



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/Sub.2/2004/SR.4
23 March 2005

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-sixth session

SUMMARY RECORD OF THE 4th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 28 July 2004, at 10 a.m.

Chairperson: Mr. SORABJEE

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GE.04-15539 (E) 220305 230305

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

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 2) (continued) (E/CN.4/Sub.2/2004/NGO/3, 4, 5, 8, 9, 11, 24 and 26)

1. Mr. CHEIKH (International Youth and Student Movement for the United Nations) drew the Sub-Commission's attention to the human rights situation in Western Sahara, which continued to deteriorate to the point where it was becoming critical. Deliberately isolated from the outside world, and in particular from the media and humanitarian organizations, the population of the Sahara and the territories under Moroccan colonial occupation was subjected to a terrible policy of repression by the Moroccan regime. Several human rights defenders had recently died as a result of torture, and enforced disappearances were increasing.
2. By stepping up repression and the plundering of those territories' resources, Morocco was clearly rejecting the independence option envisaged in the most recent United Nations report on the question. The international community must put pressure on Morocco to comply with article 19 of the International Covenant on Civil and Political Rights and abide by international law, leaving the decolonization of Western Sahara through a free and democratic referendum on self-determination to the United Nations.
3. Mr. PRAKASH (International Institute for Peace) observed that while random violence had become the main cause of human rights violations against innocent civilians across the globe, it was the systemic denial of their basic rights that affected the lives of groups and individuals at the national level. On account of its geographical location, Pakistan had emerged as a key player in the war against terrorism. However, far from being a democratic country anxious to protect the rights of its citizens, it was clearly a military dictatorship. Having come to power through a military coup in 1999, General Musharraf had sidelined all political opposition and silenced journalists. Women continued to suffer under discriminatory provisions enshrined in the hudud ordinances and over 500 of them had been victims of "honour killings" in 2003. Religious minorities remained under the threat of the blasphemy laws, and administration and public life were increasingly being militarized.
4. Despite the numerous promises made by General Musharraf, the terrorist infrastructure in Pakistan had yet to be dismantled. The leaders of banned terrorist groups roamed free and publicly called for violence. The madrasas continued to encourage extremism and fundamentalism without hindrance. Pakistan's complicity in the development of the Al-Qaida network prior to 11 September 2001 was also proven.
5. Mr. CHAUHARY (World Peace Council) condemned the racial discrimination practised in Pakistan against the Sindhis, whose political, economic and cultural rights were flagrantly violated. The Sindhis were deprived of the right to self-rule in their own province, and their

economic resources were plundered. Women, who were especially badly treated, lived in inhuman conditions, resulting in high mortality and suicide rates. Owing to the lack of economic and social investment, poverty and unemployment were rife in the province. The Sindhis were also the victims of arbitrary arrests and discrimination in almost every walk of life.

6. The World Peace Council reiterated its demand for the Sindhis to be given autonomy in the federation of Pakistan and for illegal immigrants to be repatriated, democracy to be restored, human rights to be fully protected, fundamentalism and religious extremism to be eradicated, peace between Pakistan and India to be restored and nuclear weapons to be eliminated from South Asia.

7. Ms. VERA VEGA (Association of American Jurists) said that the organization she represented had submitted five documents to the Sub-Commission on the following topics: the recent decision of the United States Supreme Court recognizing the right of prisoners from Guantánamo Bay to challenge the lawfulness of their detention in federal courts, and the fact that the United States Government was taking steps so as not to give effect to that decision; the Franco-American coup in Haiti; the intensification of economic pressure against Cuba; Security Council resolution 1546 (2004), which was an attempt to legalize the military occupation and neo-colonial status of Iraq; and the grave violations of the fundamental rights of nationals and foreigners currently being committed in the United States.

8. All those documents showed that human rights, democratic freedoms and the right of peoples to self-determination were particularly threatened at the international level, principally because of the arrogance of the world's military super-Power, which would go to any lengths to ensure control of the planet's energy and other strategic resources, and which would not hesitate, in the run-up to the presidential elections, to launch new attacks to win the support of the electorate - for instance against Venezuela, if the results of the forthcoming referendum did not meet its expectations. The Association of American Jurists called upon the Sub-Commission, States and their peoples to be particularly vigilant.

9. Mr. ALI KHAN (World Muslim Congress) condemned the reign of terror imposed by the Indian occupying forces in Kashmir through special repressive laws, where extrajudicial killings had reached genocidal proportions, forced and involuntary disappearances were reported to have affected more than 8,000 people in the last 15 years and women were regularly raped by security forces.

