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HUMAN RIGHTS COUNCIL

Fifth session

SUMMARY RECORD OF THE 2nd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 11 June 2007, at 3 p.m.

President: Mr. DE ALBA (Mexico)

later: Mr. LOULICHKI (Morocco)
(Vice-President)

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

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF
15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL” (agenda item 2) (continued)

Interactive dialogue on:

Report of the Special Rapporteur on the independence of judges and lawyers (continued)
(A/HRC/4/25 and Add.1-3; A/HRC/5/NGO/2, 7, 8, 11, 19 and 42)

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (continued) (A/HRC/4/19/Add.1 and Add.3;
A/HRC/5/10; A/HRC/5/NGO/12 and 16)

1. Mr. UHOMOIBHI (Nigeria) commended the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance for his updated study on political platforms which promote or incite racial discrimination (A/HRC/5/10). Being fully aware of the negative consequences of racial discrimination in various political systems across the globe, he welcomed the detailed analysis of the phenomenon by region. However, while it was true that the multi-ethnic nature of most African States had in many cases resulted in partisan political systems organized along ethnic lines, that phenomenon was not restricted to Africa or to developing countries, but was in fact universal. Thus, the assertion in paragraph 41 of the study that political competition in Nigeria had often exacerbated the numerous lines of regional, ethnic and religious conflict failed to recognize the bold, practical and largely successful measures his country had taken over the years to address that situation, including the “federal character principle” enshrined in the Constitution, which applied to all facets of public life and had made the sharing of political office in an all-inclusive manner possible. He welcomed the Special Rapporteur’s recommendations for promoting intercultural and inter-religious harmony at the national and international levels, particularly through the deepening of reciprocal knowledge between the different communities (A/HRC/5/10, para. 61 (e)).

2. Mr. OBIDOV (Observer for Uzbekistan) said it was unfortunate that the Special Rapporteur on the independence of judges and lawyers should have referred at the previous meeting to allegations from politically biased sources without taking account of official information that had been provided by Uzbekistan in 2006. The extradition from Kyrgyzstan of Uzbek citizens who had committed criminal offences had been fully consistent with both the national legislation and international commitments of Kyrgyzstan and Uzbekistan, and he called upon the Special Rapporteur to avoid taking a biased approach in forming his conclusions.

3. A number of reforms were under way in Uzbekistan’s legal and judicial systems, particularly in the area of independence of the judiciary. A Presidential Decree issued in 2005 had introduced the institution of habeas corpus and stipulated that pretrial detention would become the responsibility of the courts as of 1 January 2008. Corresponding amendments had been proposed to the Code of Criminal Procedure and the Penal Enforcement Code.

4. In recent years a vast range of training activities had been carried out for persons involved in law enforcement and the justice system in such areas as habeas corpus, advocacy in the juvenile justice system and independence of the judiciary. A number of basic documents of the United Nations, the Organization for Security and Cooperation in Europe (OSCE) and the United Nations Children's Fund (UNICEF) had been translated into the country's languages. The National Centre for Advanced Legal Training and other institutions of higher education had incorporated many aspects of human rights into their curricula.

5. The death penalty had been abolished in Uzbekistan by presidential decree, and many State organizations were working to implement that decree. He hoped to provide more detailed information on that subject later in the session.

6. Mr. BERZINJI (Observer for Iraq) said that while he hoped it would be possible to abolish the death penalty in Iraq one day, it was currently impossible to do so. The death penalty was provided for in the Penal Code and was a legacy of the former regime. He did not see why that penalty should not be applied to those responsible for the atrocities that had been committed in Kurdistan and other regions: thousands had been murdered, disappeared, or thrown into mass graves in Iraq, and the perpetrators must be punished. Iraq's High Criminal Court was independent and impartial, and its establishment had been approved by parliament. He contested the assertion of the Special Rapporteur on the independence of judges and lawyers that the judge who had sentenced Saddam Hussein had been previously convicted of plotting against the latter's regime. That allegation was not true and had in fact been denied by the judge at a press conference. He hoped that the Special Rapporteur would take account of the particularly difficult situation in Iraq, whose people were being subjected to indiscriminate acts of terrorism. Once the country emerged from that situation it would be possible to abolish the death penalty.

7. Mr. CHIHUAILAF (Observer for Chile) commended the Special Rapporteur on the independence of judges and lawyers on his report. An independent judiciary was important for countries in transition or emerging from situations of armed conflict and was essential to sustainable democracy and building citizens' trust in institutions. He therefore endorsed the Special Rapporteur's recommendation that the theme of justice should be promoted in the activities of the United Nations.

8. He also commended the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance for his report and his updated study on political platforms which promoted or incited racial discrimination. It was true that racism, racial discrimination, xenophobia and intolerance jeopardized democracy and impeded a society's growth. Accordingly, he endorsed the Special Rapporteur's recommendations to political parties and his recommendation concerning the implementation of the Durban Declaration and Programme of Action.

