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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 14th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 8 August 2005, at 10 a.m.

Chairperson: Mr. KARTASHKIN

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

later: Mr. KARTASHKIN
(Chairperson)

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- (a) RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA;

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The meeting was called to order at 10 a.m.

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) (continued) (E/CN.4/Sub.2/2005/26-31; 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)

1. Mr. TAKEMURA (Japan Federation of Bar Associations) said that the Korean minority in Japan continued to suffer severe discrimination. In one recent case, a woman with a Japanese mother and Korean father, born and brought up in Japan, had had her application for promotion rejected because, in 1952, she and her father had been required to forfeit their Japanese nationality. The Supreme Court had approved the Tokyo Metropolitan Government's policy of giving promotion only to employees with Japanese nationality, on the grounds that it was based on reasonable distinction. The Human Rights Committee had repeatedly recommended that the Japanese Government should end discrimination against the Korean minority in Japan. Other minorities also suffered discrimination, but that against Koreans was particularly serious in the light of the two countries' shared history. The executive, the legislature and the judiciary failed to fulfil Japan's obligation as a State party to the International Covenant on Civil and Political Rights. In particular, the Supreme Court was indifferent to international human rights treaties. It had, for example, reversed the judgement of the Osaka High Court that the mandatory fingerprinting system applied to members of the Korean minority might breach the Covenant. The Supreme Court was able to adopt such an attitude, in that and other cases, because Japan had not yet ratified the first Optional Protocol to the Covenant. Such ratification would be the best way of eliminating discrimination against minorities.

2. Ms. SHARFELDDIN (International Organization for the Elimination of All Forms of Racial Discrimination) said that a mere 2 per cent of the American people dominated the economy, the media and culture in the United States, and perhaps even worldwide. They were thus able to force United States leaders to support the ambitions of international Zionists to achieve their dream of Greater Israel, which in any case tallied with the ambition of the extreme right in the United States to dominate the oil of the Arab world in order to counter Chinese and European economic competition. That approach had, however, led the country into the invasion of Iraq, which had been deplored by the international community, as well as large portions of the United States population and many Jews in Israel. A Europe-wide poll conducted in 2004 had shown that 59 per cent of Europeans considered that the Israeli leadership posed the gravest danger to the planet, with the United States in second place. The applause that had greeted the statement of the representative of Cuba at the latest session of the Commission on Human Rights

had not reflected absolute support for Cuba but had indicated resentment at United States foreign policy. Given the gap between the public and its political leaders, who abused the power of money and the media, it was up to NGOs to work to make the United Nations the focus for the resolution of all regional and international conflicts by strengthening the International Court of Justice, the Security Council and the Commission on Human Rights.

3. Mr. ALFONSO MARTÍNEZ, introducing the report of the Working Group on Indigenous Populations on its twenty-third session (E/CN.4/Sub.2/2005/26), said that, despite having to contend with the last-minute absence of two of its members, the Working Group had dealt extensively with the question of the domestic and international protection of the traditional knowledge of indigenous populations. It had also considered a request by the Commission to submit suggestions to the Coordinator for the Second International Decade of the World's Indigenous People on activities that might be included in the programme of action for the Decade, for presentation to the General Assembly. He welcomed the further opportunity for the Sub-Commission to maintain a dialogue with international organizations and NGOs, and commended its capacity for taking on new work. He drew attention to the recommendations in chapter VI on traditional knowledge and on the question of obtaining the free, prior and informed consent of minorities, indigenous or otherwise, on matters affecting them. Annex IV contained the Working Group's suggestions for activities under the International Decade.

4. Mr. CHEN said that the Working Group had made a number of important contributions to the cause of indigenous people, having been instrumental in setting up the Permanent Forum on Indigenous Issues and having been involved with the draft declaration on the rights of indigenous people. Its recommendations should therefore be given serious consideration, especially the suggestion that Ms. Hampson should continue her work on the human rights situation of indigenous peoples in States and territories threatened with extinction for environmental reasons. Much remained to be done before indigenous people could be assured their full economic, social and cultural rights, and he hoped that the Working Group would continue with its task.

5. Mr. BENGUA, after commending the report, expressed regret that members of working groups often had access to documentation denied to other members of the Sub-Commission; the same applied to the Social Forum. The result was that discussion in plenary was not as rich as it could be. That said, he hoped that the Working Group would pursue the question of traditional knowledge: there was a huge body of knowledge and some was being lost in a short space of time. The United Nations Educational, Scientific and Cultural Organization (UNESCO) was closely involved in saving such knowledge, but one difficulty was to persuade indigenous people themselves to have their knowledge named as a part of the intangible heritage of humanity, since they saw such action as tantamount to appropriation.

