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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)\* OF THE 22nd MEETING

Held at the Palais des Nations, Geneva,  
on Wednesday, 11 August 2004, at 3 p.m.

Chairperson: Ms. RAKOTOARISOA  
(Vice-Chairperson)

later: Mr. SORABJEE  
(Chairperson)

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ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY (continued)

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\* The summary record of the second part (closed) of the meeting appears as document E/CN.4/Sub.2/2004/SR.22/Add.1.

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The meeting was called to order at 3.05 p.m.

ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY (agenda item 3)  
(continued) (E/CN.4/Sub.2/2004/5-12; E/CN.4/Sub.2/2004/NGO/11-13, 24, 26, 28 and 29)

1. Mr. MALEZER (Foundation for Aboriginal and Islander Research Action) said that the report submitted to the sixtieth session of the Commission on Human Rights by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2004/80) provided a useful commentary on the relevance of the human rights framework to indigenous peoples. In the light of that report, further consideration should be given to the truth and reconciliation mechanisms available to indigenous peoples and to the fact that most historical treaties between States and indigenous peoples did not contain mechanisms to resolve issues of interpretation. According to the Special Rapporteur, the human rights protection gap explained the lack of confidence among indigenous peoples in national systems of administration of justice. Discrimination and exclusion would be overcome only if the rights of indigenous peoples, including the right to self-determination, were respected. States should respect the principle of consultation with and participation by indigenous peoples.
2. In Australia, although Aboriginal people represented only 2.5 per cent of the total population, Aboriginals constituted 20 per cent of the male prison population and nearly half of all women prisoners. Over 40 per cent of children in correctional institutions were Aboriginals.
3. In November 2003, an expert seminar on indigenous peoples and the administration of justice convened by the Office of the United Nations High Commissioner for Human Rights had underscored the problem of racism in the administration of justice, caused inter alia by the weakening of indigenous law systems and the persecution of indigenous leaders. In December 2000, an international conference organized in Manila by an indigenous group had adopted the Manila Declaration on conflict resolution, peace-building, sustainable development and indigenous peoples. That initiative was praiseworthy but also a damning indictment of the failure of those responsible to improve the circumstances of indigenous peoples.
4. Ms. HATAE (Asia Japan Women's Resource Centre) said that a number of steps had been taken in Japan in recent years to provide greater protection to victims of sexual violence. For example, under new regulations, police officers were required to show sensitivity to victims of sex offences, and crimes such as rape and indecent assault no longer had to be reported within six months. In public trials, video technology and protective screens could be used to reduce the psychological burden placed on witnesses. However, very few victims actually pressed charges and those who did were usually provided with inadequate protection during the investigation process, largely because the judicial authorities were not required to have any specialized knowledge about sex crimes. According to a 1949 Supreme Court decision, a victim could file charges of rape or indecent assault only in cases where resistance had been extremely difficult. Consequently, criminal acts by close relatives or spouses were rarely treated as crimes. Almost nothing had been done to encourage victims of sex crimes to talk about their experiences. Only 3.8 per cent of police officers and 7 per cent of prosecutors in Japan were women.
5. In February 1994, a number of South Korean women had submitted a case to the Tokyo District Public Prosecutor's Office against the Japanese military personnel who had used them as sex slaves during the Second World War. Their case had been rejected on the grounds that the

statute of limitations had already expired and that the charges had not been specified. However, no statute of limitations should apply to crimes against humanity or war crimes. Furthermore, although no names had been provided, the allegations had been specified and any further specification should be the responsibility of the investigative agencies. The United Nations should, as a matter of urgency, establish a set of guidelines on criminalizing, investigating and prosecuting, at the domestic level, sexual violence committed during armed conflict.