9. Mr. JAZAÏRY (Algeria) said that the issue of racism was a particularly important one for his country and for Africa in general. He regretted that the late distribution of the relevant documents made in-depth debate difficult and expressed the hope that that practice would change. He endorsed the comments made by the representative of Djibouti concerning the reasons for the distinction made between racism and Islamophobia. The same could be said for the distinction made between racism and anti-Semitism. The term "Semite", however, applied to both Jews and Arabs, all of whom were victims of racism. While anti-Semitism towards Jews

was currently deemed to be politically incorrect, anti-Semitism towards Arabs was still considered politically correct, even though it amounted to racism. The concepts of anti-Semitism and racism were indivisible. It was not Islamophobic to criticize the Government of a Muslim country, just as it was not anti-Semitic to criticize the Government of Israel. He hoped that the Special Rapporteur would call racism by its name whenever it occurred, out of respect for the diversity of ethnic, cultural and religious specificities.

10. Mr. SARKI (African Union) welcomed the report by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, to which he hoped follow-up would be given. The African Union was particularly concerned at the insidious forms taken by racism, racial discrimination, xenophobia and intolerance as well as their legitimization under extremist political platforms and their intellectual justification. The Commission of the African Union attached great importance to those practices and was prepared to work with the Council, the Special Rapporteur and the international community at large to eradicate them. The report had raised a fundamental ethical question that must be answered: should manifestations of racism, racial discrimination, xenophobia and related intolerance be tolerated, or accepted as part of the overall framework of democracy, freedom of opinion and political plurality?

11. Ms. SHARMA (Human Rights Commission of India) drew attention to the report by the Special Rapporteur on the independence of judges and lawyers, and said that national human rights institutions could play an important role in national complaint mechanisms because they were apolitical, had quasi-judicial competence and reported to parliament. In India, for example, they could intervene in court cases. She urged all Special Rapporteurs, when making country visits, to engage in dialogue with national human rights institutions.

12. Turning to the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, she said that the caste system in India did not fall within the definition of racism; the Human Rights Commission of India had identified it as a form of discrimination that must not be tolerated. A focal point had therefore been established within the Commission to deal with caste discrimination.

13. Lastly, she expressed concern at the fact that the Special Rapporteur on trafficking in persons, especially in women and children, had been unable to present her report to the Council.

14. Mr. DOEBBLER (Nord-Sud XXI) encouraged Council members to study the findings of the Special Rapporteur on the independence of judges and lawyers concerning the independence of the judiciary in Iraq. Since March 2003 judges were chosen by a foreign occupying Power, human rights were declared to be irrelevant and defence witnesses and lawyers had been threatened or killed with the alleged collaboration of the governing authorities. It was estimated that dozens of people had been summarily, arbitrarily and extrajudicially executed after unfair trials. Nowhere else was the judicial process being abused to the extent that it was in Iraq by the United States of America and its collaborators, despite the fact that under the Geneva Conventions participating in an unfair trial was a war crime. He called upon Member States and civil society to show their commitment to human rights by calling for the prosecution of the individuals responsible for those trials.

15. Ms. MUKADAM (Amnesty International) asked the Special Rapporteur on the independence of judges and lawyers how the Council should respond to the creation of parallel systems for the administration of justice that ignored universally applicable standards, and to the resulting human rights violations. She also wished to know what more the Council could do to support the work of those involved in the administration of justice, and what specific measures the Council could take to ensure that persistent shortcomings at national level were adequately addressed. She asked the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance what steps States should take to counteract the xenophobia and racism caused by the rejection of diversity and multiculturalism through immigration policies that emphasized assimilation.

16. Mr. KHAN (World Peace Council) deplored the lack of an independent judiciary in Pakistan-occupied Kashmir, which was due to the influence exerted by Pakistan's military establishment on judicial appointments. The appointment of Manzoor Gilani, an ally of Pakistan's military dictatorship, to the senior judgeship in Pakistan-occupied Kashmir was an example of that state of affairs, and he requested the Council to take action to address that lack of independence. Democracy was the most effective vehicle for promoting and safeguarding human rights, and it must be protected by an independent judiciary.

17. Ms. PINTO-JAYAWARDENA (Asian Legal Resource Centre) welcomed the report of the Special Rapporteur on the independence of judges and lawyers and expressed her deep concern at the deterioration of the independence of the judiciary in Sri Lanka. She wondered whether the Special Rapporteur was aware of the serious concerns expressed at the national and international levels about the politicization of the office of Chief Justice in Sri Lanka, which had had a direct impact on the prevalence of human rights violations. Arbitrary transfers of magistrates in high-profile cases involving extrajudicial executions, enforced disappearances and serious crimes committed by public officials had raised serious doubts about the impartiality of justice in the country. She asked the Special Rapporteur whether he was concerned at the 2006 ruling by the Supreme Court that Sri Lanka's accession to the Optional Protocol to the International Covenant on Civil and Political Rights was unconstitutional. She wished to know what measures he proposed to ensure the independence of Sri Lanka's Supreme Court and Judicial Service Commission. Lastly, she drew his attention to the failure of the Sri Lankan Government to implement a recommendation of the Human Rights Committee to amend its legislation on contempt of court.

18. Ms. AHMADI (International Federation for Human Rights) reminded the Special Rapporteur on the independence of judges and lawyers that in February 2006 her organization had submitted a petition to the Special Rapporteur claiming that the case filed in 2004 on behalf of Iraqi citizens tortured while detained at Abu Ghraib had been dismissed for political reasons by the German Federal Prosecutor. The case had been brought under Germany's universal jurisdiction law, which allowed the country to prosecute war criminals anywhere in the world, even in cases unrelated to Germany. The dismissal had followed a warning by the Government of the United States of America that its relations with Germany would be affected if the senior officials involved, including the United States Secretary of Defense, were prosecuted. She called on all Council members to reaffirm the independence of prosecutors, particularly for acts of torture involving public officials, and to publicly shed light on the violations committed by the United States Government and the German judiciary.

