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COMMISSION ON HUMAN RIGHTS

Sixty-first session

SUMMARY RECORD OF THE 48th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 13 April 2005, at 3 p.m.

Chairperson: Mr. OULD MOHAMED LEMINE (Mauritania)

later: Mr. WIBISONO (Indonesia)

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The meeting was called to order at 3 p.m.

EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS:

- (a) TREATY BODIES
- (b) NATIONAL INSTITUTIONS AND REGIONAL ARRANGEMENTS
- (c) ADAPTATION AND STRENGTHENING OF THE UNITED NATIONS MACHINERY FOR HUMAN RIGHTS

(agenda item 18) (continued) (E/CN.4/2005/5, 104-109 and 133; E/CN.4/2005/NI/1-3; E/CN.4/2005/NGO/1, 7, 54-55, 100, 121, 221, 291 and 311; E/CN.4/2005/CRP.2; A/59/299)

1. Mr. TSIMBASU (Observatoire national des droits de l'homme, Democratic Republic of the Congo) said that the creation of a national human rights institution in the Democratic Republic of the Congo called the Observatoire national des droits de l'homme (ONDH-National Human Rights Observatory) had been closely bound up with the need to restore the rule of law after the horrors of two wars. It was one of five institutions established to support democracy. The country had no real experience of a human rights culture. Ever since the time of the slave trade, the Congolese people had been the victims of the most heinous violations of human rights, perpetrated also by successive regimes since the country had won independence.
2. One of the tasks assumed by the ONDH was to serve as an adviser to the Government, Parliament and other public bodies on human rights and the rule of law. As a monitoring body, it verified the Government's compliance with both national and international human rights norms. It sought remedial action for victims, including legal proceedings and compensation.
3. The institution's programme of action contained three main components. At the stage of prevention, it sought to create an environment conducive to the consolidation of the rule of law, for instance through human rights awareness campaigns among the political, administrative, judicial, military and police authorities. In May 2005 it would launch a campaign in higher education establishments with the assistance of the local field unit of the Office of the United Nations High Commissioner for Human Rights (OHCHR). The second component of its programme involved action against impunity. For instance, it had lodged a complaint with the military judicial authorities against dissident officers who had led an insurgency that had brought death and desolation to Bukavu in May and June 2004. A complaint had also been filed against police officers responsible for serious violations of the human rights of students in the Higher Commercial College in Gombe.
4. The ONDH supported the proceedings under way in the International Criminal Court, with which it collaborated closely. It commended the President of the Republic for having referred the case to the Court. With regard to economic crime, his institution had informed a delegation of the United Nations Security Council that had visited the country the previous year of its support for action on reports of the plundering of Congolese natural resources. The ONDH would make every effort, also through judicial proceedings, to enforce the country's rights with a view to reconstruction and the reduction of poverty.

5. The third component of the programme of action related to the electoral process and the promotion and protection of the exercise of civil liberties.

6. Although his institution enjoyed independent legal status, it came under attack from persons in authority, most of whom were former members of belligerent forces. Its financial independence was also undermined by its reliance on appropriations from the State budget. However, its pluralist membership and independence of mind as well as supplementary financial support from its international partners were major assets in circumventing those difficulties.

7. Mr. MUNKHBAT (National Human Rights Commission of Mongolia) said that the National Human Rights Commission of Mongolia (NHRCM) had been established in January 2001. The former communists had been in favour of an ombudsman-type institution to ensure legality and fairness in public administration, while the democratic coalition had promoted the idea of a commission-type body with a broader mandate. It had finally been agreed that the institution should be based on the United Nations Principles relating to the status of national institutions (the Paris Principles). The NHRCM was independent and had a broad human rights mandate. It published an annual report to Parliament on the status of human rights in the country.

8. The country's main human rights challenges stemmed from the dramatic increase in poverty during the transition to democracy, as the previous regime's social protection mechanisms had not been replaced. Over 30 per cent of the population lived below the poverty line, with little access to health care, education and social security. Street children lived in the sewers of the capital and there was ongoing gender inequality. Places of detention were sub-standard and the police were guilty of ill-treatment, arbitrary detention and forced confessions. A further deterioration in the human rights situation with resulting instability was to be expected.

9. The NHRCM consisted of three commissioners supported by a secretariat. Its nationwide field activities were called "Road Shows", a series of events involving consultations on human rights issues with local authorities, meetings with civil society on cooperation, press conferences, public awareness meetings and distribution of human rights pamphlets in public places. Visits were also made to pre-trial detention and prison facilities. The field team included a complaints officer and NGO activists. Where appropriate, the media were invited to join the team. The local people could lodge complaints or receive legal assistance.

10. On average, 350 complaints were received each year. The NHRCM sought to offer a user-friendly and cost-free service to complainants and respondents alike. Where a human rights grievance could not be resolved through the complaints handling mechanism, the Commission could represent the complainant in the courts. It had won a public interest case in 2004 on the payment of compensation by the Government to a victim of judicial malpractice who had been wrongfully sentenced to capital punishment. The case had established a precedent with respect to claims on the State Compensation Fund. Successful judicial proceedings that had led to the abolition of registration fees for rural-urban migrants had constituted a further milestone, since tens of thousands of internal migrants had been unable to pay the high fees imposed by the metropolitan authorities.

11. Human rights violations in the administration of criminal justice had been recognized as the most serious human rights challenge in Mongolia. The NHRCM had launched a public inquiry into torture and other cruel, inhuman and degrading treatment, both to create the political will for change and to encourage citizens to stand up for their rights.

12. The NHRCM appreciated the support it received from United Nations agencies and regional human rights bodies. It would host the tenth annual meeting of the Asia Pacific Forum of National Institutions complying with the Paris Principles in August 2005.

13. Mr. KARIYAWASAM (Chairperson of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families) said that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families had entered into force in July 2003. The Committee members had been elected by States parties in December 2003. The Committee would hold its second session at the end of April 2005. Provisional guidelines had been drafted for the presentation of initial reports by States parties, and had been communicated to all States parties to the Convention, in order to assist them in meeting their reporting obligations. The first reports under the Convention were expected in the near future. The Committee recognized that, owing to globalization, the twenty-first century was a time of migration. In order to be a meaningful instrument, the Convention needed wide-ranging accession by countries from all regions of the world. The Committee was engaged in a continuous dialogue with other United Nations agencies, international governmental organizations and representatives of civil society on ways and means of promoting the Convention. The Convention had thus far attracted only 28 States parties, and hence was the least ratified of the seven core United Nations human rights treaties. There appeared to be a certain reticence among some States to ratify the Convention, and xenophobic tendencies and discriminatory practices were creating barriers to accession. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families formed an integral part of the United Nations human rights treaty system. The small number of States acceding to that Convention made the whole treaty system vulnerable. The provisions of the Convention were broad, and many of them included norms and rights that were reflected in other human rights instruments that were widely ratified. Such norms and rights should be guaranteed to nationals and aliens alike, and hesitation by some States to accede to the Convention called into question their commitment to apply without discrimination the provisions of other human rights instruments. Those countries that had not signed and ratified the Convention should do so as soon as possible, and those that were already States parties should submit their initial reports under the Convention without delay. The Committee would hold a meeting with States parties on reporting modalities during its forthcoming second session.