10. Noting that India and Pakistan had recently entered into a peace process to resolve all issues of contention, including that of Kashmir, he said that the local Indian authorities were not in the least willing to give the Kashmiri people any relief from repression, and deplored the fact that the latter had not been included in the peace process. He called on the international community to urge the Indian Government to put an end to the human rights violations in Kashmir and encourage a peaceful settlement of the issue with the participation of Kashmiri representatives.

11. Mr. GONZALES (International Indian Treaty Council) drew the attention of the Sub-Commission to the difficult situation faced by several indigenous peoples in North America. In California, the Pit River (Iss Ahwi) tribal nation saw its sacred lands threatened by the mining projects of the Calpine Corporation. In the State of Nevada, despite opposition from the majority of the tribal councils, representing approximately 80 per cent of the population concerned, the so-called Western Shoshone Distribution Bill, signed by President Bush, would authorize the sale of a vast area of disputed lands in Nevada, Idaho, Utah and California at approximately 15 cents per acre. The lands in question were the third largest gold-producing area in the world. There was also some question of establishing a national nuclear waste deposit and a nuclear test site there.

The International Indian Treaty Council called upon the Special Rapporteur on indigenous issues to look into those cases urgently.

12. Mr. UMER (Observer for Pakistan), noting the persistent North-South divide with regard to human rights, stressed the importance of realization of the Millennium Development Goals for the promotion and protection of those rights. Foreign occupation continued to be a primary cause of conflicts and serious human rights violations, and the international community had failed to devise an effective mechanism to put an end to it. He deplored the fact that the just struggle of peoples for self-determination was often branded as terrorism, and, deeply concerned by the negative image of Islam and Muslims, he hoped for the advent of a culture of tolerance and harmony among civilizations.

13. The Government of Pakistan had shown through various legislative and executive measures, including the establishment of a National Human Rights Commission, that it was determined to promote and protect the basic rights of the population, in particular women's rights. Women already occupied 20 per cent of the seats in Parliament and 30 per cent in the local governments. A bill banning "honour killings" was currently being drafted, and the President had called for a national debate on the hudud ordinance. The Government was also striving to promote the rights of minorities, whose participation in decision-making had been substantially enhanced with the introduction of a system of joint electorates in 2002.

14. The Sub-Commission had an important role to play in exploring ways to meet the challenges faced by mankind. It was important to base the human rights approach on the principles of justice and fair play. It was essential to eliminate the root causes of human rights violations and to take into account cultural diversity in the implementation of international standards. The unjust and discriminatory global financial system needed reform so as to eradicate poverty and meet development needs.

15. Mr. GUISSÉ, recalling that the triad of peace, human rights and development constituted an inescapable functional whole, noted that peace, which was legitimately claimed by all peoples, was increasingly becoming a right. Although some thought that peace was a de facto situation and could not constitute a right, the Charter of the United Nations clearly established that peace was an obligation. The concept of the right to peace had evolved considerably since the Second World War. That right had been enshrined in 1984 by the United Nations General Assembly in its Declaration on the Right of Peoples to Peace, according to which "the peoples of our planet have a sacred right to peace".

16. Peace was not simply the negative circumstance of the absence of war, it was a positive concept involving the existence of peaceful relations within a country and among countries. International peace was the outcome of an equitable world order, and national peace that of a society where all the rights of every person were respected. When it was based on harmony and equality, peace fostered development; but when it was based on deterrence and threats, it was incompatible with development. In order to ensure respect for human rights and economic and social progress, it was not enough to acknowledge the need to establish peace on earth. It was important to examine practical measures likely to contribute to its realization.

17. In Africa, all three elements of the triad of peace, development and human rights were paralysed. The frontiers imposed by the colonial Powers, which created an artificial division between ethnic groups, were the cause of the most serious threats to peace. The conflicts in West Africa were all based on the ethnic issue, thereby preventing the countries from tackling poverty, illness, illiteracy, the lack of infrastructure, the destruction of the social fabric and African values, and human rights violations - so many problems that jeopardized the building of peace. In conclusion, he was in favour of a more thorough analysis of the concept of peace, which took account of the patterns of human existence wherever men and women lived.

