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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 8th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 2 August 2005, at 10 a.m.

Chairperson: Mr. KARTASHKIN

later: Mr. BOSSUYT
(Vice-Chairperson)

later: Mr. KARTASHKIN
(Chairperson)

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ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY (continued)

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

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, 19, 24 and 25; E/CN.4/Sub.2/2004/6)

1. The CHAIRPERSON expressed condolences to the Kingdom of Saudi Arabia on the death of King Fahd bin Abdul Aziz.

2. Ms. McCONNELL (Interfaith International) said that Sri Lanka's 1948 Constitution had specifically prohibited the adoption of laws discriminating against any one community, and solemn assurances had been given that the ethnic majority would not use its numerical superiority to discriminate against the Tamils. In 1972, however, the dominant Sinhala majority had rewritten the Constitution to ensure a dominant role for Buddhism, scrapping the constitutional safeguards against discrimination. Rule by emergency regulations had become the norm, and the Prevention of Terrorism (Temporary Provisions) Act, made permanent in 1982, had given the police broad powers to arrest Tamils and detain them without charge for up to 18 months. The security forces were thus given a free hand to torture, rape and kill. Confessions obtained under torture were admissible in evidence.

3. The pattern of bias in the judicial system was well-recorded, not least by the Human Rights Committee and the Commission's Special Rapporteur on the independence of judges and lawyers. Those responsible for the mass murder of 27 young detainees in Bindunuwewa in October 2000, for example, had been acquitted by the Supreme Court. None of the security personnel involved in three massacres that had taken place in the 1990s had been prosecuted. Soldiers charged with the murder of 35 Tamil civilians had been acquitted, after successfully applying to have their trial transferred to Colombo, where witnesses had felt unsafe and had been intimidated. There had been no progress on the case of the assassination of Mr. Kumar Ponnambalam, despite ample evidence on the alleged perpetrators. There had been no proper investigation or punishment of those responsible for the murder of many human rights defenders and journalists.

4. A statue of Buddha had been illegally erected in Trincomalee, not for worship but to cause tension among local communities. The district court had ordered its removal, but that decision had been overturned by the Supreme Court. Discrimination against Tamils was also evident in the suspension by the Supreme Court of four key provisions of the recently agreed Post-Tsunami Operational Management Structure. Tamil tsunami victims were still waiting to receive aid. In two thirds of the north-east of the island, the Tamil Eelam police, founded in 1990, and the Tamil Eelam judicial system, which had started functioning in 1993, were effective and accepted by the people of the area. There were 120 lawyers and 26 judges who had graduated from the law college of Tamil Eelam.

5. She called on the Sub-Commission to pay due regard to the lack of effective remedies in the Sri Lankan judicial system and the systematic human rights violations by that country's armed forces. There was a danger of war, should the situation deteriorate further.

6. Ms. SHAWL (International Islamic Federation of Student Organisations) said that, where a State was insensitive to human rights violations, prompt international scrutiny of both the violation and the State's response to it was a prerequisite for justice. Such scrutiny was particularly desirable where gross violations occurred on a systematic basis. Ms. Hampson's working paper on the implementation in domestic law of the right to an effective remedy (E/CN.4/Sub.2/2005/15) was admirable, but it omitted any reference to international scrutiny of the violations of the rights of people living under occupation and the absence of any remedy. A case in point was Jammu and Kashmir, where the Indian occupation forces were engaged in systematic and gross human rights violations. Remedies were non-existent; and the question was how to ensure that the occupying Power respected the provisions of international law, especially when that Power was unresponsive to calls for an end to violations.

7. As the Sub-Commission had heard many times before, around 90,000 Kashmiris had been killed since 1989 and thousands were currently detained on false charges of militancy. Some 10,000 women had been victims of individual or gang rapes by the security forces. Freedom of movement and of expression was denied. Leading human rights NGOs had documented the serious human rights situation and called in vain on the Indian Government to put an end to human rights violations and provide redress to the victims. The Government had not even made any effort to check the veracity of the NGO reports. Most recently, it had failed to investigate an incident in which an innocent young man had been killed on suspicion of being a militant. Ms. Hampson had proposed that a working paper should be written on the case law of human rights bodies with regard to the right to a remedy. Such a paper should include a study of the institution of remedy in occupation situations.

8. Ms. SHAUMIAN (International Institute for Peace) said that the administration of justice required not only well-framed legislation but also the inculcation of attitudes to ensure that the conduct of the law was free of prejudice. Yet even in the most developed democracies, especially in societies where stratification based on race, religion or ethnicity had become established over the centuries, the attitudes of those who implemented the law often negated the principles of equality and just treatment. Much depended on the home and education environment. If children grew up in a household where women were discriminated against and treated as inferior beings, or where caste and religion determined who might and might not enter a dwelling, they would grow up with inbuilt prejudices that no amount of education could completely eradicate. The problem also lay in schools where religious dogma denigrated the faith of others and men were assumed to be superior to women. Such attitudes supported discriminatory laws that had resulted in women being treated as second-class citizens, subject to evils such as "honour killings". In many societies, women were denied the right to drive, choose a spouse or take part in the political process. In such circumstances, equality of treatment for all became impossible. Whole segments of society were denied their basic democratic and human rights.

