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

**Report of the Chairperson of the Sub-Commission
at its fifty-seventh session, Vladimir Kartashkin**

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 2005/53. It contains an overview of the work of the fifty-seventh session of the Sub-Commission, held in Geneva from 25 July to 12 August 2005.

The annual report of the Sub-Commission on its fifty-seventh session is contained in document E/CN.4/2006/2-E/CN.4/Sub.2/2005/44.

Introduction

1. The fifty-seventh session of the Sub-Commission on the Promotion and Protection of Human Rights was chaired by Mr. Vladimir Kartashkin (Russian Federation). Other members of the Bureau were Mr. Ibrahim Salama (Egypt), Ms. Florizelle O'Connor (Jamaica) and Mr. Marc Bossuyt (Belgium) as Vice-Chairpersons and Mr. Yozo Yokota (Japan) as Rapporteur.

2. As in previous years, the Sub-Commission was preceded by meetings of three inter-sessional working groups: on minorities, on contemporary forms of slavery and on indigenous populations. The Social Forum was held for two days prior to the session on the theme of poverty and economic growth. Three sessional working groups – on the administration of justice, on the working methods and activities of transnational corporations and on principles and guidelines concerning the promotion and protection of human right when combating terrorism – held two meetings each during the session of the Sub-Commission. The working group on counter-terrorism met for the first time this year and started its work on the elaboration of principles and guidelines on protection of human rights when combating terrorism. The reports of the above inter-sessional and sessional working groups were considered in plenary meetings. References to specific countries in the report of the working group on the administration of justice (E/CN.4/Sub.2/2005/11) became an issue during the adoption of resolutions and decisions.

3. The Sub-Commission considered reports submitted by its special rapporteurs under the on-going mandates on:

- Discrimination in the criminal justice system (Ms. Zerrougui) (E/CN.4/Sub.2/2005/7)
- Universal implementation of international human rights treaties (Mr. Decaux) (E/CN.4/Sub.2/2005/8 and Corr.1 and Add.1)
- Non-discrimination as enshrined in article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights (Mr. Bossuyt) (E/CN.4/Sub.2/2005/19 and Corr.1 and 2)
- Corruption and its impact on human rights (Ms. Mbonu) (E/CN.4/Sub.2/2005/18)
- Discrimination based on work and descent (Ms. Chung and Mr. Yokota) (E/CN.4/Sub.2/2005/30)
- Prevention of human rights violations committed with small arms and light weapons (Ms. Frey) (E/CN.4/Sub.2/2005/35)
- Human rights and the human genome (Ms. Motoc) (E/CN.4/Sub.2/2005/38)
- Difficulties of establishing guilt and/or responsibility with regard to crimes of sexual violence (Ms. Rakotoarisoa, who made an oral presentation as the report was not submitted this year).

4. The Sub-Commission requested the Special Rapporteurs on discrimination based on work and descent to continue their work on the drafting of a set of principles and guidelines and endorsed the proposals of the Special Rapporteurs to hold a consultation in Geneva in March/April 2006 and to organize, if funding is available, two regional workshops (in Asia and in Africa) before the fifty-eighth session of the Sub-Commission (resolution 2005/22).

5. The Sub-Commission examined the following two final reports prepared by its Special Rapporteurs on:

(a) Housing and property restitution for refugees and internally displaced persons by Mr. Pinheiro, including the principles and the explanatory notes (E/CN.4/Sub.2/2005/17 and Add.1). The Sub-Commission recommended to the Commission on Human Rights that Mr. Pinheiro compile and update the study and that the full study entitled “The right to housing and property restitution for refugees and other displaced persons” be published as part of the Human Rights Study Series (resolution 2005/21);

(b) Harmful traditional practices affecting the health of women and the girl child by Ms. Warzazi (E/CN.4/Sub.2/2005/36). The Sub-Commission invited the Commission on Human Rights to request its Special Rapporteur on violence against women to continue to examine the effects of harmful traditional practices affecting the health of women and girls as an integral part of her mandate, in light of the fact that the report of Ms. Warzazi would be her final one (resolution 2005/27).

