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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-ninth session
Agenda item 9 (a)

THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS

QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

Written statement submitted by the World Society
of Victimology, a non-governmental organization
in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV)

[22 August 1997]

1. We appreciate the reports of Mr. Leandro Despouy and of Mr. Louis Joinet pursuant to Economic and Social Council resolution 1985/37 and the Sub-Commission decision 1996/119, identifying the States that have proclaimed, extended or terminated a state of emergency and summing up the principles to campaign against impunity of perpetrators of human rights violations.

2. There is a level below which we cannot go in the treatment of detainees or prisoners.

3. The question of the administration of justice and the human rights of detainees becomes even more different, intricate and sensitive, when a people alleges a grievance against a State.
4. Punishment, according to social reformists, should not be an act of violence committed by one person or many against a private citizen, but it should be public, prompt, necessary, the minimum possible under the given circumstances, proportionate to the crimes and established by law.
5. The question that we wish to emphasize, and strongly feel that it merits the attention of this Sub-Commission, Governments, intergovernmental organizations and the community of non-governmental organizations, is that of a people who justifiably refuse to accept that they violate the public order or the criminal law of a State.
6. One such people is that of the disputed state of Jammu and Kashmir, and one such State is the Republic of India. The removal of Kashmiris to various prisons and detention centres in India in itself constitutes a punishment in the overall package of punishment. The practice of detaining them in places remote from their families is a cold atrocity. Exposing them and their families to a disaffected, unsympathetic or hostile prison staff, in a remote habitat, make the punishment much more inhumane and unbearable.
7. Do these Kashmiris in far removed prisons in India, have any access to the law? Do they enjoy the untrammelled ability to make contact and have confidential meetings with lawyers and to approach the courts? The answer is a simple "no". The geographical location is a real obstacle to be overcome, since lawyers will not eagerly make a trip to these remote locations.
8. The title of a Kashmiri to his basic human rights at variance with the avowed stand of India, would of course anger the Government of India. Nevertheless it should be more than ever a cause of concern for an Indian to respect a Kashmiri "prisoner's" inherent dignity as a person and to recognize that the Kashmiri prisoner does not surrender the protection of law on being imprisoned.
9. This Sub-Commission, Governments, NGOs and the average Indian should ensure at the very minimum that the Indian penal system affords procedures and facilities for ensuring that the Kashmiri prisoner's treatment is at all times just, fair and humane.
10. Mass arrests and the detention of Kashmiris within the state and farther away in remote prisons in India are a serious humanitarian issue. The Government of the Republic of India and the International Committee of the Red Cross signed a Memorandum of Understanding on 22 June 1995 on the question of detained Kashmiris. We find that this Memorandum of Understanding does not seem to have made any marked difference to the plight of Kashmiri prisoners. In this regard we urge this Sub-Commission and NGOs to call upon the Government of India:

- (i) To inform the ICRC and the National Human Rights Commission of the number of Kashmiri prisoners and the location where they are held;
- (ii) To inform their families and advise them on the procedures for visits;
- (iii) To transfer the prisoners to Jammu and Kashmir;
- (iv) To set up welfare and legal assistance in each prison;
- (v) To arrange for the provision of information on audio cassettes for those who cannot read;
- (vi) To grant access to international, national and regional NGOs willing to assist these prisoners.

11. We also urge ICRC to sensitize its role in regard to Kashmiri prisoners and more so to energize its efforts under the Memorandum of Understanding agreed with the Republic of India. ICRC and NGOs in India and at the international level are urged to move to support the case of Kashmiri prisoners and their families.

12. The arrest and detention of Kashmiri women, for avowed political opinions, faith and alleged association with those who consider Kashmir a pending issue at the United Nations, raises many questions of respect for cultural, religious and family values. The Sub-Commission and NGOs from India and others around the world need to consider on an urgent basis the special case of Kashmiri women held, far away from Kashmir, in various prisons in India.

13. Making bonds of motherhood, sisterhood or blood with any male in Kashmir a cause for arrest and detention is unacceptable and merits the most immediate attention of men and women of good conscience around the world.
