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Report of an NGO Forum

held at the 56th session of the UN Sub-Commission
on Promotion and Protection of Human Rights

What can be done about the overall
decline of the Item 2 debate regarding
country violations in the Sub-
Commission's agenda?

Thursday, 29 July 2004
Palais des Nations

1. INTRODUCTION

An NGO Forum was held at the Palais des Nations on 29 July 2004 after the Sub-Commission's discussion under its agenda item relating to country violations (item 2 of the agenda). The Forum was co-sponsored by Minnesota Advocates for Human Rights and Geneva for Human Rights, and arose out of an oral intervention which had been made by Minnesota Advocates for Human Rights in which the decline of item 2 had been noted, and suggestions for improvement had been made. This NGO Forum was held to determine the views of other NGOs present at the 56th session and to identify any recommendations they might have for improvement.

The meeting was open to all, including NGOs, governments, Sub-Commission experts and members of the UN staff. About 100 people attended, including two Sub-Commission experts. This appeared to be a good turnout, for example equal to approximately 20% of the entire number of NGO participants who had registered to attend any portion of the Sub-Commission session in 2003.

An informal straw poll was conducted to begin the meeting. About two-thirds of those present felt that the proceedings under item 2 needed to be improved and an equal percentage also felt that there had been a major decline in interest in the Sub-Commission since 2000 when the right to vote on country situations had been removed from the Sub-Commission's mandate. Of the one-third in the room who did not say yes to these two questions, it appeared in asking further questions of them, that they had no opinion yet and were present to learn more.

A written questionnaire was also distributed during the meeting, to help understand the specific concerns and suggestions the participants might have. Approximately 80 questionnaires were distributed, with 23 being filled in and returned. The results of this questionnaire are included in Annex 1 to this Report. A list is included in Annex 2 of those NGOs who attended and gave permission to be identified.

The suggestions and observations which emerged from the meeting seemed to fall into one of two categories: 1. Recommendations to the Sub-Commission on ways to improve its work under agenda item 2, and 2. Recommendations to NGOs on ways to improve their effectiveness under agenda item 2, given the limitations now in effect under the Sub-Commission's mandate. The remainder of this Report will summarize the findings in both categories.

2. RECOMMENDATIONS TO THE SUB-COMMISSION

Speakers at the NGO Forum had the following suggestions for the Sub-Commission to consider:

1. The original mandate given to the Sub-Commission still exists, first, to review the world situation on country situations and second, to draw the Commission's attention to urgent cases anywhere in the world. We urge the Sub-Commission to continue to explore ways to effectively carry out this mandate.
2. Many situations never raised in the Commission were first raised in the Sub-Commission in the past, due in part we believe to the greater independence, expertise and impartiality of the Sub-Commission. These were situations where NGOs had grave concerns about current human rights violations on the ground, but the Commission was unwilling or unable to act. This was the item 2 we grew to know on the Sub-Commission's agenda. What strategy, what concrete proposals could be made, to make this debate similar in outcome. That should be the objective.
3. What does "urgency" mean? What actions can the Sub-Commission take when an urgent situation has been identified? We think this aspect of the Sub-Commission's mandate needs to be more clearly delineated. Actions could include resolutions, but more importantly what other types of actions might the Sub-Commission be able to engage in, once a situation has been found to be urgent?
4. Improving the summary records of the item 2 proceedings is also very important to the NGOs. One speaker indicated that they would like the Sub-Commission to prepare a comprehensive report of what was said. Whether it was by NGOs or experts. The Sub-Commission should also make better use of the summary records. Make them a more visible and accessible resource in the Sub-Commission's documentation.
5. When country resolutions were within the Sub-Commission's mandate, the pressure on voting by states was sometimes so intense that the secret ballot was introduced, as a way of preserving the independence of the Sub-Commission members. This secret ballot is still available. We can think about this as a possible way to revitalize the Sub-Commission.
6. It was noted that the restrictions imposed by the Commission are each year more and more, whilst each year the Commission itself takes fewer and fewer decisions on country situations.
7. Victims of slavery, discrimination against minorities, and indigenous peoples have their own working group and their own sub-items; women and children are also on the agenda; however, there is no such space for the other victims of arbitrary killings, torture, enforced disappearances, etc. Item 2 therefore is and remains essential to transmit this information to the UN. This function should be extended, even if no resolution is to be adopted. See for example the reports of the Working Groups on slavery, indigenous peoples and minority. They are not presented country by country, but simply reflect the discussions. This approach could also be presented under the proposals/recommendations.
8. Another NGO (Franciscans International) indicated that they had also made an oral intervention on possible improvements in item 2. The proposed focus on implementation