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

- The work of the Sub-Commission under agenda item 2: working paper by Ms. Hampson (E/CN.4/Sub.2/2005/4)
- Methods of work of the Sub-Commission relating to reports: working paper by Mr. Decaux (E/CN.4/Sub.2/2005/5)
- Administration of justice through military tribunals: report of Mr. Decaux (E/CN.4/Sub.2/2005/9). The updated draft principles governing the administration of justice through military tribunals contained in the report will be transmitted to the Commission for consideration. Mr. Decaux has been requested to prepare a note in order to facilitate their examination by the Commission and to revise them. The Office of the High Commissioner for Human Rights has been requested to organize a second seminar of military and other experts on the issue of the administration of justice through military tribunals (resolution 2005/15)
- Right to an effective remedy in criminal proceedings: report of Mr. Cherif, presented to the sessional working group on administration of justice (E/CN.4/Sub.2/2005/13)
- The implementation in domestic law of the right to an effective remedy: working paper by Ms. Hampson, presented to the working group on the administration of justice (E/CN.4/Sub.2/2005/15)
- Accountability of international personnel taking part in peace support operations: working paper by Ms. Hampson (E/CN.4/Sub.2/2005/42)
- The relationship between human rights law and international humanitarian law: working paper by Ms. Hampson and Mr. Salama, presented to the working group on the administration of justice (E/CN.4/Sub.2/2005/14)
- The right to development: working paper by Ms. O’Connor (E/CN.4/Sub.2/2005/23). This concept document on the right to development will be submitted to the Commission on Human Rights

- Implementation of existing human rights norm and standards in the context of the fight against extreme poverty: progress report of the ad hoc group of experts (Mr. Decaux, Mr. Guissé, Ms. Motoc and Mr. Yokota, with Mr. Bengoa as coordinator) (E/CN.4/Sub.2/2005/20 and Add.1)
- Realization of the right to drinking water supply and sanitation: report of Mr. Guissé, containing draft guidelines (E/CN.4/Sub.2/2005/25)
- The human rights situation of indigenous peoples in States and other territories threatened with extinction for environmental reasons: expanded working paper by Ms. Hampson (E/CN.4/Sub.2/2005/28)
- Discrimination against leprosy victims and their families: preliminary working paper by Mr. Yokota (E/CN.4/Sub.2/2005/WP.1)
- A preliminary framework draft of principles and guidelines concerning human rights and terrorism: expanded working paper by Ms. Koufa, presented to the sessional working group on counter-terrorism (E/CN.4/Sub.2/2005/39)
- Human rights and non-State actors: working paper by Mr. Biró and Ms. Motoc (E/CN.4/Sub.2/2005/40)
- Technical cooperation in the field of human rights: working paper by Mr. Alfredsson and Mr. Salama (E/CN.4/Sub.2/2005/41)

7. The presentation and examination of each report and working paper were followed by an interactive dialogue, in which both Sub-Commission experts and observers from Governments and non-governmental organizations participated.

8. The following working papers requested for submission to the fifty-seventh session were not submitted and no oral presentations made:

- Women in prison (Ms. O'Connor)
- Effects of debt on human rights (Mr. Guissé)
- Impact of intolerance on human rights (Mr. Sorabjee)
- Human rights and international solidarity (Mr. Dos Santos Alves)

9. The Sub-Commission initiated the preparation of working papers without financial implications for submission to its fifty-eighth session the following new subjects:

- Human rights and State sovereignty (by Mr. Kartashkin) (decision 20005/105)
- Transitional justice and investigation mechanisms for truth and reconciliation, with emphasis on Latin America (by Mr. Tunón Veilles) (decision 2005/109)

10. The following working papers will be prepared without financial implications for submission to various working groups next year:

- (a) For submission to the sessional working group on the administration of justice: three working papers on the relationship between international humanitarian law and international human rights law: (i) the circumstances in which civilians lose

their immunity from attack under international humanitarian law and international human rights law (by Ms. Hampson); (ii) measures designed to prevent violations in circumstances in which international humanitarian law and international human rights law are both applicable (by Mr. Salama); and (iii) the issues of amnesties, impunity and accountability for violations of international humanitarian law and international human rights law (by Mr. Yokota);

- (b) For submission to the sessional working group on transnational corporations: working papers on (i) the role of States in the guarantee of human rights with reference to the activities of transnational corporations and other enterprises (by Mr. Bíró); and (ii) bilateral and multilateral economic agreements and their impact on the human rights of the beneficiaries (by Ms. Chung and Ms. O'Connor);
- (c) For submission to the Working Group on Indigenous Populations: (i) additional working paper on the issue of indigenous peoples and conflict prevention and resolution (by Mr. Alfonso Martinez); and (ii) working paper on the present-day sequels of the colonial era that continue to adversely affect the living conditions of indigenous peoples in various parts of the world (by Mr. Alfonso Martinez);

Mr. Salama was requested to prepare a working paper examining the feasibility of a study on the human rights dimension of prostitution, which will be considered by the Working Group on Contemporary Forms of Slavery (resolution 2005/29).