6. Mr. NEUER (United Nations Watch) said that the lifeblood of democracy was the free flow of information. Although numerous emerging democracies had seen an explosion of media freedom in recent years, in many other parts of the world journalists were being censored, threatened and attacked. The recent murder of a Radio France Internationale correspondent was just one example of the State-sponsored restrictions on freedom of the press in Côte d'Ivoire. Zimbabwe's draconian new laws severely restricted freedom of the press and encouraged the mistreatment and harassment of journalists. In 2003, 30 journalists had been imprisoned in Cuba. Furthermore, the security forces in countries such as Myanmar, Nepal and Pakistan had been known to torture journalists. However, there were other, less visible threats to press freedom, which were perhaps even more dangerous. Alarming, some of the world's major media organizations were complicit in censorship by broadcasting stories they knew to be misleading or false. The high levels of censorship in Iraq had only been revealed after the downfall of Saddam Hussein. It would be interesting to know whether journalists in other parts of the Middle East would disclose the extent to which they operated under similar intimidation. The danger to democracy was clear. Governments stood or fell on the basis of votes that were founded on the faith of citizens in sources of information. He hoped that the newly appointed United Nations High Commissioner would act to ensure that press freedom was respected by all.

7. Ms. WATANABE (Asian Forum for Human Rights and Development) said that, since 2004, martial law had been imposed across the predominantly Muslim part of southern Thailand. Military force was often used to combat separatists and terrorists and to maintain law and order. On 28 April 2004, 107 insurgents had died during violent clashes with the authorities. A number of those killed had been sheltering inside a mosque. A recent investigation by the National Human Rights Commission had revealed that five Muslims suspected of a raid on an army camp had been tortured in order to extract a confession. The introduction of a deadline for insurgents to surrender or risk facing trial in a military court had created a climate of fear of arbitrary arrest and torture. Although an independent inquiry into the massacre of 28 April 2004 had confirmed the use of excessive force by security forces, there had been no discussion of a judicial investigation. Furthermore, although the Government had discussed a plan to offer compensation to the families of victims, no compensation had been envisaged for torture victims.

8. The Thai Government should lift martial law in southern Thailand and should endeavour to bring the alleged perpetrators of forced disappearances, extrajudicial killings and torture to justice. It should abide by the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Special attention should be devoted to the situation in southern Thailand.

9. Mr. KHAN (World Federation of Trade Unions) said that many States were beginning to give legal sanctity to basic human rights. For example, the Government of India had recently assumed a legal responsibility to ensure that every child under the age of 14 had the opportunity

to attend primary school. However, in the world's most developed countries such as the United States of America, people continued to suffer from discrimination on the grounds of their race, gender or religion. Similar problems also existed in developing countries, and particularly in Pakistan.

10. Mr. NARVÁEZ (World Federation of Trade Unions), continuing the statement, said that the recognition by workers that there had never been a higher level of democracy in Venezuela reflected the re-emergence of the rule of law in Venezuela. The Government of Hugo Chávez was committed to guaranteeing respect for human rights and freedoms. Nevertheless, extreme and illegal measures were being used to destabilize democracy in the country. The United States Assistant Secretary of State for Western Hemisphere Affairs had recently revealed that considerable sums of money had been invested in a plan said to support democracy in Venezuela. In fact, that plan disregarded the legitimacy of the current Government and was totally incompatible with the provisions of the Charter of the United Nations and international law. In view of the forthcoming elections in Venezuela, the United States Government should freeze all funds channelled towards activities to sabotage and destabilize the electoral process. Efforts should be made to protect the physical safety of President Chávez and other political figures and activists. Legal action should be taken against those who from the United States were promoting violence or instigating personal attacks in Venezuela.

11. Ms. GHANDHI (European Union of Public Relations) said that, according to a recent report, 88 per cent of women prisoners in Pakistan had been jailed as a result of legal ambiguities. Slow judicial processes and delays by the police in presenting evidence in court resulted in many women being held for lengthy periods in pre-trial detention, with no access to legal aid. Illiteracy, poverty and a lack of awareness of legal procedures were the major handicaps faced by those women. The situation of juvenile prisoners was even worse. Many of the children being held in Pakistani prisons were as young as 8 years old. In many States, those guilty of violating the human rights of women enjoyed full impunity. Women often remained silent through fear of threats or reprisals. Human rights violations were likely to be minimal in democratic States with an independent judiciary, a free and fair press and an empowered civil society.

