared, had been charged with various offences, including murder. On being acquitted two years later, he was promptly recommended for promotion to the rank of major-general. The President of Sri Lanka had opposed the promotion but the officer had pursued the matter in the courts, claiming that he had been unfairly denied

promotion, and had eventually been vindicated. The President had again intervened to prevent the promotion. The country was thus faced with a dilemma, since any change in the law to make prosecution easier in such cases would undoubtedly attract considerable criticism.

50. Mr. RODRÍGUEZ-CUADROS said that the administration of justice, in a State subject to the rule of law, was largely responsible for the protection of human rights through constitutional or judicial remedies. But the judiciary must be independent and unaffected by political and other forms of pressure to ensure that impunity was ruled out and that constitutional and judicial remedies were effective. Although some progress had been made in adopting international standards, for example the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers and Commission on Human Rights resolution 2000/42 concerning the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, there had been no significant strengthening of the independence of the judiciary in practice.

51. In many parts of the world, the impartiality of judges and lawyers was under attack, particularly through corruption. Systematic violations of human rights generally occurred where there was widespread impunity owing to the ineffectiveness and corruption of a judiciary that did not assert its independence from political and other sources of pressure. The acceptance by a judge, a prosecutor or any other law officer of any type of reward for an act or omission was incompatible with the proper administration of justice and the protection of human rights. Judges who, out of personal interest or under the influence of external factors, failed to base their decisions solely on the law and the evidence before them were not providing effective protection for human rights. Improper influence could be exerted by parties to the litigation, persons with economic interests at stake and, above all, politicians.

52. That situation had led many Governments and international financial institutions to attach high priority to reform of the administration of justice not only in the interests of the protection of human rights but also to ensure the proper functioning of the economic system. The World Bank, for instance, maintained that a healthy market economy must be backed up by an effective and independent judiciary. The Bank and other regional financial institutions had developed relatively ambitious programmes of judicial reform. In many cases, however, political forces had meddled in the process of reorganization of the judiciary, whose independence had been further undermined. Hence, the worthy goal of fighting corruption had led to loss of independence and in the long run to new forms of corruption.

53. It followed that any reform of the judiciary should give high priority to the fight against corruption and the exertion of undue political presence on judges. A number of international agreements established principles and standards to be observed by States, for example the Inter-American Convention against Corruption, which had been ratified by 16 States, and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organization of Economic Cooperation and Development (OECD), which had come into force the previous year.

54. Domestic legislation defining and criminalizing corruption and specifying types of misconduct by judges that entailed disciplinary sanctions should be enacted. Such legislation had recently been passed in France and Argentina and a similar bill was currently being debated

in the United Kingdom. National plans to combat corruption involving specific measures at different levels of the judiciary and the administration and implemented by independent and representative bodies should also be promoted.

55. The Sub-Commission should study issues such as the reform of the judiciary, the fight against corruption and the computerization of the administration of justice. Although modernization was always welcome, it must not be allowed to undermine the independence of the judiciary.

FREEDOM OF MOVEMENT:

(a) THE RIGHT TO LEAVE ANY COUNTRY, INCLUDING ONE'S OWN, AND TO RETURN TO ONE'S OWN COUNTRY, AND THE RIGHT TO SEEK ASYLUM FROM PERSECUTION

(b) HUMAN RIGHTS AND POPULATION DISPLACEMENTS

(agenda item 10)

56. Ms. MADUAKOH (Office of the United Nations High Commissioner for Refugees. (UNHCR)) said that refugees did not leave their country and seek admission to another one by choice but in order to escape threats to their fundamental human rights, from which the authorities in their home countries could not or would not protect them. Article 14 of the Universal Declaration of Human Rights recognized that everyone had the right to seek and to enjoy in other countries asylum from persecution.

57. Many asylum-seekers who had no safe means of departure from their home country placed themselves and their families at risk in unseaworthy vessels or as stowaways on aeroplanes or in containers only to be denied the possibility of having their claims heard in their country of destination. The right to asylum required that persons fleeing persecution or danger be admitted, at least on a temporary basis, to a place of safety.

58. One essential component of the institution of asylum was the principle of non-refoulement. Problems of illegal migration, smuggling and trafficking of persons in some parts of the world had led to the politicization of the institution of asylum and, in some States, to a tendency to criminalize refugees and asylum-seekers. In a number of instances, they had been turned back or repatriated against their will despite a clear risk to their safety. In parts of Europe, Asia and the Americas, concerns about trafficking and smuggling had led to tighter control measures. The distinction between refugees and economic migrants had been blurred, and refugees were denied access to fair and efficient procedures for the determination of their claims.