and the measurement of key indicators. They proposed using Mr. Decaux's work on the universality of treaties. Perhaps this report could be used as one of the tools for discussion under item 2. Perhaps one could look at key indicators of violations or potentials for violations, such as treaty ratification record, and various social and political indicators. A particular country's treaty ratification record should be one of the factors examined when violations are alleged.

9. The track records with respect to special procedures should also be examined. What is each country's track record? Someone, either the Sub-Commission or NGOs, should compile the conclusions of the various special procedure. How can norms be more effectively implemented in order to protect victims? This should be the objective.
10. Another NGO speaker commented that last year there was a special one hour plenary dialogue with the NGOs at the end of the Sub-Commission session. Several NGOs raised a question about the Sub-Commission's role in this field. What is the monitoring role of this body? No clear answers were given. The ball was thrown back at the NGOs. It will be important to see how this Sub-Commission expresses itself this time. Now there is a surfeit of information, unable to be processed. There is no consistency in practice. If we want to zero in on item 2, what can the experts do? Please tell us so we can help you make more of an impact under this item 2. Can the Sub-Commission act on a situation at all? What types of actions might be possible? Experts need to show some determination.
11. The value of multiple mechanisms on a single type of violation should also not be overlooked. Certainly unnecessary duplication should be avoided. But sometimes, the sheer nature of the Sub-Commission as an independent body of experts, plus the time period in the year when it is meeting, is reason alone to take up an urgent matter. The value of country resolutions in this context was huge, but don't underestimate the Sub-Commission's value as simply a voice piece for the victims.
12. But we agree this is not just about getting country resolutions back. We recognize country resolutions are not likely coming back for awhile at the Sub-Commission. We must find new, effective means of achieving the same goals. We must look to new approaches. There have been some proposals made this year and last year. Now we must go one step further and begin implementing some of these.
13. Another speaker noted that sometimes NGOs or the UN hosts a conference on certain thematic issues. If the Sub-Commission would be willing to hold some conferences or workshops on decolonization and indigenous peoples, this would fill a great need. It's a continuing unresolved conflict. Somehow if you can bring some of these issues that are unresolved to the forefront, that would be helpful. This involves both creating the will and finding out if governments are willing to back you.
14. Another speaker summed up the discussion so far by observing that we have heard many voices so far restating the importance of item 2 to NGOs and the human rights movement. Certainly there is a need for this agenda item. We've heard many reasons. The

good item 2 has done in the field is undeniable. Particularly the benefits it has provided to the victims of human rights violations.

15. Another speaker highlighted the possibility of aligning the Sub-Commission with the experts and special procedures, so they can look at collecting their observations within the scope of item 2. We've been hearing during the last 2 days that human rights are a continuing challenge for countries. We recognize the Sub-Commission must push in a prudent manner, in a way which does not endanger further limitations from the Commission, but we urge them to do what is possible, and not to give up on item 2. It is too important.
16. A joint working paper or expert appointed this year would also be a good idea. To study ways to make item 2 better. Why not? For example, 5 members, one from each region. They could look at measures to improve the outcome of item 2. NGOs could submit suggestions. All participants could consider the rich debate heard this year and come next year with some better ideas. A working paper provides a usual first step in this regard.
17. But we should also not forget that NGOs should contribute too. The Sub-Commission has occasionally used the tool of a report that is prepared jointly by members and NGOs. NGOs should be part of this process.
18. Concerning the thematic approach - we have heard in the debate that the rule of law, and human rights defenders, have been mentioned as topics that could be highlighted in the item 2 debate. These are topics that could be taken up. One of the NGOs here also mentioned self determination as a forgotten issue. This can be taken up, if there are NGO interventions to support it. But there are limits to this thematic approach. Item 2 should not become a thematic item. It needs to retain its character as a country violations item.
19. The same with implementation - this is another topic that should be taken up. How can we better implement existing standards and use existing mechanisms more effectively? How can the Sub-Commission's examination of country violations under item 2 help illuminate or illustrate these implementation problems?
20. There appears to be a big gap in how experts are looking at the issue of massive violations. The Sub-Commission could be a part of this process of sorting out the parameters of charges of massive violations.
21. One Sub-Commission expert also made some remarks at the end of the Forum, to thank the NGOs for hosting the meeting, to please fill in the questionnaires and provide the Sub-Commission with any good ideas you have for improving item 2 even in this year's resolutions, but also to look into the multiplicity of mechanisms and help the Sub-Commission find a distinct role which does not overlap or duplicate with other mechanisms. Also, the expert asked, if we identified a theme ahead of time, and asked the NGOs to gather cases -- Could it be put into a thematic resolution or a resolution