12. Mr. Sorabjee (Chairperson) took the Chair.

13. Mr. LONN (International Youth and Student Movement for the United Nations), speaking also on behalf of the Women's International League for Peace and Freedom and the International League for the Rights and Liberation of Peoples, said that the right of peoples to peace and self-determination was fundamental to the realization of most other human rights. The war of aggression launched against Iraq in February 2003 had violated the rule of international law and frustrated the aspiration of peoples to global democracy. The occupying powers had systematically violated humanitarian law and human rights in Iraq: the horrifying pictures from the Abu Graib prison illustrated just the tip of an iceberg. The Sub-Commission might wish to deliberate further on the legal status of the many thousands of persons detained without due process.

14. United Nations intergovernmental bodies had been largely silent on the situation in Iraq, notable exceptions being the Office of the United Nations High Commissioner for Human Rights and several of the special rapporteurs of the Commission on Human Rights. In recent decades

the United Nations had helped several countries to achieve self-determination and democracy, usually by holding democratic elections. The plans for elections in Iraq stood in sharp contrast: instead of offering the Iraqi people real choices, the elections appeared to exclude large segments of the electorate by imposing various restrictions, including a requirement of “good reputation”; and members of “illegal militias” were prohibited from standing for election. Elections held in contravention of established principles would not lead to peace and reconciliation and might have serious implications for the credibility of international election assistance and monitoring. The matter merited serious attention from the Sub-Commission.

15. Mr. LITTMAN (World Union for Progressive Judaism) said that the Executive Vice-Chairman of the Conference of Presidents of major Jewish organizations and the Secretary-General of the Iranian American Jewish Federation had written to the Secretary-General of the United Nations in December 2003 requesting his intervention in the case of 12 Iranian Jews who had disappeared in Iran 10 years previously. The World Union for Progressive Judaism had also written to the President of Iran to remind him that States which had ratified the human rights instruments were bound by their provisions under all circumstances, as well as by customary international law. The Working Group on Arbitrary Detention had referred to many aspects of the situation in Iran in its 2004 report to the Commission on Human Rights (E/CN.4/2004/3/Add.2). The Committee on the Elimination of Racial Discrimination had made several pertinent comments on Iran’s criminal law as it affected non-Muslim minority groups, and the International Committee of the Red Cross had held a meeting in February 2003 to discuss the issue of missing persons.

16. Nobody knew the whereabouts of the 12 Iranian Jews: they appeared to have been imprisoned, but their case was shrouded in secrecy. His organization called on the Sub-Commission to urge the Government of Iran to end the silence and release the 12 prisoners. Full details of the case, including the particulars of the 12 persons, were included in its written statement to the Commission on Human Rights (E/CN.4/2004/NGO/87).

17. Mr. VERZAT (International Movement ATD Fourth World), speaking also on behalf of the International Council of Women, the International Federation of Social Workers and Franciscans International, said that in its work on the administration of justice the Sub-Commission should give close attention to persons and groups in situations of extreme poverty, especially in the light of its recently adopted draft resolution on the subject (E/CN.4/Sub.2/2004/L.21). The civil and political rights which remained a dead letter for the poor included access to justice and the protection of the law.

18. Parents in a country member of the G8 had testified to that effect in a case in which their children had been removed from their care; such cases were by no means isolated. His organization had also documented a case of a couple living in another industrialized country in such deplorable conditions that they had come to believe that they were not accorded any rights. The experience of the very poor was similar in all parts of the world. In its report Voices of the Poor, the World Bank had shown how little access the poorest people in developing countries had to the protection of the law and the police. In such situations, people believed that their suffering was inevitable.

19. The organizations on whose behalf he was speaking requested the Sub-Commission to address systematically the most disadvantaged population groups and to produce recommendations on their access to justice. It might take into account recommendation 19 of the Council of Europe, adopted in 2003, which invited States to take specific steps with regard to persons who were not exercising their rights.

20. Mr. PRAKASH (International Institute for Peace) said that the modern world was being shaped by the promise of extending the “continuum of democracy” from the village to the global level. That represented the best hope for large numbers of people to be able to exercise their human rights. In that context, the claimed return to democracy in Pakistan had been seen as mainly cosmetic, and the British Commonwealth had refused to readmit Pakistan. The legitimacy of the tenure of President Musharraf would continue to be questioned as long as he retained his post as Chief of Army Staff and the armed forces’ grip on society continued to expand. A delegation of parliamentarians from the European Union had visited Pakistan in November 2003 and had expressed similar misgivings about the functioning of its Parliament.