11. The three new studies on the relationship between international humanitarian law and international human rights law build on increased recognition by the Commission on Human Rights of the interlinkages between international humanitarian law and international human rights law. These studies were agreed upon by the Sub-Commission in lieu of a draft proposal to establish next year a sessional working group on the subject, which was withdrawn when several members cited time constraints.

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

- Establishment of guilt or responsibility for crimes of sexual violence (Ms. Rakotoarisoa) (resolution 2005/3)
- Universal implementation of international human rights treaties (Mr. Decaux) (resolution 2005/4)
- Discrimination in the criminal justice system (Ms. Zerrougui) (resolution 2005/5)
- Non-discrimination as enshrined in article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights (Mr. Bossuyt) (resolution 2005/6)
- Extreme poverty (assessment of the activities of the ad hoc group of five members). The Sub-Commission called on the Commission on Human Rights to replace the ad hoc group of experts “by a new ad hoc group of the Sub-Commission comprising five of its members, with a specific mandate to continue consideration of the subject” of extreme poverty (resolution 2005/9)
- Administration of justice through military tribunals (Mr. Decaux) (resolution 2005/15)

- Corruption and its impact on the full enjoyment of human rights in particular economic, social, and cultural rights (Ms. Mbonu) (resolution 2003/16)
- The right to development (Ms. O'Connor) (resolution 2005/17)
- Discrimination based on work and descent (Ms. Chung and Mr. Yokota) (resolution 2005/22)
- Methods of work of the Sub-Commission (Mr. Decaux) (resolution 2005/32)
- Implementation in practice of the right to an effective remedy for human rights violations (Ms. Hampson and Mr. Cherif) (decision 2005/106)
- Human rights violations committed with small arms and light weapons (Ms. Frey) (decision 2005/110)
- Human rights and human genome (Ms. Motoc) (decision 2005/111)
- Human rights and non-State actors (Mr. Bíró, Ms. Motoc, Mr. Rivkin and Mr. Salama) (decision 2005/112)

13. The Sub-Commission also requested OHCHR to submit an updated report on the issues of systematic rape, sexual slavery and slavery-like practices during armed conflict (resolution 2005/27).

14. The appointment of five new Special Rapporteurs with the following mandates was recommended for approval by the Commission on Human Rights:

- Accountability of international personnel taking part in peace support operations (Ms. Hampson) (draft decision 1)
- The legal implications of the 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 (Ms. Hampson) (draft decision 3)
- Discrimination against leprosy victims and their families (Mr. Yokota) (draft decision 6)
- Technical cooperation and capacity-building for the promotion and protection of human rights (Mr. Alfredsson and Mr. Salama) (draft decision 7).

15. At this year's session of the Sub-Commission participants exhibited a high degree of interest in the human rights sections of the Secretary-General's report, "In larger freedom" the revised draft outcome document prepared by the President of the General Assembly and other relevant documents on the reform of United Nations human rights machinery. Public and informal discussions on reform issues, in light of the proposed establishment of a Human Rights Council to replace the Commission on Human Rights, led the adoption by consensus of decision 2005/114 on the roles of an independent expert body within the reform of the United Nations human rights machinery.

The position of the Sub-Commission vis-à-vis reform, as summarized in the annex to decision 2005/114, is that there is a continuing need for a collegial representative independent expert body – subsidiary to the proposed Human Rights Council. It is proposed that the expert body be

composed of at least 25 or 26 members and that consideration be given to setting term limits for its members as well as criteria for membership. The Sub-Commission requested its Chairperson to transmit the annexed document to the Chairperson of the Commission on Human Rights and to the High Commissioner, who was requested to ensure wide distribution of the document, in particular to the permanent missions of States Members at Headquarters and Geneva.