9. Discriminatory treatment had an impact on the welfare of the global community, as well. The campaign against international terrorism had begun to unleash forces of blatant discrimination, even in States which prided themselves on their system of justice and fair play. Racial profiling had become widespread, and nationals of various countries were singled out for discriminatory treatment on the basis of their religion, appearance or colour. In other words, democracy alone could not guarantee the proper administration of justice or the rule of law; it could do so only if human beings could shed their innate prejudices. Meanwhile, some groups

felt resentment at perceived or real discrimination. It was time to establish why, even in democratic nations, communities were beginning to bear grudges against each other, thus lending force to ideologies that claimed that democracy was an unnatural system. Failure to ensure universal equality under a democratic system, indeed, would leave room for ideologies that sought to manage the affairs of man within the framework of divine laws. Since the interpretation of such laws would lie in the hands of individuals, any setback to the democratic ethos provided religious bigots with more opportunities to preach their gospel of hate and violence. The campaign to democratize the global community must not be thwarted by prejudice, which could further segregate communities and lead to violence. At the same time, schools should, from the earliest years, weed out attitudes that fostered prejudice and discriminatory practices.

10. Ms. KHAN (World Muslim Congress) said that agenda item 3 formed the very core of the human rights system, which was predicated on credible systems of administration of justice, the rule of law and true democracy. Those three principles were blatantly violated in Indian-occupied Jammu and Kashmir. Alien rule administered by over 700,000 Indian security personnel had led to a pattern of gross human rights violations. The relatives of those who had disappeared or been tortured, raped, detained, maimed or killed were harassed by State officials to prevent them from obtaining access to the courts. People were detained on arbitrary grounds, trials were protracted and the occupation forces remained unaccountable and unpunished for their crimes. Most detainees disappeared in the custody of the security forces. Innocent people were jailed or killed. Camps and detention centres were filled with young people whose only crime was to demand the right to self-determination. The primacy of civilian institutions was essential for the rule of law; but, in Jammu and Kashmir, that principle was vitiated by the presence of a huge Indian military force. The Sub-Commission was informed of the situation year after year, but unfortunately it paid no heed. She urged it to respond to a report published by Amnesty International in May 2005 on the effects of the Armed Forces (Special Powers) Act, 1958. The Act had facilitated grave human rights abuses by bestowing sweeping powers on the armed forces in Jammu and Kashmir and in large parts of the north-east region of India. It violated non-derogable provisions of international human rights law, as enshrined in the International Covenant on Civil and Political Rights, to which India had been party since 1979. It allowed the security forces to act without a warrant and to shoot to kill. It encouraged impunity, because no legal action could be taken against members of the armed forces for activities connected with the Act. It also facilitated a high incidence of custodial deaths, torture, rape, extrajudicial killings and disappearances. The report cited three specific allegations of sexual violence by security forces, adding that dozens of reports of torture and ill-treatment had been received. Her organization urged the Government of India to repeal the Act and bring all perpetrators of human rights violations to justice. It also requested the Sub-Commission to call on the Government to end its occupation and grant the Kashmiri nation its right to self-determination.

11. Mr. MALEZER (Foundation for Aboriginal and Islander Research Action) said that the Sub-Commission should retain its important role in the proposed Human Rights Council. The peoples of the world, including the indigenous peoples, needed a continued guarantee that human rights violations would be examined objectively and in the spirit of the Charter of the United Nations. Injustice was suffered by indigenous peoples not only in repressive States but also in Western countries, including the United States, Canada, Australia, New Zealand, Sweden, Norway and Finland. In many cases, the indigenous peoples had been colonized without any

regard for their human rights. Some of the colonial States were clearly founded upon international treaties with the indigenous peoples, yet they routinely ignored such treaties, choosing to regard them as domestic law. In that connection, he commended the interim report prepared by the Special Rapporteur responsible for conducting a detailed study of the universal implementation of international human rights treaties (E/CN.4/Sub.2/2005/8).

12. Paragraph 40 of the report correctly stated that a new spirit of determination was required: States continued to evade genuine accountability under their international human rights commitments, thus escaping their obligations to address the manifest in justice, discrimination, social and economic oppression and tyrannical political control suffered by the indigenous peoples. He also drew attention to the statement in paragraph 44 that ratification alone did not guarantee a State's commitment to human rights and expressed support for the proposals contained in paragraphs 45 and 46. It would be of great use to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to work with working groups of the Sub-Commission. The Special Rapporteur should include in his current examination of constitutional reform a view of the obstacles hindering States' ratification and implementation of the human rights treaties; and he should develop that aspect of his report in collaboration with Mr. Decaux.

13. His Foundation had recently received information regarding the extent of the human rights treaty bodies' examination of the human rights of indigenous peoples. The list of findings was over 40 pages long and covered 57 countries. There had, for example, been 11 separate conclusions and decisions by treaty bodies on the situation of indigenous peoples in Australia, 6 concerning Brazil, 11 concerning Canada and 12 concerning Sweden. No definitive conclusions could be drawn, but the human rights situation of indigenous peoples was clearly of widespread concern. Some findings were positive, but most were critical. States continued to sideline the central issues of self-determination, land rights, economic development and cultural identity. The proposed reform of the United Nations human rights system offered no solutions for the human rights violations suffered by indigenous peoples. The proposed Human Rights Council might, indeed, in that it exercised peer review, exacerbate the violation of human rights. Yet indigenous peoples were not dependants of States. They owned their own territories, had the right to development, held their own values and ideologies and maintained their own systems of law, governance and social order. That should not be overlooked in any reform.