21. The situation of prisoners in Pakistan’s jails was deplorable and had become even grimmer as a result of the ban on visits by activists of non-governmental organizations (NGOs), lawyers and journalists. Torture was endemic, and violations of the regulations routine; and the Juvenile Justice System Ordinance of 2000 remained poorly implemented. Bureaucratic delays, corruption and the inefficiency of the judicial system meant that the time spent by many prisoners on remand often exceeded the applicable prison sentences. The number of prisoners continued to increase, and the number of deaths in detention pointed to the brutality of their treatment.

22. Mr. CASEY said that a number of NGOs had raised the issue of the so-called article 98 agreements under the Rome Statute of the International Criminal Court (ICC). He had himself urged the United States Government to seek such agreements because the ICC insisted on claiming the right to exercise its jurisdiction over the nationals of non-party States. That claim to universal jurisdiction was not supported by the current rules of international law, either customary or conventional. In fact, the Rome Statute had created an entirely new form of international jurisdiction, which could be exercised in contravention of the legal and constitutional arrangements of its member States. But the Rome Statute was nothing more than a treaty, and its provisions and that new form of jurisdiction could not be imposed on non-party States.

23. The efforts by the United States to ensure by means of article 98 agreements that the ICC would not target its citizens were not attempts to achieve impunity or any form of immunity from international law. The issue was the right of a State to decide for itself whether to accept the ultimate authority of an untried and virtually unchecked institution. The ICC was not the font of international criminal law but only one means of enforcing that law. The supporters of universal jurisdiction for the Rome Statute should argue their case on the merits and not pretend that States which had decided against the Court were acting against international law or seeking impunity.

24. Ms. RAKOTOARISOA said that she was grateful for all the comments made on her expanded working paper on the difficulties of establishing guilt and/or responsibilities with regard to crimes of sexual violence (E/CN.4/Sub.2/2004/11).

25. She shared Mr. Guissé's view that persons who were unable to testify should not be compelled to do so. She had stressed the point in her paper, drawing attention to the practice in several countries, the United States for example, of having social workers speak on behalf of children; and clearly the handicapped should not be compelled to testify. Useful evidence could also be given to the courts by doctors.

26. Mr. Guissé had also mentioned the reversal of the burden of proof, a principle which ran counter to the presumption of innocence and the rule that no one was to be deemed guilty until a final decision of a court so declared. His comments on the problem of corruption in the justice system were also correct, for such corruption rendered all recourse to justice void and legitimized injustice. His comments on the harmonization of international law on rape would be taken up in her next report. She also agreed with Mr. Guissé that the deliberate transmission of sexual diseases should be regarded as an aggravating circumstance of an offence, as should the abuse of women prisoners by military or prison personnel. Women prisoners could not possibly give their consent to such abuse. She also appreciated his arguments on the need for a more detailed study of the question.

27. Ms. Hayashi had raised the question of the degree of resistance put up by a victim of rape. The notion was a dangerous one, for it gave the perpetrators of sexual violence room for manoeuvre. Any penetrative sexual relations without the woman's consent should be regarded as rape, and her degree of resistance should not be taken into account. Ms. Hayashi's comments would be analysed in the next report.

28. With regard to sexual relations between spouses without the wife's consent, she could assure Mr. Cherif that proceedings ought to be instituted only on a complaint by the wife and that marriage must not be allowed to impair a wife's rights in any way: she must have access to effective remedies in the courts. Forced sexual relations must be regarded as an attack on the wife's dignity and physical integrity.

29. She could assure Ms. Hampson that the question of sexual violence in periods of armed conflict had not been omitted: she had mentioned it both in her initial working paper and in her oral presentation.

