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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-seventh session

SUMMARY RECORD OF THE 12th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 5 August 2005, at 10 a.m.

Chairperson: Mr. KARTASHKIN

later: Ms. O'CONNOR
(Vice-Chairperson)

later: Mr. KARTASHKIN
(Chairperson)

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

ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 4) (continued)
(E/CN.4/Sub.2/2005/16, 17 and Add.1, 18, 19 and Corr.1 and 2, 20 and Add.1, 21, 23, 24 and 25; E/CN.4/Sub.2/2005/NGO/1, 6, 11 and 22; E/CN.4/Sub.2/2004/21, 26 and Corr.1 and 27; E/CN.4/Sub.2/2003/12/Rev.2 and 38/Rev.2; E/CN.4/2005/25 and 91; E/CN.4/2005/WG.18/2)

1. Mr. BIERWIRTH (Office of the United Nations High Commissioner for Refugees) said that the close cooperation between UNHCR and the Sub-Commission was based on the multifaceted linkages between refugee issues and human rights and the perception that the refugee experience was affected by the degree of respect by States for human rights and fundamental freedoms. The work on the draft principles on housing and property restitution in the context of the return of refugees and internally displaced persons was an excellent example of the collaboration between a human rights body and UNHCR, as well as of the Sub-Commission's standard-setting role and the interplay between international human rights, refugee and humanitarian law. The Special Rapporteur deserved thanks for his participatory approach, in particular his consultations with UNHCR. The draft principles would be an important tool in the planning and implementation of policies and programmes concerning repatriation, return and sustainable integration. UNHCR would distribute the draft principles to its staff and its governmental and NGO partners and include them in its relevant training programmes.

2. However, the work on that complex subject had not come to a close. There was still a need for the more comprehensive commentary on the draft principles whose production had been prevented by time and resource constraints. Such a commentary, perhaps in the form of a handbook, would help to render the draft principles operational. It should include best practices and lessons learned and also address the treatment of the topic in peace and repatriation agreements, as well as reflecting national restitution and compensation schemes.

3. Mr. INGRAM (World Bank) said that the World Bank had accepted the invitation to participate in the high-level task force on the implementation of the right to development because it could contribute as a development institution to the creation of the necessary conditions for the realization of human rights. As a result, the Bank's institutional thinking about human rights had evolved further: it recognized that human rights principles could be applied in a more strategic way without creating new conditionality or new legal obligations. It had therefore begun an internal review process to relate key human rights to its activities and integrate them in existing tools and instruments. It was also conducting research on the connections between the provision of human rights and positive development outcomes. The Bank's Poverty and Social Impact Analysis was one of the policy instruments discussed with the task force which could be used to secure positive development results.

4. The World Bank regarded debt relief as an important means of promoting debt sustainability while providing resources for the attainment of the Millennium Development Goals in the poorest and most heavily indebted countries. But countries receiving debt relief must have sound public-expenditure management systems and standards of governance to ensure

that the resources saved were spent effectively, especially on growth programmes to help the poor. It was essential that the International Development Association should be compensated for any shortfalls resulting from debt forgiveness in order to preserve its financial capacity to serve the resource needs of the poorest countries.

5. Corruption was recognized by the World Bank as one of the greatest obstacles to attainment of the Millennium Development Goals; it agreed with the Special Rapporteur on the topic that corruption among political institutions was often associated with bad performance and neglect of human rights. But the Bank viewed corruption less as a cause of non-accountable government as a result of it. It was the failure to uphold certain key human rights principles which created the conditions for corruption in the first place. That distinction between cause and effect was important, because it focused attention on the wider issues of accountability and transparency. The Bank therefore supported calls to strengthen the role of civil society and the media in that connection.

6. Turning to the Social Forum, he said that economic growth was indispensable to the efforts to eradicate poverty but was not sufficient in itself. That was why the World Development Report 2006 was devoted to the issue of equity, especially the provision of equal opportunities. Through the joint review of the poverty reduction strategy papers process, conducted in conjunction with the International Monetary Fund (IMF), the Bank was trying to identify entry points in its policy instruments for the integration of human rights recommendations. It was aware that it was thus operating in areas in which Governments already had significant human rights treaty obligations which had to be taken into account in policy design and implementation.

7. Ms. PONCINI (International Federation of University Women) said that the various development instruments were the most important elements in the work on the right to development, for they facilitated the enactment of national legislation and policies. However, such instruments had the shortcoming of being largely founded on the traditional paradigms which ignored gender perspectives and the contributions made by women to economic growth. National statistical data disaggregated by sex and age were essential to the impact assessment studies mentioned by Mr. Salama at an earlier meeting.

8. The central role of women in the realization of the right to development and the empowerment of women as an effective means of combating poverty and stimulating sustainable development, both mentioned in General Assembly resolution 56/150 on the right to development, had not been developed in Ms. O'Connor's working paper (E/CN.4/Sub.2/2005/23). Mr. Salama was right to argue that the work on the topic should have built on the work done by other bodies: for example, the Millennium Development Goals and poverty reduction strategy papers regarded women's empowerment as a principal means of poverty eradication.