14. Ms. PARKER (International Educational Development) commended Mr. Decaux on his continuing excellent work in developing principles on the jurisdiction and functioning of military tribunals, as set out in document E/CN.4/Sub.2/2005/9. She noted with dismay that the only abstention at the Commission in respect of the request for him to continue his work had come from the United States of America, whose practices in that regard had been widely condemned. The Special Rapporteur should extend his principles to martial law, the legitimacy of which, although it had been in force for many years in some States, had not been effectively challenged. The Decaux principles could define the very rare circumstances in which martial law might be legitimate. Without clear guidance, States might be tempted to use military force to suppress civilian uprisings.

15. She commended the interim report by Ms. Zerrougui, Special Rapporteur for a detailed study of discrimination in the criminal justice system (E/CN.4/Sub.2/2005/7). Efforts on the part of civil society to challenge discriminatory practices had often been denied for lack of legal

"standing" and she hoped that the Special Rapporteur would address that issue in her final report. The phenomenon was most apparent when States placed combatant forces on a "terrorist" list. While the courts, especially in the United States, had agreed that the inclusion of groups such as the Liberation Tigers of Tamil Eelam (LTTE) or the Kurdish Workers' Party (PKK) on terrorist lists was politically motivated and did not conform with humanitarian law, they had also unanimously held that such groups had no standing to challenge the designation. That was unacceptable. Attempting to reverse such decisions cost hundreds of thousands of dollars and cases could take 10 years or more. Her organization had been involved in litigation for seven years regarding the infringement of human rights and humanitarian law by counter-terrorism measures that had been introduced long before the terrorist attacks in the United States on 11 September 2001. As a victory was won on one point of law, more measures were introduced. There was no acknowledgement by United States courts that the country was bound by international law standards, especially the Geneva Conventions. Her organization also welcomed the working paper by Mr. Salama and Ms. Hampson on the relationship between human rights and humanitarian law; she hoped that the study would continue.

16. Lastly, in response to the statement in exercise of the right of reply by the representative of Sri Lanka concerning post-tsunami relief, she said that the issue related directly to the rule of law and democracy inasmuch as the post-tsunami accord reached between the Government of Sri Lanka and LTTE had been largely annulled by the Sri Lanka Supreme Court. While the representative of Sri Lanka was correct in saying that some provisions of the accord had survived the ruling, those most important to relief in the Tamil areas had not. The international community should be alerted to the fact that Sri Lanka had, through its courts, effectively denied critical post-tsunami relief to the Tamil people.

17. Mr. INLANDER (United Nations Watch), speaking also on behalf of the African Services Committee, Associated Countrywomen of the World, the European Representative of the Christian Science Committee on Publication, CIVICUS: World Alliance for Citizen Participation, the Council for a Community of Democracies, Freedom House, Hope for Africa International, the International Council of Jewish Women, the International Federation of Social Workers, Ocho de marzo para la promoción de mujeres y jóvenes, Rights and Democracy, Tarumitra, the Thai Catholic Commission on Migration, VIVAT International, the International Volunteerism Organization for Women, Education and Development and the World Union of Catholic Women's Organizations, said that a Government which denied its people democracy often denied it development as well. Over the past five years, Zimbabwe had descended from prosperity into economic and social disaster. He felt that the Sub-Commission was justified in considering the situation in that country under Commission on Human Rights resolution 2005/53, both because the Commission had not considered the situation in Zimbabwe at its previous session, for the first time in several years, and because the gross and systematic violations of human rights in the country constituted an urgent humanitarian crisis.

18. The seizure of over 10 million acres of land, mostly from white farmers, had brought famine and economic ruin to Zimbabwe. The economy had contracted by 35 per cent, and approximately 80 per cent of the workforce was unemployed. Zimbabwe was now a major recipient of food aid.

19. Since May 2005, the Government's slum demolition campaign, entitled Muvabatsatsvina ("Operation Drive Out Rubbish") had made approximately 700,000 people homeless, and a further 2.4 million people were thought to be indirectly affected. The demolitions were a blatant violation of the right to adequate housing, guaranteed under article 11 of the International Covenant on Economic, Social and Cultural Rights, of which Zimbabwe was a signatory. The Committee on Economic, Social and Cultural Rights had stated in its general comment No. 4 of 1991 and its general comment No. 7 of 1997 that forced evictions were incompatible with the Covenant and that Governments must provide adequate alternative housing or resettlement arrangements before executing an eviction order.

20. Citizens who had sought asylum while abroad but had been returned to Zimbabwe had frequently suffered harassment and/or torture. The Times of London had reported cases of torture by electric shock. On 10 July 2005, The Observer had reported that a Zimbabwean citizen named Zuka Kalinga, who had been deported from the United Kingdom back to Zimbabwe, had been interrogated and threatened by police.

21. Consideration of the crisis in Zimbabwe could not wait until the next session of the Commission. He called upon the Sub-Commission to speak out on behalf of the victims of the Zimbabwean Government.

