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COMMISSION ON HUMAN RIGHTS

Sixty-first session

SUMMARY RECORD OF THE 28th MEETING

Held at the Palais des Nations, Geneva,  
on Thursday, 31 March 2005, at 3 p.m.

Chairperson: Mr. WIBISONO (Indonesia)

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:

- (a) TORTURE AND DETENTION
- (b) DISAPPEARANCES AND SUMMARY EXECUTIONS
- (c) FREEDOM OF EXPRESSION

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Any corrections to the records of the public meetings of the Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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The meeting was called to order at 3.05 p.m.

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:

- (a) TORTURE AND DETENTION
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- (c) FREEDOM OF EXPRESSION
- (d) INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY
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1. Mr. LIGABO (Special Rapporteur on the right to freedom of opinion and expression), introducing his report to the Commission (E/CN.4/2005/64 and Corr.1 and Add.1-5), said that freedom of opinion and expression was a fundamental right that contributed to the consolidation of democracy and the development of mutual respect, dialogue and tolerance. Any obstacle to the free circulation of ideas and opinions hindered the exercise of that right. However, violations of the right continued to occur in many countries, and cases of violence against media professionals, trade unionists and social workers were increasing. Strengthening the rule of law would enable cases of impunity to be reduced. In 2004 a large number of media professionals had been killed while on duty. The majority had lost their lives in conflict areas, while several others had been murdered because of their investigative activities, and in most cases the perpetrators of the crimes had either not been adequately punished, or had not been punished at all.

2. Media concentration was increasing, and was active and visible in many countries. Although the role of private enterprises was crucial for media development, journalists' independence must be preserved and guaranteed. Limiting media concentration was often a less costly and more efficient method, which contributed to a more pluralistic approach to information. The dominance of entertainment and fiction in the media had weakened the press, and the growth of the television and Internet sectors had created a crisis in the printed media. National and international print groups had merged and many professionals had been dismissed. Such a situation could endanger the independence of journalism, particularly investigative journalism.

3. Guaranteeing freedom of opinion and expression on the Internet was a central challenge for the future. A global information society, in which the poor could access modern technologies, would open new paths for human and economic development. If technologies were not accessible globally, the social and economic gap between developed and developing countries would widen. The media played a vital role in awareness-raising on political, economic and social issues, and he considered it unacceptable that many journalists had been tried for defamation. Such cases should be dealt with under civil law, and fines should be proportional. Discriminatory forms of expression such as hate speech contributed to the deterioration of stability and the increase in confrontational attitudes. In post-conflict situations, biased reporting could restart violence and ruin peace and reconciliation efforts.

4. Since the Commission's previous session he had participated in World Press Freedom Day and a conference on support to media in violent conflicts and countries in transition that had been organized by the United Nations Educational, Scientific and Cultural Organization (UNESCO) and had been followed by a regional seminar on the media in south-east Europe. He had been invited to participate in the Fifth International Conference of International PEN's Writers in Prison Committee. In June 2004 he had attended the eleventh meeting of the mandate-holders of the Commission's special procedures and had travelled to Tunisia to attend the preparatory meeting of the World Summit on the Information Society.

5. In 2004 he had signed 131 urgent appeals and 94 allegations letters, and co-signed 340 urgent appeals and 88 allegations letters with fellow Rapporteurs and experts, to which he had received numerous replies. He thanked the Governments that had responded and encouraged those from which replies were pending to provide exhaustive information.

6. His thanks also went to the Governments of Colombia, Serbia and Montenegro and Italy for their openness and cooperation during his country visits and to the Governments of Algeria, Azerbaijan, Guatemala, Honduras, Macedonia, Sri Lanka and Ukraine for extending invitations, which he intended to accept in the near future. The final version of the report on his country visit to Côte d'Ivoire was now available (E/CN.4/2005/64/Add.2). He gave a brief summary of the country reports on Colombia (Add.3), Serbia and Montenegro (Add.4) and Italy (Add.5), and said that he had taken note of the progress report that had been submitted by the Colombian Government, which detailed further measures that had been taken.

7. Mr. BEKE DASSYS (Observer for Côte d'Ivoire) said that significant progress had been made at the institutional level in respect of the Special Rapporteur's recommendations, and laws had been adopted on the rules governing the press and audio-visual communication, and on the creation of a national human rights commission. Throughout the day, the national television broadcast messages promoting peace and reconciliation, although, unfortunately, they were not received in areas under rebel occupation.

8. His delegation was concerned that the Special Rapporteur's report on his mission to Côte d'Ivoire (E/CN.4/2005/64/Add.2) contained inaccuracies on a number of issues, such as the statement in paragraph 15 that the level of violence was relatively tolerable in the areas controlled by the rebel forces. That could not be considered true, since 85 per cent of the population had taken refuge in the area under government control. In one particular case, 300 people had been killed in one day; moreover, 70 unarmed police officers had been murdered by the rebels, female traditional dancers had been killed and, since the beginning of the

conflict in September 2002, large numbers of civil servants had been systematically murdered in the north of the country. His delegation could provide evidence of such atrocities, including a DVD that showed a police officer's throat being slit in public, by rebels.

9. The Special Rapporteur had also suggested (paras. 25 and 26) that article 35 of the Constitution contained provisions in contravention of the State's international obligations and its national legislation. He wished to know which instruments Côte d'Ivoire was considered to have violated. The rejection of 14 candidatures for the presidential elections of October 2000, which the Special Rapporteur deemed to be a violation of the right to freedom of opinion and expression, had been based on the fact that the individuals concerned had not been eligible candidates. Moreover, the report classed the rebel movements as political parties, which was not the case. The rebel forces had never been registered as a political party, and to claim that they had been legitimized the rebel movement and the serious human rights violations that it had committed.