9. The International Federation of University Women proposed that the Sub-Commission should consider the preparatory documents for Beijing + 10 produced by the Economic Commission for Europe, which dealt inter alia with gender-sensitive budgeting. There was in fact a growing recognition that macroeconomic policy played an important role in improving

living standards and opportunities, in particular for women, attaining equality in the use of public resources, and achieving governmental objectives such as transparency, efficiency and accountability. Most importantly, macroeconomic policy was an effective means of mainstreaming gender issues.

10. The Sub-Commission might also look at the digital divide in terms of women's participation and in the light of the World Summit on the Information Society.

11. Ms. PIA (Ius Primi Viri) said that it was a formal task of education to bring out the potential of the human genome as a means of discovery of oneself and the surrounding world. The failure to deliver such education created serious emotional conflicts in the human brain and seriously damaged all of mankind. All people needed to be aware of the biological drives without which they could not exist.

12. Ius Primi Viri was proposing a meeting on "Education for Human Dignity: a scientific methodology for expressing the human genome's universal potential" with a view to defining a methodology to dispel the existing educational chaos, which provided no incentives for students to learn about themselves and their environment. Such lack of motivation could result in psychopathologies and drug and other addictions. Education must be used to motivate the life of every individual and free him or her from the slavery of conditioning stemming from arrogance or ignorance. The primary aim of education must be to secure awareness of dignity, freedom, justice and the joy of living.

13. Mr. AHMED (Bangladesh) said that the view accepted by Ms. O'Connor in her working paper that human rights instruments addressed the obligations of a State to its citizens and not obligations between States might have been accepted in the past but was no longer true in a globalized world. Human rights did not end at the political boundary of a State; what a State did inside and beyond its boundaries might affect the rights of other people.

14. The observation in the working paper that the identification of ways to infuse human rights values and principles into the development process would better serve the realization of the right to development was a useful idea. It was also being pursued elsewhere: in the poverty reduction strategy papers, for example, which were based on an extensive process of consultation.

15. With respect to guidelines on implementation, the working paper emphasized that the Sub-Commission should continue to seek ways of mainstreaming human rights into development and made a number of recommendations in that connection. Such issues were indeed important at the national level, but the need was to explore their integration into an international compact.

16. The section on the principles for development partnership emphasized national development programmes, and the paper regarded the topic of donor obligations as controversial, ignoring the notion of the interdependence of the global community. But the World Trade Organization had explicitly recognized the fact that the policies of one State might affect another. The Sub-Commission could not ignore the body of legal opinion emerging on that subject. The report of the open-ended Working Group on the Right to Development (E/CN.4/2002/28/Rev.1) contained many interesting ideas which might usefully be pursued.

17. In view of the indivisibility of all human rights, a holistic approach should be taken to the right to development, for without that right all other human rights were elusive. It would be useful to construct an international legal instrument on the right to development, and the identification of parameters and guidelines relating to that right must be initiated without delay.

18. Mr. BENGOA (Chairman-Rapporteur) introduced his report on the Social Forum (E/CN.4/Sub.2/2005/21). The list of participants in section I of the report showed the breadth of the participation in the Social Forum, which had included voices from the poorer parts of the world rarely heard in the United Nations, and the interest taken by important human rights and other international organizations. The point was an important one, because the aim of the Social Forum was to provide a space for dialogue among all the actors. That space needed to be expanded, for some leading actors were still absent; it was also vital for the Social Forum to be attended by government officials responsible for international cooperation programmes and, in particular, poverty issues.

19. The Social Forum had been structured around three panels. The main conclusions of Panel 1 (section II of the report) was that the participation of poor people and their organizations was essential to poverty eradication. Panels 2 and 3 (sections III and IV) had stressed the lack of accountability mechanisms, without which economic growth was impossible. One of the most important of the Social Forum's conclusions and recommendations (section V) concerned the need for accountability mechanisms to be cross-cutting. The Social Forum had also discussed its future and concluded that the context of reform of the United Nations should be used to find ways of maintaining the space for dialogue which the Social Forum offered. In 2006 the Social Forum would continue with the same topic but focus more closely on poverty eradication, the right to participation and the role of women.

20. Mr. SALAMA said that he would welcome some indication from the Chairman-Rapporteur as to how the Social Forum could feed into both economic, social and cultural rights and the right to development, which were the topics which it mainly addressed. He had been struck by the similarities between the Social Forum and the task force on the right to development: at each session they both focused on one element of the whole issue of development, poverty and human rights and both tried to create a dialogue among all the actors involved. It was clear that the same issue could be addressed from many different perspectives; it was therefore important for all human rights bodies to ensure that their mandates complemented each other. In the case of the Social Forum and the task force, he suggested that the Social Forum should choose to discuss themes already accepted by the task force; such discussion would enhance the task force's work.

21. He welcomed the comments made by the observer for Bangladesh on Ms. O'Connor's working paper and would like to know whether he thought that the "international compact", or legally binding instrument, needed to be a single instrument. Was not the approach outlined by the representative of the World Bank a legally binding approach without being based on a legally binding instrument? There would be no need for a new international compact if the existing legally binding instruments could be re-engineered.