6. He would have liked to see fuller background information on the question of free, prior and informed consent by indigenous people for work in their area. The question had also arisen in the Social Forum and it had been agreed that participation was assured where consultation took place before the finalization of a project. Lastly, he said that the Sub-Commission should call on the Commission to advance work on the draft declaration.

7. Mr. ALFONSO MARTÍNEZ said that the Working Group maintained its interest in the draft declaration and was ready to provide information at any time but had not been invited to take the matter forward. He agreed with Mr. Bengoa that there should be more information-sharing between working groups of the Sub-Commission. There should also be closer contact with UNESCO, from which his Working Group received unstinting support. As for the question of free, prior and informed consent, it had been on the Working Group's agenda for three years and Ms. Motoc had worked together with a well-known indigenous organization to produce a wide-ranging document on the issue.

8. Ms. AVIF (African Society of International and Comparative Law) said that measures undertaken by Governments as part of the "war against terror" represented a serious retreat from hard-earned civil and political rights. Equally disturbing were the attempts by some politicians and media to link Islam with the non-religious phenomenon of terrorism, thereby consolidating bigotry and fostering intolerance and hatred. Racism, discrimination and intolerance caused immense suffering to humanity, as recently evidenced by the tragic situation in Darfur. The Secretary-General had described the situation as being "little short of hell on earth"; and those responsible were the Government of the Sudan and its militia groups, the Janjaweed, who were fighting a proxy war on its behalf against people of different ethnicities. Paradoxically, the crisis had no religious dimension: Sunni Muslims were massacring members of the same sect. There were numerous reports of widespread rape and humiliation of women and girls of the African tribes of the region as a means of breaking their resistance. The situation had existed since 1989, when the African tribes had started to suffer a series of coordinated attacks in which villages had been burned wholesale and property looted, as a result of the Government's Arab-centric policy in what was a multi-ethnic and multiracial country. The African tribes had been left with no option but to take up arms in self-defence; and the situation had since degenerated into a full-blown civil war. The Sub-Commission had first been informed of the situation in 1999 through document E/CN.4/Sub.2/1999/NGO/7. That early warning signal had gone unheeded, and the result was the current large-scale humanitarian disaster. Lastly, she drew attention to the situation of over 8,000 people, including women and children, mainly from Darfur, who had been held hostage by the Libyan security forces for over a week, for unknown reasons. The authorities had cut off the electricity and water supply in their area.

9. Mr. QADIR (World Muslim Congress) said that the international community should sharpen its focus on measures to eliminate discriminatory laws and behaviour in societies where they persisted. Despite progress in some areas, one cause of immense suffering was caste-based discrimination. In India, over 160 million people, usually referred to as Dalits, were considered untouchable by reason of their birth. Nearly 90 per cent of all poor people in India and 95 per cent of illiterate Indians were Dalits. Even the official figures showed that Dalits were exceptionally often the victims of violent crime. Dalits were relegated to the lowest jobs, and many millions were bonded workers working to pay off debts incurred generations earlier. Of those, 15 million were children working in slave-like conditions in fields or factories for less than US\$ 1 per day. Dalit women were frequently raped or beaten in reprisal by upper-class Hindu landlords. Legislation to protect them existed, but local police often failed to act on it. The Sub-Commission should consider measures that could be taken by Governments and other actors to root out such caste-based discrimination. The first step would be to analyse the social fabric and the inadequate political will of the State concerned. Pressure from the international community could, as in the case of apartheid, be a means of forcing an end to the caste-based system. The Sub-Commission could play a leading role in applying such pressure.

10. Ms. BÓRQUEZ (International Association against Torture) said that the human rights organization Meli Wixan Mapu existed to defend the legitimate aspirations of the Mapuche people, who continued to suffer systematic persecution at the hands of the Chilean Government. The Mapuche were still not officially recognized as a minority in the Chilean Constitution, nor had the Government acceded to the International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169, 1989). Large companies operating in tourism, power generation, fisheries and logging put pressure on the Government to use oppressive anti-terrorist and internal-security laws against the Mapuche people: over 400 Mapuche, many of them the main breadwinner of their family, were currently in prison. The Anti-Terrorist Law, which dated from the Pinochet era, allowed arbitrary detention by the police, payments to witnesses, secret testimony by witnesses and extended incommunicado detention of suspects. In some cases, it was used to overturn an acquittal pronounced by another court

11. Chile's human rights violations against the Mapuche people had been denounced by Human Rights Watch, Amnesty International, the American Association of Jurists, Mr. Garretón, Regional Adviser of the Office of the High Commissioner for Human Rights for Latin America and the Caribbean and Mr. Stavenhagen, Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people. All of them had stated that the struggle of the Mapuche people was a social and political one, not a terrorist campaign. In a judgement delivered in July 2005, Mapuche defendants had been declared innocent of offences under the anti-terrorist legislation, although they were still in prison for other offences – another example of the Government's efforts to treat the Mapuche activists as common criminals.