22. The CHAIRPERSON invited the Special Rapporteur on discrimination in the criminal justice system to introduce her interim report (E/CN.4/Sub.2/2005/7).

23. Ms. ZERROUGUI (Special Rapporteur), introducing her interim report, recalled her earlier working papers on the subject (E/CN.4/Sub.2/2001/WG.1/CRP.1, E/CN.4/Sub.2/2002/5 and E/CN.4/Sub.2/2003/3). The interim report analysed institutional and structural discrimination in criminal procedure. In particular, she had attempted to identify indirect forms of discrimination which seriously affected the enjoyment of fundamental rights by vulnerable groups.

24. Part II of the report (paras. 14-28) described the general principle of equality and the scope of the prohibition on discrimination, the obligations of States under international law and the fulfilment of those obligations under domestic law. The human rights treaty-monitoring bodies had drawn up criteria for identifying cases of unequal treatment prohibited under international law, differences in treatment which were permitted by law and the action needed to create genuine equality for all in those areas where equality was formally guaranteed. In reality, people's access to law and justice was highly inequitable.

25. Stigmatized and marginalized groups were underrepresented among those working in law enforcement and the administration of justice; over-represented among the victims of crime; and excessively over-represented among criminals, prisoners and those sentenced to death. That phenomenon was often attributed to social inequalities, but positive action to remedy the adverse effects of social inequality and racial disparities was not always welcome: the advocates of the "colour-blind, race-blind" policy believed that colour and race had no place at all in the criminal justice system. Often, however, inequalities due to wealth, culture, legal complexities, procedural inequalities and policies of exclusion were created by the law itself. For example, the legal assistance provided for poor defendants was often low in quality and was sometimes even

provided by non-professionals. A legal adviser might be appointed at a late stage in the proceedings and, if convicted, the defendant might be obliged to pay legal costs. Foreign defendants might face the additional barrier of an unfamiliar language and culture: there were rarely resources available to provide the required standard of interpretation or translation of documents. Thus poverty, ignorance and stigmatization brought with them a greater probability of pre-trial detention, an unfair trial and an unjust or disproportionate penalty.

26. Part III of the report (paras. 29-58) dealt with de jure and indirect discrimination in criminal procedure. De jure discrimination was usually obvious, but there were three types of indirect discrimination which disproportionately affected vulnerable groups: discrimination against non-citizens arising from immigration controls and the fight against terrorism; discrimination against non-Muslim national minorities in countries which used Islamic law; and gender discrimination enshrined in laws and procedures - the latter a subject which was not covered in the interim report. It was clear that, regardless of the type of legal system in force, the criminal justice system perpetuated structural inequalities, stereotypes and prejudices. The potential victims of discrimination suffered more from the disadvantages of the system, while failing to benefit from its advantages. In an inquisitorial system, vulnerable groups were disadvantaged by the confidential, written preliminary enquiry, the imbalance between the parties in the case, the procedures for gathering evidence and the wide-ranging powers of the judicial authorities. In an accusatorial system deriving from common law, pleading guilty brought disproportionately adverse consequences for vulnerable groups, and they could not rely on being tried by a truly representative jury.

27. The report dealt briefly with the situation of victims of crime (paras. 42-50). Failure to observe a victim's rights had absolutely no effect on the outcome of the case, and no penalties could be imposed for such infringements.

28. Paragraphs 51-58 of the report addressed the structural dimension of discriminatory practices by the police and other actors in criminal procedure. In some cases, brutality and discrimination were institutionalized. Minority groups were underrepresented among law enforcement personnel in almost all countries. The phenomenon of "racial profiling" was obvious in the statistics for questioning and arrest of members of minority groups on the street and in poor neighbourhoods and in relation to drug offences, prostitution and petty crime. It had actually been raised to the status of an official policy in the fight against terrorism which had followed the terrorist attacks on the United States on 11 September 2001.

29. The institutional aspects of discriminatory practices by police officers included the increased powers granted to the police to fight crime and maintain public order, the inadequate resources they were given, the supervision of their activities and the availability - or otherwise - of effective redress when the rights of the most vulnerable groups were infringed. Those responsible for criminal justice policies, prosecutors and judges shared the stereotypical beliefs of the police, as shown by the disproportionate effects of minimum sentencing and compulsory imprisonment on indigenous and vulnerable groups. Offences involving stigmatized or marginalized groups were more severely penalized, and a defendant's race, colour and place of origin were deciding factors in the imposition of the death penalty.

30. Owing to the restrictions on the length of documents submitted to the Sub-Commission, she had not dealt with certain issues, including discrimination in penal institutions and gender-based discrimination. They would be covered in her final report, which would also contain recommendations and an analysis of best practices drawing on national, regional and international experience.

31. Ms. MOTOC welcomed the report on discrimination in the criminal justice system, which usefully analysed the situation under various systems, including common law and Islamic law. However, it dealt only with States in which the rule of law prevailed. How did the Special Rapporteur intend to deal with the many countries where the legal system was entirely corrupt and justice was available only to a privileged few?

32. Ms. WARZAZI deplored the length restrictions imposed on such an important report. It provided detailed information about the effects of discrimination by the criminal justice system and its officials and by society itself on the grounds of gender, religion, origin and colour. She was particularly concerned to see discriminatory practices being justified as part of the fight against terrorism.