22. Mr. SATTAR said that the Social Forum adopted a uniquely effective method of work. Victims of poverty testified to the effects that the lack of economic and social rights had on their lives. Experts then spoke on selected subjects, setting the stage for informed discussion by

members of the Sub-Commission, representatives of governments and NGOs. The 2005 meeting had been notable for the debate on growth with accountability, at which representatives of the World Bank, IMF and the United Nations Development Programme (UNDP) had demonstrated their organizations' commitment to poverty reduction and had listened receptively to criticism. The Social Forum, as the main forum for the integrated discussion of economic, social and cultural rights, should be given as much time to meet as other intersessional working groups. The reform process of the human rights mechanism should rectify the current arrangements, which were discriminatory.

23. Ms. O'CONNOR endorsed Mr. Sattar's comments. It had been refreshing to see the meeting between people who worked to eradicate poverty and representatives of the international financial institutions, who had accepted critical assessments of their work and listened with respect to the views expressed. It had been clear that many points were being understood for the first time by some of the representatives and she hoped that the partnership of mutual respect would be maintained. She wondered whether donors had a similar understanding of the need for dialogue. Projects should not be imposed; there was no one model of development that would suit every situation. As for the question of whether a legally binding document was required, as suggested by the observer for Bangladesh, she noted that every salient aspect of the right to development was already covered by every other international human rights instrument. If even a quarter of the principles enunciated in the existing documents had been translated into reality, there would be no need to talk about a right to development at all. The real question was therefore whether the political will existed. Existing legally binding documents should be assessed for their effectiveness.

24. Mr. CHEN said that the Social Forum performed a very valuable function. He would, however, like to see the process of analysis extended to the relationship between economic, social and cultural rights, on the one hand, and civil and political rights, on the other. The Social Forum should also provide a sufficient amount of documentation before each session, so that NGOs and other participants could prepare properly. More information should also be provided on the Forum's website. Lastly, he agreed with Mr. Sattar that the Forum should be allotted a longer session.

25. Ms. PARKER (Minnesota Advocates for Human Rights), after expressing strong support for the Social Forum, drew attention to the common thread running through all the reports and papers presented under agenda item 4: the right to participation. That thread had run through the discussions of the Social Forum, as well. A way of integrating all the various issues should be sought, given the similarities that existed.

26. Mr. SOLANO ORTIZ (Costa Rica) said that the 2005 session of the Social Forum had been most stimulating. The active participation by the World Bank, whose representative had put forward ideas for further action that it might take, had been particularly welcome. Different as were the mandates of the World Bank and the Social Forum, the two could undoubtedly complement each other. Dialogue between the two should enable them to maximize efforts to combat poverty and encourage development through improved human rights implementation.

27. In the 1990s, some regional development banks had incorporated in their programmes such factors as the environment, access to justice or conflict resolution that had formerly been considered inappropriate. Yet those factors had been crucial to the medium and long-term

success of their financial activities. In the same way, the Social Forum, the Working Group on the Right to Development and the high-level task force on the implementation of the right to development could play a fundamental role in building bridges with such bodies to their mutual benefit. There was ample evidence of a connection between poverty eradication, development and human rights. The Bank would therefore be aiding financial progress by including the human rights perspective in drawing up its policies. The many-faceted nature of poverty required a multisectoral approach; and the promotion of human rights was an essential factor in improving the quality and sustainability of development. The Social Forum should continue with its work.

28. Ms. MBONU said that the Social Forum was unique among international institutions, in that victims of poverty came to express their views in person. Such a modus operandi was particularly valuable, given the presence of representatives of IMF and the World Bank. It was thus all the more regrettable that - owing, perhaps, to budgetary restraints - few victims of poverty had been able to attend. Secondly, the Social Forum, to fulfil its potential, needed a follow-up procedure. The outcomes from the discussions by expert panels should be presented to national policy makers, with a view to achieving a real effect.

29. Mr. BENGUA said that, in his experience, many aspects of United Nations activities were regulated by negotiation rather than dialogue: people approached an issue with a set position and negotiated a compromise. With the Social Forum and other human rights bodies, however, there was no hierarchy or decision-making, so dialogue was possible and the system was able to absorb new ideas. He therefore urged those responsible for United Nations reform to leave open the possibility of dialogue. That approach had borne fruit with, for example, the growing willingness of the World Bank and IMF to take into account the views of the beneficiaries of their policies. There was thus no duplication with the work of the task force, as Mr. Salama feared. The Social Forum approached the issues in a more holistic way. Lastly, he assured Mr. Chen that all the Social Forum's documentation could be found on its website.

30. Ms. HAMPSON said it had always been accepted that the dissemination of the Universal Declaration of Human Rights had a vital part to play in human rights education. She drew the Sub-Commission's attention to the ban issued on 5 July 2005 by the Supreme Council for Islamic Affairs of Maldives on possession of the Universal Declaration, or a translation of it, on the grounds that it was inconsistent with the State's Constitution. She welcomed the robust response by the Human Rights Commission of Maldives and, above all, by the Government of Maldives, which had stated that the Universal Declaration honoured Islamic values and principles and that it was unthinkable to ban international human rights standards.