19. Mr. KHOURY (Union of Arab Jurists) said that his organization supported the recommendations of the Special Rapporteur on the independence of judges and lawyers for strengthening judicial systems around the world and hoped that the Council would extend his mandate.

20. In Iraq, unfair trials were being held as a pretext for carrying out summary and arbitrary executions that were a form of revenge against the country's former, legitimate leaders. The occupying forces had handed over President Saddam Hussein and other members of the Iraqi Government to the current Iraqi authorities in full knowledge that they would not receive a fair trial but would be tortured and killed. The acts of the occupying Powers and the Iraqi authorities constituted grave breaches of international law.

21. The creation of the High Criminal Court of Iraq was a serious violation of the Geneva Conventions, which prohibited an occupying Power from establishing a court. The Court had ordered the detention of lawyers without cause and had even been connected to the assassination of several lawyers. Defendants were regularly deprived of the right to appeal. The international community should urgently put pressure on the occupation authorities and the Iraqi authorities to stop the illegal trials, and it should implement the proposals of the Special Rapporteur regarding the situation in Iraq.

22. Some influential members of the Security Council had been attempting to destroy the foundation of international law by politicizing the law. While Security Council resolution 1757 (2007) had recommended the establishment of a special tribunal to try the perpetrators of the alleged political assassinations in Lebanon, the war crimes, genocide and crimes against humanity committed in the Occupied Palestinian Territory were met with silence.

23. Mr. HOWEN (International Commission of Jurists), speaking also on behalf of the Colombian Commission of Jurists, said that threats to the independence of judges and lawyers were often heralded by the declaration of a state of emergency. He therefore welcomed the recommendation of the Special Rapporteur on the independence of judges and lawyers that the Human Rights Council should adopt an international declaration to clarify rights and duties during a state of emergency. Such a declaration should clarify which rights were non-derogable and should identify the best way for States to ensure respect for human rights during a state of emergency without encroaching on the independence and impartiality of the judiciary. He invited the Special Rapporteur to elaborate further on the purpose and content of the proposed declaration.

24. His organization was concerned about the recent escalation of harassment and intimidation of the legal profession in Zimbabwe. The Government of that country should control the police and hold them accountable, and should permit lawyers to carry out their professional functions. He invited the Special Rapporteur to comment on that crisis.

25. He welcomed the Special Rapporteur's expression of interest in visiting Sri Lanka, where the Government seemed to be undermining the Constitution by intervening directly in senior judicial appointments, in the absence of a functional Constitutional Council. Such unilateral action posed a threat to the rule of law.

26. In Colombia, the Constitutional Court had demonstrated its independence by declaring that parts of a law that conferred impunity on paramilitaries and restricted victims' rights were unconstitutional. Yet the Government was proposing to introduce decrees that would reverse the Court's decision and new laws that would pardon both politicians involved in crimes and paramilitary groups.

27. Recent moves to suspend or replace the Chief Justice of Pakistan had undermined the independence and integrity of Pakistan's judiciary and legal profession. That situation had been confirmed by a fact-finding mission that his organization had dispatched to Pakistan in April 2007.

28. Ms. SAYEGH (General Arab Women Federation) said that her organization supported the proposal of the Special Rapporteur on the independence of judges and lawyers to create an international and independent court to try those who had committed crimes in Iraq before and after 2003.

29. Contrary to the Geneva Conventions, the High Criminal Court in Iraq had been created by the occupation authority. The criminal assassination of the former President and other former leaders had taken place in spite of appeals by many countries and international organizations. The entire judicial process had been grossly flawed. Yet the court continued to conduct illegal trials and assassinate Iraqis on the basis of their political, ethnic or sectarian affiliation. The Council should put pressure on the occupying Powers and the Iraqi authorities to put an end to the Court's activities.

30. Her organization hoped that the Council would act on the Special Rapporteur's recommendations and provide him with the necessary support to continue his work.

31. Ms. GROSS (UN Watch) noted that in paragraph 40 of his report the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance described anti-Semitic acts attributable to the Islamic Republic of Iran. The Secretary-General had condemned the Iranian President for inciting the "destruction of the Zionist regime". Since the latter continued to violate article III of the Convention on the Prevention and Punishment of the Crime of Genocide, she asked the Special Rapporteur what could be done to enforce article I of the Convention, which dealt with prevention, in respect of the Islamic Republic of Iran.

32. The Special Rapporteur's report had identified a connection between the anti-Semitism of the Islamic Republic of Iran and the country's promotion of other racist theories. Moreover, in its resolution 61/176 the General Assembly had condemned the Islamic Republic of Iran for discrimination against minorities. The policy and practice of racial discrimination violated the country's own Constitution as well as international human rights law. She enquired what steps the Special Rapporteur could take to increase the protection of minorities in the Islamic Republic of Iran.

33. Mr. BARNES (Indian Council of South America) said that racism against indigenous peoples had been legitimized on grounds of democracy since the colonization of the Americas. New authorities had been established without the participation or consent of indigenous peoples. The refusal to recognize those peoples' rights had resulted in the genocide of many indigenous peoples. He wondered whether the refusal of certain States to recognize the right of indigenous peoples to self-determination would lead to a continued denial of that right. He asked the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance whether his mandate was broad enough to cover that issue.