12. She called upon the Sub-Commission to intervene with the Chilean Government on behalf of Mapuche who were in prison or subjected to political persecution, and to look for ways of putting an end to repression, State violence and the violation of the human rights of the Mapuche people.

13. Ms. O'Connor, Vice-Chairperson, took the Chair.

14. Ms. NARIKI (Asian Women's Human Rights Council) said that Korean schools in Japan had faced systematic discrimination for over 50 years. Since March 2003, Asian schools had been excluded from the tax privileges accorded to Western international schools, and their graduates were not eligible to apply to Government-funded universities. The Japanese Government had not implemented the recommendation of the Committee on the Rights of the Child that discriminatory treatment of minority children, including Korean children, be fully investigated and eliminated whenever and wherever it occurred (see the Committee's concluding observations, document CRC/C/15/Add.90, para. 35), or the recommendation of the Committee on Economic, Social and Cultural Rights that it should officially recognize minority schools, in particular Korean schools, when they complied with the national education curriculum (see document E/C.12/1/Add.67, para. 60).

15. To cite a specific example of discrimination, the Edagawa Korean school was threatened with eviction from its current site in the Edagawa district of Tokyo. The school had used the site rent-free for almost 60 years, but the metropolitan government was now trying to move the school and claim US\$ 4 million in rent arrears for the period since the last formal lease had expired in 1990.

16. Sixty years after the end of the Second World War and almost 100 years since the colonization of Korea by Japan, the Japanese Government had still not taken any effective measures to eradicate discrimination against the Korean minority in Japan.

17. Mr. SUZUKI (International Association of Democratic Lawyers) said that, as the lawyer representing former leprosy patients in their claim for compensation against the Government of Japan, he welcomed Mr. Yokota's preliminary working paper on discrimination against people with leprosy and their families (E/CN.4/Sub.2/2005/WP.1), particularly recommendations (b) on the need for remedies for former patients forcibly hospitalized and (f) on the need to hear the views of people affected by leprosy at first hand.

18. The Government had claimed that leprosy was a highly infectious disease. It had legitimized the strict isolation of patients and banned them from working, which constituted discrimination by the State. Former patients on the Japanese mainland had received an official apology and compensation, but others in former colonies or occupied regions had not, which amounted to further discrimination. Many former patients had lost all ties with their families and communities and still lived in the former leprosy settlements because they had nowhere else to go. They must not be obliged to move again, with all the disruption that would entail.

19. Ms. SABA (International Islamic Federation of Student Organizations) said that the implementation of the Declaration and Programme of Action adopted at the end of the 2001 World Conference to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance had been slow and lacking in political will. The Sub-Commission should act as a catalyst to speed up the implementation of the Programme of Action, which could free the world of racism and racial discrimination.

20. Discrimination remained a primary cause of social disharmony and violations of fundamental human rights. People were most frequently denied the opportunity to govern their own affairs in areas under foreign occupation. The Palestinian people of the occupied Palestinian territories and the Kashmiris of Indian-occupied Jammu and Kashmir suffered discrimination in their own countries: they were denied their right to self-determination, in defiance of United Nations Security Council resolutions, and had no say in their own political or economic institutions. The large-scale deployment of heavily armed security forces led to gross and systematic human rights violations. According to local social and human rights organizations, 90,000 Kashmiris had been killed over the past 16 years, thousands of children had been orphaned and thousands of women had been raped. Those human rights violations would only cease when the occupation came to an end.

21. In 1992, the General Assembly had adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (General Assembly resolution 47/135) and had called upon relevant United Nations bodies, including the Sub-Commission, to give due regard to its provisions. In that area, too, the international human rights system had failed to provide adequate safeguards. The Muslim minority in India was still suffering the aftermath of the killing of over 3,000 Muslims in the state of Gujarat in 2002. She called upon the Sub-Commission, as a human rights think tank, to address the reasons why minorities were denied their rights and find ways to intervene in situations of gross human rights violations.

22. Mr. KLY (International Human Rights Association of American Minorities) said that he wished to convey the appreciation and congratulations of the Charleston Gullah Geechee Council of Elders to the United States Government, which had helped the members of the Gullah Geechee African-American community to express their respect for their ancestors and enjoy their cultural heritage. The Government's action had created a real framework for socio-economic development on a basis of equal status. The Gullah Geechee Cultural Heritage Act (Bill H.R. 694, passed by the United States House of Representatives in March 2005) recognized the importance of human and minority rights for self-determination and democracy. The proposed "Gullah Geechee Heritage Corridor", running along the coastline of the states of South Carolina and Georgia, would stimulate socio-economic development and provide an official and public recognition of the role which the Gullah Geechee culture had played in the development of the United States of America. The project was potentially an excellent example of integration without forced assimilation.