31. Ms. WARZAZI, introducing the report of the sessional working group on the effects of the working methods and activities of transnational corporations on the enjoyment of human rights (future E/CN.4/Sub.2/2005/22), said that much discussion had been devoted to the future of the sessional working group. Some participants had said that the issues should be discussed under agenda item 4, but the majority had been in favour of retaining the sessional working group in its current form. Other discussions had centred on the protection of individuals from the possible negative consequences of the activities of transnational corporations; the collection of data on human rights and companies' rights; the role of the State in protecting human rights; the effect of trade agreements on human rights; the drafting of human rights legislation in

relation to the activities of transnational corporations; the compilation of all available information in order to assess the impact of business activities on human rights; the need for human rights education for managers in the private sector; and the identification of appropriate solutions where human rights violations occurred as a result of trade activities. The sessional working group's recommendations concerning the agenda would shortly be circulated in a draft resolution. The members of the working group took pains to respect the decisions of the Commission in conducting their work.

32. Mr. DECAUX noted that the Commission had, in the wake of a report by the High Commissioner for Human Rights, appointed a Special Representative for a period of two years with a view to obtaining an overview of the situation. It was encouraging that in his own country, France, there seemed a growing awareness in both business and trade union circles of the importance of the issue. As for any amendments to the agenda, the Sub-Commission should bow to the Commission's wishes and should not complicate the issue by interfering with the work of the Special Representative.

33. Mr. SALAMA said that the sessional working group had no intention of bypassing the Commission, but the Sub-Commission must make every effort to avoid the perception that it might wish to do so. The time had come to take stock and allow time for reactions to the draft standards to be heard. There was no question of the Sub-Commission wishing to pre-empt the Commission's role by assuming any additional standard-setting or monitoring responsibilities. The agenda, however, should be retained.

34. Mr. BENGUA said that the topic was one of exceptional importance, as attested in the specialized literature. The topic should undoubtedly be kept on the agenda. The Sub-Commission had not dealt with the topic as diplomatically as it should have done. Any reform of the human rights mechanism must take account of the difficulty of dealing with the subject; yet, if it were removed from the agenda, there was a danger that it would be lost from view. Pressure to keep the issue on the agenda must be maintained.

35. Mr. CHEN recalled that Mr. Alfonso Martínez and Ms. Chung had made valuable suggestions about the future activities of the working group. The group should, perhaps, consider a number of other issues: the adverse effects on the environment of the activities of transnational corporations, especially in developing countries; the refusal of some corporations to allow their workers to form trade unions; and corruption in their activities.

36. Ms. WARZAZI, speaking in her personal capacity, said that it was very important to keep the issue of transnational corporations before the Sub-Commission. It was relevant to a number of the Commission's special procedures, such as the Working Group on the Right to Development. Those members who felt that the sessional working group on transnational corporations should not continue would have an opportunity to express their views later.

37. The CHAIRPERSON said that the Sub-Commission had concluded its debate on agenda item 4.

SPECIFIC HUMAN RIGHTS ISSUES:

- (a) WOMEN AND HUMAN RIGHTS
- (b) CONTEMPORARY FORMS OF SLAVERY
- (c) NEW PRIORITIES, IN PARTICULAR TERRORISM AND COUNTER-TERRORISM

(agenda item 6) (E/CN.4/Sub.2/2005/35)

38. The CHAIRPERSON invited Ms. Frey, Special Rapporteur on the prevention of human rights violations committed with small arms and light weapons, to present the revised draft principles on that subject (E/CN.4/Sub.2/2005/35, annex).

39. Ms. FREY (Special Rapporteur) said that she had not been able to submit her final report at the current session, as planned. She had received 33 responses from Governments to her questionnaire on small arms, and needed more time to analyse them. The responses provided a valuable preliminary understanding of State practice related to regulation of small arms, training in their use, criminal investigation, storage of weapons and data collection. The final report would now be submitted to the Sub-Commission at its fifty-eighth session.

40. She had modified the draft principles on the prevention of human rights violations committed with small arms and light weapons in the light of the comments made by Sub-Commission members the previous year. The revised principles were based upon the primacy of the right to life in international law. They now consisted of two sections, one dealing with the obligations of State officials and the other with the due diligence of States to protect human rights by preventing or reducing arms-related violence committed by non-State actors. Guns in the hands of private actors posed a serious threat to human rights in all States. States should take reasonable steps to regulate small arms and investigate and prosecute crimes committed by armed individuals or groups. Many States had already taken measures to regulate the supply, possession, safe storage, transfer and use of small arms and to prosecute their criminal or negligent use.

41. The draft contained five new principles (principles 10-14) governing State action to curb abuses committed by private actors using small arms. Principle 10 stated that Governments must enact and enforce licensing requirements which would take into account the applicant's age, mental fitness, any prior criminal record or acts of domestic violence, as well as the stated reason for owning small arms. Principle 11 indicated that Governments must enact and enforce national manufacturing controls, including a requirement for a permanent mark on each weapon showing the manufacturer, country of manufacture and serial number. Principle 12 stated that Governments must investigate and prosecute persons responsible for the illegal manufacture, possession, stockpiling or transfer of small arms. Principle 13 provided that Governments must introduce effective disarmament, demobilization and reintegration programmes in post-conflict situations, paying particular attention to the danger of domestic violence against women and children. Principle 14 stated that Governments must prohibit international transfers of small arms which were likely to be used to commit serious human rights violations.