about guidelines? Would this be beneficial to the NGOs? The expert concluded by saying that the more brainstorming NGOs can do about improving item 2, the better.

3. RECOMMENDATIONS TO NGOs

Recommendations to NGOs on ways to improve their own effectiveness under item 2 included the following:

1. While getting country resolutions back in the Sub-Commission would be extremely useful, NGOs also need to explore ways to become more effective within the current constraints of the Sub-Commission's mandate.
2. NGOs should develop a better understanding of the other mechanisms now present under the umbrella of the Commission on Human Rights. Their interventions under item 2 should try to identify gaps in current mechanisms, or why a particular mechanism is not well suited to the particular case.
3. NGOs need to break out of their old mode of just reporting facts about violations that concern them. We NGOs need to coordinate our efforts better, and think of the bigger picture, including how the Sub-Commission can help in the context of the Sub-Commission's present mandate.
4. NGOs should compile country-specific reports about the states about which they are concerned, including the state's treaty ratification record, the state's timeliness in submitting periodic reports to the treaty bodies, whether it has extended standing invitations for visits, and conclusions and observations about the country from recent treaty body reports and reports of the special rapporteurs and experts at the Commission.
5. NGOs should have a strategy in mind when they raise a particular country situation before the Sub-Commission. How will this fit into an overall campaign? How will you use it to promote this particular case?
6. Training opportunities during the Sub-Commission session or at other times would be welcome, especially on ways to improve NGO interventions under item 2, an explanation of the current Sub-Commission's mandate, and explanations of the other human rights mechanisms where an NGO might pursue its claims.
7. NGOs should talk to the special rapporteurs and treaty bodies, for example at the next meeting of treaty body chairs and experts in May 2005, to better understand how NGOs and the Sub-Commission can assist them and not duplicate their work.
8. Even without a country resolution from the Sub-Commission, the opportunity to be quoted by expert members is still there and should be used more effectively by NGOs. When an expert takes up an NGO's cause and mentions it, this can be a powerful tool. It

gives a victim of human rights a direct voice at the UN. Now NGOs need to explore how we can translate this technique into concrete action, and good media coverage. The Sub-Commission should be part of your strategy, but not the only part.

9. This year no NGO interventions mentioned human rights violations in either the Latin America or Eastern Europe regions. This is a shame. It tends to suggest that no violations worth mentioning are going on in those regions, or that NGOs are biased against some regions but not others. We should all try to seek a balance between regions in the country violations we address before the Sub-Commission.
10. In whatever work we engage in, let's keep in mind that we have a document or paper on changing item 2 that will have to go to the Commission. Let's be realistic in seeking things that can be achieved - things that can be changed. The language needs to be realistic enough to make sure our proposals can be seriously considered.
11. NGOs need to think more about how to process the information we receive at the Sub-Commission. What is important from what we hear? How should we best use this information in our work? We need to assemble it, make a compilation. This is a good initial exercise. But then how do we react. How do we translate it into concrete results in our field work, at the grass roots?

4. CONCLUSIONS

Many useful suggestions were offered by those attending and by those who filled in the questionnaire. It is hoped that Sub-Commission members and NGOs can put these ideas into action at the Sub-Commission's 2005 session and beyond.

Notes:

- Minnesota Advocates and Geneva for Human Rights were requested to envisage for next year a consultation with NGOs prior to the opening of the Sub-Commission;
- Minnesota Advocates and Geneva for Human Rights will also discuss and determine whether to prepare an analytical report on item 2 to be distributed during next year's session of the Commission.