34. The United States of America was an example of a country that had not done well with indigenous issues. In certain reports submitted to the United Nations the United States military had been designated as the de jure population of Alaska, in disregard of the right of the indigenous people of Alaska to self-determination. Hugo Black had been appointed to the United States Supreme Court in spite of his membership of the Ku Klux Klan. The Human Rights Committee had requested the United States to address the issue of the rights of indigenous peoples, but the country had clearly failed to do so.

35. Mr. DIÈNE (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance) said that the working methods of special rapporteurs were linked to the substance of their mandates. He was extremely concerned that the representative of the Russian Federation appeared to deny the massive and incontestable prevalence of racism and xenophobia in that country, which was demonstrated by figures from a number of sources, including the Russian Government. He wondered whether the Russian delegation believed that being objective meant that Special Rapporteurs should remain silent about what they had witnessed. Furthermore, the claim that Russian national identity had been defined 1,000 years ago suggested that it was now set in stone, and that the historic events which had brought people together since then could have no impact on it.

36. He welcomed the observations made by speakers from South America. Referring to the term "Latin America", he acknowledged that descriptions of geographical places were never neutral. To talk of "Latin" America did suggest some disregard for the presence in South America of indigenous and African peoples.

37. In the aftermath of the publication of cartoons of Mohammed in a Danish newspaper, the actions of the European Union had reached the limit of what was permissible under the international conventions it had adopted. Since 11 September 2001, an element of political and ideological bias had begun to colour States' interpretation of international instruments. Care must be taken to achieve the right balance between freedom of expression and freedom of religion, especially if parties of the extreme right manipulated such freedoms for the purpose of promoting racism.

38. A critical challenge for the future would be to defend cultural, ethnic and religious diversity. The view of integration which held that minority groups should divest themselves of their religious, ethnic or cultural characteristics and assume an established national identity should not be adopted. It implied a denial of the humanity of minority groups and of their ability to enrich national identity.

39. Mr. DESPOUY (Special Rapporteur on the independence of judges and lawyers) welcomed the appointment of the first women judges in Maldives. He also welcomed the positive response to his recommendations by the Government of the Democratic Republic of the Congo, and he encouraged the international community to continue to provide support and assistance to that country.

40. In Fiji, the constitutional order had been interrupted: the lifting of the state of siege had not led to a return to the rule of law, and concerns expressed by other countries of the region were justified. The situation had repercussions on Fiji's judicial system, and the Special Rapporteur had received information about the situation of lawyers in the country and the dismissal of the president of the court.

41. He took note of the concerns expressed about the state of the judicial system and the persecution of lawyers in Zimbabwe. He had hoped to visit Cambodia and Sri Lanka, and was still awaiting replies from the Governments of those countries. While the High Commissioner for Human Rights had mentioned the need for intensified dialogue with Sri Lanka, there should be direct observation of the situation of the judicial authorities in that country.

42. He welcomed the comments by the representative of Mexico concerning the deterioration of human rights that followed the declaration of a state of emergency. As to how to avoid the creation of new courts that failed to meet international standards, he suggested that it might be helpful to draw on the international community's positive experiences of mixed courts that had been established where countries were in a critical situation.

43. The application of the death penalty had been one of the most alarming acts of the High Criminal Court of Iraq, and he called for the suspension of the death penalty in that country. The observer for Iraq had said that the death penalty had been established under the previous regime; in fact, the current Government ought to be seeking to distance itself from the previous regime.

44. The representative of Argentina had raised the important issue of access to justice. Access to justice was indeed vital to any judicial system, and he hoped to address that issue in a future report. Since he had in a previous report described the right to truth as part of the fight against impunity, much progress had been made in terms of international recognition of that right.

45. It was vital that the special procedures should be a source of information for the universal periodic review mechanism. The impact that special rapporteurs had had in various countries showed how significant their contribution could be. Regarding the proposed code of conduct for special procedures mandate-holders, he said that it must be the product of consensus; otherwise divergent views might arise when it was actually implemented.

46. The erosion of human rights that occurred in states of emergency, states of siege and situations in which new security laws were introduced merited further analysis. It might be possible, for example, to consider the matter within the framework of a seminar organized by the High Commissioner for Human Rights.

47. Mr. Loulichki (Morocco), Vice-President, took the Chair.

Introduction of reports followed by an interactive dialogue:

Report of the Special Rapporteur on the right to food (A/HRC/4/30 and Add.1 and Add.2; A/HRC/5/NGO/6, 12, 17, 27, 29, 35 and 38)

Report of the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights (A/HRC/5/5 and Add.1; A/HRC/5/NGO/18, 21 and 34)

Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (A/HRC/4/18 and Add.1-3; A/HRC/5/NGO/8, 10, 12, 14, 15, 16 and 28)

Report of the Independent Expert on the question of human rights and extreme poverty (A/HRC/5/3; A/HRC/5/NGO/5 and 12)

48. Mr. ZIEGLER (Special Rapporteur on the right to food), introducing his report (A/HRC/4/30), said that 100,000 people died of hunger or its immediate consequences each day, many of them children, and the figures on absolute levels of hunger showed that the situation was worsening each year. The numbers of Africans suffering from severe and sustained malnutrition had increased from 80 million to 203 million over the last 30 years. The causes were well known, and included the European Union's policy of heavily subsidizing its own agricultural production and exports. As a result of that policy, European Union products were sold at much lower prices than African products on African markets, no matter how hard African women and children worked to produce them. That situation was especially alarming in view of the dependence on agriculture of many African countries.