23. His organization supported the just struggle for self-determination everywhere, and particularly appealed to the Sub-Commission to address the situation in Jammu and Kashmir, where Amnesty International had recorded over 8,000 enforced disappearances.

24. Mr. FYFE (Indigenous World Association), speaking also on behalf of the Koani Foundation, Na Koa Ikaika o Ka Lahui Hawai'i, Kanaka Maoli Tribunal Komike and Indigenous Peoples and Nations Coalition, expressed his support for the activities of the Sub-Commission, and especially the Working Group on Indigenous Populations, which was the only standard-setting body for indigenous peoples. He supported the call for a working paper on the aftermath of colonialism; the cooperation between indigenous organizations and working-group experts, such as the paper on free, prior and informed consent; and the review of draft principles and guidelines on the protection of indigenous heritage. The follow-up work on traditional knowledge should promote indigenous rights as outlined in article 29 of the draft United Nations declaration on the rights of indigenous peoples, rather than article 8 (j) of the Convention on Biological Diversity, which was too restrictive.

25. On 2 August 2005, a federal appeals court in the United States had ruled that the admissions policy of the Kamehameha schools in Hawaii violated anti-discrimination law. The schools were partially financed by a legacy from Princess Bernice Pauahi Bishop, a direct descendant of the former Hawaiian royal family: they did not receive United States Government funding. Approximately 16,000 Hawaiian, part-Hawaiian and other students were currently enrolled in schools on three sites. Supporters of the schools, who maintained that the admissions policy was designed to remedy the socio-economic disadvantages which ethnic Hawaiians had suffered since the United States takeover in 1893, intended to fight the decision, which they felt was intended to promote the passage through the United States Congress of the Native Hawaiian Government Reorganization Act.

26. Ms. QUEIROS (Commission to Study the Organization of Peace) said that discrimination arose between groups and communities because there were not enough efforts to instil attitudes which would foster a spirit of oneness and harmonious coexistence. The international human rights movement had always maintained that democracy alone could ensure universal equality

and non-discrimination. Recently, however, even democratic nations had abandoned their ideals and introduced policies which generated resentment and increased the tension between different groups. The international campaign against terrorism had prompted some Governments to take measures which victimized innocent individuals because they belonged to a particular faith or community.

27. Contemporary terrorists spread fear through the indiscriminate slaughter of individuals of all races, colours and religions. That meant that profiling potential offenders on the basis of race or religion made little sense. Terrorism could not be countered by creating fresh resentment and fostering a ghetto mentality among people who had always tried to be part of their community. The dignity of the individual must not be infringed, even in the fight against terrorism.

28. The treatment of prisoners detained as part of the fight against terrorism suggested blatant xenophobia and religious intolerance on the part of the captors. Putting up artificial barriers would not provide long-term protection. The real defence lay in addressing grievances seriously and tackling those who sought to exploit them to serve their own immediate political and strategic interests. The sense of desperation in many minority communities in developed countries was a direct consequence of policies and patterns of behaviour related to xenophobia and racism.

29. The leaders of some developed countries had forged strange and inexplicable alliances with the very elements responsible for intolerance and terrorism in non-democratic systems. Front-line allies in the battle against terrorism should be carefully chosen: mere willingness to act as military surrogates should not be a criterion for their selection. Democratic nations should only join up with those who shared their values of universal equality.

30. Mr. MALEZER (Foundation for Aboriginal and Islander Research Action) said that a number of issues of relevance to indigenous peoples were currently under examination within the United Nations system. The Working Group on Indigenous Populations was currently addressing the protection of traditional knowledge; conflict prevention and resolution; free, prior and informed consent; activities for the Second Decade of the World's Indigenous People; protection of indigenous people's heritage; and the situation of indigenous peoples in States and territories threatened with extinction for environmental reasons. The Permanent Forum on Indigenous Issues of the Economic and Social Council was considering the Millennium Development Goals related to poverty, hunger and universal primary education; data collection and disaggregation; indigenous children and young people; indigenous women; and the Second Decade of the World's Indigenous People. The Special Rapporteur of the Commission on Human Rights on the situation of the human rights and fundamental freedoms of indigenous people had recently reported on the administration of justice, human rights and indigenous people (E/CN.4/2004/80) and education systems (E/CN.4/2005/88); his report on impediments to the achievement of human rights outcomes through constitutional and legislative changes was due in 2006.

31. Among non-human-rights bodies, the World Intellectual Property Organization was continuing its examination of genetic resources, traditional knowledge and folklore. The secretariat of the Convention on Biological Diversity was undertaking further work on article 8 (j) of the Convention, dealing with indigenous peoples' relationship with the natural environment. UNESCO was working on a preliminary draft convention for the safeguarding of the intangible cultural heritage.