18. Mr. DECAUX said he considered that the current agenda item must remain one of the high points of the work of the Sub-Commission and that it was always useful to discuss human rights lucidly and honestly. He hoped that the Sub-Commission would complete, in a constructive climate, the difficult but necessary task of carrying out the annual assessment of the human rights situation in the world, with human rights as its only yardstick. The human rights situation seemed less gloomy than during the previous session. Freedom of information, which the Sub-Commission did not discuss enough, had played a decisive role in revealing unacceptable situations, even though the press was stifled and journalists were killed in too many countries. He also commended the role played by the judiciary, citing the United States Supreme Court decision that had removed the Guantánamo Bay detainees from legal limbo, but wondered how many more secret prisons there were throughout the world. He hoped that the Sub-Commission would continue to examine basic legal issues such as the privatization of conflicts and the subcontracting of war crimes to mercenaries or paramilitaries, which testified to a worrisome spread of lawlessness. He also welcomed the judgment of the International Court of Justice, which requested the United States to provide reparation for having violated the 1963 Vienna Convention on Consular Relations by guaranteeing around 50 Mexicans on death row opportunities to appeal.

19. However, the right to life was still violated throughout the world. The crisis in Darfur was the most recent example of a fatal chain of events where time was increasingly running out. While humanitarian action was the priority, the importance of international criminal law must not be overlooked. In that connection, the establishment of the International Criminal Court was an encouraging sign. In the face of all threats and all crises, the law must remain the guardian of human rights.

20. Mr. KARTASHKIN noted that many events had taken place since the previous session which would certainly influence the work of the Sub-Commission. When one spoke of human rights violations, one was referring to acts of genocide, persecutions of minorities, the killing of civilians or torture. Many of those violations were committed on the pretext of protecting the interests of the international community. In fact, they were motivated by the

extremely narrow national interests of a small group of States. It was not enough to take note of those violations; measures must be taken to prevent them so as to close the gap between theory and practice. It was therefore advisable, while continuing to draft new standards and new instruments, to ensure their implementation and to recommend that the Commission should adopt decisions aimed at preventing violations.

21. In that connection, he commended the Secretary-General's initiative for the drafting of an optional protocol to the Convention on the Prevention and Punishment of the Crime of Genocide. He also welcomed the proposed consideration of the possibility of drafting an additional protocol to the International Covenant on Civil and Political Rights concerning the rights of minorities. He underlined the importance of the recent entry into force of the Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights. It was important that the Sub-Commission should take steps to ensure the universal ratification of international human rights instruments. In keeping with the Secretary-General's appeal for prevention, the Sub-Commission should invite the High Commissioner for Human Rights to look into the possibility of organizing an international meeting with a view to devising measures to prevent human rights violations.

22. Mr. BENGGOA said he considered that the past year had not been a good one from the human rights standpoint. The evident decline in respect for the rights of individuals, the attack against the United Nations Mission in Iraq, the practice of torture and the continuation of conflicts, which not only seemed interminable but were growing steadily worse, gave rise to a strong feeling of powerlessness. Faced with the risk of drifting towards "globalized tribalism", in the words of the philosopher J. Habermas, only the systematic defence of human rights could serve as a guide. But while NGOs were expecting concrete action from the Sub-Commission, it only had the right to hold discussions. To study the realization of all human rights, in other words also including civil and political rights, as the Commission had requested it to do in resolution 2004/24 presented the Sub-Commission with an enormous challenge in the current climate of undeclared war that seemed to reign worldwide, while public opinion demanded an effective response from the international organizations. Faced with dramatic situations such as that looming in the Sudan, all the Sub-Commission could do was to appeal for action before it was too late. He said that the Sub-Commission should analyse the nature of agenda item 2 more thoroughly and should itself find ways of taking effective action in order to promote and protect human rights.

23. Mr. SALAMA said that the gravity of the violations committed, the attempts made to justify those violations and the confusion surrounding the notions of terrorism and resistance, giving rise to what Mr. Decaux had referred to as the spread of lawlessness, were signs of a deterioration in the human rights situation. He did not think that the fact that the Sub-Commission no longer dealt directly with situations in particular countries diminished its role. The question of the violation of human rights and fundamental freedoms must be seen as offering an opportunity for the Sub-Commission to review the way it approached its mandate and to move towards a more pragmatic approach. It must draw some common characteristics from all the information submitted to it on particular situations with a view to establishing current shortcomings and proposing standards that would ensure better protection of human rights. It might wish to entrust that task to a small working group.

24. NGOs could assist the Sub-Commission in that regard by making less political and more practical statements because, unlike the Commission, the Sub-Commission was composed of experts and not States. He was convinced that under the current agenda item the Sub-Commission could make a useful contribution in several areas, such as the question of the relationship between human rights and international humanitarian law, or the human rights dimension of article 146 of the fourth Geneva Convention.