49. Since 2002, increasing numbers of Africans had tried to enter the European Union, and untold numbers had drowned in the attempt. The vast majority of those persons were trying to escape hunger. Several African forums and conferences had severely condemned the European Union for the action it had taken to deal with such refugees, denouncing its use of military-style measures. Nevertheless, some countries had taken steps to improve the situation: Italy and Spain, for example, had tried to increase technical cooperation with the African countries most concerned. Likewise, efforts to combat the organized criminal groups that profited from the terrible situation of refugees from hunger had been carried out in cooperation with several African States. He urged the Council to elaborate a new international instrument to assist African refugees from hunger and reminded the States members of the European Union of their obligation to respect the right to food even beyond their borders under the existing legal framework.

50. A distinction must be made between African refugees who had fled their countries as a result of hunger and those who were economic refugees. The former fled their countries because they were forced to by necessity, and while they often entered the European Union by illegal means, that illegality was nullified by the state of necessity. Fortunately, the United Nations system had the capacity to identify clearly and rapidly places where the food situation was critical and justified the granting of refugee status. However, as no existing convention gave

refugees from hunger the right to asylum, he had decided to recommend to the Council that a right to asylum should be recognized in respect of refugees who could demonstrate a state of necessity, a right that could be revoked when that state ceased to exist. The Council was the only United Nations body that had the capacity to create an instrument establishing such a right.

51. Naturally, other countries played a role in the problem, but it was the European Union that was principally responsible for the spread of hunger in Africa because of its practice of agricultural dumping, and it was therefore the European Union that should take the initiative in establishing the right to asylum. He also strongly recommended that, should the Council decide to establish the proposed expert advisory body during the current session, one of the new body's first tasks should be to draft international standards to address the issue.

52. Referring to his mission to Bolivia, he congratulated the efforts that had been made by the recently elected Government to tackle the difficult food situation which the country had inherited from the previous regime. One of the first measures launched by the new Government had been a programme to eradicate malnutrition. Other measures included the planned incorporation of the right to food in the country's new Constitution and the nationalization of the country's petroleum industry, which had generated funds that would be used to combat hunger. He also praised the support for those efforts provided by the international community and United Nations agencies.

53. Mr. IBEANU (Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights) said that since his mandate had been established a number of mechanisms and bodies had been put in place to regulate the transnational movement of hazardous waste and products. In particular, several environmental agreements had been concluded which sought to reduce the negative effects that such movements might have on human health and the natural environment. Nevertheless, more work needed to be done, particularly from a human rights perspective.

54. Economic growth and demand for energy and consumer goods had led to unprecedented levels of industrial production, which had in turn led to an increase in toxic waste. In industrialized countries, landfilling and incineration were increasingly subject to restrictions, phase-outs or bans as a result of opposition from local populations. There was thus increasing pressure to export waste to poor and remote areas. Since the inception of his mandate, the range of toxic waste and products had increased, while products that were banned or strictly regulated in industrialized countries continued to be produced and exported to developing countries, where their use was encouraged.

55. There was an important correlation between armed conflicts and the spread of toxic and dangerous products and waste. The accidental or voluntary large-scale spread of toxic and dangerous products had seriously affected the enjoyment of human rights in regions affected by conflict. Armed conflicts could also have an impact on a State's capacity to control the movement and dumping of dangerous products and waste. While armed conflicts had always adversely affected the environment, the potentially harmful consequences had increased with modern warfare: for example, oil and highly toxic chemical products had been released in great quantities during recent conflicts, as stockpiles and industrial facilities were often military targets.

56. The deliberate use during armed conflicts of herbicides to target drug crops also posed immediate and long-term health risks for humans and could affect nearby agricultural crops and, consequently, access to food. Trafficking in dangerous products and waste and the concomitant dumping also posed risks, as the resulting contamination of soil and water could lead to denial of the enjoyment of basic human rights. To compound all those risks, local populations in conflict situations often lacked access to information on the dangers they might face from toxic and dangerous products and waste.

57. Because the human rights aspect of war's impact on the environment had often been ignored, his report sought to address the question of the effects of exposure to toxic and dangerous products during and after armed conflicts on the enjoyment of human rights. Taking a rights-based approach to that question could help to prevent such effects, or at least ensure that they were better managed. Observance by the parties to a conflict of the basic rules governing the conduct of hostilities could limit the serious and lasting effects of the release of toxic and dangerous products during the conflict. On a practical note, he had recommended that the parties to the conflict should facilitate immediate access of clean-up crews and should broadcast health warnings to the local population as a means of mitigating the adverse effects of such activities.

58. A preliminary note on his visit to Ukraine in January 2007, was contained in document A/HRC/5/5/Add.1, and a full report containing recommendations would be submitted to the Council at a later date. Despite the many problems Ukraine faced relating to dangerous and toxic waste, he had been encouraged by the country's acknowledgement of the urgency of the problem posed by the accumulation of toxic and dangerous products and waste, and its desire to find solutions to that problem.