32. He called upon the Office of the United Nations High Commissioner for Human Rights (OHCHR) to produce an annual report listing thematic and other studies relating to the human rights of indigenous peoples for the benefit of key bodies and special mechanisms, including the Sub-Commission. It might also benefit the Inter-Agency Support Group on Indigenous Affairs, whose recent report was contained in document E/C.19/2005/2.

33. It was vital that the work of the Working Group on Indigenous Populations should continue, even if the Commission on Human Rights was replaced by a new Human Rights Council. The human rights situation of indigenous peoples was not improving, and the programmes introduced by States were sometimes divisive or too liable to assimilate indigenous peoples to the majority population. He asked how OHCHR would implement its proposals for "country engagement", not only in the developing world but also in developed countries with high standards of living. Would it involve country desks, staff, fact-finding missions, human rights training and long-term commitment of States with the participation of indigenous peoples?

34. Mr. COOPER (World Association for the School as an Instrument of Peace) called upon the Sub-Commission to appoint a special rapporteur to consider the human rights situation of indigenous peoples in States and other territories threatened with extinction for environmental reasons, building on the working paper produced by Ms. Hampson (E/CN.4/Sub.2/2005/28). It should continue its collaboration with the specialized agencies and other expert bodies. It should complete the questionnaire for Governments referred to in Ms. Hampson's working paper and hold workshops to hear the views of people directly affected by the threat of disappearance of their territory because of extreme environmental conditions.

35. The working paper showed the value of the Sub-Commission's work in highlighting vital human rights issues. It was essential to explore the legal implications of the disappearance of those States, where people were faced with the possible loss of most or all of their sacred homeland. Tuvalu, an island nation in the Pacific, would soon celebrate the fifth anniversary of its membership of the United Nations: if the country disappeared beneath the waves, would it also lose its independence and its place at the United Nations? It was essential to build upon the international legal jurisprudence which recognized environmental damage as a human rights issue, amounting to a right to a sound environment. The Sub-Commission's work filled a gap in the international legal consideration of the issue.

36. Over the next year, his organization would host workshops and seminars in the affected regions, where indigenous people's voices could be heard. It also hoped to explore mechanisms such as the Sub-Commission's Social Forum. A voluntary trust fund would be needed to allow indigenous peoples to participate in the discussions about the future of the island States, to help to preserve the islands and to contribute to the costs of relocating their population.

37. The World Meteorological Organization should be consulted about trends in global warming, and the Office of the United Nations High Commissioner for Refugees about the likely response to potential environmental refugees. It was essential to find solutions which took the rights of indigenous peoples into account.

38. Ms. JOURDAN (Association of World Citizens) said that one of the most visible forms of discrimination was in the area of health. She recalled the family planning programme launched in Peru, under which 300,000 women had been sterilized between 1996 and 2000. In 2004, a parliamentary inquiry had declared that it constituted a crime against humanity. In order to convince poor and indigenous women to be sterilized, threats and promises of gifts and assistance had been made. In cases where the Fallopian tubes had been tied during Caesarean sections, it was claimed that it had been done at the request of the women themselves. It was clear that an explanation was required.

39. An NGO had recently suggested the need for a special rapporteur on epidemics such as HIV/AIDS with a view to the drafting of an international convention to promote and protect the rights of infected persons. It was surprising that certain diseases were singled out from all the other conditions that existed, which could be counterproductive. For example, approximately 50 million people suffered from epilepsy, 85 per cent of whom lived in developing countries. In comparison, there were some 500,000 people worldwide being treated for leprosy.

40. Provision should be made for victims of nuclear testing to have DNA tests on request so that they could receive anti-cancer treatment.

41. Women and children suffered particularly from discrimination. In the Millennium Development Goals, reference had been made to combating infant mortality. It was known that almost 40 per cent of infant deaths had neonatal causes. Women rarely had the possibility of receiving antenatal tetanus vaccines in developing countries. The question of preventive medicine and discrimination between rich and poor countries in terms of access to medication required greater consideration.

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

43. Mr. RAPACKI (Poland) drew the Sub-Commission's attention to the position of the Polish minority in Belarus, which had been deteriorating for a number of months due to the unlawful actions undertaken by the Belarusian authorities, particularly against the Union of Poles in Belarus (UPB), an independent NGO. The authorities had repeatedly violated the right to freedom of assembly and association and the right to freedom of expression. The sixth Congress of UPB had been declared null and void by the Belarusian authorities, and that decision had been followed by attacks on the organization, unlawful threats and interventions of the security forces. The bank accounts of the organization had been blocked and its members denied access to the main seat of the Union. On several occasions the authorities had threatened that the organization would soon be declared illegal.

44. Mr. ALFONSO MARTÍNEZ, speaking on a point of order, said that the statement was not being made under the correct agenda item. Concerns relating to human rights violations in particular countries should be raised under agenda item 2, which had already been considered.

45. The CHAIRPERSON pointed out that, in accordance with the rules of procedure, government observers could address only the situation in their own countries under item 5.