14. During the Inter-Committee meeting and the meeting of Chairpersons that had been held in June 2004, discussions had taken place on the issue of streamlining reporting requirements under various human rights treaties. Facilitation of reporting by States parties and implementation of treaty obligations was a concern of treaty bodies and States parties alike. It had been agreed that any States wishing to prepare reports using the draft guidelines for the expanded core document and treaty-targeted reports should be entitled to do so. Such States were encouraged to seek technical assistance from OHCHR. Eight States were currently receiving, or had expressed interest in, such technical assistance. He welcomed the support of

the United Nations Secretary-General for harmonized guidelines on reporting. The harmonized guidelines and revised reporting procedures would continue to be discussed at future inter-Committee and Chairpersons' meetings.

ORGANIZATION OF THE WORK OF THE SESSION (agenda item 3) (continued)
(E/CN.4/2005/10; E/CN.4/2005/G/29)

15. Ms. ARBOUR (United Nations High Commissioner for Human Rights), introducing the High Commissioner's eighth report on the situation of human rights in Colombia (E/CN.4/2005/10), said that Colombia had made some advances in implementing the recommendations contained in the previous report, especially in the second half of 2004. The implementation process had, however, been less consistent than desired. The High Commissioner's local office in Colombia had intensified dialogue with the Government, especially the Vice-President, who was responsible for coordinating human rights policies. She welcomed the Government's reaffirmation of its commitment to advance the process, in cooperation with relevant international and national institutions and OHCHR. She hoped adequate action would be taken as soon as possible to ensure more comprehensive implementation of the recommendations.

16. OHCHR had strengthened its regional presence by establishing a third regional office in the city of Bucaramanga. Frequent on-site visits had been made throughout the country, and interviews had been conducted with civil and military authorities and with victims and witnesses. Official and other material, including statistical data, had been analysed, and advice and technical cooperation had been provided to both State entities and civil society organizations.

17. She welcomed the Government's implementation of the International Labour Organization (ILO) Worst Forms of Child Labour Convention, 1999 (No. 182) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. The Constitutional Court had also continued to render important judgements to safeguard the application of international law and to enhance the protection of human rights. In particular, it had declared unconstitutional the Anti-terrorist Statute, which OHCHR had regarded as incompatible with international norms.

18. The humanitarian situation and respect for humanitarian law in Colombia continued to be of critical concern. The persistence of the armed conflict continued to have a negative impact on the human rights of the civilian population. Illegal armed groups had ignored her Office's recommendations regarding the armed conflict, compliance with international humanitarian law and respect for human rights. They continued to commit homicides of protected persons and were responsible for indiscriminate and terrorist attacks, hostage-taking, forced displacements, recruitment of minors for military purposes, acts of sexual slavery, violence against women and girls, and the use of anti-personnel mines.

19. The Fuerzas Armadas Revolucionarias de Colombia - Ejército del Pueblo (FARC-EP), the Ejército de Liberación Nacional (ELN) and the paramilitary groups of the United Self-Defence Forces of Colombia (AUC) continued to commit acts of violence and to terrorize the civilian population. The guerrillas, especially the FARC-EP, bore the main responsibility for hostage-taking and had in some cases tortured or killed their hostages.

20. Her Office continued to receive allegations of breaches of international humanitarian law by the security forces, including breaches of the principles of distinction, proportionality, limitation and immunity of the civilian population, as well as homicides, forced displacements, acts of sexual violence and pillaging. The demobilization of the illegal armed groups and the Government's negotiations with the AUC paramilitary groups had not prevented them from committing serious breaches of international humanitarian law, despite the commitment by the AUC to a cessation of hostilities.

21. She was deeply convinced of the importance of seeking a negotiated solution to the armed conflict based on dialogue and agreements. It was important to adopt an appropriate legal framework that would guarantee the right to truth, justice and reparation for victims, and would also promote national reconciliation and a sustainable peace. Such a framework should be compatible with international norms and take the victims' cultural, ethnic and gender differences into account.

22. The possibility of creating judicial benefits for members of illegal armed groups who decided to lay down their arms and sign peace agreements with the Government should be considered. However, such benefits should depend on action by the beneficiaries to contribute effectively to justice, including clarification of past events and reparation for victims. Adequate measures should be taken to dismantle illegal structures that had enabled those groups to exert social, economic and political influence. She was greatly concerned about the text of a bill currently before Congress and encouraged the authorities to act on the advice that the OHCHR office in Colombia had been providing.

23. Reports had been received in 2004 alleging violations of the right to life, integrity, liberty, security of person, due process and respect for privacy, as well as of freedom of movement, residence, opinion and expression. There had also been allegations of extrajudicial executions by security forces personnel and other public servants, and reports of torture and cruel, inhuman or degrading treatment, forced disappearances, legally unjustified detentions and searches, and tampering with evidence and testimony. Those targeted included human rights defenders, trade unionists, indigenous and Afro-Colombian communities, women, journalists and social leaders. Impunity continued to be one of the biggest obstacles to effective promotion of human rights.

24. Monitoring by her office in Colombia indicated that links continued to exist between some public servants and paramilitary groups and that increasing infiltration on behalf of such groups occurred at various administrative and social levels. She encouraged more decisive action by the authorities in the fight against impunity related to those circumstances.

25. Some indicators of violence, such as those for homicides, massacres and kidnappings, while still high, continued to decline. However, there were significant weaknesses and omissions in the official statistics, especially with respect to conduct attributed to agents of the State.

26. It was crucial to ensure that the Government's security policy complied with human rights norms and to reinforce the presence of civilian institutions, especially bodies that monitored the protection and promotion of human rights. It was also highly important to ensure the coherent and consistent implementation of human rights policies. Statements by some

authorities that questioned the work of human rights defenders and their organizations had adversely affected security, the democratic exercise of freedom of expression and the promotion of fundamental rights. The rule of law and the results of the security policy were strengthened by the valuable work of human rights defenders and their organizations. The authorities must guarantee their full participation in public matters as partners in the defence of democratic rights and values.

27. Her report contained 27 recommendations to the various branches of the Colombian State, the parties involved in the armed conflict, civil society and the international community. Most of them were not new, but they needed to be fully implemented in a consistent process. They continued to be grouped under the headings of prevention and protection; the internal armed conflict; the rule of law and impunity; economic and social policies; promotion of a human rights culture; and technical cooperation and advisory services. She emphasized that the illegal armed groups must take the recommendations addressed to them seriously. They translated into concrete action humanitarian obligations aimed at ensuring the protection of the civilian population.

28. The recommendations in the High Commissioner's previous reports had been transformed into commitments through the agreement by the Colombian Government and the international community to the statement by the Chairperson of the Commission at its sixtieth session. They had also been strongly supported at meetings in London in 2003 and Cartagena in February 2005. She urged the Government to take effective action on its commitment to implement the recommendations and invited the international community to support those efforts. She appreciated the international support already given to her office in Colombia.

29. She reiterated her availability, and that of her office in Colombia, to continue advising and cooperating with the Colombian State and civil society in developing and implementing programmes, policies, norms and mechanisms for the promotion and protection of human rights. In line with that undertaking, she looked forward to her forthcoming visit to Colombia in May 2005.