42. International discussions were taking place at a global level on the need to reduce gun violence and prevent the misuse of small arms by both State and non-State actors. The Sub-Commission should reaffirm the primacy of human rights in national laws, policies and actions regarding small arms and light weapons.
43. Ms. O'Connor, Vice-Chairperson, took the Chair.
44. Mr. DECAUX noted that there had been recent European initiatives on the marking and traceability of weapons. A group of NGOs had drawn up a draft framework convention on international arms transfers.
45. In draft principle 7, it was important to decide exactly what was meant by terms like “tactical situations” or “means of settlement” and make sure that they were adequately reflected in all the working languages of the Sub-Commission.
46. In her commentary on draft principle 12, Ms. Frey referred to the granting of immunity from prosecution for people who voluntarily surrendered illicitly held arms. However, it should be made clear that they would be granted immunity only in respect of possession of the weapons concerned, not in respect of any crimes they might have committed using them.
47. He had a number of linguistic and other comments to make, which he would submit to Ms. Frey in writing.
48. Ms. HAMPSON said that it would be necessary to go through the wording of all the draft principles, carefully coordinating all the language versions to ensure that no distortions arose in translation. Perhaps an informal meeting could be convened for that purpose. She asked for a further revised version of the draft guidelines to be appended to Ms. Frey’s final report.
49. Mr. BENGGOA asked whether the Sub-Commission would have access to government responses to Ms. Frey’s questionnaire and, if so, in what form - as submitted by the Government, or analysed in some way?
50. Draft principle 11 referred to controls over the manufacture of small arms. However, he wondered whether merely marking a weapon at the time of manufacture was sufficient. Such marks could easily be filed off, as criminals well knew. Similarly, in draft principle 14, it might be difficult for Governments to predict the circumstances in which arms were “likely to be used to commit serious human rights violations”.
51. Mr. PINHEIRO said that, since children and adolescents were the principal victims of murders involving small arms in many countries, restricting access to such weapons could be seen as protecting the rights of children. Ms. Frey’s study was a valuable contribution to the study of the human rights aspect of armed violence, as opposed to the law enforcement aspect.
52. Mr. CASEY said that he could not agree with Ms. Frey’s assertion that guns in private ownership always posed a threat to human rights. In some situations, gun ownership might actually prevent human rights violations - a higher prevalence of gun ownership might have prevented some of the massacres in Bosnia in the 1990s, for example. He could not accept draft principle 10, which obliged States to introduce licensing for gun ownership. It was essential to take into account the traditions and constitutional requirements of each State.

53. Ms. HAMPSON said that Canada had a higher rate of gun ownership than the United States of America, but a lower murder rate, so gun ownership alone was clearly not the only factor at work. However, she could not agree that greater gun ownership would have helped to protect human rights in Bosnia: the problem was precisely that the former Yugoslavia had had a “citizens’ army”, so that people who had completed their military service still kept a weapon in their homes.

54. Mr. RAJKUMAR (Pax Romana) said that a number of NGOs had had the opportunity to convey their concerns to Ms. Frey at a meeting earlier that morning. NGOs had received her questionnaire on small arms, light weapons and ammunition, and would submit their replies as a contribution to the study.

55. NGOs were particularly concerned by the effects of armed violence, rather than the purely legal aspects. Someone, somewhere in the world, was killed every minute by small arms. People were being killed in Guatemala because the system of transitional justice was not yet capable of tracking down all illegal arms, and even in London a Brazilian national had been mistakenly gunned down by armed police. More and more frequently, law enforcement officials bore arms as part of the fight against terrorism, but without proper training.

56. Ms. FREY (Special Rapporteur) said she hoped that it would be possible to hold the informal meeting which Ms. Hampson had suggested. In reply to Mr. Bengoa, she said that the questionnaire results would be presented in a form which would show both individual responses and comparisons between different responses.

PREVENTION OF DISCRIMINATION:

- (a) RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA
- (b) PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES
- (c) PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

(agenda item 5) (E/CN.4/Sub.2/2005/27-31; E/CN.4/Sub.2/2005/WP.1; E/CN.4/Sub.2/2005/NGO/8, 17, 31, 32 and 34; E/CN.4/Sub.2/2004/28 and 29; E/CN.4/Sub.2/AC.4/2005/5; E/CN.4/2005/81)

57. Mr. YOKOTA introduced his preliminary working paper on discrimination against leprosy victims and their families (E/CN.4/Sub.2/2005/WP.1). Effective multidrug therapy had been available free of charge since the 1980s, under the auspices of the World Health Organization (WHO). It was estimated that 14 million people had been cured of the disease, and it was now endemic in only nine countries.

58. However, discrimination against leprosy-affected persons - i.e. people with the disease and those who had been cured, and their families - was still widespread, affecting an estimated 100 million people in total. Leprosy-affected persons were isolated in hospitals and leprosy facilities, neglected and rejected, and denied health care and social welfare services.