59. People who were granted temporary sanctuary should also be treated in a dignified and humane way until they could return safely to their home countries or some other durable solution was found. Refugees did not lose their entitlement to fundamental human rights when they crossed an international border but were protected by the Convention relating to the Status of Refugees and by international human rights instruments. UNHCR thus welcomed the

Sub-Commission's study on the rights of non-citizens and would be pleased to explore the issue of quality of treatment of non-citizens with the Special Rapporteur, Mr. Weissbrodt. It welcomed, in particular, his comments on the detention of asylum-seekers. The arbitrary detention of asylum-seekers was a violation of human rights principles.

60. UNHCR was concerned about the increasing level of xenophobia and intolerance in host countries and supported the Sub-Commission's work in preparation for the World Conference against Racism. It was to be hoped that the working paper on proposals for the work of the Conference would reflect issues pertaining to asylum-seekers and refugees. As refugees often belonged to minorities, UNHCR had also read with interest the working papers by Mr. Eide and Mr. Sik Yuen on minorities.

61. UNHCR was encouraged by the Sub-Commission's willingness to keep the issue of freedom of movement on its agenda and looked forward to contributing to specific studies and exploring practical ways of addressing the issue.

62. Mr. PANDITA (African Commission of Health and Human Rights Promoters) said that the increase in the number of internally displaced persons to over 50 million at the beginning of the year 2000 called for more vigorous efforts to meet the challenge. Religious and ethnic minorities often became the victims of internal displacement in areas of armed conflict, especially when armed groups were sponsored by foreign countries. The largest numbers of internally displaced persons were to be found in the Sudan, Angola and Colombia. More recent additions included nearly a million Eritreans and about half a million Kashmiri Pandits in India.

63. Displaced persons generally did not receive the attention they deserved from the Governments concerned and the international community. States were reluctant to recognize their status for fear of public and international censure. The protection of property abandoned by internally displaced persons was the responsibility of the local authorities, but there should be a mechanism whereby the State was made accountable to the international community in that regard.

64. Coercion of internally displaced persons into returning to areas where they could not rely on the goodwill of the local majority population and were not guaranteed adequate security and means of subsistence was tantamount to refoulement. His organization suggested that consideration should be given to their quasi-resettlement and rehabilitation in other, more secure, areas.

65. His organization wished to draw the attention of the Representative of the Secretary-General on internally displaced persons to the phenomenon of "reverse minorities", groups which were prone to repeated human rights violations even in secularist democracies, and also to the failure, at both the national and international levels, to pay sufficient attention to internally displaced persons.

66. Ms. WAKIM (North-South XXI) said that the Western countries, had in the past, proclaimed the right to freedom of movement loudly and clearly in order to distinguish

themselves from the countries of the Eastern bloc. It was a right, however, that they were willing to grant only to the peoples of their own region, while they mercilessly discriminated against the rest of the world's people, often on geographical, cultural, racial and national grounds.

67. The policies currently pursued by the States of the North were at odds with the principles laid down in international instruments such as the American Convention on Human Rights concerning freedom of movement and refoulement. A notice in United States embassies abroad, for example, warned nationals of the Democratic People's Republic of Korea, Iraq, the Islamic Republic of Iran and some other countries that they were forbidden to apply for a visa. The rights of such persons were simply not recognized. The United States was also the only country that reserved the right to deny entry to persons holding a valid visa if they had visited certain countries.

68. In other parts of the world, entire populations were denied the right to freedom of movement, for example Palestinians living in refugee camps in Lebanon, Jordan, the Syrian Arab Republic and the territories occupied by Israel, who had no passports and were often denied the right to work.

69. The Sub-Commission should make every effort to ensure that all men and women, especially the neediest, enjoyed the right to freedom of movement.

70. Mr. WARIKOO (Himalayan Research and Cultural Foundation) said that atrocities by mercenaries, terrorists and extremists and other forms of violence against ethnic and religious minorities had led to the forced exodus and internal displacement of several hundred thousand people in parts of south and central Asia, including almost the entire Kashmiri Pandit community. Terrorists had been targeting Pandits who had been unable to take flight owing to infirmity, old age and other constraints in order to cleanse the Kashmir Valley of its non-Muslim minorities. The last 18 families in one district had been forced to leave earlier in the current year.

71. The right to live and remain in one's homeland was a prerequisite for the enjoyment of other rights, but the Kashmiri Pandits had been displaced from theirs for 11 years. Restoration of that homeland with dignity, security and freedom of religion, as well as appropriate institutional infrastructure, was a sine qua non for peace and security in Kashmir.

72. There was also an urgent need for a policy of integrated humanitarian assistance and sustainable development, with emphasis placed on health recovery, education and employment. The international community should exert pressure on the sponsors of violence and religious terrorism to eliminate that major cause of forced human displacement in the region.