10. Nor was it the case that ethnic identity was indicated on identity documents in Côte d'Ivoire, or that there were persons who had been detained on grounds of their ethnic background. "Patriot" groups were not militia, but, rather, the equivalent of resistance groups in situations of foreign occupation. They held peaceful demonstrations, meetings and sit-ins, which could not be compared to militia activities. The doubt which the report cast on the legitimacy of election results in Côte d'Ivoire was unfounded, since President Gbagbo had won elections that he had not organized, and for which there had been a 37 per cent voter turnout, which was well above the average for most African countries.

11. All newspapers in Côte d'Ivoire were sold and read in the area controlled by the Government. That was not, however, the case in the north of the country, where the population had been taken hostage by the leader of the rebel movement. The Special Rapporteur had remained silent on the issue of the recent assassination of Antoine Massé, a journalist, and the shooting of 62 unarmed protesters in November 2004.

12. His delegation wished to invite the Special Rapporteur to carry out a follow-up mission to Côte d'Ivoire, with a view to constructive dialogue and cooperation, in order that Côte d'Ivoire might be recognized as a country under attack, rather than the aggressor. It was time to stop vindicating the rebel forces, which had defied the authorities by creating their own television stations, police and armed forces training institutions, and banks, unquestioned by the international community. He welcomed the Special Rapporteur's call for immediate disarmament, since that was a prerequisite to the creation of a framework more conducive to respect for human rights, and in particular, freedom of opinion and expression.

13. Ms. FORERO UCROS (Observer for Colombia) said that Colombia was a complex democracy confronted with many challenges to its institutional and legal order. As a result, the report by the Special Rapporteur on his mission to Colombia (E/CN.4/2005/64/Add.3) failed to provide a full or accurate picture of the country and its political context, especially the policy of democratic security. The State was seeking to defeat terrorism and recover full control of its territory. Violent groups were trying to thwart the country's pluralist democratic process. As the democratic opposition could operate freely and had achieved considerable success at the ballot box, there was no call for an armed opposition.

14. She disputed the Special Rapporteur's claim that opponents of the Government were being stigmatized as part of the counter-terrorism strategy. It was untrue that any kind of criticism was interpreted as an attack on the State. On the contrary, the defence of pluralism was one of the pillars of the policy of democratic security.

15. The State took no less rigorous action against the illegal self-defence forces, which were financially and militarily independent, than against the guerrillas. The Government had never stated its intention to grant immunity to some illegal self-defence groups in the context of the demobilization legislation. The law did not permit the granting of amnesties or pardons to those who had committed atrocities. Moreover, the National Congress hoped shortly to adopt an instrument recognizing the rights of victims and their families to justice and reparations. The so-called "Anti-Terrorism Statute" was not in force because it had been declared unconstitutional.

16. She agreed with the Special Rapporteur that the phenomenon of kidnapping was a major impediment to the full enjoyment of human rights in Colombia. However, Government action had reduced its incidence by almost 41 per cent in 2003-2004. The number of journalists murdered had also declined by 50 per cent during the same period. Of course, the Government would not be satisfied until the number of journalists at risk had been reduced to zero. The Government had increased by 45 per cent the funds appropriated for the protection programmes for vulnerable people, including journalists, trade union leaders, and representatives of NGOs and opposition parties, run by the Ministry of Internal Affairs and Justice.

17. The recommendations of the Office of the United Nations High Commissioner for Human Rights (OHCHR) were being implemented gradually, with close institutional cooperation, under the guidance of the Vice-President of the Republic and in consultation with the Director of the OHCHR Office in Colombia and diplomatic representatives of the 24 States that had been monitoring and funding peacebuilding activities. Close links were also maintained with human rights NGOs. She was disconcerted by the failure to acknowledge those efforts and the results achieved to date. The report also failed to mention the dialogue that the Government was pursuing with civil society. The President himself had twice met with human rights NGOs and other social organizations in 2004, and the Vice-President had met with them on four occasions.

18. At all events, the Government would continue to work in a transparent way towards restoration of the security and well-being of all citizens, respecting human rights and civil liberties as well as its commitments to the international community.

19. Mr. SAHOVIC (Observer for Serbia and Montenegro) said that his Government attached great importance to cooperation with the Commission's special procedures. Although the Special Rapporteur, in his report on his mission to Serbia and Montenegro (E/CN.4/2005/64/Add.4), had made a commendable effort to give a balanced assessment of the situation in the country, there were elements of the report with which the Government did not fully agree, such as the recommendation concerning the Autonomous Province of Vojvodina.

With over 20 national minorities, Vojvodina was the most ethnically diverse region of Serbia and Montenegro, and the Government was making continuous efforts to ensure the full integration of all minorities into society, while preserving their national and cultural identities. A recent report published by the Council of Europe following a European Parliament delegation visit to Vojvodina had found inter-ethnic relations in the region to be satisfactory.

20. Media legislation reforms had continued since the Special Rapporteur's visit, including an initiative to privatize State-owned media, with the involvement of the Ministers of Culture and the Media. The Law on Free Access to Information had been adopted in the Republic of Serbia in November 2004, and a Commissioner for free access to information had been appointed by Parliament. A Broadcasting Council had been established in accordance with the Law on Broadcasting. A law on free access to information in the Republic of Montenegro was currently in the process of adoption, and the adoption of a law on media transparency and the prevention of media concentration was expected by June 2005.

21. The Government was aware that much remained to be done and was willing to cooperate fully with the Special Rapporteur in the consideration and implementation of his recommendations. The OHCHR field office could play a significant role in that regard. His Government called on the United Nations Interim Administration Mission in Kosovo to consider fully the report and its recommendations in respect of Kosovo and Metohija. The OHCHR field offices in Belgrade and Priština should establish closer and more visible cooperation in promoting inter-ethnic dialogue, eradicating hate speech and generally raising public awareness of the need to respect human rights.