Annex 1: Summary of survey results – NGO Forum Questionnaire on Improving Item 2

Last updated: 1 August 2004

No.	Question	Replies	Other comments
1	Do you favor the Sub-Commission reclaiming the right to vote under item 2?	Yes - 21 No - 1	
2	Does your NGO participate more, less or about the same since 2000 when the Sub-Commission lost the right to vote on country situations?	More - 5 Less - 6 Same - 8	<ul style="list-style-type: none"> At Geneva office the same. However we do not anymore invite members from the field
3	Have you noticed any NGOs who used to participate in the Sub-Commission but who no longer do so? If possible, please provide us with names and contact information for any of these NGOs so that we can seek their input too.	Yes - 11 No - 7	<ul style="list-style-type: none"> Yes & unfortunately they are key NGOs Yes, Amnesty, Human Rts Watch & other major NGOs Yes, everybody has noticed this
4	Do you think the decline in NGO attendance at Sub-Commission sessions is primarily due to the reduced importance of country situations or for other reasons? If other reasons, please specify.	Yes - 17 No - 3	<ul style="list-style-type: none"> "Decline also due to the quality of experts" "Other reasons: slow response, & attitude of the countries" [2 NGOs] time & cost
5	Has your NGO ever submitted written interventions under item 2 before or after 2000. What are your feelings about whether they receive adequate attention or mention in item 2 deliberations?	Yes - 14 No - 9	<ul style="list-style-type: none"> Of the 14 NGOs who answered yes, three said they don't submit written interventions any more due to lack of impact and lack of attention Another comment received to this question: these NGO interventions are also used in college courses Another comment: Before we used to submit written interventions. Attention on them varies. "Yes, they don't receive proper attention" It was hard for us to submit a written statement in time Yes, our's have received adequate attention Yes, we have intervened before under this item, but we are persuaded that the increased "academic" level of the debates has provoked a negative reaction in our participation, as a ground level organisation
6	If there was more focus on the content of NGO written	Yes - 20 No - 3	

No.	Question	Replies	Other comments
	interventions under item 2, would your NGO consider increasing your submissions under this item?		
7	Would you favor a more useable, available summary record of the Sub-Commission's item 2 debate? Would you consult such a record if it were available? Any particular suggestions for how to make it more useable and available?	Yes - 23 No - 0	Other suggestions - <ul style="list-style-type: none"> • post the docs on the web more prominently • Should be distributed with the other documents • Make the summary records from this year available as an item 2 document next year • Yes, through regular interaction • Expedite issuance of the summary records in all UN languages • Yes through email contact will help to understand • Yes, there is supposed to be a report • You might want to consider the approach the ILO takes with reference to countries in their summary records -see comment 18 below
8	Do you encounter cases of violations against human rights defenders that you would be willing each year to inform the Sub-Commission about? Do you think this is a good use of time under item 2?	Yes - 19 No - 2	<ul style="list-style-type: none"> • No, there is already a procedure on this • No we don't encounter these violations in our NGO's work, but yes, we think this is a good use of time under item 2 • Yes, we have focused on issues of human rights defenders. We don't think it is a matter of time, but the lack of concrete contents.
9	Do segregation policies of any type lead to human rights violations in any of your NGO's field work?	Yes - 18 No - 2	<ul style="list-style-type: none"> • Two of the NGOs who answered yes indicated that their cases of refugees, trafficking & migration have segregation policies interwoven into them
10	Do colonial or dependent territories or countries figure in your NGO's work in any way? If so, please explain.	Yes - 14 No - 4	<ul style="list-style-type: none"> • Yes, especially military intervention/coalition authorities • Yes, Palestine, Kashmir, Sudan [2 NGOs] • Yes, heavily. We specialize in humanitarian law • Yes, & other NGOs and indigenous peoples • Yes, indigenous issues of the Pacific and of Commonwealth • We have been very active in the cases of Puerto Rico, Palestine, Basque Country and many others. We feel the self-determination right is a key issue in human rights violations all over the world
11	Would you favor or not favor an increase in thematic type resolutions and discussions under item 2?	Yes - 13 No - 6	<ul style="list-style-type: none"> • One NGO who answered "no" remarked: To be discussed under the appropriate items • Yes, but do not reduce the scope of item 2 • The thematic debates and resolutions are really necessary, but we are persuaded that