46. Mr. BOSSUYT said that the rules of procedure were restrictive in that regard. It was true that human rights violations in any part of the world could be discussed under agenda item 2, but NGO or government observers could raise specific questions on minorities in a particular country under other agenda items also. The Working Group on Minorities had dealt with the situation of minorities in a number of countries, and he wondered why that was not also possible in the plenary when discussing the report of that Working Group. The Sub-Commission should not be too strict in interpreting the rules of procedure.

47. The CHAIRPERSON said that the rules of procedure forbade criticism by government observers of the situation in other countries, even agenda item 2. The guidelines for the application of the rules of procedure (HR/NONE/2001/126) stated that government observers should normally avoid referring to human rights situations in countries other than their own. In any event, the current discussion was under a different agenda item.

48. Ms. HAMPSON said that the first question was under which agenda item general situations of violations were to be discussed, which was clearly item 2. However, under agenda item 5, individual cases of discrimination against minorities were also discussed. The Sub-Commission could hear statements on the issue of the protection of minorities, and indeed two members of the Sub-Commission had expressly referred to the same situation under two agenda items. Whether Governments were allowed to refer to situations in other countries was a separate issue. The guidelines on the rules of procedure stated that government observers should “normally” avoid making such reference. However, one ground on which an exception might be expected to be made would be when dealing with their obligation to protect persons of the same national or ethnic origin as themselves. In that sense it could be argued that the observer for Poland was talking about persons of Polish origin who were entitled to some measure of protection on the part of the Polish authorities. It was noteworthy that in a recent decision, the European Court of Human Rights had ruled that the State to which individuals belonged had an obligation to protect them, even when they were outside the control of that State. Therefore the question of whether it was appropriate to refer to the situation in another country depended on interpretation of the term “normally”.

49. Mr. ALFONSO MARTÍNEZ said that he had no objection to the observer for Poland completing his statement, on condition that he did not refer to the same matter which had given rise to such a lengthy debate. Regarding the comments made by Ms. Hampson, the Sub-Commission was under no obligation to take account of the rulings of the European Court.

50. Ms. WARZAZI said that she agreed with Mr. Alfonso Martínez that what happened in European bodies should not determine the Sub-Commission’s position in that case. The Chairperson had specified previously that the Bureau had decided, as in other years, that a government observer could not discuss another country, and the Sub-Commission had accepted that decision and must therefore adhere to that position.

51. The CHAIRPERSON invited the observer for Poland to complete his statement.

52. Mr. RAPACKI (Poland) said that the deteriorating situation of the Polish minority in a neighbouring country should be of concern to the entire international community, as it touched on the fundamental issue of the protection of minority rights.
53. Mr. KHAN (Pakistan), speaking on behalf of the Organization of the Islamic Conference (OIC), said that Muslim countries were seriously concerned at the rise in Islamophobia in recent months. At its previous session, the Commission on Human Rights had adopted a resolution calling for collective efforts to curb Islamophobia, but the tide of defamation of Islam had become even stronger since then. OIC countries had strongly condemned the terrorist attacks in London and Sharm al-Shaikh as despicable criminal acts which ran counter to the tenets of Islam. However, the terrorist attacks had been used by vested interests to demonize Islam and Muslims.
54. Although Governments and world leaders had been careful in assigning blame for terrorist attacks, the media were often used to persecute and discriminate against Muslims in Europe and North America. Instances of Islamophobia formed a pattern and forebode a major catastrophe ahead unless the trend was reversed. Tens of thousands of Muslim men, women and children had been subjected to verbal abuse and hostility, one Muslim had been murdered, allegedly on grounds of Islamophobia, mosques had been attacked, vandalized and burnt, racial profiling was increasing, and discrimination was spreading in workplaces, with businesses owned or run by Muslims being targeted. A strong message was being sent that Muslims were not welcome in their adoptive homelands. Hate crimes or murders committed by Muslim criminals were being generalized to profile the Muslim immigrant community in Europe and the United States.
55. Foreign Ministers of the Association of Southeast Asian Nations had criticized stereotyping of Muslims as possible terrorists and complained that Muslims were being singled out in investigations into the attacks and also at immigration checkpoints.
56. Regrettably, the Sub-Commission had also been subjected to abuse. Certain NGO representatives were presenting propaganda as scholarly research in a bid to spread hatred against Muslims. The term "Jihad" was being used as a synonym for terrorism and extremism, and the prefix "Islamic" before terrorism was a sacrilege.
57. Muslim countries were closely scrutinizing their textbooks to banish any germs of hatred. The textbooks in Western countries that projected Islam as a religion of violence and revived images of holy wars dating back to the medieval age to profile contemporary Muslim civilization should also be examined.
58. Commentators and academics were sounding warning bells for Western European Governments that Muslims, because of their high birth rate and immigration levels, would gain demographic dominance in Europe. That premise was used to advocate the persecution of Muslims and to push through legislative amendments to expel them. Islamophobes were demanding that the European Union and the United States should discard the policies of multiculturalism, tolerance and dialogue between civilizations. The tendency to project Muslims

as a monolithic extremist bloc, bent upon bringing the whole world under Islamic law, was both misleading and sinister. The contributions of the majority of law-abiding Muslims in the United States and Europe were deliberately being suppressed, as Islamophobes' real fear was the growing influence of those moderate Muslims, not terrorists and extremists.