59. Mr. KOTHARI (Special Rapporteur on adequate housing as a component of the right to an adequate standard of living), introducing his report (A/HRC/4/18), said that he favoured a constructive approach to promoting the human right to adequate housing. To that end, he had tried to provide practical tools and solutions with which States and civil societies could implement that human right. One such tool was a questionnaire developed in the context of his work on women and housing, which had led to a better understanding of the link between violence against women and the right to adequate housing. The questionnaire had also been used to monitor the realization of women's rights to housing and land, an issue covered in his report.

60. During the course of his work, he had often remarked the lack of tools to measure the implementation of the right to adequate housing. The need for an operational framework for the realization of the right to adequate housing had become even more apparent in the context of the Millennium Development Goals. One section of his report thus dealt with indicators on the right to housing. Such indicators should translate the legal standard establishing the right into specific attributes. Accordingly, four essential elements of the right to adequate housing had been identified: habitability, accessibility to services, housing affordability and security of tenure.

61. Other practical tools to implement the right to housing that had been developed included a set of basic principles and guidelines on development-based evictions and displacement setting forth stringent criteria under which displacement could occur, as well as detailed steps to be taken by States to protect human rights before, during and after evictions. The guidelines called for the provision of compensation, restitution and adequate rehabilitation consistent with human rights standards; they also reflected a strong gender perspective.

62. While forced eviction continued to be a major human rights concern, discrimination, violence against women, indigenous people's rights, threats against human rights defenders working on housing rights and access to land and livelihood were other issues of concern associated with the right to adequate housing. An emerging issue of concern was the fact that inadequate housing was often the consequence of denial of access to land and common property resources. The majority of the world's people depended on land-based resources for their lives and livelihoods, while in urban areas, legal recognition of land rights was often critical to protecting the right to adequate housing.

63. During the past year he had actively collaborated with all relevant actors. For example, he was working with the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women to explore the possibility of developing general comments on the right to adequate housing. He had also attended a national conference on urban development in Angola, and he hoped that he would be able to carry out a mission to that country in the near future.

64. Turning to the report on his mission to Australia (A/HRC/4/18/Add.2), he noted the various policies and tools that had been adopted by that country with a view to implementing the right to adequate housing. Unfortunately, despite those efforts, no significant impact had been made on the adverse housing and living conditions faced by people and communities throughout Australia. The number of homeless persons and the housing and living conditions of indigenous peoples in particular needed to be addressed urgently. He drew the attention of the Government of Australia to the recommendations made in the report and expressed the hope that they might serve as a starting point for further discussions.

65. Introducing the report on his mission to Spain (A/HRC/4/18/Add.3), he welcomed the efforts made by the Spanish authorities to implement the right to adequate housing, such as the creation of a housing ministry, the development of regional programmes and the enactment of land legislation. Nevertheless, a number of issues were still hampering those efforts, such as affordability, rising housing prices and Spain's lack of alternative housing possibilities. Women victims of domestic violence also faced obstacles to enjoyment of their right to adequate housing. He welcomed recent statements by the President and the Minister of Housing on the need to control speculation and increase the price of land, but he also recalled the recommendations he had made in his report urging the Spanish authorities to review the impact of economic and social policies related to housing, recognize housing as a basic human right and not as a mere commodity and adopt a comprehensive and coordinated national housing policy.

66. Regarding his mission to South Africa, he acknowledged the efforts made at all levels to deal with issues related to the realization of adequate housing since the end of apartheid, in particular the progress made towards democratization and redressing racial segregation, inequality and systematic violations of human rights. During his visit he had noted the existence of good practices but also areas for concern, all of which would be reflected in his forthcoming mission report.

67. Mr. SENGUPTA (Independent Expert on the question of human rights and extreme poverty) said that he had sought to highlight three main points in his third report (A/HRC/5/3). Firstly, he had called for a definition of extreme poverty that could be measured and therefore tackled by policies. Secondly, he had stressed the need for a social consensus among States on the need to make the elimination of extreme poverty a priority policy. Thirdly, he had wished to highlight specific economic policies in countries where the elimination of extreme poverty was a possibility.

68. The world had accepted that poverty was not just a matter of income, but was multidimensional. He had developed that idea by identifying extreme poverty as a combination of three factors: income poverty, human development poverty and social exclusion. Income poverty and human development poverty were both familiar concepts, whereas social exclusion was a relatively new element. For him, defining extreme poverty would help make it possible to reduce poverty to a manageable level. While the eradication of extreme poverty remained the ultimate goal, the reality of specific situations should be taken into account and measures should initially target persons suffering from all three aspects of extreme poverty.

69. If the international community could agree that extreme poverty was a violation of human rights, then it could adopt the policies and instigate the international cooperation needed to tackle it. There was a theory that a transfer of less than 1 per cent of world income, most of which was accounted for by the industrialized countries, would be sufficient to eradicate poverty throughout the world. The Council should bear in mind that once it had been recognized that part of humanity was living in the worst possible deprivation, a consensus would emerge, which would be the first step towards the elimination of extreme poverty. Poverty was not solely a problem of developing countries, as his report on his mission to the United States of America (E/CN.4/2006/43/Add.1) had made clear: poverty was a social phenomenon that needed to be tackled accordingly.