33. The report indicted that the victims of crime were traumatized by the way their cases were dealt with by the criminal justice system (para. 46), to the extent that they were actually reluctant to seek justice. It was the responsibility of Governments to ensure that victims could seek redress without fear of reprisals or stigmatization, have confidence in the police and receive the financial and linguistic support they needed.

34. Paragraph 45 of the report dealt with the discrimination suffered by women, minorities and the poor under Islamic law. One possible remedy lay in the legal practice of ijtihad, or independent interpretation of the law, based on the inalienable principles of justice and equality of Islam, which had contributed to the new, more equitable family code now in force in Morocco.

35. Ms. HAMPSON noted the need for caution in any attempt to redress underrepresentation of certain groups in the police force (see paragraph 19 of the report). In Croatia, for example, some members of the majority of ethnic Serb police officers had actually lost their jobs, which could itself be considered discrimination.

36. The report (para. 26) dealt with the right of a defendant who did not understand the language of the court to the services of an interpreter free of charge. In a case involving Germany, the European Court of Human Rights had stated that the requirement for a defendant who had been convicted to pay the costs of employing an interpreter contravened the European Convention on Human Rights.

37. The Special Rapporteur (para. 40) noted the decision reached by the European Court of Human Rights in the case of Natchova v. Bulgaria, which was based on indirect evidence of discrimination and placed the burden of proof on the Government rather than on the plaintiff. Unfortunately, however, a subsequent decision in the same case by the Grand Chamber of the Court had gone rather less far in that direction.

38. Paragraph 49 of the report dealt with the rights of victims of offences. In that connection, the Special Rapporteur might also wish to consider the case of Venables. v. United Kingdom, which had been considered by the European Court of Human Rights. In that case, the parents of the victim, the toddler James Bulger, had been allowed to address the Court.

39. The report (paras. 51 ff.) distinguished between direct and indirect discrimination. However, it was also important to identify institutional racism, which had been usefully defined in the inquiry into the murder of the black student Stephen Lawrence in the United Kingdom, and could be seen in "processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people".

40. It was sometimes difficult to decide whether negative attitudes on the part of police officers were due to ignorance, inadequate training or simple prejudice (para. 56 of the report). Ms. Zerrougui might wish to consider the case of Nasir Ilhan v. Turkey, lodged with the former European Commission on Human Rights on 24 June 1993, in which the European Commission had identified no less than 14 violations of the right to an effective investigation, many of which had been attributable to bias or prejudice on the part of the police.

41. The Committee on the Elimination of Racial Discrimination (CERD), which was currently in session, had recently become interested in the issue of discrimination in the judicial process. The Special Rapporteur might wish to make contact with the Committee during her stay in Geneva.

42. The report clearly showed the need for secondary action to establish guidelines for the implementation of human rights standards. She suggested that the Sub-Commission should submit a request at the current session for the Special Rapporteur's final report to be exempted from the usual restrictions on length, and for it to be translated in full into all the working languages.

43. Mr. DECAUX said that Ms. Zerrougui's approach, which considered the cumulative effect of poverty, ignorance and stigmatization, and took into account the victims as well as the accused, was very enlightening.

44. The role of the police was decisive, and it would be interesting to consider in the next report concrete solutions in areas such as training and ethics. As to the administration of prisons, it would be useful to examine the situation of foreign prisoners.

45. The report would be useful not only for CERD, but also for the Human Rights Committee, which was currently preparing a general comment on the principle of equality before the law.

46. Mr. CHEN said that eliminating discrimination and guaranteeing justice were serious challenges faced by many countries. Many discriminatory phenomena occurred because of a lack of understanding of the justice system. In addition, many victims could not afford the services of a competent lawyer, and were therefore in a position of weakness before the courts, which gave rise to further potential discrimination.

47. Regarding institutional or indirect discrimination, further study was required on aspects such as implementation.

48. Mr. SALAMA welcomed the Special Rapporteur's approach, which identified areas for further examination by the Sub-Commission. Discrimination in the administration of justice would be aggravated by terrorism, which had negative repercussions on the criminal justice system. In an atmosphere of fear and panic, the number of police blunders would necessarily increase. He therefore welcomed the fact that the Special Rapporteur's definition of criminal justice included police action.

49. The nature of the study would make clear that implementation was not an alternative to standard-setting. On the contrary, the greater the need to implement current standards, the more there was a requirement for further qualification. If the idea of killing suspects in suspicious circumstances was tolerated, there was a need for greater legal guarantees in all countries. Faced with terrorism, it was likely that there would be increased action by the police, and there would be a need to clarify the almost automatic use of force in terms of real or perceived danger. The ethics surrounding the use of force by police must be reconsidered in the light of the report, which highlighted that the protection of human rights needed to be adapted to new circumstances.

50. Mr. YOKOTA said that, as the report touched on a number of topics dealt with under other subjects addressed by the agenda, such as discrimination against minorities, women and children, and terrorism and counter-terrorism, its implications were far-reaching, and it would be useful for the future work of the Sub-Commission.

51. He welcomed the fact that Ms. Zerrougui had pointed out the importance of de facto discrimination. Although most constitutional law and national legislation made reference to fair and open trials, they were not ensured in all criminal proceedings in all countries. He also welcomed the attention paid to the most vulnerable members of society, particularly those in extreme poverty, who, whether as defendants or victims, could not afford to hire competent lawyers, and did not know what legal protection was available to them.