22. Mr. BRUNI (Italy) said that Italy had a strong tradition of freedom of opinion and expression, and Italian society attached great importance to the principles of pluralism and democracy. His delegation had submitted a document (E/CN.4/2005/G/20) in an effort to clarify issues which, due to their complex and technical nature, had not been properly and exhaustively addressed in the Special Rapporteur's report (E/CN.4/2005/64/Add.5)

23. The principle of pluralism was enshrined in the Italian Constitution and had been a guiding principle for the Government. The recently adopted law on the reorganization of the broadcasting system was intended to promote pluralism, by making it compatible with the strong impetus exerted by new technologies. The digital television and radio system had led to an increase in broadcasting, which had increased pluralism. Specific regulations allowed local broadcasters to extend their coverage area and increase their resources by raising the ceilings on advertising. The ongoing privatization of RAI, the Italian public broadcasting corporation, and the recently established procedures for electing the corporation's administrative board and Chairman, would help to distance RAI from politics.

24. The report contained a number of misunderstandings regarding Italian laws and regulations and gave the impression that the granting of public subsidies to newspapers was subject to arbitrary criteria. Press support was strictly regulated by a law and directly controlled by the Italian Parliament. Moreover, specific legislative provisions aimed to grant support to publications that the legislator thought must exist as instruments for enhancing pluralism, regardless of their commercial value and political orientation.

25. Regarding alleged media concentration and conflict of interests, the Italian authorities did not share the Special Rapporteur's concerns regarding law No. 215/2004. That law had been adopted to address conflict of interests, and the remark that the ownership of a company or shareholding was not taken into account by that law was misleading, particularly since articles 42 and 51 of the Italian Constitution protected the fundamental right of individuals to hold private property and the freedom to be elected to public office. The law limited ownership by providing for the suspension of management rights during the public mandate.

26. In order to protect the legitimate right to criticize a media professional, the Italian Government had proposed a new law, which had already been approved by the Chamber of Deputies, on the decriminalization of defamation suits.

27. Mr. LORD (Canada) asked what measures could be taken to ensure active follow-up to the Special Rapporteur's recommendations to Governments.

28. Mr. CERDA (Argentina) asked what follow-up measures could be taken on the recommendations on media concentration. He wondered whether the Special Rapporteur could monitor follow-up, or whether his mandate extended only as far as initial country visits.

29. Mr. BERNIS (Observer for Luxembourg), speaking on behalf of the European Union, the acceding countries (Bulgaria and Romania), the candidate countries (Turkey and Croatia), the stabilization and association process countries (Albania, Bosnia and Herzegovina, The former Republic of Macedonia, Serbia and Montenegro) and, in addition, Iceland, enquired whether the Special Rapporteur had noticed an increase in the number of attacks against journalists. He asked for more detailed information on the advantages of an impartial and in-depth study on the safety of journalists, in particular those in conflict situations.

30. He also asked whether the Special Rapporteur considered there to be a connection between the decline of traditional printed media and media concentration, and if so, what strategy he would recommend for preserving the traditional press.

31. Mr. LIED (Observer for Norway) asked how it would be possible to ensure freedom of expression for human rights defenders in countries with restrictive legislation. He also wished to know how international society and the Commission on Human Rights could contribute to the safety of journalists and media professionals in situations of armed conflict.

32. Mr. HARIYADHI (Indonesia) said that freedom of opinion and expression was often compromised in efforts to combat terrorism. The dissemination of biased views and defamation through the media could lead to conflict situations and instability, which were contrary to the protection and promotion of human rights. Internet use was particularly significant in that regard, since it was hardly monitored. It was necessary to identify legitimate restrictions on freedom of expression, as described in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Special Rapporteur should give that issue the attention it deserved in his future work.



33. Mr. ALAEI (Observer for the Islamic Republic of Iran) said that media concentration should be discussed in future Commission debates, since it could have a negative impact on the right of individuals to access to information. He wished to know how the Special Rapporteur would address that issue, and what practical follow-up measures would be taken.
34. Mr. REYES RODRÍGUEZ (Cuba) noted that in June 2004 and again in February 2005 a group of Commission special rapporteurs and independent experts had requested an invitation to visit the detention camps in Guantánamo and Iraq. Referring to the killing of a number of journalists in Iraq during the invasion, he expressed surprise that the Special Rapporteur on the right to freedom of opinion and expression had not requested an invitation to visit that country and asked whether he had any intention of doing so in order to clarify the circumstances in which the journalists had died. He also wished to know what recommendations the Special Rapporteur would make to prevent a repetition of the censorship of press coverage of the invasion of Iraq that had been imposed by the military authorities in the name of the global fight against terrorism.
35. Referring to the denial of access to information under the prevailing unfair international patent system that prevented the majority of people, especially in developing countries, from obtaining access to knowledge regarding important advances in science and technology, he asked whether the Special Rapporteur intended to promote access to knowledge as a basic right.
36. He further wished to know how the Special Rapporteur would address the issue of increasing transnational control of the media. Would he consider promoting norms, basic principles or a code of conduct to prevent totalitarian private control of the media resulting in serious violations of the right to freedom of information?
37. Mr. LIGABO (Special Rapporteur on the right to freedom of opinion and expression) said that the comments and clarifications made by the delegations of Côte d'Ivoire, Colombia, Serbia and Montenegro and Italy would be reflected in his report.
38. The number of journalists killed had increased between 2003 and 2004 from roughly 56 to 76. The figures differed slightly depending on the sources consulted. Parties to conflicts were usually the perpetrators.
39. Media concentration was one of the most threatening phenomena of the century. The encroachment by proprietors of electronic enterprises on the print media was sharply reducing the amount of information available in those media, which were an essential tool for communication, information and education. With regard to strategies to curb the trend, he believed that Governments should consider subsidizing traditional print media outlets to prevent their demise. All stakeholders should perhaps meet to discuss ways of halting the decline in the print media.
40. United Nations country teams had a major role to play in ensuring follow-up to recommendations by the Commission's Special Rapporteurs. A clear time limit should also be set, either by the Commission or by its special procedures, for submission of a status report on steps to implement recommendations.