70. Mr. VASSYLENKO (Ukraine) thanked the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights for the work done during his visit to Ukraine. His Government noted with satisfaction that the measures it was taking to ensure proper and efficient protection of the population from the possible negative effects of toxic and dangerous products and wastes had been appropriately mentioned by the Special Rapporteurs. His delegation took note of the preliminary conclusions contained in the Special Rapporteur's preliminary note on his mission to Ukraine (A/HRC/5/5/Add.1) and looked forward to receiving the full report, which would be carefully studied by the competent authorities in his country.

71. Ms. MILLAR (Observer for Australia) thanked the Special Rapporteur on adequate housing for his presentation but said it was disappointing that the comparative strength of Australia's housing situation and the Government's position on adequate housing were not adequately reflected in the Special Rapporteur's report on his mission to her country (A/HRC/4/18/Add.2), particularly in view of the efforts made to cooperate fully with the Special Rapporteur during his visit. The report made exaggerated claims regarding deficiencies in Australia's housing sector and failed to acknowledge that the vast majority of Australian households had access to high-quality housing.

72. During his visit, the Special Rapporteur had spent much of his time in discussions with special interest groups, from which he had extrapolated a number of misleading or erroneous claims. He had failed to take account of the factual information and clarifications provided by the Australian Government.

73. Mr. MARCH (Observer for Spain) thanked the Special Rapporteur on adequate housing for the preliminary note on his mission to Spain (A/HRC/4/18/Add.3), but said it would have been preferable for the Council to discuss a final report, which it ought to have been possible to produce in the six months that had elapsed since that visit.

74. Many of the views expressed in the report would not be shared by anyone who had any knowledge of Spain. Comment was required on several points. The level of protective housing, for example, had reached a record high, and many thousands of families had benefited from housing assistance in the past three years. With regard to vulnerable groups, he said that while the State's housing plan for 2005-2008 was universal, it also targeted a number of specific groups, including persons with disabilities, victims of gender-based violence, young people and students.

75. On the subject of corruption, he said that the new land legislation deserved more than the passing reference made by the Special Rapporteur, since it had brought about significant changes in that situation in Spain.

76. Lastly, the Special Rapporteur had said in his presentation that Spain should recognize housing as a basic right and not a mere commodity. Yet that was precisely the approach adopted by his Government; moreover, the right to decent and adequate housing was enshrined in the Spanish Constitution.

77. Mr. DA CUNHA (Brazil), referring to the report of the Special Rapporteur on the right to food (A/HRC/4/30), welcomed the Special Rapporteur's recognition of Brazil's positive attempts to deal with hunger, which had had concrete and far-reaching results and had helped to guarantee food to some 40 million people in the past year.

78. His delegation considered the report of the Independent Expert on extreme poverty (A/HRC/5/3) to be a document of high quality and shared the view that the fight against poverty was multidimensional in nature. Combating poverty was not only a matter of increasing GDP but required that the interdependent issues of income, human development and social exclusion should be addressed. Brazil applied the broad perspective recommended by the Independent Expert in its own efforts to combat poverty.

79. His delegation also shared the Independent Expert's concern that structural adjustment policies might exacerbate poverty and inequality unless efforts were made to mitigate such effects. Brazil's own experience showed how economic policy could benefit from social policies that were implemented in partnership with civil society.

80. Mr. CHHÉANG VUN (Observer for Cambodia) said that private property in Cambodia had been completely abolished by the Khmer Rouge, under whose regime Cambodians had become internally displaced persons with no land, homes or property. The country's subsequent

transition from a planned to a market economy and the reintegration of diverse populations after more than 30 years of civil war meant that the issues relating to land ownership in Cambodia were not the same as property issues in other countries.

81. The right to own property had been restored and a rural and urban development programme was under way. Local authorities had helped rehouse those who were illegally occupying private or State property, in the interests of public health, safety and security, and in order to improve people's daily lives and maintain towns' aesthetic appearance.

82. His Government categorically rejected the comments on Cambodia contained in the Special Rapporteur's report (A/HRC/4/18/Add .1). They addressed only the negative aspects of the situation with regard to the right to housing in Cambodia and were politically motivated and untrue.

83. Mr. BUTT (Pakistan), speaking on behalf of the Organization of the Islamic Conference (OIC), thanked the Special Rapporteur on the right to food for his forthright report (A/HRC/4/30). It was a sad comment on humanity that while the world produced more than twice the quantity of food required to feed its entire population thousands of children died of malnutrition every day.

84. The root causes of the problem were the imbalance in trade and financial systems, inefficient food distribution and macroeconomic disparities. OIC appreciated the Special Rapporteur's efforts to highlight those issues, which needed to be discussed in the Human Rights Council. The Council must take the Special Rapporteur's report as a basis for developing an advocacy role in trying to end hunger and starvation.

85. Mr. ABU ZEID (Observer for the Sudan), drew attention to the report of the Special Rapporteur on the right to food (A/HRC/4/30) and said that he wished to highlight some of the positive steps taken by his Government to facilitate access to food in the Darfur region. One such measure had been the fast-track project launched in 2004; in addition, an agreement with the United Nations to facilitate access to humanitarian aid had been signed in March 2007. The Sudan had also arranged for food assistance to be provided to the people of the region.

86. In May 2007 a joint communiqué had been issued by the Sudan, the United Nations and the African Union confirming that access to food in the Darfur region had improved. However, armed groups that had not signed the Darfur Peace Agreement continued to obstruct the delivery of food supplies to the people of the region and to humanitarian workers. His Government renewed its appeal to the international community to encourage those groups to sign the Peace Agreement.