16. The Sub-Commission continued its efforts to scrutinize its own working methods. Resolution 2005/32, "Methods of work of the Sub-Commission", reflects the efforts of the Sub-Commission to strengthen its think-tank role, including through better prioritization, choice and discussion of subjects for working papers and reports. The resolution also calls for the development of a page on the OHCHR website with a view to facilitating thematic research and exchange of information.

17. Discussion on the reform of agenda item 2 relating to violations of human rights in countries was revitalized this year. During the debate on Ms. Hampson's paper on the Sub-Commission's work under agenda item 2 (E/CN.4/Sub.2/2005/4), members proposed that country situations be integrated more systematically in the studies/reports on thematic issues. However, two members expressed support for the abolition of the agenda item, in light of the ban on the adoption of country-specific resolutions imposed by the Commission.

18. Efforts to reorient the work of the Sub-Commission on item 2 are illustrated by a number of resolutions, including:

- Decision 2005/107 (adopted by a vote of 19 to none, with 2 abstentions) in which the Sub-Commission requested OHCHR to provide various information related to States, before the Sub-Commission's annual sessions, including a list of countries which have proclaimed a state of emergency, issued a standing invitation to the special procedures, rejected a request by a special procedure to visit, as well as a list of States on the agenda of the Commission, etc.
- Resolution 2005/11 in which the Sub-Commission requested the Commission on Human Rights to consider making the termination of a mandate of a country-specific special procedure conditional upon the issuance of a standing invitation to special procedures by the countries concerned.

19. The Sub-Commission, as in previous years, will forward the summary records of its deliberations under this agenda item to the Commission.

20. In some of the resolutions adopted under item 2 the Sub-Commission took strong human rights positions, such as resolution 2005/2 on prohibition of military operations directed against medical facilities, transport and personnel entitled to protection during armed conflict, in which the Sub-Commission invited the Special Rapporteur of the Commission on the right of everyone to the highest attainable standard of physical and mental health to address the issue of attacks on medical facilities; resolution 2005/10 on attacks on persons entitled to protection as civilians; and resolution 2005/12 (adopted by a vote of 21 to 1, with 2 abstentions) on the need for human rights protection when transferring persons between States.

21. As in previous years, the Sub-Commission held, on 26 July 2005, a closed meeting with the Expanded Bureau of the sixty-first session of the Commission on Human Rights. Discussion

focused on such issues as time constraints (particularly in the light of the Commission's decision that the inter-sessional Working Group on Minorities would become an in-sessional working group of the Sub-Commission), the work of the Sub-Commission under agenda item 2 and the future of the Sub-Commission with regard to the Working Group, the Sub-Commission requested its parent bodies to reconsider their decision. In resolution 2005/18, the Sub-Commission requested the Commission to request the Economic and Social Council to authorize the Working Group to meet for five working days prior to the fifty-eighth and subsequent sessions of the Sub-Commission. The view of the Sub-Commission, widely supported by NGOs, is that the Commission's decision (resolution 2005/79) would negatively affect the Working Group as a forum for dialogue with minorities.

22. The Sub-Commission continued its cooperation with treaty bodies. Two members of the Committee on the Elimination of Racial Discrimination addressed the Sub-Commission and views were exchanged on several issues of mutual concern, including the study on discrimination in the criminal justice system by Ms. Zerrougui. Members of the Sub-Commission were also invited by the International Law Commission to participate in one of its meetings. Discussions with the International Law Commission focused on the latest report of the Special Rapporteur of the Commission on reservations to treaties (Mr. Pellet), the working paper on accountability of international personnel taking part in peace support operations (Ms. Hampson) and the report on the universal implementation of international human rights treaties (Mr. Decaux).

23. As in previous years, the fifty-seventh session of the Sub-Commission attracted a large number of observer delegations from Governments (104) and NGOs (122), with a total number of participants close to 1,000, which was approximately the same as last year.

24. The Sub-Commission continued to be recognized as one of the best access points for NGOs in the United Nations human rights system. As in previous years, the members of the Bureau of the Sub-Commission held weekly meetings with NGO representatives. With regard to United Nations reform, NGOs expressed their concern that grass-roots organizations that were not in consultative status with the Economic and Social Council would no longer have access to United Nations human rights forums if the Sub-Commission and its working groups were not replaced by similar bodies.

25. It was announced that the fifty-eighth session of the Sub-Commission was scheduled to be held from 7 to 25 August 2006.

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