41. He agreed that the developing countries were the victims of a critical decrease in information due to media concentration and the dominant position of the electronic media. It was an issue that should be addressed at the forthcoming World Summit on the Information Society in Tunis.
42. He was more than willing to pursue his mandate and request an invitation to visit any country where journalists had been killed, even if there was an armed conflict in the country concerned.
43. The CHAIRPERSON invited the Chairperson of the Working Group on a draft legally binding normative instrument for the protection of all persons from enforced disappearance to introduce the Group's report (E/CN.4/2005/66).
44. Mr. KESSEDJIAN (Chairperson-Rapporteur of the Working Group) said that the Working Group had held two highly productive sessions in October 2004 and January-February 2005, which had been attended by 75 government delegations and representatives of 15 NGOs, especially associations representing victims' families. The Working Group had also drawn on the expertise of the International Committee of the Red Cross (ICRC), the Commission's former Independent expert to examine the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearance, the former Chairperson-Rapporteur of the Sub-Commission Working Group on the preparation of a draft international convention on the prevention and punishment of enforced disappearances, and representatives of the Working Group on Enforced or Involuntary Disappearances.
45. The new instrument was basically intended to respond to the demands of victims' families. He had hoped to be able to submit the final version to the Commission at its current session, but a number of delegations had rightly preferred to hold a supplementary session to secure the broadest possible consensus. Most sensitive issues had been resolved but remaining difficulties included whether a reference should be made to non-State actors in a human rights instrument for whose implementation States would bear primary responsibility. As the actions of such groups could no longer be ignored, agreement on the inclusion of a reference had been accepted in principle. It was now a matter of finding appropriate wording that would neither equate enforced disappearances with abduction, which was punishable under existing criminal codes, nor relieve States of their responsibilities for protection, prosecution and compensation.
46. Another difficulty concerned how to reconcile the right to know the truth about a victim's fate with the need to protect personal data.
47. Moreover, the Group had been unable to agree on whether the new instrument should take the form of a full-fledged convention or a protocol to the International Covenant on Civil and Political Rights, and there were also different views on the nature and functions of a monitoring body. However, the Working Group agreed that priority should be given to a humanitarian early warning mechanism designed to prevent enforced disappearances.
48. Lastly, there was some difficulty in the final provisions regarding the territorial scope of the jurisdiction of a prospective State party.

49. The future instrument drew on three sources: human rights, criminal law and international humanitarian law. It was necessary to plan adequate preventive mechanisms, to organize international cooperation in the prosecution of criminals, and to ensure just reparations for families and the rehabilitation of victims. He trusted that the Commission would be able to adopt the instrument at its next session.

50. Mr. GUEVARA (Mexico), speaking on behalf of the Latin American and Caribbean Group (GRULAC), welcomed the progress made in finalizing the draft basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law (E/CN.4/2005/59), a project first conceived in 1989. The role played by civil society in the development of the basic principles and guidelines had ensured that a victims-oriented perspective was preserved.

51. The instrument did not create new international obligations but merely clarified the scope of victims' right to reparation and identified procedures for enforcing existing international obligations under international human rights and humanitarian law. He trusted that the principles and guidelines would soon become a useful instrument for States and those who had suffered violations of their basic human rights. Indeed, many countries in his region had already looked to the draft instrument for guidance in developing initiatives and policies aimed at restoring social peace and ending impunity.

52. GRULAC agreed with the Chairperson-Rapporteur that his mandate had been completed. It was now time to submit the draft principles and guidelines to the Commission so that it could recommend them to the General Assembly for adoption. Although the drafting process had been lengthy, it had been inclusive and transparent, so that the final text could count on solid support from all regional groups. No text was ever perfect, but he urged the members of the Commission to display flexibility so that the draft resolution to be submitted shortly would be adopted by consensus.

53. Turning to the question of enforced disappearances, he said that GRULAC welcomed the progress made by the Working Group in drafting a legally binding normative instrument. He trusted that a solid instrument that lived up to expectations would emerge from its final session. He hoped that the instrument would be a separate convention, reflecting States' political determination to prevent enforced disappearances, and supported the establishment of a new monitoring body, perhaps a small-scale committee of experts.

54. He urged all delegations which had not yet joined in the emerging consensus to continue working in a spirit of compromise at the final session of the Working Group so that negotiations on the text could be completed by the end of 2005 and the instrument submitted to the Commission for adoption at its next session.

55. Mr. MENGA (Congo) said that the Congo had played an active and constructive role in the proceedings of the Working Group on a draft legally binding normative instrument for the protection of all persons from enforced disappearance, which had addressed both traditional and new legal aspects of the issue. Agreement had not yet been reached on whether the resulting instrument should be an international convention or an optional protocol to an existing instrument and on the type of monitoring body to establish. A number of sensitive legal questions also required further discussion. The Chairperson-Rapporteur had therefore been

unable to complete his mandate in spite of holding numerous informal meetings with a view to forging a consensus. Nonetheless, if the Working Group had been able to meet for just a few more days, he was sure that the draft instrument could have been submitted to the Commission at its current session. Its mandate should now be extended.

56. Mr. LAGON (United States of America) urged all members of the Commission to vote in favour of the draft resolutions on promoting the rights to freedom of peaceful assembly and of association, and on democracy and the rule of law.

57. The rights to peaceful assembly and freedom of association fostered the growth of democracy, as demonstrated by the thousands of Lebanese who were rising up to demand their sovereignty and democratic rights and the thousands of Ukrainians who had demanded that their Government respect freedom and human rights. A free society respected the right to political advocacy, a free and independent press, literary expression, trade union activities, and religious belief and practice.

58. As democracy was the best guarantor of inalienable human rights, the United States had co-sponsored a resolution at the previous session empowering the High Commissioner for Human Rights to coordinate United Nations programmes to promote the rule of law and democracy in countries in transition. It had made a sizeable contribution towards funding the focal point on democracy established by the resolution.

