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COMMISSION ON HUMAN RIGHTS

Sixtieth session

SUMMARY RECORD OF THE 32nd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 1 April 2004, at 10 a.m.

Chairperson: Mr. SMITH (Australia)

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

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, INCLUDING:

- (b) PROCEDURE ESTABLISHED IN ACCORDANCE WITH ECONOMIC AND SOCIAL COUNCIL RESOLUTIONS 1503 (XLVIII) AND 2000/3

(agenda item 9) (continued)

1. The CHAIRPERSON announced that the Commission had examined in closed meetings the human rights situation in Bolivia, Djibouti, Honduras and Uzbekistan under Economic and Social Council resolutions 1503 (XLVIII) and 2000/3. It had decided to discontinue consideration of the human rights situation in Bolivia, Djibouti and Honduras and to keep the human rights situation in Uzbekistan under review and appoint an independent expert to report to it under the confidential procedure. He reminded members of the Commission that, in conformity with paragraph 9 of Council resolution 2000/3, they should make no reference in the public debate to the confidential decisions and material concerning the four countries.

2. The Commission had also adopted a decision proposed by the representative of Paraguay to recommend to the Economic and Social Council that it make public the material relating to Paraguay placed before the Commission under the confidential 1503 procedure from 1978 to 1990. The decision would be made public.

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:

- (a) TORTURE AND DETENTION
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(agenda item 11) (continued) (E/CN.4/2004/3 and Add.1, Add.2 and Corr.1 and Add.3, 7 and Corr.1 and Add.1, Add.2 and Corr.1 and Add.3, 50-52, 53 and Add.1, 54, 55, 56 and Add.1-3, 57-59, 60 and Add.1, 62 and Add.1-4 and 63 and Add.1 and 2; E/CN.4/2004/G/18, 19, 26, 33, 34 and 40; E/CN.4/2004/NGO/8, 13, 14, 19, 30-49, 52, 54, 55, 58, 59, 65, 70-72, 79, 87, 88, 90, 92, 94, 104, 111, 125, 128-130, 134, 145, 151, 153, 179, 182, 183, 188, 194, 206, 214, 224, 231, 236-240, 246 and 252; E/CN.4/Sub.2/2003/39; E/CN.15/2002/3; E/CN.15/2001/18)

3. Mr. DESPOUY (Special Rapporteur on the independence of judges and lawyers), introducing the report contained in documents E/CN.4/2004/60 and Add.1, said that the number

of complaints he had received since taking up the mandate of Special Rapporteur in August 2003 demonstrated the scale of the ongoing threat to the independence of judges and lawyers in a large number of countries. Since the establishment of the mandate 10 years previously, the Commission had adopted an increasingly holistic approach to the operation of judicial systems on the ground that the separation of powers and the rule of law were inextricably linked in a democratic society. The rule of law clearly called for judicial review of the constitutionality or legality of executive decisions, administrative acts and legislation. Judges and courts were the custodians of human rights and guaranteed the right of appeal, protection against impunity and the right to compensation. Impartiality and independence were thus human rights of the beneficiaries of justice rather than privileges of the judiciary.

4. His task as Special Rapporteur was therefore to examine the practical impact of the functioning of the judiciary, since social, economic and cultural factors could impede the enjoyment of rights, especially by groups which found it extremely difficult to obtain access to justice, such as people with disabilities or living in extreme poverty. His mandate required him to investigate and record any infringement of the independence of judges, lawyers and court officials, to make recommendations designed to safeguard and enhance their independence, and to offer advisory services or technical assistance to the States concerned.

5. He endorsed his predecessor's recommendations concerning the Special Rapporteur's working methods, namely examination of country situations; communications and urgent appeals to Governments; consultations with Governments, United Nations treaty bodies and special procedures, and non-governmental organizations (NGOs); promotion of technical assistance and standard-setting activities; and participation in international, regional and national meetings and other events. He had as yet been unable to act on the invitations received for country visits from Kazakhstan, Tajikistan, Kyrgyzstan, Kenya, Brazil or Paraguay. Three other countries had informed him of their intention to issue an invitation shortly. A summary of the communications and appeals sent to Governments, the replies received and press releases issued was contained in document E/CN.4/2004/Add.1.

6. It was important to detect and draw attention to any structural and institutional problems that impeded the orderly functioning and independence of the judiciary. He intended to focus in that context on impunity and corruption, which were particularly widespread phenomena. He would also examine discriminatory practices against women, national, ethnic, religious and linguistic minorities and indigenous peoples, which restricted their access to the legal profession or led to unequal treatment in employment and other areas.

7. The report provided examples of the persecution suffered in many countries by judges and lawyers. It also addressed the question of detention without a court order on grounds of national security, the administration of justice during states of emergency and judicial practices in the case of terrorist offences.

8. Lastly, he considered it important to persist with efforts to strengthen the International Criminal Court so that it could discharge its mandate fully and effectively.

9. Mr. BIGGAR (Ireland), speaking on behalf of the European Union (EU), said he considered that country visits were an essential part of the Special Rapporteur's mandate and inquired about the schedule of visits for 2004.