52. It was also commendable that institutional discrimination had been described, as many cases of discrimination in criminal proceedings were not one-off incidents, but the result of deep-seated ideologies within an institution hostile to a particular group of people.

53. There was a need to examine the question of different legal systems reflecting different cultural, religious and historical backgrounds. As a result of globalization, people were increasingly moving from one legal system to another - hence the need to assess how to ensure fair proceedings for people entering an alien system.

54. A major problem was the lack of independence of law enforcement officers, particularly the police, and also prison and immigration officials, who often discriminated on the basis of race, nationality, language, gender or religion. Prosecutors, and in some cases judges, were not always totally independent either, and there was therefore a need to examine the justice system as a whole. The role of defence lawyers must also be examined, as unless independent professional lawyers were available to defendants, their rights were often violated, and they were subject to discriminatory treatment.

55. The question of transitional justice had been raised in the working group on the administration of justice, and although the Special Rapporteur was not in a position to go into that matter in depth, it was a related subject. After major conflicts, the issue of the prosecution of perpetrators was a complicated one. If justice was pursued in the national courts, they would either be sympathetic and protective of the perpetrators, or attempt to carry out reprisals. In some cases, international tribunals were established, such as the International Criminal Tribunal for Rwanda, or cases referred to the International Criminal Court. The Sub-Commission might be able to identify good practices which could be used in the national criminal procedures to protect victims and ensure a fair trial for defendants.

56. Training and education were essential elements in tackling discrimination in the criminal justice system. Although the emphasis of the World Programme for Human Rights Education was on primary and secondary education, the training of law enforcement officials, judges and prosecutors should remain a leading priority.

57. Ms. O'CONNOR welcomed the fact that the Special Rapporteur had noted that the criminal justice system mirrored prevalent prejudices and stereotypes. In certain societies, discrimination was based on the class system. Those who administered the law were usually from a "higher class", while those who took up a disproportionate amount of space in prisons and appeared in court on a regular basis, and whose areas of resistance were the focus of police attention, were usually poor and illiterate or semi-literate. In some administrations, discrimination in the justice system was based on the perception that the poor were either criminals or potential criminals. Therefore there existed a paradoxical situation where those most targeted as potential criminals knew the least about the law and were least able to defend themselves. The disparities in sentencing in certain regions reinforced the perception that there were two levels of justice, one for the rich and another for the poor.

58. Great importance was placed on providing adequate legal aid, but in certain regions attempts to do so were thwarted by the economic realities of the State. Therefore, although a legal aid system might exist on paper, it broke down when the Government was unable to pay the fees of lawyers who provided representation.

59. Another problem was the ongoing education of the judiciary, which should centre on an "attitude-changing" programme, because as long as there was an attitude that presupposed the guilt of certain members of society, discrimination in the administration of justice would persist. Regarding the training of the police, in addition to the recognition of the fundamental right to life, it was critical that ongoing training should be based on examination of cases as they occurred, so that the police were sensitized as to what had gone wrong in the handling of a particular incident.

60. The use of mediation as an alternative to court proceedings in certain areas and the imposition of non-custodial sentences were a cause for optimism, and she hoped the Special Rapporteur would be able to consider such measures.

61. In certain jurisdictions, very little assistance was provided to foreigners in the prison system. Perhaps representatives of embassies and missions in countries where their nationals were imprisoned could be more involved in providing legal representation and ensuring that the rights of such detainees were respected.

62. Regarding the implications of counter-terrorism, it was apparent that persons were now exposed to questionable detention, arrest and even violation of their right to life. In certain areas, the emergence of vigilante groups who had lost faith in the justice system and had taken it upon themselves to impose summary justice meant that there was now a double threat of counter-terrorism and breakdown of the rule of law.

63. As part of the World Programme for Human Rights Education, it would be worthwhile to ensure that information on basic laws and rights was imparted to children, so that they would be more knowledgeable about their rights in later life.

64. She agreed with Ms. Hampson that the limitations on the length of reports should be lifted in the present case because of the importance of the subject.

65. Ms. KOUFA commended the Special Rapporteur's analysis of de jure and institutional discrimination incorporated into the procedures and practices of different legal systems, and said she agreed with Mr. Yokota's comments in that regard.

66. She had been particularly interested to learn that the concept of equal access to the law was clearly present in all types of legal system, whether based on common law, Muslim law or civil law, which highlighted the importance of the universality of the international human rights instruments.

67. The reference to the concept of affirmative action in the report indicated that access to justice and the right to equality under the law were not enjoyed by all in many States. Racial discrimination was of course a major factor in that phenomenon, but even added to economic and social inequality, it was not sufficient to justify shortcomings in the criminal justice system. The emphasis on the situation of the victims in criminal proceedings had been particularly interesting. It was clearly necessary to strike a balance between protecting the rights of the accused and recognizing the rights of the victims of criminal acts.

68. Although the interim report showed great understanding of the issues involved, she did not see how it would be possible to complete the final report by the following year, as there were many areas remaining to be considered. She therefore proposed that the Special Rapporteur should be authorized to submit a second progress report that included some of those areas, so that her final report could be prepared with all issues taken into consideration.