59. In addition to credible elections meeting international standards, a vibrant democracy required the independence of the judiciary and the accountability of members of the legislature and the executive. The principles of equal protection under the law, also for disadvantaged groups, must be respected.

60. There had been encouraging developments in several countries where free elections had taken place for the first time, positive constitutional changes had been enacted and democratic institutions strengthened. In Iraq, over 8 million people had defied terrorist threats to vote in free elections and more than 85 women had been elected. The Transitional National Assembly had met and would draft a new constitution. Municipal elections had been held in the West Bank for the first time since 1976, and international observers had declared the elections for President of the Palestinian Authority generally free and fair. The people of Ukraine had protested peacefully against electoral fraud. In October 2004, 10 million people, more than 40 per cent of them women, had voted in the presidential elections in Afghanistan. Indonesia had held a series of free and fair national elections in 2004. The world would judge the elections in Togo and Zimbabwe by internationally accepted criteria.

61. The Commission should redeem its record by helping to advance the march of freedom and should not stand in its way. To suggest that some cultures did not long for or were not ready for civil and political liberties and democracy was a form of bigotry.

62. Mr. VEGAS TORRES (Peru) said that his country associated itself with the statement made by the representative of Mexico on behalf of GRULAC. Freedom in a wider sense implied democracy, the rule of law and freedom from all forms of discrimination or repression. Both the Peruvian Government and civil society geared their efforts towards creating a more inclusive form of democracy that placed citizens at the centre of policy-making. Such a process required

leadership, patience, progressive institutional capacity-building, a collective commitment and an international climate that was conducive to such developments. His delegation therefore welcomed the Secretary-General's support for the creation of a Democracy Fund at the United Nations to assist in the establishment or strengthening of democracies around the world. As a participant in the Community of Democracies, his country supported all Commission initiatives that served the common interest of all peoples. Together with Romania, his delegation was also participating in the preparation of a draft resolution on democracy and human rights.

63. The work of the Truth and Reconciliation Commission had both helped Peruvian society to come to terms with the country's recent history and consolidated a democratic process based on justice and human rights. The basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law had been crucial to that process. His delegation hoped for the adoption of those guidelines during the current session of the Commission and supported the Argentinian delegation's initiative for a draft resolution on the right to the truth.

64. Peru had made progress in addressing issues such as impunity, the establishment of an independent judiciary and compensation for victims. In 2004, the Peruvian Constitutional Court had ruled that human rights violations perpetrated by military and police officials did not constitute an offence committed in the line of duty and could therefore not be judged by military courts. Following recent changes in criminal proceedings concerning human rights violations, the specialized chamber on terrorism would in future be competent to hear cases of crimes against humanity and ordinary crimes that constituted a violation of human rights. Human rights courts had been established in Lima and Ayacucho, and the establishment of further such courts was envisaged for areas that had been particularly affected by the violence.

65. A number of legislative initiatives had been submitted to the Peruvian Congress that contemplated, inter alia, the establishment of a national reconciliation council; the strengthening of the role of Congress with regard to the state of emergency; and various types of reparations.

66. In the Huancavelica region, which had been most seriously affected by the violence, the regional government had presented a comprehensive plan on both individual and collective reparations involving economic, health and education compensation and the restoration of civil rights.

67. With the assistance of the United Nations Development Programme (UNDP) and OHCHR, nationwide consultations were currently under way on the formulation of a national human rights action plan.

68. Peru's recent history had shown that development could be achieved in many ways, but must always be based on democratic principles, fundamental freedoms and the promotion and protection of human rights, all of which were closely interlinked.

69. Mr. BARREIROS (Paraguay), speaking on behalf of the Southern Cone Common Market (MERCOSUR) and associated countries, said that democracy, development and respect for human rights were interdependent and mutually reinforcing. The subregional integration process in the framework of MERCOSUR was based on those principles.

70. The “democratic clause” contained in the Ushuaia Protocol established respect for democratic principles as a fundamental accession criterion, and a series of institutional mechanisms were in place to ensure cooperation between member States in the field of human rights. Following the subregional workshop on the application of international human rights standards by the national courts held in October 2001, which had reiterated the indissoluble and mutually supportive union of democracy and human rights, MERCOSUR member States and associated countries had initiated the drafting of the Asunción Protocol on the commitment to the promotion and protection of human rights. If adopted, the instrument would establish respect for and active promotion of human rights as an accession criterion.

71. The forthcoming Third Ministerial Conference of the Community of Democracies would provide an opportunity to strengthen regional and international cooperation and promote dialogue on issues such as good governance; the role of civil society; the coordination of international assistance; the strengthening of political parties and the rule of law; and the work of coalitions and caucuses in support of democracy in the United Nations and other multilateral forums.

72. The adoption of an international normative instrument on the enforced disappearance of persons would bring tangible benefits for victims of human rights violations. MERCOSUR member States and associated countries therefore supported the extension of the mandate of the Working Group entrusted with the formulation of such an instrument.

73. Mr. BERNIS (Observer for Luxembourg), speaking on behalf of the European Union, the acceding countries (Bulgaria and Romania), the candidate countries (Turkey and Croatia), the stabilization and association process countries (Albania, Bosnia and Herzegovina, The former Republic of Macedonia, Serbia and Montenegro) and, in addition, Iceland, said that the International Covenant on Civil and Political Rights was one of the cornerstones of the protection and promotion of human rights worldwide. The European Union therefore welcomed the growing number of States parties to the Covenant and encouraged its universal ratification.

74. Implementation of the Covenant provisions was vital, and States must cooperate with all mechanisms established to promote and monitor effective compliance with human rights obligations. Cooperation with Special Rapporteurs was particularly important, and he called on all States to follow the example of European Union Member States and accept country visits. No State had a perfect human rights record; independent assessment of compliance with international human rights standards was therefore indispensable, and he urged States to recognize the competence of the treaty-monitoring body set up under the Covenant.