30. Mr. FRANCO (Observer for Colombia) thanked the High Commissioner for her report and acknowledged OHCHR's work in Colombia. He hoped that her forthcoming visit to the country would strengthen the commitment of all sectors of society to respect and promote human rights throughout Colombia.

31. He welcomed the High Commissioner's recognition in her report of a number of positive developments, including the security forces' action to protect civilians; efforts to implement OHCHR's recommendations; progress in drawing up a national plan of action; the presidential order to review intelligence records; the inclusion of a gender perspective in public policies; progress in the fight against impunity and the punishment of public servants who had disobeyed government orders; measures to extend the coverage and quality of education; and the reduction in violence against the people and institutions. Those developments clearly demonstrated the State's commitment to work towards guaranteeing human rights.

32. The authorities had taken note of the concerns expressed in the report, some of which were being addressed as a matter of urgency. For instance, a law regulating the urgent tracing

mechanism for cases of forced disappearance had been enacted in 2004. Half a million United States dollars had been appropriated for the registry of missing persons, an emergency plan had been adopted and special task forces had been established.

33. He reiterated his Government's resolve to analyse, assess and prioritize the High Commissioner's recommendations transparently and in good faith. It would submit a periodic progress report to Colombian society and the international community.

34. The international community was given conflicting messages regarding the situation in Colombia: some claimed that the President enjoyed a very high popularity rate, that the armed forces and police were respected by all institutions, that the economy was growing, that the illegal armed groups were losing support and operational capacity, and that the human rights situation had improved; others contended that there had been systematic human rights violations, that they formed part of the Government's policy, that NGOs and trade unionists were persecuted, and that the Government did not want peace, had a secret pact with the self-defence groups and wanted to do away with the rule of law.

35. Such conflicting reports generated confusion. The fact was that the Government was aware of the serious problems and was dismayed and frustrated whenever the rights of any of the country's citizens were violated. Statistics showed that its policies had succeeded in improving the situation. For instance, the number of internally displaced persons (IDPs) had been reduced from 400,000 to 160,000 and the number of homicide victims from 1,400 to 259. No previous Government had taken such strong action against the self-defence groups. There had been a 50 per cent increase in the number of self-defence group members captured in 2004, and their structures had been dismantled throughout the country.

36. Although the Government had differences of opinion with many NGOs, it was committed to affording them protection and to engaging in dialogue with them. In 2004 the President had met with NGOs on two occasions, and other government officials had spent 60 hours considering their comments on the Government's implementation of the High Commissioner's recommendations. The document recently produced by NGOs in Cartagena had secured strong support from civil society. The Government intended to analyse the comments it contained.

37. The United Nations, Switzerland, Mexico, Cuba, the Catholic Church and civil society had all sought to promote dialogue, so that there was no further justification in Colombia for resorting to violence or supporting armed groups. The Government had acted on the decisions of the Constitutional Court. Led by the Vice-President and acting on detailed instructions from the President, public servants were working day and night to implement the human rights policy. No complaint was ignored and every allegation was channelled to the appropriate authorities. Clearly, a great deal remained to be done. State institutions must take more effective steps to address the major obstacles that continued to impede the full enjoyment of human rights.

38. Colombia was extremely grateful to the institutions and individuals from many different countries that had shown solidarity with its plight. It would continue to keep an open door and forge ever-closer bonds of cooperation and friendship.

39. Mr. Wibisono (Indonesia) took the Chair.

40. Mr. ALEX (Observer for Luxembourg), speaking on behalf of the European Union (EU), the acceding countries (Bulgaria and Romania), the candidate countries (Croatia and Turkey) and the countries of the Stabilization and Association Process and potential candidates (Albania, Bosnia and Herzegovina, Serbia and Montenegro and The former Yugoslav Republic of Macedonia), welcomed the Colombian Government's commitment to maintaining a constructive dialogue with the Office of the High Commissioner and assured the Office of its unqualified support. The EU hoped that an agreement would be reached as soon as possible between the United Nations and the Government on reactivating the Secretary-General's good offices in seeking a peaceful solution to the conflict in the country. It also fully supported the Organization of American States (OAS) and urged the Colombian Government to cooperate with the OAS peace mission, the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights.

41. In recent weeks the EU and the Colombian Government had held consultations aimed at drawing up a declaration of the Presidency on the human rights situation in Colombia. The EU was following closely the Government's efforts to find a peaceful solution to the armed conflict and to restore democratic values, good governance, and respect for the rule of law and human rights throughout the country. It called on the Government to engage in direct talks with illegal armed groups that were prepared to negotiate, and called on the groups themselves to participate in such talks. The London and Cartagena declarations demonstrated the international community's support and willingness to cooperate actively with the Government in that area.

42. While welcoming the authorities' commitment to disarm and demobilize paramilitary groups, the EU took the view that such a process required a complete cessation of violence by the groups concerned and the adoption of a legal framework to ensure that those responsible for serious violations of human rights and humanitarian law did not go unpunished and that victims' right to justice, truth and reparation was fully recognized. The EU hoped that the legislation on demobilization would conform to international law and jurisprudence pertaining to victims' rights. It welcomed the involvement of the Inter-American Commission on Human Rights in the demobilization process.

43. The EU noted that progress had been made in 2004 in establishing a fully functioning democratic State and that crime and human rights violations had decreased. In fighting terrorism, drug trafficking and related criminal activities, the Colombian Government should respect and protect the rights of its citizens. It should take effective measures as a matter of urgency to halt serious and persistent violations of human rights and breaches of international humanitarian law, ensuring that victims' rights were respected. The EU supported the Government's efforts in that area.

44. Noting that in 2004 the vast majority of violations had been committed by illegal armed groups, the EU called on those groups to cease all hostilities. The EU also continued to be concerned about violations committed by the security forces and collusion between State agents and paramilitary groups. The Government must step up measures to halt such practices and bring those responsible to justice.

45. The EU particularly condemned violations perpetrated against persons belonging to vulnerable groups, especially human rights defenders, displaced persons, members of indigenous

and Afro-Colombian communities, and women and children. It called on the Government to take effective measures to protect human rights defenders and to prevent officials from making public statements that could place their lives at risk.

46. The EU strongly condemned the murder of eight members of the Peace Community of San José de Apartadó in February 2005. It attached great importance to the proper conduct of the investigations and urged the authorities to ensure the safety of witnesses, the families of victims and all members of the community.

47. The EU firmly condemned hostage-taking and kidnapping and called for the unconditional release of kidnapped persons. In that connection, it emphasized the need for a humanitarian agreement based on the principles of international humanitarian law.

48. The EU attached great importance to the role of civil society in seeking a peaceful solution to the conflict and hence to an open and regular dialogue between civil society and the Government. It also encouraged the Government to consult civil society on the national plan of action on human rights and humanitarian law, which should be adopted as soon as possible.

49. The recommendations of the High Commissioner and those adopted by the Commission at previous sessions should be implemented in full, and the Government should make full use of the services and expertise of the High Commissioner's Office.

50. Mr. MEYER (Canada) said that the preparation of an interim report on the High Commissioner's forthcoming visit to Colombia for submission to the General Assembly would be a valuable contribution to the monitoring of the human rights situation in Colombia. The agreement concluded between OHCHR and the Colombian Government on cooperation in the implementation of a National Plan of Action on Human Rights was commendable. He urged the Colombian authorities to adopt a more systematic approach to ensure that its activities yielded measurable results and to renew the OHCHR mandate in Colombia beyond 2006.