30. Ms. O'CONNOR asked NGO and Government observers for their assistance in breaking the wall of silence preventing the emergence of information about the treatment of women in prison. On account of the social stigma, women were reluctant to talk about their experiences in prison. NGOs could assist by recording information, providing legal advice and, if necessary, filing complaints on behalf of victims under the confidential procedure laid down in Economic and Social Council resolution 1503 (XLVIII). On the basis of her own report and those prepared by Ms. Hampson and Ms. Rakotoarisoa, the Sub-Commission should publish a comprehensive document concerning the problems facing women in the criminal justice system, with special reference to sexual violence.

31. Mr. ALFONSO MARTÍNEZ welcomed the fact that, at the 20th meeting, Mr. Casey had agreed with his own position concerning the sovereign equality of States, in accordance with Article 2 of the Charter of the United Nations. However, although Mr. Casey tended to defend the sovereignty of his own country, he did not always extend that principle to other nations. On that issue, Mr. Casey's position was fundamentally different to his own.

32. Mr. CASEY said he failed to understand what Mr. Alfonso Martínez was referring to, since he agreed that the principle of sovereignty extended to all sovereign States.

33. Mr. ALFONSO MARTÍNEZ said that, as far as he was aware, Mr. Casey had supported legislation in his own country that disregarded the sovereignty of another State. If he was mistaken, he was pleased to have discovered another supporter of the international campaign to break the economic embargo against Cuba.

34. Mr. MAHMOUD (Observer for Iraq), speaking in exercise of the right of reply, said that full sovereignty had been restored to Iraq in accordance with Security Council resolution 1546 (2004), and the interim Government had assumed executive powers. The Transitional Administrative Law accorded a panoply of civil rights to all citizens and established the independence of the judiciary from the executive. A federal court had been set up to deal with controversial issues arising between local and central authorities and between the legislature and the executive. The court's members had been elected from among the members of the Supreme Council of the Judiciary, and its composition and jurisdiction were not subject to outside interference. The new Government had undertaken to lead the Iraqi people out of an era of abhorrent dictatorship into one of civilian rule based on a united multi-party democracy. It would guarantee the rule of law and protect society against politicization and outside interference. Respect for the rule of law and the integrity of the judiciary were the safety valves of the new Iraqi society.

35. The Iraqi delegation called on the Sub-Commission to support the interim Government in its efforts to secure stability and prosperity for the Iraqi people. The new Government wished to coexist in peace with neighbouring countries on the basis of non-interference in internal affairs, to enhance its relations with fraternal nations, and to consolidate freedom and democracy after a long period of injustice and despotism.

36. Mr. MANSOUR (Observer for Tunisia), speaking in exercise of the right of reply, said that political progress in Tunisia was based on the commitment of Tunisian society to the universal values of the promotion and protection of human rights, democracy and political pluralism. In that context, Tunisia constantly sought to strengthen the rule of law and the administration of independent justice and to keep pace with the development of international standards. That approach was reflected in the latest reform of the Constitution. Tunisia was grateful to the Sub-Commission for its contribution to the establishment of the new frames of reference.

37. Everyone participating in the Sub-Commission's work should make a constructive contribution to the interactive debate: certain persons should refrain from putting about incorrect information and narrow judgements and should instead demonstrate the objectivity needed for the advancement of the cause of human rights. In view of his country's commitment to human rights, democracy and the rule of law, his delegation had been all the more astonished to hear unfounded statements about Tunisia in the Sub-Commission. As recently as 10 August, Tunisia's Head of State had made a speech to the Higher Council of the Magistrature in which he had emphasized the country's continuing commitment to the rule of law and the independence of the judiciary.



38. Mr. KEBE SEKA (Observer for Côte d'Ivoire), speaking in exercise of the right of reply, said that an NGO, United Nations Watch, had accused his country of failing to respect the freedom of the press, on account of the murder of the French journalist, Mr. Jean Hélène. His Government had immediately condemned the murder of Mr. Hélène, and the convicted murderer had been sentenced to 17 years' imprisonment. The official investigation, carried out in conjunction with the French authorities, had absolved the Government of Côte d'Ivoire of any involvement in the murder. The Constitution and laws of Côte d'Ivoire provided comprehensive protection of the right to freedom of expression, provisions which his Government strived to implement to the full.

The public part of the meeting rose at 4.40 p.m.