75. The European Union supported the universal abolition of capital punishment and universal, unreserved accession to the Second Optional Protocol to the Covenant. Pending the complete abolition of the death penalty, States must restrict its imposition to the most serious crimes and ensure that it was carried out in strict compliance with United Nations minimum standards. The practice of public executions, stoning and other particularly degrading forms of execution must be halted.

76. Recourse to extrajudicial and arbitrary executions was particularly frequent in the context of armed conflict, and the International Criminal Court could play an important role in preventing genocide and crimes against humanity. The groups most vulnerable to extrajudicial executions included internally displaced persons; refugees; members of national, ethnic or religious minorities; members of indigenous communities; human rights defenders; lawyers; and journalists.

77. The European Union was concerned at the dramatic increase in the number of cases referred to the Working Group on Enforced or Involuntary Disappearances in 2004. In many States, cases of alleged disappearances had not been clarified, and certain States had failed to reply to the Working Group's request for information. He called on all States to cooperate with the Working Group to facilitate clarification processes. Practices such as holding persons in secret detention centres; withholding information relevant to the detention of persons; and suspending investigations into cases of alleged disappearance prior to their clarification were unacceptable. The European Union supported the drafting of a legally binding instrument on the protection of all persons against enforced disappearance.

78. Judicial control of the deprivation of liberty and respect for the right to a fair trial were crucial to the prevention of arbitrary detention, and those principles must be strictly applied in the fight against terrorism. The Working Group on Arbitrary Detention had underlined the importance of avoiding the misuse of administrative detention and the danger that prolonged incommunicado detention could encourage the use of torture. All States should take due note of the Working Group's conclusions.

79. The use of torture and other cruel, inhuman and degrading treatment or punishment continued to be widespread. The mandate of the Special Rapporteur on the question of torture had been established as a global mechanism to investigate, receive and respond effectively to allegations of torture. Regrettably, several countries, among them members of the Commission, continued to refuse cooperation. The European Union called on those States to accede to the Special Rapporteur's request for country visits and advocated the immediate universal ratification of the Convention against Torture. States should also consider ratifying the Optional Protocol to the Convention, concerning visits to places of detention.

80. Ongoing attacks against, inter alia, journalists, media representatives and human rights defenders and the violation of the rights to freedom of opinion and expression, access to information, and freedom of thought, conscience, religion or belief were cause for grave concern. All forms of religious persecution, discrimination and intolerance must be condemned. The European Union had therefore prepared a draft resolution aimed at the elimination of all forms of religious intolerance and discrimination based on religion or belief and hoped for the Commission's full support.

81. An independent and efficient judiciary, active investigation of all allegations of human rights violations, by whomever they were committed, and the prosecution of the perpetrators in a framework of international cooperation were of paramount importance. In that connection, the European Union welcomed the growing number of States parties to the Rome Statute of the International Criminal Court and called for universal ratification.

82. Mr. AL-THANI (Qatar) said that in 1998 his Government had embarked on a comprehensive reform process, which included constitutional, political, economic, social and cultural reforms. The promotion and protection of civil and political rights had been at the heart of that process.

83. The new Constitution, which would come into force in June 2005, enshrined the principle of the indivisibility and interdependence of all human rights and guaranteed, inter alia, equality before the law, non-discrimination, respect for the physical and moral integrity of persons, prohibition of torture, freedom of expression, press freedom, freedom of religion and opinion and freedom of association. The constitutional protection of those rights and freedoms had been strengthened by the adoption of criminal, labour and other relevant legislation.

84. Democracy was based on the rule of law, which was the fundamental safeguard for the enjoyment of human rights and fundamental freedoms. Law enforcement agencies were entrusted with upholding respect for the provisions guaranteeing those rights and freedoms contained in both domestic legislation and international instruments to which his country was a party. An independent judiciary was a crucial element of strategies and mechanisms for the protection of human rights at the domestic level, and his Government had adopted new legislation that strengthened and enhanced the independence of the judiciary and the public prosecutor. Domestic institutions established to promote and protect human rights included the National Human Rights Commission, the Bureau of Human Rights Affairs at the Ministry of Foreign Affairs and the Human Rights Section at the Ministry of the Interior. In an effort to enhance freedom of religion or belief and to combat religious intolerance, his Government had given legal status to non-Muslim religions and granted them permission to construct their own places of worship.

85. Mr. PATHIRANA (Sri Lanka) said that respect for civil and political rights in Sri Lanka, which was based on both age-old traditions and the commitment to parliamentary democracy, had proved useful in meeting the challenges posed by insurgency and terrorism that had threatened to undermine progress. Even under the extraordinary security conditions imposed by the internal conflict, democratic principles had been strictly observed. His country's recent history had shown that it was possible to integrate militant groups in the democratic process through dialogue and negotiation.

86. An independent and effective judiciary was a vital element of a functioning democracy. His Government had taken a series of measures to decentralize judicial proceedings in an attempt to reduce the backlog of cases and facilitate citizens' access to justice. The measures contemplated an increase in the number of judges of the Court of Appeal and the establishment of appeal courts at the provincial level.

87. His country had a long history of peaceful coexistence of all religions. The four major religions practised tolerance towards each other, and the most important pilgrimage sites were frequented by members of all religions. The right to freedom of religion was enshrined in the Constitution, and the main religious festivals of the major religions had been declared national holidays. The forthcoming visit of the Special Rapporteur on freedom of religion or belief would provide a welcome opportunity for constructive dialogue with all parties concerned.