69. Mr. CHERIF, referring to the interpretation services which ought to be made available to certain suspects and accused persons, said that, in addition to foreigners, certain people with disabilities could be severely discriminated against, notably those who were deaf and dumb.

70. Discrimination had psychological origins, and a relatively new discipline, legal psychology, which studied the psychology of judges and juries, had highlighted aspects of discrimination in the legal treatment of those being tried. Whether conscious or not, that indirect discrimination could be very serious and touched on the question of the impartiality of judges.

71. Gender discrimination could sometimes be found in the judiciary itself, because certain legal systems did not allow women to become judges, which violated the principle of equality between the sexes.

72. Human rights education should be imparted to judges and law enforcement officials at all levels, particularly during specialized training at police institutes and magistrates' schools, as an effective preventive measure against discrimination and prejudice in the justice system.

73. Ms. ZERROUGUI (Special Rapporteur) said that she was grateful for members' comments, which would help her with the conclusion of her study. She was particularly glad that members had realized that the topic could not be covered in three reports and that her work would open the way to further studies. She was also glad that the sessional working group had started to consider a number of problems requiring studies in themselves.

74. It should be remembered that discrimination in the justice system did not end when a sentence had been served: former prisoners were often stigmatized for life; in some countries they lost the right to vote and to exercise their other civil rights. Throughout her study she was in fact trying to concentrate on discrimination against vulnerable groups and the degree to which their fundamental rights were respected.

75. Some of the concerns raised in the Sub-Commission had been touched on in her earlier working paper (E/CN.4/Sub.2/2003/3). In her final report she would try to make concrete proposals for the continuation of the Sub-Commission's work on the topic.

76. Mr. ESHAGHI (France Libertés) said that the recent election of Mahmoud Ahmadi-Nejad, a former member of the Revolutionary Guard, to the presidency of Iran had marked the end of long years of an illusion of reform and the return of a regime which had been condemned 59 times by United Nations bodies for its systematic violation of human rights. Another former revolutionary guard had recently been appointed Chief of Police and urged to improve the police service by recruiting "faithful, revolutionary and efficient officers". There was to be a new operation against "vice" in Tehran in which the police were to target non-veiled or poorly veiled women, noise pollution and the disregard of Islamic values and morality. Those were worrying developments as far as respect for the fundamental rights of Iranians was concerned.

77. The head of the judiciary in Tehran had recently reported on human rights violations in 19 detention centres, including arbitrary detention without trial, increased use of torture and rape, and judicial chaos. For example, one prisoner had been held since 1988 without charge or trial; and a woman had been imprisoned in place of her husband who was wanted for drug addiction; many women and girls had been raped by prison warders, and many had committed suicide owing to their intolerable treatment. The same report mentioned many cases in which defendants had been refused the services of a lawyer and it also stressed the flagrant discrimination found in the prisons. Furthermore, in 2004 more than 230 executions had been reported in the press or by human rights organizations, and more than 100 persons had been sentenced to death, sometimes by public hanging, since 1 January 2005.

78. The Iranian people clearly did not enjoy the rule of law or a minimum of respect for the international standards of justice, even though Iran had signed several of the international conventions. Twenty-six years after the arrival of theocracy, the situation of human rights

remained one of the most worrying in the world, especially in view of the failure to renew the mandate of the Special Rapporteur in 2002. The Sub-Commission must take a very serious attitude to the situation in Iran.

79. Mr. Bossuyt, Vice-Chairperson, took the Chair.

80. Mr. WANI (International Human Rights Association of American Minorities) said that, despite the efforts of the international human rights community, many peoples were still denied their basic rights. One case in point was Jammu and Kashmir, which had been subjected to the cruel occupation of the Indian army for the past 50 years and whose people suffered gross and systematic violations of their human rights. Such situations highlighted the important relationship between democracy and the administration of justice and rule of law. Only full self-determination could guarantee the full enjoyment of all human rights. India had continued to inflict injustice on Kashmiris in violation of Security Council resolutions. Although India was reputed to be a "democracy", its governing elite had always relied on repressive powers and legislation to maintain its rule.

81. He listed the repressive legislation enacted by India during the 1980s and said that such brutal laws denied people access to judicial and administrative remedies and had become a licence for impunity. The Prevention of Terrorist Activities Act, 2002 was the latest in the series of draconian laws: it allowed detention for up to 180 days without charge; it subverted the principle of the presumption of innocence; it provided for the identity of witnesses to be withheld and for confessions made to a police officer to be admitted as evidence; and it allowed the public prosecutor to veto bail. A 2003 human rights report by the State Department of the United States had disclosed that 702 persons had been arrested under the Act.

82. It was impossible for the Kashmiris of Indian-occupied Jammu and Kashmir to seek justice and judicial remedies from national and international human rights mechanisms. The Sub-Commission was therefore urged to impress upon the Indian Government that it should repeal legislation which violated the basic principles of justice and the rule of law.

83. Ms. SPALDING (Women's Sports Foundation) said that involvement in sports could change the lives of women and girls in the direction of greater dignity and exercise of all their human rights. The world of sport was an under-recognized but powerful tool which could help the United Nations to deliver human rights for women and girls and for all other people. The promotion of sports might seem a subtle human rights strategy, but it could mean "human rights experienced" when a disabled athlete achieved a 10-yard walk through a swimming pool at the Special Olympics.