59. The international community must combat defamation of all religions, especially Islam, through the promotion of education and awareness-raising and the promulgation of laws prohibiting Islamophobia. The dissemination of xenophobic and Islamophobic ideas should be prohibited, as should discrimination on the basis of religion in workplaces and educational institutions. Tolerance and respect for all religions and their value systems must be promoted, and a sustained dialogue should be initiated to promote a culture of tolerance and peace.

60. OIC welcomed the initiative of the British Government to reach out to the Muslim communities across the United Kingdom to reassure them that they would not be discriminated against. The majority of Muslim and Western societies wanted coexistence, not conflict. The Sub-Commission should play a role in arresting the trend of Islamophobia.

61. Mr. AHMED (Bangladesh) said that his delegation fully endorsed the statement made by the previous speaker.

62. In view of the importance of agenda item 5 (c), the report of the Working Group on Minorities on its eleventh session (E/CN.4/Sub.2/2005/27) should have been made available earlier in order to facilitate meaningful discussion.

63. The way in which certain unsubstantiated statements by non-State actors had been reflected in the report, in particular in paragraph 20, gave the impression that they were the views of the report's authors. Bangladesh was in fact deeply committed to the rights of persons belonging to ethnic, religious or linguistic minorities. In addition to the legal safeguards, the Government took affirmative action to help such groups. The Hill Tracts Peace Accord, for example, showed that the majority community was prepared to go the extra mile to help the minority. The rapid transformations taking place in Bangladesh's economy and society were having a positive impact in ensuring non-discrimination. But minority groups, while preserving their distinct linguistic and cultural identity, must integrate into the mainstream of the country's life.

64. Commission on Human Rights resolution 2005/79 formed the basis for the Working Group's future work. If the Working Group was to play a meaningful role, it must engage in a dialogue with the Governments concerned. To engage only in criticism and rhetoric might serve the purposes of some parties, but it would not help the people whom the Working Group intended to help. The comments made by Mr. Sorabjee were very pertinent in that respect.

65. Turning to the expanded working paper by Ms. Hampson on the human rights situation of indigenous peoples in States and other territories threatened with extinction for environmental reasons (E/CN.4/Sub.2/2005/28), he said that it was a good thing that the Sub-Commission was

tackling the consequences of a State's activities on people living beyond its boundaries. With regard to paragraph 26, he could inform the Sub-Commission that if the level of the sea rose by only 1 metre by the turn of the century Bangladesh would lose 17 per cent of its surface area. More than 15 million people lived in the areas which would be affected, and Bangladesh did not have sufficient land for the millions who would be displaced. The world needed to plan for the possibility of millions of environmental refugees, who would have to face the consequences of the violation of their fundamental human rights by others. The views of the affected States could provide crucial input for the next report. Since in today's globalized world no country could live in isolation, a supportive framework of international cooperation would be essential to the solution of the problem. The paths to the delivery of human rights would differ from country to country.

ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY (agenda item 3)
(continued) (E/CN.4/Sub.2/2005/6, 7, 8 and Corr.1 and Add.1, 9, 12-15 and 42;
E/CN.4/Sub.2/2005/NGO/6, 9, 12, 16, 24 and 25; E/CN.4/Sub.2/2004/6)

66. Ms. FISHEL (Indian Law Resource Center) said that she was speaking as representative of the delegation of the Western Shoshone, an indigenous people in the United States of America who were involved in a decade-long struggle for justice and for recognition of their land and cultural rights. The Working Group on Indigenous Populations had certainly increased public awareness of the dire situation of indigenous peoples, but the way in which racism affected those peoples was still not well understood: legal and political systems continued to exploit them in the United States and around the world. The Western Shoshone people were enduring serious violations of their human rights and fundamental freedoms by the United States. The Indian Claims Commission had determined that the rights of the Western Shoshone to their ancestral land had been extinguished without their consent or participation.

67. The United States courts had denied the Western Shoshone due process. In January 2003 the Inter-American Commission on Human Rights had found in favour of the Western Shoshone in that regard. But the United States Government had claimed that the Commission did not have jurisdiction and had continued to ignore Western Shoshone rights. It was also planning to establish a national nuclear-waste depository on Western Shoshone land. The working papers currently before the Working Group, on traditional knowledge and on free, prior and informed consent, were both very important. Her delegation urged the Working Group to continue its efforts and called for the immediate adoption of the draft declaration on the rights of indigenous peoples.