51. The destruction of stored anti-personnel mines, growing State control over the territory and the decrease in homicides, massacres and kidnappings were significant achievements. However, the situation continued to cause grave concern, and the Government must ensure that its security policy was consistent with its international obligations. The reported extrajudicial executions, torture and enforced disappearances and the continued use of massive and systematic search and arrest procedures without sufficient proof by the Government and the Office of the Attorney-General were particularly worrying. Human rights defenders, trade unionists, community leaders and members of civil society organizations were particularly vulnerable, and the Government afforded no protection to those groups.

52. Impunity must end. His Government condemned the murder of eight members of the San José de Apartadó Peace Community on 21 February 2005 and called on the Colombian authorities to conduct thorough and impartial investigations and bring the perpetrators to justice. Colombia's recent engagement with the International Criminal Court was a positive step. Continued cooperation and the implementation of measures to enhance the effectiveness and independence of the judiciary were crucial to combating impunity. The Government must also offer protection and assistance to guarantee the safety and dignity of the large number of IDPs.

53. His Government condemned the practice of blockading communities and kidnappings and urged the illegal armed groups to cease hostilities against the civilian population and release all hostages.

54. As part of its commendable efforts to negotiate a peaceful solution to the internal conflict, the Government must take concrete measures to sever the links between paramilitary groups and establish a comprehensive legal framework for the disarmament, demobilization and reintegration of the illegal armed groups permitting the realization of the principles of truth, justice and reparation and guarding against impunity.

55. He reaffirmed his Government's support for the London Declaration and the Cartagena Declaration. A peaceful solution to the internal conflict could only be achieved if the security policy was balanced by social policies that addressed the roots of the conflict.

56. Mr. STROMMEN (Observer for Norway) said that the report by the High Commissioner for Human Rights on the human rights situation in Colombia (E/CN.4/2005/10) provided a comprehensive review of the situation and was indicative of the important work carried out by OHCHR in that country. He encouraged the Colombian Government to sustain dialogue and cooperation with OHCHR. Active implementation of the recommendations made in the report was essential for improving the human rights situation, which remained critical. The Government must strengthen its efforts to alleviate the tremendous suffering of the civilian population.

57. The inconsistencies between the objectives of the Government's "democratic security" policy and the methods used in its implementation and its effects on the civilian population were cause for concern, in particular with regard to the safety of human rights defenders. The success of that policy must be measured against the benefits reaped by civilians.

58. The illegal armed groups must implement the High Commissioner's recommendations; end the grave violations of international humanitarian law; release all hostages and kidnapped persons; and halt the recruitment of child combatants.

59. His Government remained committed to supporting the Colombian Government in its efforts to find a negotiated solution to the armed conflict based on the implementation of the High Commissioner's recommendations.

60. Ms. VOIGT (Observer for Switzerland) said that continued cooperation between the Colombian Government and OHCHR, as well as the international community's support for Colombia's efforts to negotiate a peaceful resolution to the internal conflict, were crucial to improving the human rights situation in that country. The participation of civil society in the process was also important.

61. The Government's efforts to improve the security situation and restore institutional legitimacy must include measures to ensure the protection of the civilian population. All acts of homicide and attacks against innocent civilians, such as the massacre in San José de Apartadó, must be thoroughly and impartially investigated. Combating impunity must remain a priority.

62. Reports of the arbitrary detention of community leaders, human rights defenders and trade unionists, as well as extrajudicial executions, enforced disappearances and torture attributed to State agents, were cause for grave concern. Her Government condemned the serious violations of international humanitarian law committed by members of FARC, ELN and AUC and called on those groups to respect international humanitarian law. Women, children, indigenous peoples and Afro-Colombians were affected disproportionately by the ongoing humanitarian crisis. The Government must step up its efforts to protect communities and prevent renewed displacement and the recruitment of child soldiers.

63. The Government's efforts to demobilize the paramilitary groups were commendable. However, that process should be based on an appropriate legal framework that was in conformity with international norms on the right to truth, justice and reparation; the effective dismantlement of the political, social and economic structure of illegal armed groups; and the breaking of all links between paramilitary groups and public officials. Sustained efforts must be made to find a negotiated solution to the conflict, for which purpose Switzerland was willing to provide its good offices.

64. Mr. SANCHEZ-THORIN (Colombian Commission of Jurists, International Commission of Jurists and Amnesty International) said that the lack of comprehensive data on the extent of violations of human rights and international humanitarian law in Colombia, and the inadequate criteria used by the Government for identifying such violations, resulted in serious discrepancies between official statistics and information provided by civil society organizations.

65. The report of the High Commissioner for Human Rights (E/CN.4/2005/10) described the human rights situation in Colombia as critical and referred to an increase in extrajudicial executions attributed to the security forces, the circumstance of which were often misrepresented. Human rights violations committed by members of the armed forces were reportedly on the rise, and illegal armed groups continued to target civilians and recruit child combatants in a climate of total impunity. Existing legislation afforded impunity for past crimes to demobilized combatants; thus far 5,000 members of paramilitary groups had benefited from those provisions. Draft legislation currently before Parliament contained provisions for the exemption from prosecution of paramilitary leaders for war crimes and crimes against humanity, in blatant violation of international law.

66. The systematic failure to respect human rights commitments was a permanent feature of the Colombian Government. He called on the Commission to remind the Government of its international obligations and to consider establishing a mechanism to monitor the implementation of the High Commissioner's recommendations.

67. Ms. AULA (Franciscans International, Lutheran World Federation, World Council of Churches and World Alliance of Reformed Churches) said that evidence implicated members of the armed forces in the recent massacre in the San José de Apartadó Peace Community. The Government's security policy and the process of negotiation with illegal armed groups had not led to the effective dismantling of paramilitary structures; instead, their local and regional influence had increased and they were afforded impunity for past atrocities. In addition, the growing presence of United States soldiers and private military contractors threatened to exacerbate the conflict.

68. The Government's economic and social policies had failed to reduce inequalities, and Colombia had seen the accelerated privatization of basic public services, the closure of many domestic businesses and the unhindered entry into the country of large multinational companies. The scale and nature of internal displacement in Colombia suggested underlying political and economic interests.

69. He urged the Commission to call for justice and adequate reparations in relation to the massacre in San José de Apartadó; strengthen active United Nations engagement in Colombia; request the High Commissioner for Human Rights to submit a report to the General Assembly on the situation in Colombia; and request the Government to implement fully the High Commissioner's recommendations and to present a national action plan for human rights and international humanitarian law in 2005.

70. Ms. GUTIERREZ (International Federation of Human Rights Leagues) said that killings and threats to human rights defenders, arbitrary detention of entire communities, attacks against unionized workers, torture, enforced disappearance and massive forcible displacement in Colombia were common practices. The Colombian Government denied the existence of an internal armed conflict, affirming instead the existence of a terror threat, and had imposed a security policy that undermined the implementation of international humanitarian law and exacerbated the vulnerability of the civilian population. Failing to conclude humanitarian agreements that could mitigate the effects of the armed conflict, the Government afforded impunity to demobilized members of paramilitary groups, leaving their organizational structure largely intact. Draft legislation proposed as a legal framework for the demobilization process contained no provisions to guarantee the rights of the victims, the restitution of land or property, the imposition of sentences commensurate with the gravity of the crimes committed, or the prosecution of State collusion with paramilitary activities. The resulting consolidation of paramilitary structures placed at risk the future of democracy in Colombia.