10. What steps did the Special Rapporteur envisage in order to bring greater visibility to the mandate in its tenth year?
11. State organs had traditionally been the major culprits when it came to intimidating judges and lawyers. However, with the rise in organized crime, non-State paramilitary actors also frequently engaged in intimidation. How could the protective role of the State be strengthened in such cases?
12. Equal access to justice was a fundamental principle to which the EU attached special importance and it therefore appreciated the Special Rapporteur's concern for people in extreme poverty. It also welcomed the emphasis on technical assistance in the report. The Union wished to know more about how the Special Rapporteur envisaged promoting and protecting the principle of equal access to justice for other vulnerable groups such as women, national, linguistic or religious minorities, indigenous peoples, persons with disabilities and persons with HIV/AIDS.
13. The EU welcomed the Special Rapporteur's intention to promote the role of the International Criminal Court.
14. Mr. CERDA (Argentina) asked the Special Rapporteur whether he thought generally applicable conclusions on the protection of the independence of judges and lawyers could be drawn from visits to individual countries.
15. Given that access to justice was a human right, he wondered whether the Commission should strengthen that aspect of his mandate in its resolution on the subject.
16. Mr. HUSSAIN (Pakistan) said he agreed with the Special Rapporteur's comment in his report that there could be no peace without justice, no justice without freedom and no freedom without human rights.
17. He strongly recommended that future reports should deal with the grave implications for the administration of justice of draconian security laws applied by occupying powers.
18. Mr. DESPOUY (Special Rapporteur on the independence of judges and lawyers) said that he planned to visit Kazakhstan, Brazil and Paraguay in 2004 and Kyrgyzstan, Tajikistan and Kenya in 2005.
19. Ensuring equal access to justice was a crucial issue and he would appreciate any consolidation of that aspect of the mandate in the resolution to be adopted by the Commission. He intended to focus on circumstances in which some members of a community were being denied access to justice on equal terms with the rest of the population and, having assembled the facts, he would present an analysis of his conclusions to the Commission.
20. Technical assistance was important for countries that were emerging from traumatic experiences such as war or armed conflict or were going through a period of transition to democracy. He was also aware of the importance of studying respect for human rights in the administration of justice in countries under occupation. There was a tendency in such cases to replace regular judges and courts by special courts that often flouted human rights standards.

21. He intended in future reports to present guidelines on the observance of human rights in the administration of justice for all actors, not only States and NGOs but also other Commission mandate-holders.

22. Mr. KESSEDJIAN (Chairperson-Rapporteur of the Working Group on a draft legally binding normative instrument for the protection of all persons from enforced disappearance) said that the Working Group had held two meetings since the previous session of the Commission, in September 2003 and January 2004, at which major progress had been made in drafting a legally binding instrument. Everybody was aware of the extreme seriousness of the crime of enforced disappearance, which in certain circumstances constituted a crime against humanity. By denying the very existence of the victim, it violated all internationally recognized rights.

23. He welcomed the families of victims present, whose associations had assisted the Working Group in understanding the modus operandi of the criminals and offered guidelines to the international community on how such abominable practices could be eradicated. He also thanked the many States belonging to all regional groups whose delegations had assisted in drafting the instrument. Forty proposals had been submitted in writing to the January 2004 session.

24. Two basic working criteria were to disregard insignificant details and focus instead on vital aspects of the problem, and to seek universality without making unacceptable compromises. Responsibility for implementing the instrument would lie primarily with States themselves.

25. Many issues had not yet been resolved, such as the responsibility of non-State actors, the definition of what constituted a crime against humanity, and the balance that should be struck between respect for privacy and the right to information. The Working Group was moving towards a consensus to the effect that national decisions could not, under any circumstances, deprive victims of their right to material and moral damages.

26. Other difficult questions concerned the type of instrument - an additional protocol to the International Covenant on Civil and Political Rights or an independent instrument - the type of monitoring body and the question of individual complaints. The monitoring body should not be too cumbersome or costly and should not place an unduly great reporting burden on States parties. It should serve as an early warning mechanism so that the international community could be mobilized quickly.

27. He hoped that a final draft enjoying broad support could be submitted to the Commission at its next session. The families of victims, in particular, were impatient to see the results of the proceedings. The draft resolution on enforced disappearance to be submitted to the Commission therefore provided for two further sessions of the Working Group.

28. Mr. LIGABO (Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression), introducing the report contained in documents E/CN.4/2004/62 and Add.1-4, said that freedom of opinion and expression not only benefited from a democratic environment but contributed to the emergence of effective democratic systems. Unfortunately, the global situation remained grim. Attacks on journalists, media professionals and trade unionists continued, and the perpetrators were rarely punished.

29. Modern technology had led to an increase in the number of journalists working in war zones. While the violence and absurdity of war were thus exposed, reporting was often unbalanced. He urged the media to treat war victims and war prisoners in accordance with international human rights and humanitarian standards.

30. Governments should take all necessary measures to protect journalists from attacks by officials, law enforcement officers, armed groups or terrorists and provide them with an enabling environment. With the Commission's approval, he proposed to undertake an in-depth study on the security of journalists, especially in conflict zones, based on information from Governments, intergovernmental organizations and NGOs. He also proposed to report annually to the Commission on the impact of anti-terrorist activities on the right to freedom of opinion and expression, making recommendations to the Commission for intervention in cases of gross violations.

31. The dominant role in certain markets of large media groups controlled by a small number of corporations was an obstacle to pluralism of information. Governments should ensure that civil society, local communities, minorities and vulnerable groups had access to the media to express their views. He encouraged initiatives aimed at monitoring the implementation of the right to information and the adoption of global or regional instruments on that right.

32. The World Summit on the Information Society held in December 2003 had regrettably neglected human rights issues, especially the right to freedom of opinion and expression. He hoped that the second phase of the Summit, to be held in 2005, would remedy that shortcoming.