No.	Question	Replies	Other comments
			this discussion must come from ground cases and concrete situations
12	Does collapse of the rule of law figure in any of your NGO's work? If so, please explain? Do you think this is a good use of the Sub-commission's time under item 2 or not? Please explain.	Yes - 13 No - 5	<ul style="list-style-type: none"> • Transitional justice • Military intervention used in humanitarian causes • Collapse of the rule of law, and mainly the issue of torture, is the goal of our organisation • No, it is already under item 3 • It is important to do country specific situations in the Sub-Commission. Particularly on colonialism & indig peoples & other unsettled questions • Yes, because otherwise use of force would be the only answer • Violation of human rights by terrorists
13	Are there any other questions you think would be useful to include in this survey and report of NGO concerns about item 2?	Yes - 6 No - 3	<p>Suggestions included</p> <ul style="list-style-type: none"> • religious freedom & conscience • self determination • colonialism & indigenous peoples • training opportunities for NGOs to learn how to better use the Sub-Commission • conflict situations • How many NGOs present do not speak on item 2? • I appreciate very much this initiative. I think that the NGOs should organize more linked actions, to enforce their impact in the Sub-Commission. I hope this concrete petition can be a positive model for further action.
14	If an expert or group of experts were appointed to study item 2 in more depth, would your organisation be willing to submit additional comments?	Yes - 20 No - 2	
15	Any other comments you would like to add?		<ul style="list-style-type: none"> • One NGO responded - "Unless there is more substantial opportunity for comment and action re violators, little point in Sub-Commission" • Another said: "More important than country resolutions is the quality of Sub-commission members" • "The key is transparency of Sub-Commission working methods" • "We have to support the experts and other organisations" • "Keep agenda item 2" • Many of your questions don't apply to our NGO

No.	Question	Replies	Other comments
			<ul style="list-style-type: none"> • Sub-Commission should ask for country reports
16	Do you think the Sub-Commission needs to be careful not to swing the pendulum too far the other way, and give too much time or attention to the item 2 debate, in contrast to the other items on the agenda?	Yes - 11 No - 8	<ul style="list-style-type: none"> • "yes, everybody knows that" • Due regard must be given to item 2 even in comparing other items • It needs to be careful

Other comments from NGOs

1. We are still relatively young at the Sub-Commission. A brief training would be very beneficial. We could also assist in sharing information on indigenous peoples rights
2. Name and shame the "bad guys" in the Sub-Commission
3. We should have clear roles of experts, what they do, can do, and let the NGOs know, and that means ALL NGOs.
4. More emphasis needs to be given to the "prevention" of abuse
5. Themes that are looked at in detail by the special rapporteurs, experts, Sub-Commission or others should be "new issues" but also need to look at some long term issues like the "Kashmir issue." Maybe under the theme of "self-determination."
6. The issue of stateless people needs to be a priority for the Sub-Commission.
7. NGOs should put more pressure on the media, to cover the key events at the Sub-Commission and to use press releases and media coverage in connection with the presentation of the NGO's statement at the Sub-Commission
8. The NGO liaison office should be encouraged to coordinate with NGOs to do some NGO trainings in parallel events next year, on how NGOs can be more effective
9. Need to explore the connection between colonialism and indigenous peoples more closely, perhaps with some workshops or seminars
10. Better use of OHCHR website to facilitate NGO information retrieval
11. Need mechanism for NGOs and experts to contribute thoughts and ideas on item 2 before each session, to be better prepared -possibly written, web-based, or pre-sessional parallel events the week before the session for NGOs who are already in Geneva [& summary of those events for those NGOs arriving later in Geneva]
12. If item 2 begins next year on the first day - it is even more difficult to have effective debate. Extra care should be given to facilitate maximum documentation, pre-sessional information and interchange
13. Subcom experts should mention NGO written interventions in their item 2 remarks, to give them more visibility
14. The Subcom should designate an expert to summarize the debate on item 2 into the record
15. Teach or help NGOs think more strategically about their cause and how to best use the Subcom effectively in their cause, within the Subcom's existing mandate