Statements in exercise of the right of reply

87. Mr. MAFEMBA (Observer for Zimbabwe), replying to the statement made at the previous meeting by the representative of Canada in connection with the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance,

asked why Canada, Australia and the United States of America insisted on politicizing the Zimbabwean issue. There was no discrimination against any racial group in Zimbabwe. However, Zimbabweans who worked for foreign Powers to the detriment of their own country would be treated as the traitors they were.

88. He despaired for the Aborigines in Australia, who routinely died in police custody while racist judges absolved racist police. Australia had set aside US\$ 18 million to effect regime change in Zimbabwe; however, if it was genuinely concerned about Zimbabwe's judiciary, it should turn those funds over to his country so that it could improve its justice delivery system. It was likewise absurd for the United States of America to tell Zimbabwe about the independence of the judiciary, given that eight attorneys in that country had recently been dismissed for their independence while the political establishment protected the Attorney-General who had dismissed them.

89. Mr. ABU ZEID (Observer for the Sudan) said that the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, had stated at the previous meeting that the conflict in the Darfur region was between the nomadic Arabs and the farmers in Zaghawa, Masalit and Fur. That was correct: such conflicts had nothing to do with ethnic origin - there could be competition over natural resources even within the same tribe. In the past, such conflicts had been resolved within the local community.

90. Thus it was not the Sudanese Government that had triggered the conflict in the Darfur region; rather, it had been attacks by armed rebel groups on police, army, Government and civilian facilities that had compelled the Government to take a stand. As his Government had stated many times in the past, the Janjaweed groups were drawn from several tribes and were in fact outlawed in Darfur. It was not true to say, as the Special Rapporteur had done in his report, that the Janjaweed received orders from the Government. The Government, too, faced attack from such groups, and it prosecuted them and brought them to justice.

91. The International Commission of Inquiry on Darfur had found no evidence of ethnic cleansing of black Africans by the militias. Moreover, the provisional Constitution of the Sudan provided for the equality of all citizens and granted equal rights to citizenship to all.

92. Mr. BERZINJI (Observer for Iraq), replying to the statement made by the representative of the Union of Arab Jurists, wondered whether that organization had heard of the atrocities committed under the previous regime in Iraq. Saddam Hussein had come to power through a bloody revolution and had subsequently organized bogus elections in order to legitimize his position. That had not legitimized his atrocities. It had been necessary to give him a fair trial, and that had been done. It was impossible to deny that crimes had been committed, and anyone responsible for such a trial would have condemned him to death. Prosecuting authoritarian regimes was a legitimate right, and the Saddam regime should be no exception.

93. Mr. MINAMI (Japan) said that his delegation rejected the statement made by the observer for the Democratic People's Republic of Korea to the effect that Korean nationals in Japan were subjected to racial discrimination and harassment. Japan's Constitution prohibited racial discrimination and xenophobia, and Japan had acceded to the International Convention on the

Elimination of All Forms of Racial Discrimination. It had cooperated fully with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. Moreover, victims of racial discrimination could initiate court proceedings, through a judicial system that was totally independent from Government. Japan would continue to take all measures to combat racial discrimination.

94. Mr. MALGINOV (Russian Federation) said that his delegation was not convinced by the replies given by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to his delegation's comments on the Special Rapporteur's report (A/HRC/4/19/Add.3).

95. The statement made by the observer for Georgia at the previous meeting concerning the persecution and deportation of Georgian nationals bore no relation to reality and did not reflect the efforts of the Russian Federation to combat illegal immigration. The monitoring of foreign nationals was done in strict compliance with the law and was aimed at all foreigners regardless of national origin. Moreover, the number of illegal immigrants from Georgia who were the subject of court-ordered deportations was lower than the number of nationals of any other country in the same situation. Thus the complaints by Georgia were unfounded.

96. As to the question of human rights violations by the forces of the Ministry of the Interior, he recalled that detailed information on those cases had been sent to the Special Rapporteur.

97. Mr. FERNANDO (Sri Lanka), replying to the statement by the representative of the International Commission of Jurists, said that the seventeenth amendment to the Sri Lankan Constitution had entered into force in 2001 and a Constitutional Council had been established. Although the Council was an apolitical body, it had not been possible to convene it, as the minorities represented in Parliament had been unable to agree on who would represent them there. It was, however, incorrect to state that because the Constitutional Council was not functioning and vacancies were being filled by appointment, the independence of those offices was being eroded.

98. With regard to the change of magistrate in the proceedings relating to the killing of 17 aid workers, he said that the decision to replace the magistrate had been taken because the magistrate himself had had to seek police protection, which meant that he might be called as a witness in judicial proceedings. Consequently, the Judicial Service Commission had rightly decided to appoint another magistrate who could hear the case without bias or personal involvement.

99. Mr. CHOE Myong Nam (Observer for the Democratic People's Republic of Korea), replying to the statement made by the representative of Japan, said that the human rights violations in the form of discrimination and harassment directed against Korean nationals in Japan were becoming harsher and indeed had been strongly criticized in United Nations forums such as the Human Rights Committee and the Human Rights Council itself. His delegation again urged Japan to stop violating the rights of Korean nationals in Japan.

The meeting rose at 6.15 p.m.