33. In 2003 he had signed or co-signed 450 urgent appeals and letters of allegation addressed to Governments containing credible and reliable information about grave human rights violations. As at 26 March 2004 he had signed 49 single and 140 joint urgent appeals and 12 letters of allegation. He thanked all Governments which had sent comprehensive replies.

34. On a fact-finding visit to the Islamic Republic of Iran in November 2003 (E/CN.4/2004/62/Add.2), he had met a wide range of senior officials and civil society representatives and visited Evin Prison. He was concerned, however, about cases of intimidation of and reprisals against persons who had cooperated with him, despite government commitments.

35. He welcomed the reform of the judiciary which had led to the reintroduction of the institution of prosecutors and the identification of alternative punishments to imprisonment for certain offences, and hoped that the authorities would act on the recommendations in that regard contained in his report.

36. On the other hand, the situation with respect to the exercise of freedom of opinion and expression had deteriorated in recent years in terms of the number of persons arrested, prosecuted and sentenced for press and opinion-related offences and the number of publications closed down. There had been systematic repression of all forms of peaceful expression of ideas critical of authorized political and religious doctrine, and severe and disproportionate sentences had been imposed.

37. Excessive control by non-elected bodies over governmental, parliamentary and judicial processes was a major impediment to reform. Extremely restrictive interpretations of Islamic principles often led to violations of the right to freedom of opinion and expression. Laws such as the Press Code, the Penal Code and the Preventive Restraints Act contained provisions that were at odds with international standards relating to freedom of opinion and expression, due process of law and the right to liberty and security of person.

38. While the report listed a number of recommendations, he particularly emphasized that all those currently detained or imprisoned for offences related to freedom of the press and opinion should be granted a full amnesty, given that abuses of the right to freedom of opinion and expression called for civil, not criminal, proceedings.

39. Events in the Islamic Republic of Iran prior to the election in February had vindicated his concern that the powers of the Council of Guardians to veto candidates to the parliament, based on subjective criteria, could be used to penalize those who had been overly critical of the authorities. That had impeded the functioning of democratic institutions in the country.

40. His visit should be seen as part of a process of dialogue between the Iranian authorities and the United Nations human rights mechanisms. The authorities should further engage in the dialogue and cooperate with him and the Office of the United Nations High Commissioner for Human Rights (OHCHR) to find ways of addressing the issues that had been identified and implementing the recommendations made by all the human rights experts.

41. During the mission to Côte d'Ivoire in January 2004, he had ascertained that the free flow of balanced opinions and ideas had been impeded by the circumstances surrounding the violence and uncertainty there. While the majority of people he had met, regardless of their political affiliations, had expressed great hopes for reconciliation, peace efforts had been unsuccessful, which had hindered the enjoyment of the right to freedom of opinion and expression. Several national and international newspapers had a large circulation in the country, but the national media were under the control of the major political parties. The fight against impunity should be one of the main political priorities, particularly through implementation of the Linas-Marcoussis agreement.

42. The CHAIRPERSON invited the concerned countries to respond to the presentation by the Special Rapporteur.

43. Ms. FORERO UCROS (Observer for Colombia) said that her comments would be based on the press release the Special Rapporteur had issued before leaving Colombia, since the full report would not be discussed until the sixty-first session. Expressing her country's intention to cooperate in a constructive and transparent fashion with the Special Rapporteur, she trusted that his work would send a clear message to the illegal armed groups that threatened democracy, that they should stop violating all the human rights of the Colombian people, including the right to freedom of opinion and expression.

44. While welcoming the description of Colombia as a country of great traditions, she noted that journalism and freedom of expression was precisely one of those traditions. Journalism had flourished since the beginning of the republican era and, except for a four-year period in

the 1950s, censorship had been unknown. There were several important regional newspapers and other media that reported a wide range of opinions on national affairs and the Government's policies.

45. The prevalence of drug trafficking and the proliferation of illegal armed groups had resulted in the kidnapping and killing of several journalists and other media personnel. Daily risks were therefore being taken by all those working in the media to ensure the public was informed of current affairs. The general reduction in the level of violence, due to the Government's crackdown, had benefited those working in the media.

46. Mr. BEKE DASSYS (Observer for Côte d'Ivoire) said that the right to freedom of opinion and expression was enshrined in the Constitution of his country. Regarding the press, apart from the legal framework governing the profession, journalists had established several other instruments to guarantee that right, including a national press commission, which was an independent authority responsible for ensuring that journalists fulfilled their obligations. While inadequately qualified journalists had often sparked conflict by expressing partisan ideas, the President had given a commitment that no further proceedings would be taken against journalists for press offences, and a bill was currently before parliament to decriminalize those offences. There was, therefore, sufficient legislation and political will to guarantee the right to freedom of opinion and expression, and any violations had been a direct result of the current crisis. While he was grateful for the efforts of the international community to end the crisis, its increased involvement in the quest for peace would be appreciated.

47. Mr. MOJTAHED SHABESTARI (Observer for the Islamic Republic of Iran) said that, while his delegation could not concur with all the conclusions drawn by the Special Rapporteur, the visit and subsequent report had provided a stimulus for a healthy exchange in which Iran would take effective local measures and the Special Rapporteur would become increasingly acquainted with the dynamics of Iranian society. The Commission should note that the report had received an extraordinary amount of attention from the public, the press and the authorities in his country, and the Government was determined to encourage such dialogue on a national and international level. It was ready to work closely and effectively with the Special Rapporteur on the basis of his recommendations and ideas.