25. Mr. BOSSUYT said that the new rules imposed on the Sub-Commission by the Commission did not benefit the victims of human rights violations but instead the Governments which committed them. Moreover, he doubted that the 10 minutes allocated to experts to deal with human rights violations in all countries would allow them to make exhaustive and discriminating comments. He would confine his statement to the situation in Iraq, the Middle East and central Africa.

26. Experience in Iraq showed that when armed force was used in defiance of the Charter of the United Nations, the risk of other abuses was high. It was to be hoped that as the Iraqi people recovered their sovereignty, they would also recover the security and respect for human rights to which they were entitled. In the Middle East, where the situation had continued to deteriorate, only policy changes in the parties concerned and the more determined involvement of the international community could lead to a mutually acceptable settlement. As for the crisis in the Sudan, the international community must hold the Sudanese Government responsible for the situation and ensure that the militias could no longer wreak havoc with impunity. There was also a need to keep an eye on the situation in the Democratic Republic of the Congo, which had been devastated by unrest, war, illness and poverty, and to support the reconciliation process taking into account, on the one hand, the fate of the Banyamulenge, the Kinyarwanda-speaking people who had settled a long time ago in the Congo but who were often refused Congolese nationality, and, on the other hand, the armed presence of the Interahamwe, Rwandan militias who had participated in the genocide of the Tutsis in 1994 and who continued to wreak havoc in the Congo and jeopardize Rwanda's security. It was to be hoped that the Arusha Accords would soon bring peace to Burundi and that the international community would at last give assistance to the people of Burundi, which was one of the poorest in the world.

27. Mr. RIVKIN said that although war was undeniably the cause of serious human rights violations, tyranny was still worse. Tyrannical regimes brutally oppressed their people and attacked other countries. If they wanted peace, it was peace on their terms. Aside from the problem that there were too many States which systematically violated human rights, there was now also that of non-State actors who were enabled by globalization and technological progress to commit equally serious violations by attacking civilians, executing hostages and carrying out other absolutely unjustifiable acts.

28. With regard to the question of the lawfulness of the use of armed force, he said that in response to the unprovoked act of war of 11 September 2001, the United States had exercised its legitimate right of defence provided for under international law and the Charter of the United Nations. It had not needed the express authorization of the Security Council for that

purpose. The non-use of force could sometimes exacerbate human rights situations. The regimes which posed the greatest threat to international security were generally the very regimes that oppressed their people, as in the case of the Taliban. Although the current situation in Afghanistan was by no means perfect, the Afghan population, in particular women, now had the possibility of creating conditions for a democratic future.

29. Ms. HAMPSON said if it were not for the fact that the Commission and the Security Council were already dealing with the matter, she would have wanted to discuss the situation in Darfur and express the hope that the Commission would call an extraordinary session. After welcoming some positive developments in the field of human rights, specifically in Sri Lanka and in Turkey, she drew the attention of the Sub-Commission to four situations involving serious human rights violations that were not being addressed by the Commission.

30. In Colombia, the paramilitary threats and attacks against human rights defenders, peace activists and trade unionists had increased: the paramilitaries had allegedly been responsible for the death or disappearance of at least 1,300 people in 2003. The Colombian armed forces had clearly been involved in those acts and were themselves responsible for a significant increase in the number of serious human rights violations. In Indonesia, in the region of Aceh, extrajudicial killings had been committed by the security forces virtually with impunity since 2003, with the introduction of martial law, which had been transformed, as a matter of form, into a state of emergency in May 2004. To discourage them from spreading information on the situation, several NGOs had been listed by the police, and their members had received death threats, while the press was under strict control. In Uzbekistan torture remained systematic. She had serious cause to believe that the three situations she had mentioned revealed a consistent pattern of violations of human rights and fundamental freedoms, and a special rapporteur needed to be appointed in each case. In those three countries, the authorities had always justified their acts since 11 September 2001 as part of the “war on terrorism”, with all that that entailed by way of financial support and freedom of action.

31. She then turned to another problem that was directly connected with the “war on terrorism” - the secret transfer of people from one State to another, often by the agency of a third State. She condemned the many transfers of people sent into United States custody in breach of the rule prohibiting the extradition of individuals to a State where they were likely to be subjected to torture or to be denied due process, as well as the transfer of detainees from one State to another, most often through the intermediary of the United States. She recalled that States had an obligation to protect their nationals, and that while the law allowed for effective measures against terrorism, it did not allow for torture or indefinite detention without access to the courts. Noting that the war on terrorism had tainted even those States with a good human rights record, she said that the prohibition of torture allowed of no exceptions, even limited ones.