84. The sports programmes of the Women's Sports Foundation encouraged girls to achieve the fullest development of their personalities and to exercise their rights to health and participation in community life. In the context of the heinous violations of human rights throughout the world, it might prove salutary to examine the power of sports to prevent, rehabilitate and reintegrate. There had also been numerous instances in which sports had helped to prevent discrimination.

85. The Women's Sports Foundation was committed to the full development of individuals and communities through participation in the joys and disciplines of sport, which enabled people to lead responsible lives in the larger "team" of the global community. It was in fact time to stop playing games with the application of human rights values. The powerful human rights tool of sports must be used, in the Sub-Commission and elsewhere, to promote the exercise of human rights the world over.

86. Mr. FYFE (Indigenous World Association) said that his statement was endorsed by the Indigenous Peoples and Nations Coalition, Na Koa Ikaika O Ka Lahui Hawaii, the Kanaka Maoli Tribunal, the Koani Foundation, the Elders Council of Tununak, the Tenekee Thlingit Nation, and various supporters in Alaska and Hawaii.

87. The Sub-Commission should establish a system to review and identify cases of violation of the decolonization resolutions of the United Nations, especially with regard to Alaska and Hawaii, with a view to enabling colonial peoples to exercise the right to petition and their right to full self-determination under international law.

88. The Indigenous World Association welcomed the interim report of the Special Rapporteur on the universal implementation of international human rights treaties (E/CN.4/Sub.2/2005/8). The peoples of Alaska and Hawaii should have been consulted by the administering Power, the United States of America, in accordance with General Assembly resolution 742 (VIII). At the time of the adoption of that resolution in 1953 the Kingdom of Hawaii had been a signatory to 30 international treaties and Alaska had been recognized as independent by the United States. The United States often cited constitutional obstacles to ratifying international conventions, but such claims were merely a means of denying remedies for human rights violations. It should in fact ratify the relevant international agreements without reservations or declarations and put itself through the test of the treaty bodies and the scrutiny of the Commission on Human Rights.

89. The Kingdom of Hawaii had been officially recognized by the United Nations, France and the United Kingdom in 1843, but less than 50 years later the United States had occupied its territory. In November 1993 the United States had passed legislation admitting complicity in the illegal act of war against the peaceful nation of Hawaii and proposing a true reconciliation process. The Indigenous World Association called upon the United States to end its occupation of Hawaii, as the United Kingdom had done 162 years previously.

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

91. Mr. WARIKOO (Himalayan Research and Cultural Foundation) said that some States which claimed to be democratic were in fact only quasi-democratic, for their regimes ignored the principles of free and fair elections, independence of the judiciary, equitable representation and equal distribution of wealth. There were blatant examples of discrimination in the judicial systems of some States in southern Asia, in cases of rape for example. Such discrimination was so firmly established in the criminal justice system that victims, especially women, children and members of minorities, were denied their rights. The time had come to eliminate discrimination based on socio-economic, cultural, ethnic, religious, gender or political considerations.

92. Terrorism constituted a major threat to democracy, the rule of law and the administration of justice. In post-Taliban Afghanistan, for example, the battle between the forces of democratization and those of destabilization was continuing. And in the Indian State of Jammu and Kashmir terrorists had been making desperate attempts to thwart the election process. However, in September 2002 even the killing of political leaders and over 800 members of mainstream political parties had not deterred Kashmiris from exercising their right to vote. In the parliamentary elections in April/May 2004 terrorists had again targeted political leaders, party workers and voters: over 30 persons had been killed and some 300 injured. But the total voter turnout had increased: the people of Jammu and Kashmir had affirmed their faith in democracy and chosen representatives to voice their aspirations in the Indian Parliament. Those elections had also marked the emergence of competitive politics in Jammu and Kashmir, a good augury for the strengthening of democracy. The reassertion of democracy had been demonstrated yet again by the local elections held in January/February 2005 after a gap of 27 years. A record number of voters had voted in the last phase of the elections even after the murder of four elected councillors, demonstrating the determination of the people of Kashmir to combat terrorism through the ballot box.

93. Mr. CHOUDHRY (World Peace Council) said that only a democratic society could protect and promote human rights, and only a functional democracy could provide transparency and accountability in public administration and respect for the rule of law. In that connection, States had the primary responsibility for protecting the rights of their citizens and preventing victimization on the grounds of race, colour, language, religion, sex or political opinions. The people of Jammu and Kashmir did not enjoy the luxury of democracy but had lived for the past 57 years under puppet Governments put in place by India and Pakistan on both sides of the divide. There was much talk of an ongoing peace process, but the suffering of the ordinary people continued.

94. After citing several incidents to illustrate that point, he said that the people of Gilgit and Baltistan had been directly colonized and cruelly treated by Pakistan: the situation had been described in a report issued by the Human Rights Commission of Pakistan in October 2004, which had recommended that the freedom of local political institutions should be ensured by curtailing the powers and the official and unofficial roles of Pakistan's bureaucracy. The World Peace Council hoped that something could be done to alleviate the misery and suffering of the Kashmiri people.

The meeting rose at 1 p.m.