71. The Colombian Government must support the work of OHCHR in Colombia; implement the recommendations of the High Commissioner; dismantle paramilitary structures; return property and land; guarantee the right to truth, justice and reparation; investigate the links between public officials and illegal armed groups and punish implicated persons; and guarantee the safety of human rights defenders. Humanitarian agreements should be signed by all parties to the conflict.

72. Ms. ABRAHAM (Centre on Housing Rights and Evictions) said that an estimated 3 million persons in Colombia were internally displaced; women, children, Afro-Colombians and indigenous people were affected disproportionately. The leasing or selling of land for the exploitation of natural resources often caused conflict affecting indigenous communities.

73. Living conditions in the shanty towns that housed the majority of Colombia's IDPs were characterized by overcrowding and lack of personal security and access to employment, education, health care and other basic services. The Government offered no protection from forced evictions and displacement or assistance to the displaced. She called on the Colombian Government to implement fully the provisions of the Guiding Principles on Internal

Displacement and to ensure the restitution of property to displaced persons. Her organization supported the initiative for drafting guiding principles on housing and property restitution for refugees and other displaced persons.

74. Ms. AVELLA (World Federation of Trade Unions) said that trade unionists in Colombia were subject to ongoing human rights violations. Homicide, enforced disappearance, gender-based violence and threats targeting trade unionists were on the rise. A strike organized by the oil-workers union had been declared illegal and 253 workers had lost their jobs as a result. Those incidents illustrated the effects of the Government's "democratic security" policy. The violation of trade union freedom also affected foreign trade unionists, who had been denied entry into the country. The process of investigation into the activities of human rights activists and political and trade union leaders ultimately aimed at their elimination. In a country where trade union leaders were considered legitimate military targets, democracy did not exist. The crimes against humanity committed against those persons must not go unpunished.

75. Ms. VERNER (Human Rights Watch) said that Colombia's long-standing internal armed conflict had been marked by ongoing human rights violations committed by both guerrillas and right-wing paramilitary groups. As a result, Colombia had one of the largest populations of IDPs in the world. Human rights defenders, journalists, academics, indigenous leaders and trade union leaders were frequent targets of violations, and units of the armed forces had been implicated in atrocities committed by paramilitary groups. Thus far, the Government had failed to take effective action to sever those ties, and impunity prevailed. Despite the demobilization process launched by the Government, paramilitary groups continued to violate ceasefire agreements, and the Government had yet to establish an effective legal framework to dismantle paramilitary structures and ensure accountability for the crimes committed.

76. The OHCHR office in Colombia played a crucial role in human rights monitoring and had made recommendations to both the Government and illegal armed groups concerning respect for human rights and international humanitarian law. The Commission should increase OHCHR activities in Colombia and request the allocation of additional resources for that purpose, as well as calling on the Colombian Government to establish a legal framework in accordance with international standards on truth, justice and accountability.

77. Ms. GRAF (International League for the Rights and Liberation of Peoples) said that the massacre in the San José de Apartadó Peace Community was an act of terror, and evidence suggested the implication of units of the armed forces.

78. In spite of repeated calls by the Inter-American Court of Human Rights for the implementation of measures to protect that community, San José de Apartadó had been the continuous target of extrajudicial executions, anti-personnel mines, enforced disappearance, arbitrary detention, pillaging, armed occupation, threats, extortion, torture, forced displacement, indiscriminate aerial bombardment, armed assault, economic or food blockades, burning of houses, and unlawful entry of premises. All those criminal acts had been carried out with the participation of members of the armed forces.

79. Ms. TOLEDO (Latin American Federation of Associations of Relatives of Disappeared Detainees) said that between 2002 and 2004 over 6,148 persons had been killed or disappeared in Colombia. In addition, thousands of Colombians had been forcibly driven out of their

communities. Her organization had worked continuously for the adoption of a convention for the protection of all persons from enforced disappearance, a widespread practice which destroyed the social fabric of the country. The demobilization process had not led to a reduction in the number of enforced disappearances; instead, the persecution of trade unionists and civil society had intensified. She urged the Commission to adopt radical measures to stop the violence and ensure the monitoring of military activities in Colombia.

80. Ms. VERA (Women's International League for Peace and Freedom) said that, in the context of Colombia's internal conflict, women had become military targets and war trophies. Sexual violence, including rape, sexual slavery, forced birth control and forced abortions, was used as a weapon of war and terror, and armed groups controlled the most intimate spheres of women's lives. Women's right to freedom of movement was severely restricted, and 76 per cent of Colombian IDPs were women and children.

81. The current negotiations between the Government and paramilitary groups contemplated high levels of impunity, and the legal framework proposed by the Government failed to meet international standards on the rights of the victims. Perpetrators of acts of gender-based violence enjoyed total impunity.

82. The Commission should call upon the Colombian Government to comply with Security Council resolution 1325 (2000); implement the recommendations of the United Nations Human Rights Committee and the High Commissioner for Human Rights; establish a legal framework that guaranteed the right to truth, justice and reparations; and take the gender measures provided for in the Rome Statute.

83. Mr. ANDRADE (International Working Group for Indigenous Affairs) said that the indigenous peoples of Colombia were caught in the crossfire of a war that was not theirs. Despite the Inter-American Court of Human Rights' repeated requests for the implementation of protection measures, the lives, autonomy and life-sustaining activities of indigenous peoples continued to be at risk. Five months after the Special Rapporteur of the Commission on Human Rights on the situation of human rights and fundamental freedoms of indigenous people had presented his report, urging the Colombian Government and paramilitary groups to respect human rights and international humanitarian law, the situation remained critical. Both members of the armed forces and paramilitary groups were implicated in acts of violence committed against indigenous communities, including forcible displacement, arbitrary detention, restrictions on freedom of movement and denial of access to food and medicine.

84. The Commission should call on the Colombian Government to implement the recommendations of the High Commissioner for Human Rights and the Special Rapporteur, and monitor the peace process and the human rights situation in indigenous communities.

85. Ms. ZALALOCITA TORRES (Netherlands Centre for Indigenous Peoples) also speaking on behalf of the Tayrona Indigenous Confederation, requested the High Commissioner for Human Rights to arrange a special meeting to discuss the situation of the indigenous peoples of Colombia during her forthcoming visit to the country.

86. Armed groups were disputing control over the Sierra Nevada de Santa Marta, the home of four indigenous peoples. The violence there had sparked an acute humanitarian crisis and

massive violations of human rights. The “democratic security” policy aimed at defeating the armed groups had resulted in the militarization of indigenous lands by mountain infantry whose occupation of sacred sites was damaging the cultural and spiritual roots of the Sierra’s indigenous peoples. At the same time, the armed groups were eating the locals’ food and their indiscriminate hunting and fishing activities were depleting natural mountain resources. In addition, not only did they oblige members of indigenous communities to act as informers, thus exposing them to the risk of being killed by another group, but they also forcibly recruited local women and children, despite the fact that the communities did not consider themselves to be parties to the armed conflict.