48. His delegation welcomed the recommendations made in the report of the Working Group on Arbitrary Detention, on the basis of which several measures had been taken since June 2003. The revolutionary courts no longer had jurisdiction over press cases, since provincial criminal courts had been established. A panel of three judges and a jury would hear press cases, and the Supreme Court would consider appeals. Solitary confinement had been abolished, and a bill had been drawn up to replace imprisonment with fines and social punishment for non-payment of debt.

49. The CHAIRPERSON invited statements from interested countries as part of the interactive dialogue on the report of the Special Rapporteur on the right to freedom of opinion and expression.

50. Mr. NORMANDIN (Observer for Canada) welcomed the emphasis placed by the Special Rapporteur on the tragic death of a Canadian photojournalist who had died while working in

Iran. While recognizing the Government's willingness to facilitate the Special Rapporteur's visit, he pointed out that such visits were not an end in themselves, but should be a first step towards lasting change. The political will to provide for freedom of opinion and expression in Iran had been blocked by non-elected institutions that were not accountable to the people. The report had emphasized the political reprisals against members of the Majlis who had criticized the Establishment or encouraged reform, and many concerns had been voiced inside and outside Iran over the decision to disqualify large numbers of candidates from seeking office in the elections. While noting the Iranian delegation's willingness to cooperate, he would be interested to learn whether the Iranian authorities were taking measures, as a result of the report, to remedy that situation.

51. Ms. WHELAN (Ireland), speaking on behalf of the EU, wondered what specific measures the Special Rapporteur envisaged to ensure the safety of journalists while reporting on armed conflicts. Since the rapid spread of HIV/AIDS had been facilitated by the unwillingness of some Governments to support education on the disease and its prevention, it would be interesting to know what could be done to help Governments to realize that preventive education and information should be a priority. Regarding the creation of adequately resourced independent administrative bodies, the EU would like to know how countries could be helped to build up such bodies.

52. Mr. VIGNY (Observer for Switzerland) said his delegation would welcome more emphasis in the next report on the impact of modern information and communication technology on freedom of expression.

53. Mr. UMER (Pakistan) said that, as his delegation shared the concerns of the Special Rapporteur on the dangers facing journalists who worked in war zones, it supported his recommendation of an in-depth study on the security of journalists in conflict zones, and trusted that the predicaments facing those working in occupied territories would be examined. It would be interesting to learn the views of the Special Rapporteur on the responsibilities of journalists.

54. Mr. REYES RODRÍGUEZ (Cuba) shared the concerns of the Special Rapporteur over the concentration of private media. He recommended that the impact of the global imbalance in the flow of information on the enjoyment of freedom of opinion and expression should be studied, since those in the South were invariably mere recipients of information from the North. The Special Rapporteur should also investigate the freedom of opinion and expression in the developing world in relation to media such as community radio, and the use of television and other audio-visual media in education. Emphasis should be placed on analysis of the situation of journalists in armed conflicts, particularly in occupied Iraq, regarding both censorship and the risk of losing one's life, as had been seen in relation to both European and local journalists.

55. Mr. TORO JIMÉNEZ (Observer for Venezuela) supported the call for an in-depth study of the responsibilities of journalists, and emphasized the need to examine the role of the private media in future reports.

56. Mr. LIGABO (Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression), responding to the Canadian delegation, said that the Iranian authorities had expressed their desire to work in close cooperation with the Commission, and to implement remedial measures to deal with the issues he had highlighted in his report. Regarding guarantees of their commitment, it was the prerogative of the Iranian delegation to address that issue, if it so wished.

57. In regard to the concerns of the EU over HIV/AIDS, in the report for the previous year, great emphasis had been placed on gathering information on national measures taken to disseminate information on that issue. Much work remained to be done, however, since some victims of HIV/AIDS still suffered discrimination.

58. In response to the concerns raised by Cuba, Pakistan and Venezuela, the current report had sought the Commission's approval for an in-depth study of the role of journalists in conflict situations, including their responsibilities. He shared the view of the Pakistan delegation that it was necessary to create a free exchange of ideas, given that he had seen members of the press, particularly in Côte d'Ivoire, using their position to promote hatred and bitterness. Journalists should, nonetheless, be protected, as long as they were working within the law.

59. The concentration of the media was another concern addressed in the report. It had been an issue in several countries, such as those of Latin America, where armed gangs and people involved in illegal deals had joined forces to prey on journalists.

60. The CHAIRPERSON invited members to continue their consideration of agenda item 11.

61. Mr. DU Zhongxing (China) said that no one model for the realization of civil and political rights was better than another, and that such realization would always be a gradual process, dependent on the level of overall social development. Each country should assess its own progress and that of others in the light of countries' development and historical background. No country had a perfect record, and the Commission should be a forum for dialogue and exchange of best practice. The realization of civil and political rights required resources and capacity-building. Human rights education, training of law enforcement personnel, provision of legal aid and elections at grass-roots level all involved resources. In that respect, those rights were closely linked to economic, social and cultural rights and the right to development, and the international community should allocate greater technical support and assistance to developing countries for the purpose of capacity-building. In accordance with articles 19-22 of the International Covenant on Civil and Political Rights, it should be remembered that rights and obligations were interrelated and indivisible, and neither should be emphasized over the other.

