



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2005/90
9 December 2004

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sixty-first session
Item 16 of the provisional agenda

**REPORT OF THE SUB-COMMISSION ON THE PROMOTION
AND PROTECTION OF HUMAN RIGHTS**

**Report of Soli Jehangir Sorabjee, Chairperson of the
Sub-Commission at its fifty-sixth session**

Summary

The present report is submitted by the Chairperson of the Sub-Commission on the Promotion and Protection of Human Rights, in accordance with Commission on Human Rights resolution 2004/60. It contains an overview of the work of the fifty-sixth session of the Sub-Commission, held in Geneva from 26 July to 13 August 2004.

Introduction

1. The fifty-sixth session of the Sub-Commission on the Promotion and Protection of Human Rights was chaired by Soli Jehangir Sorabjee (India), member of the Sub-Commission since 1998. The other members of the Bureau were Françoise Hampson (United Kingdom), Antoanella-Iulia Motoc (Romania) and Lalaina Rakotoarisoa (Madagascar) (Vice-Chairpersons) and Paulo Sergio Pinheiro (Brazil) (Rapporteur).

2. Some of the highlights of the session are described in the following paragraphs. The report of the session is contained in document E/CN.4/2005/2-E/CN.4/Sub.2/2004/48.

3. As in previous years, the session of the Sub-Commission was preceded by meetings of three intersessional working groups: on minorities, on contemporary forms of slavery and on indigenous populations. Another pre-sessional meeting, the Social Forum, was held for two days prior to the session on the theme of rural poverty. Two sessional working groups - on the administration of justice and on the working methods and activities of transnational corporations - held two meetings each during the first week of the session.

4. Also as in previous years, the Sub-Commission held a closed meeting with the Expanded Bureau of the sixtieth session of the Commission on Human Rights to exchange views, aimed at improving cooperation between the two bodies. Issues related to the role and working methods of the Sub-Commission were discussed during the meeting.

5. A non-governmental organization (NGO) in consultative status with the Economic and Social Council submitted a formal proposal for inclusion of a new item in the provisional agenda of the Sub-Commission. The proposal was considered but was found unacceptable by the Sub-Commission.

6. The Sub-Commission considered reports submitted by its special rapporteurs under the following ongoing mandates:

Universal implementation of international human rights treaties (E/CN.4/Sub.2/2004/8) (Mr. Decaux);

Housing and property restitution in the context of the return of refugees and internally displaced persons (E/CN.4/Sub.2/2004/22 and Add.1) (Mr. Pinheiro);

Corruption and its impact on the full enjoyment of human rights (E/CN.4/Sub.2/2004/23) (Ms. Mbonu);

Prevention of human rights violations committed with small arms and light weapons (E/CN.4/Sub.2/2004/37 and Add.1) (Ms. Frey);

Human rights and the human genome (E/CN.4/Sub.2/2004/38) (Ms. Motoc);

Elimination of traditional practices affecting the health of women and the girl child (E/CN.4/Sub.2/2004/41) (Ms. Warzazi).

Another Special Rapporteur of the Sub-Commission - on discrimination in the criminal justice system (Ms. Zerrougui) - was not able to present her report at this session.

7. The Sub-Commission examined three final reports prepared by its Special Rapporteurs on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation (E/CN.4/Sub.2/2004/20) (Mr. Guissé); on indigenous peoples' permanent sovereignty over natural resources (E/CN.4/Sub.2/2004/30 and Add.1) (Ms. Daes); and on terrorism and human rights (E/CN.4/Sub.2/2004/40) (Ms. Koufa).

8. Other reports and working papers considered by the Sub-Commission included:

The issue of the administration of justice through military tribunals (E/CN.4/Sub.2/2004/7) (Mr. Decaux);

The issue of women in prison (E/CN.4/Sub.2/2004/9) (Ms. O'Connor);

The difficulties of establishing guilt and/or responsibilities with regard to crimes of sexual violence (E/CN.4/Sub.2/2004/11) (Ms. Rakotoarisoa);

Non-discrimination as enshrined in article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights (E/CN.4/Sub.2/2004/24) (Mr. Decaux);

Implementation of existing human rights norms and standards in the context of the fight against extreme poverty (E/CN.4/Sub.2/2004/25 and Add.1) (Ms. Motoc, Mr. Decaux, Mr. Yokota and Mr. Guissé, with Mr. Bengoa as coordinator);

The effects of debt on human rights (E/CN.4/Sub.2/2004/27 and Corr.1) (Mr. Guissé);

Discrimination based on work and descent (E/CN.4/Sub.2/2004/31) (Mr. Eide and Mr. Yokota);

Reservations to human rights treaties (E/CN.4/Sub.2/2004/42) (Ms. Hampson);

Human rights and international solidarity (E/CN.4/Sub.2/2004/43) (Mr. Dos Santos Alves);

Poverty as a violation of human rights (E/CN.4/Sub.2/2004/44) (Mr. Bengoa).