87. Ms. BERNARD (Global Rights), also speaking on behalf of Partners for Justice and the Afro-Colombian and Raizal Women’s Network, explained that Raizals were inhabitants of the islands of San Andrés and Providencia, who had a culture, language and religion distinct from those of the majority population in Colombia. Women of African descent and Raizal women were subjected to systematic discrimination and displacement in Colombia as a result of the internal armed conflict. Over the years they had also suffered from social exclusion. Black and Raizal women comprised 48 per cent of the displaced population, and those who were human rights defenders had been raped and kidnapped by armed groups.

88. Her organization therefore welcomed the report of the High Commissioner for Human Rights on the human rights situation in Colombia (E/CN.4/2005/10) and that of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (E/CN.4/2004/18/Add.3), which had highlighted the marginalization experienced by black women.

89. In the light of those reports, she requested that Colombia implement the recommendations of OHCHR, that it report to the Commission on Human Rights on progress in implementing the Convention on the Elimination of All Forms of Discrimination against Women and that it formulate policies guaranteeing the equal participation of Afro-Colombian women and recognizing the special status of the Raizal population.

90. Mr. FRANCO (Observer for Colombia), speaking in exercise of the right of reply, said that an appeal had been made to all illegal armed groups to free hostages as a preliminary to serious peace negotiations. Although the Government agreed that the widespread violence was having an adverse effect on human rights, it could not shirk its responsibility for guaranteeing the protection of those rights by pleading that the action of others was undermining them.

91. The High Commissioner for Peace had told Congress, with reference to humanitarian exchanges and the legal framework for them, that the Government was prepared to hold a direct meeting with FARC. The secretary of FARC had referred to a humanitarian agreement and the possibility of initiating a peace process. One clearly had to follow the other. Transparent discussions would be the best path to follow. The Government was also absolutely determined to dismantle the self-defence units, as that move would benefit the whole nation.

92. The prosecutor’s office was conducting an on-the-spot investigation of the events in San José de Apartadó. The Government was prepared to guarantee the safety of witnesses.

PROMOTION AND PROTECTION OF HUMAN RIGHTS:

- (a) STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS
- (b) HUMAN RIGHTS DEFENDERS
- (c) INFORMATION AND EDUCATION
- (d) SCIENCE AND ENVIRONMENT

(agenda item 17) (E/CN.4/2005/46, 92-100, 101 and Add.1-2 and Add.3 and Corr.1, 102 and Add.1, 103 and 133; E/CN.4/2005/G/1 and 25; E/CN.4/2005/NGO/6, 15, 27, 53, 70, 89, 96, 99, 114, 119, 122, 127, 133, 135, 151, 167, 178-179, 190, 226, 236-237, 247, 265, 272, 275, 284, 287, 290 and 322; E/CN.4/Sub.2/2004/43; E/2005/3)

93. Mr. GOLDMAN (Independent expert on the protection of human rights and fundamental freedoms while countering terrorism) said that his report (E/CN.4/2005/103) identified some key issues that had not been addressed by other mandate-holders. Terrorism seriously threatened the exercise of human rights and for that reason the emergence of global terrorist networks unquestionably made it necessary to step up international and regional cooperation in order to suppress terrorist violence. Nevertheless, the international community must uphold the rule of law at all times.

94. In any situation of armed conflict, humanitarian law must govern the conduct of hostilities. No person, however classified, could be legally placed beyond the protection of international humanitarian law. Even in a genuine emergency, States could not legally suspend non-derogable human rights, yet many Governments had sanctioned counter-terrorism practices that were not in keeping with internationally recognized human rights and they had passed domestic legislation that violated the principle of nullum crimen sine lege.

95. Prolonged, incommunicado or secret detention of suspects fostered an environment in which disappearances and torture could occur. Certain military tribunals were inconsistent with internationally recognized fair trial standards. It was alarming that detainees protected by the Geneva Conventions had been subjected to torture. Similarly, in some instances, the transfer or "rendition" of foreign suspects was incompatible with international law.

96. While significant steps had been taken by the United Nations to promote and protect human rights in the struggle against terrorism, the significant gaps recorded in the monitoring of States' counter-terrorism measures by treaty bodies and special procedures meant that there was a pressing need for stronger human rights safeguards. A special procedure with a multidimensional mandate should therefore be created to ensure that the steps taken by States to combat terrorism were compatible with their international legal obligations. The appointment of a special rapporteur with such a mandate would be a wise move.

97. Ms. JILANI (Special Representative of the Secretary-General on the situation of human rights defenders), introducing her report (E/CN.4/2005/101 and Add.1-3), said that while she had been encouraged by some positive trends, she was disturbed by the 34 per cent rise in the number of communications she had sent to Governments. She was also disturbed by States' lack of tolerance for the activities of defenders, 47 of whom had been killed in 2004. Journalists

reporting on human rights violations and humanitarian personnel were also being targeted more frequently. She was perturbed that many Government replies to her communications had cited national law as a justification for the alleged violations. National law must, however, be consistent with the international human rights framework. Another worrying feature of Governments' responses had been their unjustified questioning of defenders' credibility. Impunity remained unacceptably high; only 2 of the 128 cases of alleged violations of defenders' rights committed by security and armed forces had resulted in convictions, and the vast majority of cases were still pending.

98. In 2004, as part of her efforts to turn her attention to Africa, she had strengthened her links with the focal point on human rights defenders in the African Commission on Human and Peoples' Rights with a view to gaining a broader picture of the situation of human rights defenders on that continent.

99. She welcomed the creation of mechanisms to implement the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms and the adoption of the European Union Guidelines on Human Rights Defenders. In order to maximize the effectiveness of her country visits, she had embarked on a series of follow-up visits and assessments.

100. In Angola the pace of judicial and legislative reforms needed to be expedited. The role that human rights defenders played in a democratic society had not been fully understood, although admittedly their situation was significantly better in Luanda than in the rest of the country. Legislation on freedom of expression, information and association was weak, and there were several ways in which the capacity of human rights organizations could be strengthened in order to improve their ability to meet the considerable challenges they faced. The elections in 2006 would be a crucial juncture in Angola's history. The role of defenders in preparing and monitoring the elections would be essential if the process were to be credible.

101. Her visit to Turkey had taken place at a time when vigorous efforts were being made to consolidate democracy. Nevertheless, laws on trade union and labour rights had not yet been reviewed. At provincial and local level, a change in attitude was needed towards mechanisms addressing human rights issues because in practice, defenders still encountered sizeable difficulties in publicizing human rights concerns and vexatious legal proceedings brought against them amounted to intimidation. It was therefore to be hoped that the Government's commitment to change would extend to devising stronger strategies to ensure that reforms were implemented in such a way as to remove lingering constraints on fundamental freedoms and dispel the climate of distrust that still persisted.

102. The work of human rights defenders was indispensable to the advancement of human rights. Attempts by Governments to harm or marginalize them in order to avoid transparency and accountability for human rights violations could only result in a worsening human rights situation. Such gambits also severely weakened the capacity of the international community to address human rights concerns and would have far-reaching consequences for the preservation of peace and security.