They suffered discrimination in family, social and public life and in employment. Leprosy was often associated with poverty, because affected persons were not allowed to work and were forced to survive by begging. People with leprosy often did not have the access to health care and education which would enable them to avoid the disfiguring effects of the disease, and that further increased their stigmatization.

59. He had included a case study on the situation of leprosy in his own country, Japan: further countries would be studied in his final report. He had attended three international conferences on leprosy-related discrimination in South Africa, Brazil and India, at the last of which he had interviewed a number of former leprosy patients.

60. His conclusions were the following: leprosy was curable and medicines for treatment were available free of charge; it could not usually be transmitted by ordinary human contact; the forced institutionalization of leprosy patients was a serious violation of basic human rights and fundamental freedoms, as well as the dignity and security of the person; discrimination against leprosy patients, former patients and their families persisted; the Governments of the few remaining leprosy-endemic countries could achieve a great improvement by working with WHO and other competent agencies, including NGOs; leprosy-related discrimination was based on ignorance, indifference and irresponsible attitudes and could be countered by education.

61. He recommended that all Governments should abolish the forced institutionalization of leprosy patients and provide effective, prompt and free treatment. They should compensate former patients who had been forcibly hospitalized. They should immediately prohibit discrimination of any type against leprosy victims and their families, and include leprosy education in school curricula.

62. The Sub-Commission should consider requesting the Commission on Human Rights to appoint a special rapporteur on leprosy and human rights. Regional seminars should be organized to hear the views and experiences of former patients and their families, as well as physicians, social workers, experts, NGOs and government officials.

63. Ms. HAMPSON said that, while she welcomed Mr. Yokota's paper, she must point out that a disease was not, in itself, a human rights violation, although there might be a violation of the individual's right to health care or rehabilitation, or of the State's obligation to prevent discrimination. It would be much more useful to prepare an analysis of discrimination on the grounds of illness in general, which would cover not only leprosy, but also tuberculosis or mental illness, for example.

64. Mr. PINHEIRO said that the Sub-Commission had an important role to play in bringing to light the situation of the forgotten victims of human rights violations. Leprosy was a human rights problem as well as a problem of public health. Mr. Yokota's paper might well prove the starting-point for a general study on discrimination on medical grounds.

65. Ms. CHUNG said that it would be helpful to consider whether discrimination against leprosy victims was related to discrimination based on descent and work, or caste or class. Leprosy raised not only medical issues, but also important sociological questions based on bias and social conception of the disease. It would also be useful to pay special attention to women

and children affected by leprosy. She looked forward to case studies of different countries which had different experiences rooted in culture, religion and history, including the colonial past.

66. Mr. CASEY agreed that disease was not a human rights violation, although widespread ignorance of an illness, such as HIV/AIDS, often led to discrimination. However few diseases had been viewed for so long or so universally as a punishment or visitation from the divine, as leprosy had. That disease was in a category of its own, and it was therefore appropriate for the Sub-Commission to single it out for special treatment. He urged Mr. Yokota to continue with his work in that area.

67. Ms. HAMPSON, in response to Mr. Pinheiro's comments, said there was a danger that if the Sub-Commission focused on one specific medical condition, it would adopt guidelines and recommendations that would actually be counterproductive in relation to other conditions. A conceptual examination of the problem was necessary, since, so far as she knew, no study had yet been carried out on discrimination based on medical illnesses generally. That could be followed by both general guidelines and recommendations and, if necessary, guidelines and recommendations specific to particular conditions. Case law from regional and international human rights mechanisms showed that there was a serious worldwide problem with discrimination, in varying forms, against those suffering from mental illness, for example. Her objective was not to reduce the work on leprosy, but rather to ensure that the Sub-Commission approached the subject in a coherent way.

68. Mr. SATTAR said that it was difficult to think of other diseases which had historically led to, and, despite enlightenment, continued to result in discrimination of such magnitude as afflicted leprosy victims. Therefore, that particular disease merited continued study and special emphasis. There could be no objections to proposals for studies of other cognate aspects, but the Sub-Commission should encourage Mr. Yokota to continue his study.

69. Ms. MBONU said that a disease which affected 100 million voiceless people warranted the Sub-Commission's attention. There were global forums for HIV/AIDS, but leprosy sufferers had been forgotten. A lot had to be done in terms of education to combat ignorance which led to stigmatization of leprosy victims. A special rapporteur should be appointed to raise awareness. Mr. Yokota should be given all the support necessary to carry out his study.

70. Mr. YOKOTA said that the only point at issue in the debate appeared to be whether he should concentrate on leprosy alone or expand the study to cover all disease-related discrimination. He strongly believed that leprosy had a unique stigma attached to it, which led to serious human rights violations. The nature of the discrimination was much more serious and widespread, and some patients were even disowned by their families. It would therefore be worthwhile to concentrate on leprosy initially, but he would take account of the issues raised by Ms. Hampson and would perhaps touch on other illnesses.

71. Mr. Kartashkin, Chairperson, resumed the Chair.

72. Mr. LE BLANC (Dominicans for Justice and Peace), speaking also on behalf of the Dominican Leadership Conference and Franciscans International, drew the Sub-Commission's attention to the escalation of religious intolerance and discrimination on the basis of religion, which was a major cause of divisions, conflicts and ongoing violence in many parts of the world.