9. The Sub-Commission also considered the reports of the following intersessional and sessional working groups:

Report of the sessional working group on the administration of justice (E/CN.4/Sub.2/2004/6);

Report of the sessional working group on the working methods and activities of transnational corporations on its sixth session (E/CN.4/Sub.2/2004/21);

Report of the second Social Forum (E/CN.4/Sub.2/2004/26 and Corr.1);

Report of the Working Group on Indigenous Populations on its twenty-second session (E/CN.4/Sub.2/2004/28);

Report of the Working Group on Minorities on its tenth session (E/CN.4/Sub.2/2004/29 and Add.1);

Report of the Working Group on Contemporary Forms of Slavery on its twenty-ninth session (E/CN.4/Sub.2/2004/36 and Corr.1).

10. The presentation and examination of each report and working paper was followed by an interactive dialogue, in which both Sub-Commission experts and observers from Governments and NGOs participated. A heartening feature of the interactive dialogue was the frank and constructive exchange of views. It would be helpful if more time were allowed for this purpose.

11. The Sub-Commission adopted 30 resolutions and 23 decisions on such issues as the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment; extrajudicial, summary or arbitrary executions; discrimination against convicted persons who have served their sentence; the right to food and progress in developing international voluntary guidelines for its implementation; protection of indigenous peoples in time of conflict; systematic rape, sexual slavery and slavery-like practices; and others. Only one resolution - on imposition of the death penalty on civilians by military tribunals or by tribunals whose composition includes one or more members of the armed forces - was adopted by a vote; the rest were adopted by consensus.

12. In view of the directives of the Commission on Human Rights prohibiting the adoption by the Sub-Commission of country-specific resolutions, decisions or Chairperson's statements, the Sub-Commission initiated a process of reviewing and reforming its agenda item 2 relating to violations of human rights in countries. Many NGOs and participants felt that this restriction impeded effective and meaningful discussion and debate about situations of grave and manifest human rights violations in some parts of the world. Consideration of this important aspect of the Sub-Commission's work will continue next year on the basis of a working paper to be prepared by Ms. Hampson, which will contain proposals on the organization, content and outcome of the Sub-Commission's work under item 2. The paper will be prepared in consultation with all Sub-Commission members and will take into account any comments received from States, NGOs and other concerned parties.

13. The Sub-Commission also initiated a study of its methods of work with regard to the choice of subjects and the preparation of reports. The debate will continue next year on the basis of a working paper on this issue to be prepared by Mr. Decaux.

14. The Sub-Commission decided to establish next year a sessional working group with a mandate to elaborate detailed principles and guidelines for the protection of human rights when combating terrorism (decision 2004/109). These will be based on the work of the Special Rapporteur on terrorism and human rights, Ms. Koufa, who submitted her final report on the issue to the Sub-Commission this year.

15. The Sub-Commission extended the mandate of the Sub-Commission's sessional working group on the working methods and activities of transnational corporations for a further three years (resolution 2004/16). A conflicting draft decision calling for the termination of the working group's mandate was ultimately withdrawn.

16. Continuing to perform its basic "think tank" function and to act as a testing ground for new ideas, the Sub-Commission initiated the preparation of working papers and other documents on new subjects such as:

The right to an effective remedy in criminal proceedings (decision 2004/117)
(Mr. Cherif);

The relationship between human rights law and humanitarian law (decision 2004/118)
(Ms. Hampson and Mr. Salama);

The right to an effective remedy in civil matters against violations of human rights by State agents (decision 2004/119) (Ms. Hampson);

Discrimination against leprosy victims and their families (resolution 2004/12)
(Mr. Yokota);

Impact of intolerance on the enjoyment and the exercise of human rights
(decision 2004/108) (Mr. Sorabjee);

Accountability under international human rights law of non-State actors
(decision 2004/114) (Mr. Bíró and Ms. Motoc);

Evaluation of the content and delivery of technical cooperation in the field of human rights (decision 2004/115) (Mr. Alfredsson and Mr. Salama).

17. The Sub-Commission also requested several experts to continue their work on the following subjects:

Administration of justice through military tribunals (resolution 2004/27) (Mr. Decaux);

Women in prison (decision 2004/116) (Ms. O'Connor);

The need to develop guiding principles on the implementation of existing human rights norms and standards in the context of the fight against extreme poverty (resolution 2004/7) (Ms. Motoc, Mr. Decaux, Mr. Yokota and Mr. Guissé, with Mr. Bengoa as coordinator);

The effects of debt on human rights (decision 2004/106) (Mr. Guissé);

Guidelines for the realization of the right to drinking water supply and sanitation (decision 2004/107) (Mr. Guissé);

The right to development (decision 2004/104) (Ms. O'Connor);

The legal implications of disappearance of States and other territories for environmental reasons, including the implications for the human rights of their residents, with particular reference to the rights of indigenous peoples (resolution 2004/10) (Ms. Hampson);

Human rights and international solidarity (decision 2004/111) (Mr. Dos Santos Alves).