62. Since the new Chinese Government had taken office the previous year, several measures had been implemented to promote and protect civil and political rights, such as the provision of relief and assistance to beggars and vagrants, according to their wishes. The regulations on legal aid had stipulated that the Government had the responsibility to provide assistance to disadvantaged people in lawsuits, and law enforcement departments had made efforts to increase the accessibility of their services to the public.

63. The National People's Congress had adopted an amendment to the Constitution, providing that "The State respects and protects human rights", demonstrating the Government's determination to observe human rights. It was willing to engage in further exchanges and cooperation with the international community on the basis of equality and mutual respect. The United States, however, had portrayed itself as a model for the protection of human rights, when in reality that country had the highest level of private gun ownership in the world, rampant violent crime, police brutality and poor prison conditions. The Patriot Act, adopted in the wake of the attacks of 11 September 2001, had introduced many provisions that encroached on the rights and freedoms of its citizens, particularly minority groups. Several other laws and incidents had amply demonstrated that there were significant deficiencies in the respect of civil and political rights in the United States, which that Government should recognize and rectify.

64. Mr. PURI (India) said that, while the Indian population would make a free choice of its representatives at the forthcoming elections, that freedom, on which the enjoyment of almost every other civil and political right depended, was denied to many peoples. Democracy was an article of faith for over 1 billion Indians, and his delegation was proud that the institutions upon which it relied had become entrenched in the country. No country should accept a lesser system than one where every citizen was equal under the law.

65. Civil and political rights represented the cornerstone of the international edifice of human rights, and those rights impacted on almost every aspect of life and shaped a nation. India had never accepted the argument that there was an implicit trade-off between civil and political rights and economic, social and cultural rights. Democracy, and its values and principles, was not an obstacle to the fight against poverty and the development of a country; it was the only durable and sustainable framework within which the welfare of the people could be ensured. India had therefore sought to promote both sets of rights as a composite whole.

66. In his report (E/CN.4/2004/56), the Special Rapporteur on torture had expressed concern about India's failure to extend to him an invitation to visit the country. However, a country's commitment to human rights could not be measured by the alacrity with which it responded to a request for an invitation to visit. It was rather presumptuous to believe that, in the absence of the Special Rapporteur, democratic societies would fail to take appropriate corrective measures when violations did occur.

67. There was no cause, religion or ideology to justify terrorism, of which India had been the victim for 20 years. Democracies everywhere must oppose that international menace and treat States sponsoring terrorism as global pariahs.

68. The human rights mechanisms, special procedures and international instruments that had been constructed over the years were in need of rationalization. The tendency to duplicate was unlikely to serve the cause of human rights. Ultimately, it was the political will of States that would lead to the promotion and protection of civil and political rights. There was no substitute for national capacity-building.

69. Mr. BARREIRA PERROTTA (Paraguay) said that his Government recognized the link between strengthening democracy and the rule of law and the enjoyment of human rights and fundamental freedoms. Significant progress had been made in that regard in Paraguay since the re-establishment of democracy in 1989. The presidential elections in April 2003 had been

described as exemplary, transparent and participatory. There had been greater freedom of expression and freedom of the press. Furthermore, the principles enshrined in the international human rights instruments, most of which had been ratified by Paraguay, were reflected both in the Constitution and in domestic legislation. Further details were provided in the second periodic report that Panama would shortly be submitting to the Human Rights Committee.

70. The Government was strongly committed to seeking truth and justice with regard to the human rights violations committed during the 35-year dictatorship. The criminal courts had, on a number of occasions, invoked the international human rights instruments and some significant jurisprudence relating to reparation had been created in civil law. The recent creation of a truth and justice commission to investigate human rights violations during the dictatorship had been a major step forward. The Government had asked the Commission to make public the documentation relating to Paraguay that had been examined between 1978 and 1990 under the 1503 procedure.

71. Remedy and compensation were essential parts of the quest for truth and justice. Paraguay therefore supported the finalization of the “Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law”. A national law stipulating that compensation should be provided for victims of the dictatorship would enter into force shortly.

72. Mr. BELASHOV (Ukraine) said that his Government was committed to strengthening institutions designed to guarantee the rule of law and democracy and aspired to provide better human rights protection at the national level. It was endeavouring to bring national legislation into conformity with the human rights instruments to which it was a party. In that respect, the Ukrainian authorities were working in close cooperation with the international organizations and agencies active in the field of human rights and humanitarian law.

73. Ukraine was in the process of reforming its judicial system and its law enforcement agencies in order to guarantee independence and to prevent interference in the administration of justice. Substantial legislative amendments had been made and new laws had been adopted in that regard.

74. Ukraine welcomed the practical measures and recommendations contained in the report of the Secretary-General on human rights in the administration of justice, in particular in post-conflict States and in juvenile justice (E/CN.4/2004/51) and recognized the importance of the technical assistance of the United Nations system in that regard. It further welcomed the activities of the United Nations agencies in developing technical cooperation programmes and in providing assistance and training.

75. In close cooperation with the international anti-torture bodies, Ukraine continued to adopt legislative and practical measures to improve detention conditions. An important development had been the recent entry into force of a new criminal code regulating the execution of criminal sentences and a normative act that aimed to increase public participation in the social rehabilitation process.

76. Mr. ROMANOV (Russian Federation) said that the effective implementation of human rights and freedoms was a high priority in Russia's foreign and domestic policies. Russia had recently submitted its fifth periodic report to the Human Rights Committee under the International Covenant on Civil and Political Rights and welcomed the Committee's comments and recommendations.