68. Mr. ALFONSO MARTÍNEZ (Special Rapporteur) said that he was grateful to all the indigenous organizations which had expressed their support for the Working Group on Indigenous Peoples. The specific concern expressed by the representative of the Foundation for Aboriginal and Islander Research Action had been covered in one of the draft resolutions to be submitted to the Sub-Commission. He could assure the representative of the Western Shoshone that the Working Group had indeed been discussing the terrible effects of the seizure of land from indigenous peoples without their free, prior and informed consent.

69. Ms. MOTOC (Chairperson-Rapporteur) introduced the report of the sessional working group work on the administration of justice (E/CN.4/Sub.2/2005/11). After drawing attention to a number of the points made by the members of the Working Group during its deliberations, she said that it was eager to increase its collaboration with NGOs and invited them to submit their working papers, in particular on the topics of transitional justice and the right to an effective remedy, on which the Working Group had decided to concentrate at its next session.

70. Ms. PARKER (Minnesota Advocates for Human Rights) said that she looked forward to increased collaboration between NGOs and the sessional working group, in particular on the topic of transitional justice. Several NGOs had expressed an interest in convening a seminar before the fifty-eighth session of the Sub-Commission; one outcome of such a seminar would be the production of a number of NGO working papers on topics considered by the sessional working group.

71. Ms. MOTOC said that she had been contacting NGOs to ask them to produce working papers. She very much hoped that the seminar mentioned by the representative of Minnesota Advocates for Human Rights would take place.

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) (continued) (E/CN.4/Sub.2/2005/32-41; E/CN.4/Sub.2/2005/NGO/2-5, 8, 14-16, 18, 20, 23, 26-31, 33 and 35; E/CN.4/Sub.2/2004/47; E/CN.4/Sub.2/AC.2/2005/5; E/C.12/2000/4)

72. Ms. WARZAZI (Special Rapporteur) introduced her final report on recent developments with regard to traditional practices affecting the health of women and the girl child (E/CN.4/Sub.2/2005/36). She reviewed the history of her study, in particular with regard to the practice of female circumcision, and the consideration of her reports by the Sub-Commission. In view of the progress made, particularly in raising awareness at the national, regional and international levels concerning harmful traditional practices and in mobilizing NGOs and other bodies, in particular the Inter-African Committee, the time had come for her to withdraw from the position of Special Rapporteur and pass the torch on to the Special Rapporteur of the Commission on Human Rights on violence against women, even though that Special Rapporteur had not taken account of all the work done by the Sub-Commission.

73. The work on the topic could be continued more effectively by the Commission's Special Rapporteur because her budget gave her access to all the relevant sources of information and enabled her to carry out field missions and enquiries. She could also organize seminars and workshops which were extremely useful for the implementation of the plan of action. Furthermore, the Special Rapporteur enjoyed the unwavering support of the High Commissioner and she had sufficient staff to discharge her mission properly. Unfortunately, over the past

two years she herself (Ms. Warzazi) had gained the disagreeable impression of not receiving from the High Commissioner's Office the consideration which her task merited. A further reason for passing on the torch was that she had been unable to obtain the collaboration of Asian Governments and NGOs on the many harmful practices affecting the health of women and girls on that continent. The Special Rapporteur on violence against women would be more likely to succeed in that respect.

74. She was grateful to the Sub-Commission for the trust which it had placed in her over the years as she had tried to discharge her responsibilities with the limited resources available. The Sub-Commission must continue to encourage all activities for the elimination of harmful traditional practices: it had created an irreversible momentum which must be further strengthened.

75. The CHAIRPERSON said that he was sure he was speaking on behalf of all the members of the Sub-Commission and all the participants in the fifty-seventh session in thanking the Special Rapporteur most warmly for all the work which she had done on the topic over the past 20 years.

76. Mr. CHERIF said that much had been achieved by way of raising public awareness of harmful traditional practices. The delivery of human rights was the best way of ending those practices. NGOs had a major role to play in that connection, and States must redouble their efforts to eliminate practices rooted for too long in their peoples' cultural traditions. However, crimes of honour were not simply a traditional practice affecting the health of women and girls but a serious criminal phenomenon calling for more detailed study by a human rights body of the United Nations.

77. He welcomed the Special Rapporteur's final report: she merited the Sub-Commission's congratulations and thanks for her excellent work.

78. Mr. SORABJEE, Mr. BOSSUYT, Mr. PINHEIRO, Mr. YOKOTA, Ms. WADIBIA-ANYANWU and Mr. DECAUX endorsed Mr. Cherif's congratulations and offered their personal thanks to the Special Rapporteur.

The meeting rose at 1.05 p.m.