103. Mr. BELO MANGUEIRA (Observer for Angola) said that, after 30 years of devastating fratricidal war, the Angolan people yearned for national reconciliation, democratization and progress. Real progress had been made in acknowledging the role of human rights defenders. The Government was striving to develop democratic, transparent governance respectful of constitutional rights and it was endeavouring to improve mechanisms to protect the exercise of fundamental freedoms.

104. The human rights situation in his country had improved substantially, and serious violations of defenders' rights had occurred in only a few rare cases. As soon as they had been brought to the attention of the Government, the latter had introduced measures to reduce the risk of abuses. It had also suggested that an ombudsman be appointed to draw up a national human rights plan with the assistance of civil society and OHCHR. Elections were scheduled for 2006, when Angolans would have an opportunity to exercise their political and democratic rights. The Constitution was being revised in the run-up to the elections. That process would include the amendment of laws on press freedom and the freedom of expression and association. Judicial reforms were already under way.

105. His Government therefore took issue with some of the findings of the report on the Special Representative's mission to Angola (E/CN.4/2005/101/Add.2), and it had set out its objections in a letter to the Secretary-General, in which it had outlined the mechanisms and institutions it had established at local and national level to safeguard citizens' basic rights. The Government was not hostile to human rights defenders. The country was at peace, and significant progress was being made as far as respect for human rights was concerned. The programme of democratization introduced after the restoration of peace in 2002 was the strongest guarantor of human rights, in that it provided for the establishment of human rights units in every province. Human rights courses for the army and police had contributed to a significant improvement in the observance of human rights, contrary to what was stated in the report. Advances had also been achieved in women's representation, the rights of the child and social and economic rights.

106. While his Government was attempting to address some of the concerns expressed by the Special Representative, it could not accept interference in Angola's domestic affairs. It was, however, committed to improving the human rights situation and to close cooperation with the United Nations for that purpose.

107. Mr. KERTTEKIN (Observer for Turkey) noted that his Government's observations on the Special Representative's report on her mission to Turkey (E/CN.4/2005/101/Add.3) had been circulated as document E/CN.4/2005/G/25. The Government and people of Turkey were determined to achieve higher standards in the field of human rights. Some of the observations, criticisms and recommendations in the report had been formulated before the new Law on associations had been enacted. The Law dealt with a number of the shortcomings mentioned in the report. Again, supplementary information in that respect had been provided in document E/CN.4/2005/G/25. The new Penal Code that would enter into force in June 2005 would probably meet some of the other concerns raised by the Special Representative.

108. In order to clarify footnote No. 1 of the report (p. 26), he explained that the PKK was a terrorist organization and listed as such by the European Union and the United States of America. Omission of any reference to that fact in the report was a serious shortcoming which should have been remedied in the footnote in question.

109. His Government regarded representatives of civil society, including human rights defenders, as important partners in the democratic process. Hence it would maintain its dialogue and cooperation with the Special Representative.

110. Ms. ORENTLICHER (Independent expert to update the Set of Principles for the protection and promotion of human rights through action to combat impunity) said that she had been mandated to update the Set of Principles to combat impunity, prepared by Mr. Louis Joinet and transmitted to the Commission in 1997, taking into account comments provided by States and other sources, and reflecting recent developments in international law and practice and recent experience gained by States in combating impunity. She had completed that task in accordance with Commission resolution 2004/72, and was particularly appreciative of the assistance that had been provided to her by OHCHR in preparing her report (E/CN.4/2005/102 and Add.1). The developments that had occurred in international law since 1997 had been significant, and had strongly affirmed the Principles. Considerable progress had been made, including the establishment of a permanent international criminal court. Prosecutions before international criminal tribunals had brought to light crimes of sexual violence, the United Nations Secretary-General had joined United Nations human rights bodies in condemning amnesties for serious crimes under international law, and States had cooperated to ensure the prosecution of individuals, including senior officials, against whom there was substantial evidence of personal responsibility for serious crimes under international law. A number of States had reduced impunity by repealing amnesties or adopting judicial interpretations that enforced international law.

111. The advent of international criminal tribunals had enhanced the capacity of domestic courts to play a part in combating impunity. The statute of the International Criminal Court affirmed the enduring primacy of national Governments in combating impunity. The International Criminal Tribunal for the former Yugoslavia had played a leading role in launching a new war crimes chamber in the Court of Bosnia and Herzegovina, which reinforced the essential message that international justice achieved its aims only when it strengthened States' domestic capacity to combat impunity through the reliable administration of fair process. One of the guidelines set forth in the Principles, which addressed the jurisdiction of national courts in relation to international criminal tribunals, had been revised to reflect the emergence of internationalized courts that comprised local and international personnel. Similarly, the Principles had been updated to reaffirm the importance of ensuring compliance with obligations that States might have assumed under applicable treaties to cooperate with international or internationalized courts. Although the Principles were not legally binding, they nonetheless reflected and were consistent with the relevant standards of international law.

112. Developments in practice over recent years had provided a wealth of experience to draw on in updating the Principles, an example of which was that nearly 20 truth commissions had been established across the world since 1997. The revisions based on experience reflected several main concepts: first, that there was no general response to serious violations of human rights. The unique experience of each society that had endured large-scale atrocities inevitably

shaped its citizens' understanding of justice. Experience had reinforced the importance of encouraging broad public participation in deliberations on the design and implementation of programmes for combating impunity. In revising the Principles, she had taken into account the significant practical challenges faced by societies seeking to combat impunity after the complete collapse of legal process. The updated Principles included a new paragraph on administrative programmes of reparation, which could provide an effective means of distributing adequate and prompt reparation in situations with large numbers of victims. The Principles had provided inspiration and practical guidance to countless individuals involved in the struggle against impunity, and had a profound influence in shaping major advances in international law and practice.

SPECIFIC GROUPS AND INDIVIDUALS:

- (a) MIGRANT WORKERS
- (b) MINORITIES
- (c) MASS EXODUSES AND DISPLACED PERSONS
- (d) OTHER VULNERABLE GROUPS AND INDIVIDUALS

(agenda item 14) (continued) (E/CN.4/2005/8, 63, 79, 80 and Add.1, 81-83, 84 and Add.1, 85 and Corr.1 and Add.1 and Add.2-4, 86 and Corr.1 and Add.1, 124, 128 and 133; E/CN.4/2005/G/7, 19, 31 and 33; E/CN.4/2005/NGO/13, 25, 52, 65, 74, 82, 106, 120, 129-130, 143, 180, 186, 195, 199, 232, 234, 270, 289, 302, 320 and 321; E/CN.4/Sub.2/2004/29 and 36 and Corr.1; E/CN.5/2005/5 and Corr.1; A/59/360)

113. Mr. KHAMBIEV (Transnational Radical Party) said that after six years of conflict, the situation of the Chechen people was more serious than ever. Large-scale human rights violations had led to a considerable increase in numbers of refugees, IDPs and missing persons. Acts committed against the civilian population had forced hundreds of thousands of people to flee their homes. The Office of the United Nations High Commissioner for Refugees (UNHCR) had criticized the Ingush authorities for having forced Chechen refugees to return to war-ravaged areas. According to the Global IDP Project, the Russian Federation authorities continued to deprive IDPs in the northern Caucasus of adequate protection. Since 1999, the federal authorities had attempted to contain the displacement crisis in Chechnya, by denying IDPs access to safety elsewhere. Approximately 60 per cent of IDPs in the Russian Federation were located in Chechnya, despite widespread insecurity and destitution.