77. A comprehensive judicial reform was under way in the Russian Federation aimed, inter alia, at ensuring the independence and impartiality of the judiciary, the equality of all persons before the law and the presumption of innocence until proven guilty. Russia's firm belief in those principles had led it to submit to the Commission a draft resolution on the integrity of the judicial system. Furthermore, as part of its efforts to guarantee the implementation of civil and political rights, the Government worked closely with the special procedures of the Commission and the United Nations treaty bodies.

78. Although Russia welcomed the efforts of the Working Group on Enforced or Involuntary Disappearances to prepare a legally binding document to protect all persons from disappearance, a considerable amount of work remained to be done. It was hoped that the future document would eventually form the basis of an optional protocol to the International Covenant on Civil and Political Rights. His delegation therefore supported the proposal that the Working Group should hold informal consultations on that issue in late 2004.

79. There was no universal recipe for the construction of a democratic society. Any attempt to export democracy or to impose it by force would undermine the very concept of democratic development. Any initiatives should, however, be in conformity with the universally recognized principles of international law.

80. Five years had passed since the start of the bombing of the territory of the Federal Republic of Yugoslavia by forces of the North Atlantic Treaty Organization (NATO), carried out in violation of the Charter of the United Nations. It was largely thanks to Russia's efforts that the military action had been ended and the situation had been brought within the purview of the United Nations, leading to the unanimous adoption of Security Council resolution 1244 (1999) laying down the principles for a Kosovo settlement.

81. Regrettably, the situation in Kosovo continued to be problematic. It was difficult to see how a long-term solution could be reached that would take into account the rights of all those living in the area, regardless of their ethnic group. Many Serbs in Kosovo were currently living in conditions that did not meet their basic needs. The Russian authorities were delivering tents, food and medicine to the people who needed them most.

82. The NATO-led multinational force, having assumed responsibility for the maintenance of security and law and order in Kosovo, had given its assurances that life in Kosovo was returning to normal. However, the situation had clearly regressed into one of medieval barbarism in which people continued to be killed and homes and places of worship continued to be destroyed. The fact that the Kosovo settlement had reached a virtual impasse complicated the settlement processes in other countries of the Former Yugoslav Republic, including in Bosnia and Herzegovina.

83. The international community should do its utmost to bring the Kosovo settlement on to a normal political track. The international presence in Kosovo should focus on the full and impartial implementation of Security Council resolution 1244 (1999), which remained the sole legal basis for the settlement. Drastic action was needed to prevent ethnic cleansing. Only then would it be possible to discuss ways of moving the settlement further.

84. Mr. MARTABIT (Chile) said that, although it was a difficult task, the people of Chile had recognized the need to seek truth and justice and to offer compensation to victims. The Government of Chile therefore supported the Working Group on Enforced or Involuntary Disappearances and was actively participating in the elaboration of an international legally binding instrument that defined enforced disappearance as a crime against humanity, prohibited amnesty and formalized the imprescriptibility of the crime. The refusal to accept impunity was a fundamental pillar of the new instrument.

85. In order to strengthen the fight against impunity at all levels, it was necessary to give concrete expression to the principle that victims of human rights violations should receive fair reparation. A draft resolution aimed at the expeditious finalization of the “Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law” would be submitted to the Commission at the current session.

86. Chile was convinced that only by facing the human rights violations that had occurred 30 years previously would it be able to build a solid democracy. Since democracy had been re-established in 1990, Chile’s human rights policy had been based on three pillars: truth, justice and remedy. The Commission on Torture and Political Imprisonment had been established to provide compensation for persons who had been punished by State agents for political reasons during the dictatorship. However, a democratic system was the best guarantee of the enjoyment and development of human rights. Chile would always be ready to share its experience in a constructive way.

87. The Community of Democracies Convening Group had met recently in Geneva in order to renew efforts to promote the values of tolerance and commitment to pluralism. The delegations of the Convening Group had identified a number of resolutions to be presented to the Commission.

88. Mr. UMER (Pakistan) said that, although it welcomed constructive criticism, his delegation regretted statements from sources known to enjoy external sponsorship aimed solely at maligning the Government for political reasons. Civil and political rights commanded a central place in the Constitution of Pakistan and his Government was fully aware of its constitutional obligations. It had set an ambitious agenda in seven key areas, including the restoration of genuine democracy and full respect for civil and political rights. However, institutionalizing those rights was a gradual process. No State could claim to have achieved the highest attainable standards in that regard. Nevertheless, Pakistan was moving with determination towards the achievement of its goal.

89. As a result of efforts over the past four years, the country's key institutions had been revitalized. An unprecedented number of women and indigenous people had seats in Parliament and empowerment at the grass-roots level had been realized through the establishment of local councils.

90. The \$350 million Access to Justice Programme was being implemented in cooperation with the Asian Development Bank as part of the priority goal of improving the system of administration of justice. Strengthening the infrastructural capability and the quality of jurists were integral features of the Programme.

91. The Government also intended to transform the police force into a professional, accountable and people-friendly institution. Efforts were being made to raise human rights awareness among the police, judiciary and other administrative branches of the Government at all levels.

92. Freedom of opinion and expression had been expanded to include the electronic media. All political, religious, economic and social issues were openly debated. Internet access was also expanding rapidly.

93. Although Pakistan's resource constraints had hindered the establishment of prisons that satisfied international standards, every effort was being made to ensure that the basic needs of inmates were adequately met. The Government was mindful of international concerns over the use of torture, which it did not sanction and had taken note of the concerns of the special procedures. He urged those mechanisms to be objective, impartial and neutral. Training and appropriate institutional measures to deter such violations were being considered by the Government.