32. Mr. SATTAR stressed the usefulness of NGO statements, and urged NGOs to continue to provide information to the Sub-Commission and to make known their views on how agenda item 2 could be handled better. In that connection, he welcomed the proposal by the Minnesota Advocates for Human Rights that a meeting should be organized on the question. Concerning the suggestion by the same NGO that the Sub-Commission should look into the situation of human rights defenders, he said he feared a duplication of efforts, recalling that the

Secretary-General had entrusted the matter to a special representative. He did not believe that the restrictions imposed on the Sub-Commission in connection with the consideration of agenda item 2 were a real handicap.

33. With regard to the humanitarian crisis and human rights violations in Darfur, he hoped that the Commission would investigate the root causes of the outbreak of violence in that region. If, as some people asserted, the tensions were due, at least in part, to the drought caused by global warming, an attempt should be made to tackle those causes. It was to be hoped that the United Nations system would find a way of enabling people to stay in their countries of origin. In conclusion, it would be useful for the Sub-Commission to draft a resolution or declaration referring to the different topics considered under agenda item 2.

34. Mr. PINHEIRO said that human rights violations occurred everywhere and that it was very difficult not to mention a country's name when dealing with the subject. Rather than lamenting its powerlessness, the Sub-Commission must see itself as a mediator between States, which were supposed to protect human rights but which sometimes violated them, and civil society, which, through NGOs, played a remarkable role in condemning violations committed. It was therefore essential that the Sub-Commission should pay all due attention to the information provided to it by NGOs.

35. Encouraged by the quality and number of statements made on agenda item 2, he endorsed the suggestions made by experts with a view to establishing prevention mechanisms and setting up a small working group to study how to improve the consideration of agenda item 2. The suggestions made by the Minnesota Advocates for Human Rights were also interesting.

36. Ms. CHUNG said she would address the question of trafficking in persons under agenda item 2 given that it was spreading in an alarming fashion and constituted one of the most serious cases of a consistent pattern of violations of human rights and fundamental freedoms. She welcomed resolution 2004/45 adopted by the Commission on the subject, as well as the appointment of the Special Rapporteur, Ms. Johnson Sirleaf. She referred to the situation of more than 2 million persons who were trafficked in the world each year, and in particular the growing number of young girls from developing countries and economies in transition who were the victims of sexual exploitation in Asia and Eastern Europe.

37. Noting that the many initiatives undertaken by NGOs and governmental and intergovernmental institutions all over the world to address the various aspects of trafficking had not ameliorated the situation, she considered it necessary to redouble efforts to ensure better coordination of the activities under way, to make provision for measures which were legally binding on States and to carry out a more in-depth study on the root causes of the problem, namely the lack of security and gross inequalities within and between countries. The Sub-Commission should continue to work on the issue, in particular on the causes of trafficking, the means of preventing it, and mechanisms to combat it at the disposal of the United Nations.

38. Mr. ALFREDSSON said that although agenda item 2 was still important because it allowed NGOs, by expressing their concerns, to make a useful contribution to the work of the Sub-Commission, it must be admitted that it no longer carried the same weight in the

Sub-Commission's deliberations, not only because of Commission resolution 2004/60 but also because of the increasing number of monitoring procedures within the system. Virtually all the human rights violations reported by NGOs were dealt with under other procedures, and there was no need to repeat what was done elsewhere.

39. The Sub-Commission's task was to see whether applicable international standards were adequate and how to remedy any shortcomings. Mr. Salama's suggestion that a small working group should be set up to consider those issues was interesting. Also, perhaps the Sub-Commission should not focus solely on the negative aspects of the human rights situation in different countries but also consider the positive aspects, for example new laws drafted and institutions established, initiatives in the area of human rights education, etc.

40. Mr. CHÉRIF said that the question of the violation of human rights and fundamental freedoms remained without doubt one of the most important items in the work of the Sub-Commission. The picture portrayed was rather gloomy and imbued with pessimism and a feeling of powerlessness. But the conclusions presented by the experts, while harsh and realistic, were not discouraging. More than ever before it was necessary to face up to the situation with greater lucidity and commitment and to work together to promote the rule of law in countries and to uphold legitimacy at the international level.

The meeting rose at 1 p.m.