73. Mr. SÁNCHEZ (American Association of Jurists) said that the Government of Colombia had repeatedly shown itself to be incapable of dealing effectively with the serious human rights crisis in that country, despite the numerous recommendations addressed to it by United Nations and other human rights bodies. The never-ending and massive forced displacement of people was symptomatic of the bleak situation facing the majority of Colombians. According to unofficial figures, almost 1 out of every 20 Colombians had been uprooted and forced to abandon his or her few possessions, and the figure was rising with the continuing spiral of terror

and death. The current Government's belated response had only made matters worse: temporary arrangements to house displaced persons in schools and health centres had become permanent, affecting the rights to education and health of the local population.

74. However, worse was yet to come, with the implementation of the so-called "Plan Colombia", a United States programme to combat drug-trafficking by spraying vast areas of illegal crops with a fungus called fusarium exysporum. The fungus would damage not only the crops but also the whole ecosystem of the Amazon and would even be a threat to human life. A third of the money made available for the Plan Colombia, mostly by the United States, was set aside for equipment for the Colombian army and police, revealing that the true intention of the United States was to intervene in the internal conflict, even though a peace process was still under way. The Plan would displace between 150,000 and 300,000 people, some across the Colombian border, leading to heightened tension in neighbouring countries and disputes over their refugee status.

75. He did not deny that the main cause of the internal displacements was the armed conflict in which armed groups often breached humanitarian law, but that was no reason for raising the military stakes, with all the negative effects that would have on the enjoyment of basic rights.

76. Ms. PARKER (International Educational Development, Inc.) said that, although an occupying Power was prohibited under article 49 of the Fourth Geneva Convention from moving its own citizens into occupied territory, the practice was widespread in a number of situations of armed conflict.

77. In the Western Sahara, the long-standing practice of transferring non-Saharans to the area had rendered the self-determination referendum problematic. International assistance was crucial to support United Nations efforts to verify voters for the referendum and to ensure a fair referendum.

78. In the Moluccas, the Indonesian authorities, under the pretext of a jihad, had made concerted efforts to "dilute" the presence of native Moluccans and to suppress their aspirations to self-determination. They were responsible for a massive influx of settlers and heavily armed Javanese "commandos", who were often members of the Indonesian armed forces. The most recent wave of armed commandos numbered up to 40,000.

79. Given the duty of States to ensure respect for the Geneva Conventions in all circumstances, the international community should act to protect all civilians in conflict situations, whether internally displaced or seeking refuge abroad. International humanitarian law also prohibited forced removal of civilians in almost all circumstances.

80. The Sub-Commission should thus continue to study the issue of relocation due to wartime sexual slavery schemes and pay particular attention to the need to compensate victims of the United States Government scheme during the Second World War, in which Peruvians and other Latin Americans of Japanese ancestry were abducted from their own countries and held in camps in the United States.

81. Ms. ROBERT (Médecins du Monde - International) said that her organization had been present in Kosovo since 1992 and had not left the province even during the bombing raids by the North Atlantic Treaty Organization (NATO). Several medical teams provided some 2,000 primary health consultations each week. Médecins du Monde assisted civilians irrespective of their ethnic, linguistic or religious group but its efforts were currently being concentrated on the Serbian and Roma minorities who were in particular need. The level of violence in the province restricted the freedom of movement of those communities, significantly limiting their access to health care.

82. Some 100,000 Serbs were still present in Kosovo, and were the daily victims of attacks, intimidation, killings and property destruction. The remaining Serbs - mostly children and older people - lived in enclaves, often under international protection. As for the Roma in Kosovo, they numbered more than 15,000 and lived in deplorable conditions, segregated from the rest of the population. The social isolation of Roma - a familiar story - was exacerbated in Kosovo by intimidation, which was based on the reproach that the Roma had collaborated with the Serbs before the war. Moreover, fear of violence had the effect of limiting their movements within Kosovo and made them dependent on mobile health-care services. The overall insecurity in the province not only provoked further population displacement towards Serbia, it also hampered the return of the displaced Serbs.

83. Her organization was concerned that all persons in Kosovo should enjoy equal access to health services, and that the restoration of freedom of movement for all persons should be a priority of the United Nations Interim Administration in Kosovo (UNMIK). The Sub-Commission, for its part, should identify measures for promoting a culture of protection of human rights for all minorities in Kosovo.

84. Mr. GRAVES (Interfaith International) said that, according to government figures, there were 697,000 internally displaced persons in Sri Lanka. Most were Tamils, some of whom had been displaced as many as 15 times. They lived in appalling conditions and suffered from starvation, which only increased their vulnerability to epidemics. Moreover, hospitals in the region had been forced to close because of acute shortages of medical supplies.