Pakistan was an example of a country where systemic religious discrimination was embedded in the legislation, promoting a culture of intolerance, division and extremism. The National Commission for Justice and Peace of Pakistan had recently stated that the overall conditions affecting the legal, civil, economic and constitutional rights of minorities continued to marginalize them, and the systematic violation of their rights remained unchecked. The Government's attempts to resolve the key issues of discrimination were half-hearted.

73. Although Pakistan had signed the International Covenant on Economic, Social and Cultural Rights, it had yet to ratify it. It was also regrettable that Pakistan had not yet signed or ratified the International Covenant on Civil and Political Rights or its Optional Protocols. He called on the Government of Pakistan to consider ratifying all those instruments.

74. His organization also encouraged the Government of Pakistan to invite the Special Rapporteur of the Commission on Human Rights on freedom of religion or belief to examine the situation in Pakistan and to assess any developments, especially with regard to the implementation of the recommendations made by the Special Rapporteur following his only visit to Pakistan in 1996.

75. Mr. SHARAFEDDIN (International Organization for the Elimination of All Forms of Racial Discrimination), speaking also on behalf of the Arab Lawyers Union, said that it was now more than a year since the International Court of Justice had ruled that the wall erected by Israel in Palestinian territories was illegal and should be removed. However, Israel had continued construction of the wall and had created further challenges to the rule of law and world peace by extending the wall to Jerusalem. Israel continued to defy Security Council and General Assembly resolutions declaring any change to the status of Jerusalem to be illegal and demanding that Israel rescind all actions taken in that respect. Nonetheless, Israel continued to be regarded as a democracy which respected the rule of law, and was allowed to persist in its violation of the rights of the Palestinian people and the Charter of the United Nations, the Geneva Conventions and humanitarian law, while other States parties failed to take any action in discharge of their obligation under those conventions to ensure respect for their provisions.

76. The double standard applied by certain members of the United Nations in terms of the enforcement of resolutions was seriously affecting the credibility of the Organization. One standard should be rigorously applied: respect by all for the rule of law and the Charter of the United Nations and resolutions of its organs.

77. Mr. McKENZIE (Innu Council of Nitassinan), speaking also on behalf of the Congress of Aboriginal Peoples, said it was unfortunate that consensus had not yet been reached on the draft United Nations declaration on the rights of indigenous peoples, which had been the subject of discussions between States and indigenous peoples for at least 20 years, and negotiations for the past 10 years. He commended the initiative taken by Mexico at the previous session of the Commission on Human Rights, announcing that it would hold a seminar to discuss the draft declaration. Such a forum was necessary to explore alternative working methods in order for the working group on the draft declaration to advance in its discussions.

78. The Permanent Forum on Indigenous Issues had recommended in its latest report that the Commission should adopt creative methods of work with regard to the full and effective participation of indigenous peoples, including the appointment of an indigenous co-Chairperson of the working group to elaborate a draft declaration. He hoped that that recommendation would be addressed at the seminar in Mexico.

79. Ms. THEPHSOUVANH (International Federation of Human Rights Leagues) drew the Sub-Commission's attention to the situation of ethnic minorities in Laos, particularly the Hmong population, which had been subject to violent repression since the Communist Party had come to power in 1975. Thousands of civilians were surviving on leaves and roots in the jungle, unable to farm or build permanent houses for fear of being found and killed by soldiers of the Lao People's Army. Hundreds of Hmong who had turned to the Government in the hope of a normal life had been arrested or had disappeared. In June 2005, approximately 170 Hmong had gone to the authorities to avoid starvation. In spite of eyewitness reports, the authorities denied the facts and would not grant access to any international humanitarian NGOs to assist those Hmong. The absence of transparency had dissuaded other groups from coming out of the jungle. Her organization was also concerned at the violent repression suffered by Christians in Laos.

80. The situation of national minorities in Georgia, particularly Armenians, Azeris, Kurds, Yezids, Chechens and Roma, was also a matter of concern. National minorities were particularly vulnerable to the economic difficulties faced by the majority of the Georgian population, and that situation was exacerbated by their underrepresentation in parliament and other governmental bodies. National minorities must have the possibility of being educated in their mother tongue, but not to the detriment of the State language, which contributed to their exclusion from economic, political and social fields.

81. Certain religious minorities were also victims of violence and discrimination. The privileged relationship between the State and the Georgian Orthodox Church, symbolized by the constitutional agreement of October 2002, led to a difference in status between the religions and contributed to the marginalization of minority religions.

82. Discrimination faced by the Roma minority in the Russian Federation was also a cause for concern. In the context of the upsurge in nationalism and xenophobia in Russia, Roma were stigmatized by both the general population and the authorities, and were the victims of violence, sometimes fatal, by racist and ultra-nationalist groups. Lack of protection, police harassment, destruction of identity papers, corruption, violence, torture and fabrication of evidence by the police were all suffered on a daily basis by the Roma, particularly women. Such violence was also exercised against other minorities, including nationals of central Asia and the Caucasus, but also indigenous Russian peoples. They were further discriminated against in relation to economic and social rights, particularly the right to housing, health and education.