94. Pakistan's civil and political rights situation had to be understood in the context of security. Extremist forces were determined to destabilize the country through sectarian killings, sabotage and the targeting of minorities. However, the Government was determined to ensure that the perpetrators were held accountable and that the victims received compensation. It would adopt measures to increase security and deter such violence.

95. The creation of a democratic and equitable international order was a prerequisite for the success of international efforts to promote democracy and good governance. True democracy did not allow for any violation of human rights, least of all occupation and the systematic and organized persecution of minorities. The Commission should not let such gross injustices go unnoticed.

96. Mr. HARIYADHI (Indonesia) said that, although States bore the primary responsibility for the promotion and protection of human rights, the importance of genuine and constructive cooperation at the international level could not be over-emphasized. At the national level, it was only through the existence of a comprehensive and effective legislative and institutional framework that civil and political rights could be fully guaranteed. His Government, therefore, was undertaking legal and institutional reform and a democratization process that affected all layers of society.

97. One of the most salient outcomes of that reform process had been the enhancement of a monitoring system for the executive, legislative and judicial authorities. Furthermore, concerted efforts were being made to promote freedom of the press, tolerance and freedom of religion and opinion, and measures were being taken to eradicate all forms of discrimination, to prevent torture and to protect minorities and vulnerable groups. Particular attention was being given to education and to raising human rights awareness among Government officials.

98. Another major policy with direct bearing on the protection of civil and political rights was the decentralization of the system of governance through the adoption of a law on regional autonomy. As a result, local populations enjoyed greater decision-making powers. The provinces of Aceh and Papua had a very broad degree of autonomy on all matters other than those relating to defence and foreign policy and monetary and judicial questions.

99. While Indonesia was determined to pursue its endeavours in the area of civil liberties and fundamental freedoms, its efforts had been hampered by the terrorist tactics adopted by armed separatist groups, particularly in parts of Aceh. The actions of such groups negated Indonesia's founding principles as a multi-ethnic, multi-religious and pluralistic nation.

100. Indonesia had been pursuing its goals under the watchful eye of a strong parliament, critical national media and active national human rights institutions. It was regrettable that certain quarters of the international community had been misled by unbalanced reports that focused only on security aspects. Such reports failed to reflect not only that human rights violations were addressed through due process of law, but also the other components of the Government's combined strategy, such as the enforcement of law and order. Nevertheless, his Government would continue to implement its reform process and to promote human rights. It was aware of the challenges in its path and would not be complacent in addressing problem areas.

101. Mr. HERNANDEZ-BASAVE (Mexico) said that, in the case concerning Avena and Other Mexican Nationals, the International Court of Justice had recently ruled that 51 Mexican nationals sentenced to death in the United States had been denied their rights, under article 36 of the Vienna Convention on Consular Relations, to information and consular assistance. The decision had reaffirmed that States must ensure the right to a fair trial and comply with judicial decisions. The Government of Mexico would do everything in its power to ensure that the Court's decision was upheld in respect of all of its citizens facing the death penalty.

102. The protection of civil and political rights had played a central role in his Government's efforts to consolidate democracy. Since democracy should be an inclusive system, Mexico had tried to open up new avenues for participatory government. It aimed to ensure that the justice system prevented impunity and guaranteed protection against arbitrary detention, torture and enforced disappearances. In cooperation with OHCHR, it had undertaken legal reforms to facilitate the use of international human rights treaties. It had recently signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

103. The United Nations should possess mechanisms to prevent human rights abuses, as well as to respond whenever they occurred. His Government had played an active role in developing a legally binding instrument against enforced disappearances, and urged the international community to support that initiative. In line with their international obligations, States should guarantee the right to adequate compensation for human rights abuses.

104. Mr. VEGAS TORRES (Peru) said that, in August 2003, the Truth and Reconciliation Commission in Peru had submitted its final report concerning human rights abuses during the period 1980-2000. On the basis of 17,000 depositions, it had concluded the following: that a total of 69,280 persons had died or disappeared; that Shining Path (Sendero Luminoso) had been responsible for over half of the reported victims; and that some members of the armed forces had committed abuses as they fought to maintain the rule of law. In November 2003, the Government had set out its strategy for national reconciliation, including measures to combat impunity, identify victims, provide for compensation, and foster development in areas affected by violence. It had established a high-level committee, chaired by the prime minister, to monitor implementation of the strategy.

105. The draft Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law, prepared under the auspices of the Commission, had been a useful tool for the truth and reconciliation process in Peru. The Commission should adopt them within the following year. Peru fully supported the Working Group on a draft legally binding normative instrument for the protection of all persons from enforced disappearance.

106. Peru was making great efforts to build a more participatory democracy, with a view to guaranteeing the full enjoyment of human rights, access to basic services and a tangible improvement in the standard of living. It would require strong leadership, as well as the support of the international community, to achieve those objectives. Therefore he welcomed the establishment of a coordinating group of democratic countries at the Commission. Peru and Romania had taken a similar initiative in holding negotiations for a resolution on democracy and human rights, for submission at the current session.