85. The effect of such restrictions was akin to an embargo on the civilian population. Indeed, several international legal experts had asserted that that the Sri Lankan Government was using food and medicine as a weapon of war against the Tamil population. Tamil lives were also in constant danger due to daily bombings by the Sri Lankan forces.

86. His organization was also concerned about the tragic plight of Shiite Muslims in southern Iraq and Iran, and the situation of Eritrean refugees in the Sudan.

87. Mr. QADIR (World Muslim Congress) said that, in Kashmir, the Indian Government continued to restrict freedom of movement, including by prohibiting Kashmiri leaders from leaving India - whether for the purpose of religious pilgrimmages or to attend international conferences. A number of prominent Kashmiris had never been allowed to leave the country, not even to participate in meetings of the Organization of the Islamic Conference (OIC). His organization could provide details of many such cases. It was a matter of grave concern when

representatives of civil society were prevented from participating in international conferences, including sessions of the Sub-Commission and of the Commission on Human Rights.

88. The international human rights community should join forces and adopt an international convention on the right to freedom of movement which gave special consideration to the situations of peoples living under foreign or colonial occupation. In addition, the Commission on Human Rights should be reminded of the draft declaration on the right of a person to leave any country, including his own, which had been presented to it by the Sub-Commission in 1991.

89. Ms. GRAF (International League for the Rights and Liberation of Peoples) said that, although the Government of Turkey had stated that it no longer wished to address the issue of population displacement in south-east Turkey, a rectification of figures was in order. The Government alleged the number of evacuated villages and hamlets to be 800 and 1,600 respectively, while the Turkish Parliamentary Committee estimated the number at 3,428. Under agenda item 2, the Turkish delegation had claimed that only 5 per cent of the people had been forced to leave, while 60 per cent had abandoned their villages voluntarily. According to the Parliamentary Committee, however, "evacuations" had been carried out by "security units".

90. According also to figures provided by the Regional Governor's Office in 1997, only 6 per cent of the refugees had returned home. Some 23,000 people must therefore have returned, not 61,987, as the delegation had asserted. According also to official figures, 3,313 settlements had been evacuated and 401,328 people had emigrated. Most, however, did not wish to return because their homes had been destroyed and because they were not confident of the security situation in their villages.

91. The governmental "return to village project" cited by the delegation of Turkey could not be taken seriously, since it was based on voluntary action rather than State initiative. Moreover, villagers were being obliged to become village guards as a condition of return, and to de-mine the area themselves. It was essential that the project be implemented in a transparent and participatory way, as the Parliamentary Committee itself had stated. If only the Turkish Government implemented the Copenhagen Criteria and fulfilled its international treaty obligations, Kurds and Turks would be able to coexist peacefully.

92. The right to return also continued to be refused to the 10,000 Kurds who had fled Turkey in 1998 and were currently living in Makhmour, a camp in northern Iraq. Return would be possible only after the lifting of the state of emergency in the Kurdish provinces and a change in the Government's attitude towards the Kurdish culture and language.

93. Mr. AKRAM (Observer for Pakistan) said that migrations were propelled in large measure by economic incentives: the prospect of a better job and quality of life. The current practice in industrialized countries of accepting only political refugees or, more readily, trained and skilled migrant workers, was discriminatory in essence and only exacerbated the "brain drain" from the developing countries. If problems associated with large movements of people from the South to the North were to be addressed, policies must be based on objective demographic, economic and social criteria and human rights considerations.

94. The Sub-Commission should thus undertake a study on the issues of migration and freedom of movement in the current global and North-South environment. It was vital to tackle root causes of such movements, such as poverty, civil conflict, insecurity or persecution for reasons of race, ethnic origin, religion, language or political views. Above all, developing countries must be given the means to strengthen their fledgling economies and to sustain the needs of their populations.

95. The resolution of armed conflict and the promotion of peace depended on the freedom of movement of the political opposition both within and outside countries and territories. Such was the case in the disputed territory of Jammu and Kashmir. It was most disturbing to learn of opposition leaders being prevented from travelling to Geneva to attend sessions of the Sub-Commission and of the Commission on Human Rights.

96. It was also a matter of concern that several criminal elements had left Pakistan and were currently residing in certain Western countries. A mechanism to ensure their speedy return must be found, if international crime, drug trafficking and terrorism were to be combated.

97. The CHAIRPERSON, supported by Mr. ALFONSO MARTÍNEZ, suggested that, the speaking time of NGOs and members should henceforth be reduced to 5 and 10 minutes respectively, in view of the time constraints.

98. It was so decided.

The meeting rose at 6.05 p.m.