114. At present, there were no prospects of a political solution to the conflict, and violence in the region was increasing. The current Chechen leader, Abdul-Khalim Sadulaev, was advocating the search for a peaceful solution to the conflict by opening negotiations. The Transnational Radical Party welcomed the fact that the High Commissioner for Human Rights had been invited by the Russian authorities to visit the northern Caucasus. The Commission should take note of the human rights violations in Chechnya, and urgent measures must be adopted commensurate with the gravity of the situation.

115. Ms. STUCKELBERGER (International Association of Gerontology, Society for Psychological Study of Social Issues, Pan Pacific and South-East Asia Women's Association International, Worldwide Organization for Women, World Movement of Mothers, International Association for Counselling, International Council of Jewish Women, World Union for Progressive Judaism, Brahma Kumaris Work Spiritual University, Women's World Summit Federation, Institute for Planetary Synthesis, International Federation of University Women, International Inner Wheel, International Council of Nurses and World Union of Catholic Women's Organizations) said that the Commission must recognize and mainstream older persons in its agenda, and adopt a declaration on the rights of older persons. Very few international legal documents referred specifically to the rights of older persons, and although objectives had been set to ensure the rights of older persons, protect them from neglect, abuse and violence in all situations addressed by the United Nations and recognize their role and contribution to society, such objectives were insufficient. Older persons were increasingly excluded from their active role in society.

116. The contribution of older persons in relation to the HIV/AIDS pandemic was vital, since their right to care for their orphaned grandchildren, and children in general, would benefit socio-economic development and the human reconstruction of society. The migration of younger generations from developing or transition countries with poor social welfare systems left behind older persons with no social, economic and care support, and thus increased their vulnerability, isolation, poverty and lack of health care. Discussions were also under way in some States on the plan to delocalize older persons' health care for economic gain. Technological development increased the generation gap. Older generations were too often excluded and affected by the digital divide, and became victims of a development framework adapted for younger generations. Older persons' rights were also inadequately addressed in situations of asylum, displacement, imprisonment, conflict, war and natural disasters. Older people often faced discrimination in access to health, the right to dignity and respect of cultural and spiritual life. The right to development must take account of old age and generation specificities. She called on the Commission to appoint a Special Rapporteur on the rights of older persons, mainstream aging into all issues addressed, and specifically mention older persons in the agenda for future sessions.

117. Mr. VOONG (World Evangelical Alliance and Becket Fund for Religious Liberty) expressed concern about Sri Lanka's proposed anti-conversion law, which unfairly targeted the country's Christian minority. Sri Lankan Christians had been the victims of over 160 incidents of violence and intimidation over the past two years, including church bombings, physical assaults and desecrations. Laws safeguarding religious freedom should protect religious minorities, not discriminate against them. Sri Lanka was struggling to recover from the effects of the tsunami disaster, following which there had been an unprecedented humanitarian effort at every level of society. Ordinary citizens had risen to the occasion and had helped each other, irrespective of ethnic or religious differences. The tsunami itself had not been discriminatory in its destruction. The Government of Sri Lanka, however, rather than building on that sense of unity, had decided to pass a law that would fuel religious intolerance and endanger religious minorities. The proposed law was in breach of Sri Lanka's obligations under the International Covenant on Civil and Political Rights. Christians had long been known all over the world for

providing education, social assistance and relief. The new law imposed a sentence of up to seven years' imprisonment for persons providing aid to members of religions other than their own. He called on the Government of Sri Lanka to withdraw the new legislation. The Commission should protect the right of religious minorities to freely practise their beliefs by providing assistance to others without the threat of criminal penalties.

118. Ms. GEGAJ (Human Rights Advocates), also speaking on behalf of the National Association of Criminal Defense Lawyers, said that undocumented migrants were subject to human rights violations as they crossed borders and when they began to work in receiving countries. Although many immigration policies criminalized undocumented migrants, the flow of undocumented migrants had increased in recent years. Such policies violated human rights, including the right to life, since migrants often died while attempting dangerous border crossings. Many immigration policies also subjected migrants to arbitrary detention. Australia had a mandatory detention policy for asylum-seekers who arrived by sea. Any policy that led to detention of a migrant for more than 12 days without judicial review violated international norms.

119. On arrival in receiving countries, undocumented workers accepted low wages and poor working conditions, and they did not report abuse for fear of deportation. Guaranteeing the right to organize could solve the problem of abuse in the workplace. Spain and the United States deprived undocumented workers of that right, and had been called on by ILO to ensure effective remedies for violations of that right. He urged the Commission to call on all countries to amend immigration policies to reduce border deaths and arbitrary detention of migrants, affirm the right to organize without distinction on the grounds of immigration status, and renew the mandate of the Special Rapporteur on the rights of migrants. The Special Rapporteur should recommend the adoption of immigration policies that focused on the social integration of migrants and protected their human rights, in particular the right to organize.

120. Ms. THONISSEN (Lutheran World Federation, FORUM-ASIA, Habitat International Coalition, International Educational Development, Inc. and Jesuit Refugee Service) said that over 100,000 Bhutanese refugees had been languishing in seven camps in south-eastern Nepal, run by UNHCR, for approximately 15 years. Despite ministerial negotiations between the Governments of Nepal and Bhutan, none of those refugees had been able to exercise their right to return. Bhutan had repeatedly refused to allow UNHCR to exercise its proper role in the negotiation, verification and repatriation process, and had effectively blocked progress towards a just and durable solution. Increasing instability in Nepal was making the refugees' situation even more precarious. The material support that the refugees had been receiving was currently under threat, since UNHCR had announced its intention to gradually withdraw from the camps in view of the lack of progress in negotiations with Bhutan. UNHCR representatives had recently met with the staff of the camps to decide whether the necessary cutbacks would be made to provisions for cooking fuel, education or shelter. The Commission should call on the Government of Bhutan to allow UNHCR to exercise its legitimate protection mandate, to respect the right to return of those refugees who wished to do so, and to guarantee them a return in conditions of safety and dignity. The international community must assist in the process of finding a comprehensive solution to the problem.

121. Mr. SIDOTI (International Service for Human Rights, Canadian HIV/AIDS Legal Network and Human Rights Council of Australia) said that many people involved in the current session of the Commission might feel unable to express their sexual orientation or gender identity for fear of discrimination. Although diversity among human beings was a fact, it was often the cause of human rights violations. Although violations of human rights on the basis of sexual orientation and gender identity had been acknowledged by States, special procedures of the Commission and treaty monitoring bodies, the Commission itself had remained silent on the issue. Persecution based on sexual orientation and gender identity should be a subject of condemnation and concern in the Commission. The issue required close attention, and must be dealt with according to law. A few States, from all regions, should begin discussions to identify common ground on the problem, and could learn from each other's experiences. In some countries, national measures of protection and promotion had positively affected the lives of countless individuals. All concerned parties should work together before the next session of the Commission to develop a cross-regional proposal to address persecution based on sexual orientation and gender identity. He hoped that in 2006, the Commission would support an effective resolution that dealt with a form of persecution that had been ignored for too long.

The meeting rose at 6 p.m.