16. Balance of criticisms by region - both NGOs and experts should be encouraged to attempt to achieve balance between regions and not ignore some regions from criticism about country violations
17. I have noticed that many organisations that participated before at both sessions, the Commission and the Sub-Commission, currently have deserted from the Sub-Commission. Theoretically the Sub-Commission is the wider [more open] body to where NGOs can assure their participation. I feel that since no concrete debates can take place many NGOs have lost their interest in this body.
18. Most of the questions asked are not relevant to our NGO because we only raise country-specific human rights violations in very exceptional circumstances and on no occasion have we sought to do so at the Sub-Commission, at least during the last 11 years. However, we would like to suggest to the Sub-Commission a way in which it could make the report of its consideration of item 2 more useful, drawing on the experience of the International Labour Organisation. In the work of the latter organisation, particular issues/problems or violations of relevant standards and responses or further information requested from governments are included in their report. This sometimes includes the inclusion of what is known as a 'paragraph' in relation to a particular named country. The Sub-Commission might wish to consider adopting a similar approach adapted as appropriate to their particular situation, for example, there could be a "mention" (by name) where the situation has been raised. This could be supplemented by a request for information or comment from the government concerned. A "paragraph" would then be reserved for situations of particular concern/violations.
19. Your questionnaire is almost completely irrelevant to the NGO I represent. I fill it in simply to counterbalance the inevitably self-selecting sample of NGOs with particular concerns in this area.
 - We have been represented at the Sub-Commission since 2002, and have yet to participate actively. I am still assessing the possibility of a more active involvement and of bringing a larger representation than just myself. However as we are restricted by our terms of reference to a specific issue, and one in which standards do not yet exist, it is extremely unlikely that we would find it relevant to intervene under Agenda Item 2.
 - With more experience of the Commission on Human Rights, I am struck by how much better the debate in the Sub-Commission manages to avoid the problems of politicization and domination by sterile pre-drafted statements. In the last week I have heard much nostalgia for the Sub-Commission's historical, strictly limited mandate. I would however consider that the change in title was instead an opportunity for experts to intervene effectively in any of the areas on the mandate of the Commission itself, with the ability to study issues in depth and in a non-partisan manner and, at best, to pick up immediately issues/info raised by NGOs. Without losing any of its traditional concerns, the Sub-Commission cannot handle this broader mandate if the weight of these traditional concerns on the agenda is to be considered sacrosanct. From the point of view of a new NGO trying to break into the loop, I might observe that a more transparent agenda could help.
 - I would be wary of the statistics quoted [on declining participation, in an NGO oral intervention this session under item 2]. Over the last three years I don't think my own participation in the Sub-Commission has yet been recorded by the Secretariat. Other

experience suggests that the Secretariat's records are not only inaccurate, but not necessarily consistent from year to year. Nor is the number of individuals so significant as the number of NGOs, and indeed the number of NGOs is not necessarily an indication of the quality of NGO involvement.

- Again by comparison with the Commission, where overcrowding greatly hampers the quality of NGO involvement, the greater space at the Sub-Commission does allow those NGOs present to contribute effectively and without being under the degree of threat they are at the Commission. A small suggestion is that the space available would seem sufficient for NGOs to be issued with place cards, as I believe happened at the Social Forum.
- The most important boost to the effective intervention of NGOs, as of experts themselves, however, would be the availability of the papers early enough to enable them to be read before they were discussed.
- Regarding the right to vote on country resolutions, I remain unconvinced that voting on resolutions is the most effective way that the Sub-Commission acts, and that its efforts would not be better directed towards promoting with maximum efficiency within the environment it finds. I reserve judgment, but do not feel qualified to adopt a public role of devil's advocate.

Annex 2: List of NGOs who participated and gave their permission to be identified

Baha'i International Community
Consultative Council of Jewish Organizations
Foundation for Aboriginal and Islander Research Action
Franciscans International
Friends World Committee for Consultation (Quakers)
General Conference of Seventh Day Adventists
Geneva for Human Rights
Hawaii Institute for Human Rights
Indigenous Peoples & Nations Coalition
International Association Against Torture
International Association of Democratic Lawyers
International Baccalaureate Organisation (IBO)
International Council of Jewish Women
International Educational Development
International Human Rights Association of American Minorities
International Islamic Foundation of Student Organisations
Japan Lawyers International Solidarity Association
LIDLIP
Minnesota Advocates for Human Rights
World Muslim Congress
World Peace Council