107. Mr. AYALOGU (Nigeria) said that the emerging democracy in his country was committed to a social order that facilitated the full enjoyment of human rights. To that end, his Government had carried out various judicial and legislative reforms, including measures to guarantee freedom of the press. Victims of violations of their constitutional rights were entitled to seek the appropriate legal remedies. Nigeria was determined to prevent arbitrary detentions, torture, extrajudicial executions and enforced disappearances. It was working to ensure the independence of the judiciary, inter alia, through improving conditions for judges, as well as to reform the prison system.

108. Nigeria was reviewing its constitutional provisions concerning the death penalty. A partial moratorium on capital punishment had been introduced, and no judicial executions had taken place for the previous eight years. The President and State Governors were entitled to amnesty prisoners facing the death sentence. A major national programme of action had been launched to combat the spread of HIV/AIDS, comprising public awareness campaigns, educational and preventive measures, and the provision of care and support for persons living with the virus.

109. The Government was committed to strengthening human rights institutions, with a view to eliminating corruption. Corruption undermined the very fabric of society, and deprived societies of the necessary vision and resources for sustainable development. He urged the international community to support the global fight against corruption in all its manifestations.

110. Mr. CHIARADIA (Argentina) said that the recent transition to democracy in Argentina had been consolidated by the incorporation of international human rights standards into national legislation. Since 2003, the judicial system had been entitled to process extradition requests concerning alleged human rights abuses committed by agents of the former military regime. The so-called Full Stop and Due Obedience Laws, which had effectively granted amnesty to State agents of the military regime, had been declared invalid. Consequently, a number of important cases had been reopened, several suspects had been detained, and inquiries had been launched into various instances of State terrorism, including enforced disappearances, torture and summary executions. Steps had been taken to identify and, wherever possible, to recover child victims of enforced disappearances. An archive had been set up to record testimony and gather information concerning systematic human rights abuses committed under the former regime.

111. His Government attached high priority to the swift development of a legally binding instrument concerning protection from enforced disappearance. He urged the Commission to give its full support to the working group on that issue. He also supported adoption of the draft Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law.

112. The politicization of issues and tendency to make selective accusations had damaged the effectiveness of the Commission. It was essential to pursue common objectives and to confine differences of opinion to the means of achieving those objectives. The report on enhancing the effectiveness of the mechanisms of the Commission (adopted by decision 2000/109) provided a good basis on which to strengthen the Commission's credibility.

113. Mr. OULD MOHAMED LEMINE (Mauritania) said that the indivisibility of human rights was widely acknowledged. Although Mauritania faced major social and economic challenges, the Government attached equal importance to civil and political rights. The rule of law was the only way to ensure freedom, equality and human dignity. The independence of the judiciary was guaranteed by law and the justice system was accessible to all. Judges received human rights and other appropriate training, and their salaries had recently been doubled. The right to legal counsel was guaranteed for all defendants, and provided free of charge for the poor. The national lawyers' association played a vital role in protecting and promoting human rights, and was free to organize the legal profession without government interference. The right to freedom of expression was fully protected, so as to remove all barriers to economic and social development. Numerous magazines and newspapers were published regularly, contributing to the lively debate that characterized social life in Mauritania.

114. Mr. MENGA (Congo) said that civil and political rights were a source of freedom, equality, security and dignity. The Constitution of 20 January 2002 had enshrined a commitment to the human rights principles contained in various international treaties. The Government had taken steps to improve the administration of justice, by focusing on independence and accessibility. The judiciary was entirely separate from the executive and legislative branches; its independence was guaranteed by the Supreme Council of Judges. Efforts had been made to

bring justice closer to the people, by raising general awareness of rights and obligations. For example, the Government had organized seminars and conferences, with the support of international partners, and set up legal advice centres.

115. The right to freedom of expression not only strengthened democracy but played a vital role in combating HIV/AIDS. The law of 12 November 2001 banned censorship and guaranteed the right to receive and communicate information. The Supreme Council on the Freedom of Information had been set up to monitor implementation of the law. The right to freedom of information was closely linked to development.

116. Mr. MNATSAKIAN (Armenia) said that emerging democracies were faced with the dual challenge of changing mentalities and setting up a framework for protecting civil and political rights. Interaction with, and accountability to, the international community brought huge benefits to the democratic reform process. Armenia had a variety of commitments with the Council of Europe, the Organization for Security and Co-operation in Europe, and the United Nations. It had recently adopted a new Criminal Code, abolishing the death penalty, and ratified the Sixth Protocol to the European Convention on Human Rights. Judicial reforms were being carried out in collaboration with the Council of Europe. Work had also begun on constitutional reform, including an expansion of the activities of the Constitutional Court. An Ombudsman had been appointed to monitor the effective functioning of human rights mechanisms.

117. As had been pointed out in the report of the High Commissioner for Human Rights on interdependence between democracy and human rights (E/CN.4/2004/54), the election process was an expression of the basic right to political participation. Armenia had recognized the profound shortcomings of its 2003 elections, and was planning to implement a reform process within a strict time frame. In addition to the recent adoption of laws on radio and television, the Government was taking steps to enhance the effectiveness of the independent broadcasting authority. Information and communication technologies presented new opportunities for improving the transparency and accountability of government. Several projects had been carried out with a view to promoting electronic governance. Armenia had adopted a law on alternative military service, which protected the right to conscientious objection.

118. Violations of civil and political rights could proliferate beyond national borders, inflicting damage on a regional scale. The incitement of hatred and violence tolerated and even encouraged by Azerbaijan had led to the brutal murder of an Armenian military officer on 19 February 2004. The murderer had been elevated to the status of a hero in his home country, Azerbaijan.

The meeting rose at 12.55 p.m.