88. Recent measures taken to strengthen the normative framework concerning freedom of opinion and religion included the repeal of anti-defamation legislation, Cabinet approval of the Freedom of Information Bill, and the establishment of a self-regulated independent Press Complaints Commission.
89. Since the ceasefire agreement signed between the Government and the Liberation Tigers of Tamil Eelam (LTTE) in February 2001, there had been no direct military confrontation. The Government remained committed to re-opening direct negotiations with the group on the establishment of an interim authority to meet the urgent humanitarian and development needs of the population in the north and east, and to subsequent negotiations on a final settlement of the conflict.
90. Mr. CHOI Hyuck (Republic of Korea) said that, despite the remarkable progress made with regard to civil and political rights worldwide, violations of fundamental freedoms continued to persist. To ensure respect for the non-derogable prohibition of torture enshrined in international legal instruments, compliance with the provisions of the Convention against Torture by all States was vital. Also, concrete action was required to put an end to the ongoing practice of torture, including the implementation of the recommendation of the Special Rapporteur on the question of torture to prohibit the international transfer of skills and tools that could be used for torture.
91. In an effort to enhance the protection of suspects, the Korean Criminal Code had been amended to, inter alia, stipulate the presence of a lawyer during interrogations and expand the system of public defenders. Ending impunity was crucial to preventing future human rights violations. He therefore called on all States to formally recognize the imprescriptible nature of genocide, crimes against humanity and war crimes and to prosecute the perpetrators. The progress report provided by the Independent expert assigned to update the set of principles for the protection and promotion of human rights through action to combat impunity provided a useful overview of recent developments in the field. Granting adequate reparation to the victims of human rights violations was an essential part of the justice process, and his delegation welcomed the completion of the drafting of the basic principles and guidelines on the right to a remedy and reparations.
92. In the Republic of Korea, capital punishment was restricted to the most serious crimes, and had not been carried out since December 1997.
93. Both the 2005 expert seminar on democracy and the rule of law and the 2004 seminar on good governance practices for the promotion of human rights had highlighted the linkages between human rights, democracy and good governance based on the rule of law, and his delegation looked forward to action being taken during the current session of the Commission in follow-up to those seminars. As an active member of the Community of Democracies, his country hoped that the forthcoming Third Interministerial Conference would enhance efforts to strengthen democratic institutions and processes throughout the world.
94. In May 2005, his Government would host the 6th Global Forum on Reinventing Government, which it hoped would contribute to improving international cooperation in promoting good governance.

95. Mr. COSTEA (Romania) said that the debates which had taken place in the Commission on the subject of democracy had broadened areas of common understanding. The first free elections ever to be held in some countries and the concomitant consolidation of democratic institutions were welcome. Governments willing to take such steps deserved support. When dealing with conflict situations, the Security Council ought to look beyond the violence to the establishment of genuine democracy. United Nations peace-building operations should therefore be viewed from the outset as a means of laying the foundations for democracy. The Commission itself should strive to undertake effective operational activities for democratization. He commended the Commission's work to further the rule of law.

96. Mr. VARELA QUIROS (Costa Rica) endorsed the statement made by Mexico on behalf of GRULAC and explained that his country's profound, long-standing respect for all civil and political rights, especially the most fundamental right of all, the right to life, had led it to abolish the death penalty back in the nineteenth century. All other States should follow suit and not misguidedly reintroduce capital punishment as a response to terror. As history had shown, it would not have the desired deterrent effect or assuage the pain caused by such a serious crime. Moreover, human rights had to be fully respected in the battle against terrorism. Rather than derogating from international instruments, better use could be made of the scope for action they offered.

97. The increased use of torture and the calling into question of the ban on it were sources of concern; States should urgently consider signing and ratifying the Optional Protocol to the Convention against Torture.

98. The reports of the Special Rapporteurs on the question of torture and on extrajudicial, summary or arbitrary executions deserved special attention, as they dealt with very basic rights. His Government also supported the endeavours of the Chairperson-Rapporteur of the Working Group on a draft legally binding normative instrument for the protection of all persons from enforced disappearances. Similarly, it hoped that 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 would be adopted at the current session, because they would be a valuable tool for securing the realization of justice.

99. Mr. HARIYADHI (Indonesia) affirmed that civil, political, economic, social and cultural rights formed the backbone of fundamental human rights, but the right to vote was the best expression of an individual's right to participate in society. The peaceful, free, fair and transparent elections held in his country the previous year were an indication that grass-roots democracy was flourishing there.

100. In the areas of civic education, human rights, intercommunity reconciliation, gender equality and interfaith dialogue, his Government worked closely with NGOs and the public to bolster democracy, using Islam as a catalyst. Indeed, those efforts sprang from the idea that Islamic values could form the basis of a democratic political system characterized by non-violence and religious tolerance. In that spirit, his country had been increasingly involved in multilateral forums for interfaith dialogue.

101. Since just and effective law enforcement was a powerful guarantee of the enjoyment of civil and political rights, the authorities in his country had pursued wide-ranging judicial reforms to promote the rule of law. Their endeavours had been supported by a number of NGOs, including the Asia Foundation.

102. His Government was committed to abiding by the principles set forth in the Universal Declaration of Human Rights and to meeting its obligations under the International Covenant on Civil and Political Rights, but transformation needed time and perseverance. Furthermore, if all human rights were to be fully realized, equal attention would have to be paid to economic, social and cultural rights.

103. Mr. RABGYE (Bhutan) announced that the draft constitution ushering in parliamentary democracy in his country had been published the previous week. It was a historic occasion marking the culmination of a process of political reform initiated and encouraged by the King. The ideals of equitable and sustainable development, environmental protection, the preservation of culture and tradition and good governance figured prominently in the draft text. The latter also guaranteed fundamental rights. People in all districts of the country would be consulted on the draft constitution prior to its adoption by the National Assembly.

104. Mr. OWADE (Kenya) said that the history of his people has made it acutely aware of the importance of human rights and fundamental freedoms. That was why it took its obligations under the International Covenant on Civil and Political Rights so seriously. The Constitution safeguarded all persons within Kenya from discrimination on any grounds. The ongoing constitutional review process set out to guarantee peace and national security, establish a free and democratic system of government, promote the people's participation in the governance of the country and respect ethnic and regional diversity.