83. Her organization called on the Sub-Commission to draw the attention of the competent United Nations mechanisms to those situations so as to demand that the three Governments concerned cease all repression and discrimination against ethnic and religious minorities.

84. Ms. ALA'I (Baha'i International Community) drew the Sub-Commission's attention to the continuing human rights violations suffered by the Baha'i community in Egypt solely on the basis of their religious beliefs. Many abuses stemmed from Presidential Decree No. 263 of 1960, which had dissolved the community's religious institutions and banned its organized activities, and was still used to justify arrests and keep the community under constant police surveillance. Baha'is could not legally marry and had no recourse in respect of pensions, inheritance, alimony and child custody.

85. Of most immediate concern, however, was the Government's new computerized system for processing national identity cards, which accepted only the three recognized religions: Islam, Christianity or Judaism. As the teachings of their faith prohibited Baha'is from lying about their beliefs, and the new computerized system did not accept the category "other" or allow the possibility of leaving the space reserved for religion blank, Baha'is could not renew their identity cards and risked having their old ones confiscated, and young Baha'is who came of age could not obtain cards at all, and were consequently forced out of universities and the army.

86. The Baha'i community had approached the Government many times to plead for a change in the programming, if not the law, but the Government had refused. Her organization therefore called on the international community for support in urging the Government of Egypt to resolve that situation and grant Baha'i citizens their basic rights and freedoms. She also called on the Sub-Commission to consider the matter in the broader context. It could not be deemed acceptable for a State to demand that its citizens declare a religious affiliation in order to obtain official documents and other rights of citizenship, and it was even more unacceptable if the State restricted the choice to only a few recognized religions.

87. Mr. VALDEZ (American Association of Jurists) said that the tendency not to recognize the rights of indigenous peoples was illustrated by the lack of political will of States to approve the draft declaration on the rights of indigenous peoples. In the Americas, national legislation did not represent or safeguard the interests and particularities of the indigenous peoples, but, rather, discriminated against them and encouraged total assimilation. The struggle of indigenous peoples in defence of their territories and rights was criminalized by States.

88. The Puebla-Panama Plan, Plan Colombia, the establishment of United States military bases, the attempts to establish the Free Trade Area of the Americas, and the free trade treaties promoted by the United States and other industrialized countries all threatened the future of indigenous populations. The serious problems faced by indigenous peoples would not be solved by drafting reports, declaring new decades or establishing working groups so long as a permanent strategy in defence of collective rights was not in place. Conflicts could not be resolved until an international instrument existed and indigenous peoples decided their own fate.

89. At the recent meeting of the Working Group on Indigenous Populations, the representative of Chile had boasted of his country's advances in indigenous matters. However, in reality, Chile had not fulfilled its international commitment to constitutionally recognize indigenous peoples, had not ratified International Labour Organization Convention No. 169, and had repeatedly been accused of violating the American Convention on Human Rights and the International Covenant on Civil and Political Rights. Chile had ignored the numerous protests and recommendations of the international community and United Nations bodies.

90. The struggle of the Mapuche people had been harshly repressed, as demonstrated by the violence exercised against the peaceful demonstrators for the release of Mapuche political prisoners, the hundreds of arrests and the legal proceedings directed against traditional authorities, the dozens of political prisoners and large numbers of people who were forced to live clandestinely for having demanded their rights as a people. Torture, physical abuse, the militarization of Mapuche territories, permanent harassment by the police and excessive State violence were part of daily life in the territories concerned. The perpetrators of the murder of two young Mapuche men were at liberty, as were the killers of more than 3,600 Chileans during the military dictatorship. Extraordinary laws were used to combat the Mapuche movement. The Arauco Malleco Mapuche Coordinating Committee of Communities in Conflict, an organization which demanded the right to self-determination and recovery of usurped territories and promoted a process of community reconstruction, had been pursued using the most sophisticated methods.

91. He called on the Sub-Commission to propose the necessary mechanisms to condemn and stop the efforts of transnational corporations to plunder resources and exterminate indigenous populations, and to regulate their operations so that they did not compromise the survival and future development of those peoples. The Sub-Commission should condemn the repression of the Mapuche people by Argentina and Chile and call for the unconditional release of all political prisoners.

92. Mr. SASAKAWA (Nippon Foundation) said that people affected by leprosy had long been stigmatized, marginalized and without a voice. He invited four cured leprosy victims to share their experiences of the disease and associated discrimination with the Sub-Commission. Gopal and Mary from India, Kofenya from Ghana, and Amar from Nepal had all suffered similar humiliation, social isolation and discrimination. Most had suffered from the disease for a number of years before being diagnosed, and had then spent several years in leprosy hospitals or colonies. People afflicted with leprosy were segregated from the community, and those abandoned by their families were forced to beg for a living. The situation of women was particularly difficult, as in certain cultures they depended on men for a living, but leprosy was considered valid grounds for divorce, and many leprosy-afflicted women were abandoned by their husband. Securing employment was difficult, and cured leprosy victims did not dare tell their employers and co-workers that they had suffered from leprosy. They called on the Sub-Commission to help sufferers of leprosy to fight the stigma and discrimination attached to the disease.

The meeting rose at 1.05 p.m.