18. The Sub-Commission also called upon the High Commissioner for Human Rights to submit an updated report on the issues of systematic rape, sexual slavery and slavery-like practices during armed conflicts (resolution 2004/22).

19. The Sub-Commission recommended to the Commission on Human Rights the appointment of four special rapporteurs of the Sub-Commission for the following three new mandates:

Discrimination based on work and descent (resolution 2004/17) (Mr. Yokota and Ms. Chung);

Non-discrimination as enshrined in article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights (resolution 2004/5) (Mr. Bossuyt);

The difficulties of establishing guilt and/or responsibilities with regard to crimes of sexual violence (resolution 2004/29) (Ms. Rakotoarisoa).

Pending approval by the Commission, preliminary reports on the above issues are to be submitted to the Sub-Commission at its fifty-seventh session in 2005.

20. The Sub-Commission also recommended or requested the Commission on Human Rights:

To study the possibility of extending the annual session of the Social Forum (resolution 2004/3);

To approve the publication of the reports of the Special Rapporteur on the right to drinking water supply and sanitation in all official United Nations languages (resolution 2004/6);

To recommend to the Economic and Social Council the establishment of a voluntary fund to facilitate the participation of grass-roots groups and similarly disadvantaged organizations in the Social Forum (resolution 2004/8);

To recommend to the Economic and Social Council that it authorize the Office of the High Commissioner for Human Rights to convene an expert seminar during 2005 on indigenous peoples' permanent sovereignty over natural resources, to which representatives of indigenous communities and Governments, as well the Special Rapporteur, would be invited (resolution 2004/9);

To request the Secretary-General to ensure that the Special Adviser for the Prevention of Genocide takes into consideration the need to protect indigenous peoples and their territories (resolution 2004/11);

To establish a post of a special representative of the Secretary-General on minority issues, with a particular focus on country fact-finding missions and preventive diplomacy (resolution 2004/13);

To endorse the request that the Economic and Social Council authorize the Working Group on Indigenous Populations to meet for five working days prior to the fifty-seventh session of the Sub-Commission in 2005 (resolution 2004/15);

To recommend to the Economic and Social Council that the compilation of all the reports and documents submitted by the Special Rapporteur on human rights and terrorism be published as part of the Human Rights Study Series (resolution 2004/21);

To request Ms. O'Connor to submit, without further delay, to the Sub-Commission at its fifty-seventh session the working paper on the right to development (decision 2004/104).

The Sub-Commission also recommended to the General Assembly that it consider proposing that Human Rights Day be commemorated every year worldwide in all educational and training institutions as of 2005 (resolution 2004/18).

21. The fifty-sixth session of the Sub-Commission attracted a large number of observer delegations from Governments (99) and NGOs (111), with the total number of participants close to 900 persons. As in previous years, the Chair and members of the Bureau held weekly meetings with NGO representatives. The meetings were marked by a friendly atmosphere and there was a free and frank exchange of views. These meetings were also useful because of the information provided and the suggestions offered to strengthen the Sub-Commission.

22. The Sub-Commission continued its cooperation with treaty bodies: several members of the Committee on the Elimination of Racial Discrimination, including the Chairperson, addressed the Sub-Commission. Also, members of the International Law Commission, including its Special Rapporteur on law and practices relating to reservations to treaties, attended the interactive dialogue following the presentation of Ms. Hampson's final working paper on reservations to human rights treaties.

23. In view of personal references with regard to Sub-Commission experts made by some observers, the Chair made a statement appealing to all observers to refrain from casting personal aspersions or making insinuations about the integrity and impartiality of Sub-Commission members.

24. For the first time, some observers were permitted to make statements during the closing ceremony, which was marked by a spirit of cordiality.

25. The Commission's attention is drawn to the heavy pressure to which the experts are subjected owing to a lack of time. Again this year, during its shortened session of 15 working days (future sessions will be abbreviated further owing to an official holiday during the time the annual sessions are normally scheduled, which this year was on a weekend), the Sub-Commission had to study and discuss 28 reports, organize the work of its two sessional working groups and conduct the debates on the items of its agenda, during which 230 statements

were made by NGOs and 33 by observer Governments. As requested by the Commission, the Sub-Commission drafted many of its resolutions in closed meetings. In spite of severe time pressure, several experts also participated in panels, held between meetings, with the participation of NGOs, governmental observers and interested persons. These activities add to the existing pressure and it sometimes becomes difficult for experts to devote their full time to the deliberations of the Sub-Commission.

26. The Sub-Commission has no illusions about its competence and its capacity to put an end to the horrendous human rights violations taking place in the world. The fervent hope of the Sub-Commission is that at the end of its session it shall have been instrumental in removing some tears from some faces and providing some relief to some segments of the vast population of victims of human rights violations.

27. It is sincerely hoped that the Commission will devote its urgent attention to the recurring problem of time pressure, which gravely undermines the work of the Sub-Commission and its effectiveness in real terms.