105. The draft constitution contained a bill of rights inspired by international human rights standards. The promotion and protection of human rights was central to the current Government's domestic and foreign policy, and a number of practical measures had been adopted to ensure peace, stability, freedom and justice in society. In addition, Kenya had ratified the Convention against Torture and had actively striven to implement its provisions. Corporal punishment had thus been abolished. His country had also ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

106. His Government looked forward to working with the Commission and its special mechanisms to create a multiracial society where every person could live in peace and harmony and enjoy all their human rights.

107. Mr. OULD MOHAMED LEMINE (Mauritania) said that the Constitution of his country enshrined fundamental freedoms, as well as civil and political rights, including the presumption of innocence and the prohibition of torture. The struggle against poverty and underdevelopment also formed part of the authorities' efforts to free citizens from need so that they could fully exercise their rights.

108. His country was party to the main international human rights instruments. The latter took precedence over the Constitution and could be invoked before national courts. A national campaign had been mounted to disseminate the content of those instruments so that every citizen would be aware of his or her rights. Several past and future judicial reforms were aimed at improving access to the courts and the functioning of the latter, as well as at heightening the competence and efficiency of the legal profession.

109. The trial and sentencing of persons who had taken part in an attempted coup d'état in 2003 had demonstrated the professionalism and independence of the judiciary. The trial had been fair and the offenders had not been executed, but were serving prison sentences in conditions that respected human dignity. National and international media had been allowed to attend court proceedings.

110. The country had a dynamic, free press which championed human rights. That was why the Government had set up a fund to support a free press. It had also established an ethics committee to encourage responsible journalism. All those measures had been prompted by a desire to promote and protect individual and collective freedoms and to secure the rule of law.

111. Mr. BIELASHOV (Ukraine) stated that civil and political rights were the cornerstone of human rights. The extent to which citizens could enjoy civil and political rights defined the essence of a society and shaped a nation. The advancement of democracy was the best foundation for domestic stability. Democratically governed nations were more likely to secure peace, deter aggression, expand open markets, promote economic development, combat international terrorism, uphold human rights and improve human health. Adherence to the rule of law was necessary in order to build a stable political and economic environment. For that reason, the observance of civil and political rights had become the top priority in his country after the peaceful orange revolution.

112. The international community must be on its guard against gross violations of human rights like the Great Famine, which had occurred in Ukraine in 1932-1933 as a result of forced collectivization. Because of its experiences, his country welcomed the Secretary-General's appointment of a Special Adviser on the Prevention of Genocide.

113. His Government was making every effort to ensure that national legislation was in keeping with the relevant human rights standards and principles. It hoped that the Working Group on Enforced or Involuntary Disappearances would succeed in drafting a legally binding instrument on that subject and it agreed with the recommendations of the Working Group on Arbitrary Detention (E/CN.4/2005/6 and Add.1-4). His country was a party to Protocols 6 and 13 to the European Convention on Human Rights and it had already abolished the death penalty.

114. Furthermore, it believed that freedom of opinion was fundamental to good governance and the rule of law and realized that free, independent and objective media were vital to the democratization process of Ukrainian society.

115. Mr. MNATSAKIANIAN (Armenia) said that human rights were a pillar of international security. The genuine protection of civil and political rights provided a key to the resolution of conflicts. Promoting the individual freedoms of members of society enabled them to develop their talents and skills. Despite the vicissitudes of its recent past, his country was steadily building democratic institutions and strengthening the rule of law and good governance. In doing so it had been greatly assisted by cooperation with the United Nations, the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE).

116. A new package of constitutional reforms was designed to enhance the independence of the judiciary, diversify political representation in parliament and redistribute responsibilities between parliament, the Government and the President. The Electoral Code was being amended to overcome previous shortcomings, and the Law on Political Parties was under review. Obstacles to the right of freedom of assembly were about to be removed. Great progress had been made with respect to freedom of religion and belief, in that all previous bars on conscientious objection to military service on religious grounds had been removed and thus the long-standing problem regarding the registration of one particular religious organization had been resolved.

117. The report of the Special Rapporteur on the right to freedom of opinion and expression (E/CN.4/2005/64 and Corr.1 and Add.1-5) was most interesting, and his Government shared the Special Rapporteur's concerns about the use of forms of expression having discriminatory connotations or resulting in hate speech or warmongering, since they hampered peace processes. It therefore encouraged the Special Rapporteur to provide an in-depth study of such dangerous practices and also mechanisms to curb them in his future reports.

#### Statements in exercise of the right of reply

118. Mr. PARTHENIOU (Observer for Greece), responding to the statement of the Special Rapporteur on the right to freedom of opinion and expression, drew attention to the passage of Security Council resolution 817 (1993) concerning the admission of a certain State to membership in the United Nations, "being provisionally referred to for all purposes within the United Nations as 'the former Yugoslav Republic of Macedonia' pending settlement of the difference that has arisen over the name of the State". That difference had not been settled. Hence the Special Rapporteur had used an incorrect denomination.

119. Mr. FERNANDO (Sri Lanka), responding to the statement made by the Becket Fund, said that his Government had been most grateful for the unprecedented amount of assistance it had received after the tsunami disaster on 26 December 2004. It believed that all groups engaging in the relief effort did so for purely humanitarian purposes and that such aid was not conditional or intended to create religious disharmony.

120. It was therefore preposterous to suggest that legislation was being prepared to jail faith-based aid workers carrying out a purely humanitarian mission. His Government was unaware of any such legislation. Perhaps the Becket Fund had been referring to a private member's bill on unethical conversions, which had been rejected as unconstitutional by the Supreme Court the previous year.

121. As for the allegation that the children of Sri Lanka would not have a home, a dose of medicine or a meal if it were not for faith-based organizations, the Becket Fund should remember that, since independence, successive Sri Lankan Governments had provided their citizens with free education and health services without any discrimination whatsoever, as was confirmed by the country's high standing on the UNDP Human Development Index.

122. It was disappointing that an NGO proclaiming its stand for religious liberty had chosen to use the human rights forum represented by the Commission to attempt to cast aspersions on another ancient religion which preached tolerance and was followed by millions around the world.

The meeting rose at 6 p.m.