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**CIVIL AND POLITICAL RIGHTS**

**Continuing dialogue on measures to promote and consolidate democracy**

**Report of the High Commissioner for Human Rights submitted  
in accordance with Commission resolution 2001/41\* \*\***

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\* As the seminar reported upon in this document was convened late in 2002, it was necessary that this report be submitted only in January 2003, following consultations between the secretariat, the Chair and commissioned experts.

\*\* The annexes are being circulated in the language of submission only.

### **Executive summary**

On 25 and 26 November 2002 in Geneva, following the invitation of the Commission on Human Rights, the Office of the High Commissioner for Human Rights held an expert seminar on the interdependence between democracy and human rights. The High Commissioner for Human Rights opened the meeting and Dr. Surin Pitsuwan (Thailand) gave the keynote address. The meeting was chaired by Dr. Frene Ginwala, Speaker of the Parliament of South Africa. In addition to the experts invited from different regions, the seminar was attended by observers from interested Governments, experts of the United Nations specialized agencies, funds and programmes, other relevant intergovernmental and interested non-governmental organizations.

The seminar had two main objectives. The first was to explore the conceptual linkages between democracy and human rights, and the second was to engage in a dialogue on practical ways and means of promoting and consolidating democracy. The seminar's agenda included segments on the interdependence between democracy and human rights, the centrality of the rule of law, parliaments, the media and civil society to democracy and human rights, institutions of democracy, human rights safeguards in democracies, the contribution of the human rights treaty bodies and special procedures to democracy and the United Nations system engagement in democracy assistance, the *Human Development Report 2002*, and a series of regional perspectives from Asia and the Pacific, the Arab region, Africa, Europe, and Latin America and the Caribbean. The seminar also included two focus groups which dealt respectively with institutions of democracy and human rights safeguards in democracies.

The main threads of the proceedings and the seminar's conclusions are outlined in the present report.

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## I. INTRODUCTION

1. In accordance with Commission on Human Rights resolution 2001/41 of 23 April 2001, the Office of the High Commissioner for Human Rights held an expert seminar on the interdependence between democracy and human rights on 25 and 26 November 2002 in Geneva. The two-day seminar benefited from the participation of 21 invited experts, representatives of 69 Member States, one non-Member State, 14 intergovernmental organizations, international agencies and regional institutions, 12 non-governmental organizations, and several academics, parliamentarians and United Nations officials. The present report contains a summary of the seminar's proceedings together with its conclusions. Part II provides an overview of the interdependence between democracy and human rights, and includes some of the main findings of the *Human Development Report 2002*. Part III examines the centrality of the rule of law, parliaments, the media and civil society to democracy and human rights. Part IV provides a summary of the main points emerging from the seminar's two discussion groups which dealt with institutions of democracy and human rights safeguards in democracies. Part V looks at the contribution of the human rights treaty bodies and special procedures to democracy, and United Nations democracy assistance activities. Part VI is dedicated to regional perspectives on issues relating to democracy and human rights in Asia and the Pacific, the Arab region, Africa, Europe, and Latin America and the Caribbean. Part VII contains excerpts from the Chairperson's final remarks and conclusions, and recommendations for further study.

## II. THE INTERDEPENDENCE BETWEEN DEMOCRACY AND HUMAN RIGHTS

2. The United Nations High Commissioner for Human Rights, Sergio Vieira de Mello, Dr. Frene Ginwala, Dr. Surin Pitsuwan, Professor David Beetham, Professor Shadrack Gutto, and Sakiko Fukuda-Parr offered the seminar's introductory and framing thoughts.

3. The High Commissioner emphasized that for all of its imperfections, democracy remains the best hope for securing human dignity and rights. A main objective must be to move beyond narrow notions of democracy to promoting and securing "holistic democracy" - a conception of democracy that encompasses the procedural and the substantive, formal institutions and informal processes, majorities and minorities, males and females, Governments and civil society, the political and the economic, the national and the international. This vision of democracy is normatively grounded in the universal human rights standards, and recognizes the interdependence of human rights instruments and the rights they defend. The Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights provide democracy's essential ingredients, including the principle and right of self-determination, vesting governmental authority in the will of the people through genuine and periodic elections, the rights to freedom of thought, conscience and religion, opinion and expression, and peaceful assembly and association, as well as the rights to an adequate standard of living and to education. The human rights standards emphasize equality and fairness. They are thus the backbone of "holistic democracy" which abhors discrimination and the concentration of power, whether on the basis of wealth, race, ethnicity or other such factors. Holistic democracy recognizes the importance of strong institutions and practices of governance, including an accountable executive, as elected legislature, an independent judiciary

and the rule of law, with due respect for cultural and societal values and traditions. Holistic democracy also seeks to respond to today's globalized world where decision-making, with far-reaching consequences for all spheres of life, is increasingly being moved from the national context. It thus advocates a continuum of democracy in an interconnected and globalized world, reaching from the village to the State, to the international institutions and back.

4. Dr. Frene Ginwala reminded participants that development was crucial to both democracy and human rights and that the 1993 Vienna Declaration and Programme of Action had confirmed that democracy, development and respect for human rights were interdependent and mutually reinforcing. She recalled that for most of the twentieth century, South Africa had projected itself, and been accepted, as a democracy with all of the institutions and procedures of democracy. Yet, it had excluded the majority and denied them their rights. She thus cautioned against being fooled by formal democracy and instead encouraged looking beyond to its content and values, its definition and degree of inclusiveness. She noted that legal instruments and procedures alone are not enough. People must be able to access and exercise their human rights. Lastly, cultural and religious considerations must be coupled with the universally accepted underpinnings of human rights.

5. Dr. Surin Pitsuwan pointed out that many States refer to themselves as "democratic" and have established institutions to authenticate this label. However, those same States know democracy only in form and not in substance, as witnessed by their gross violations of the human rights of their citizens. He recalled Thailand's experience of democratic development in the past 50 years, which illustrates that mere "institutions" do not guarantee democracy. The Thai people organized themselves into various civil society groupings to advance the quest for democracy. The result was the 1997 Constitution which contains 40 articles devoted to the rights of the people, incorporates the concept of "human dignity" in the supreme law of the land and establishes various independent constitutional bodies to ensure respect for its provisions. The Thai experience offers several lessons: first, the road to democracy is furrowed; second, once people have tasted the fruits of democracy, they crave more and will pursue their quest with zeal; third, all sectors of society must strive towards a vision of true democracy based on those common standards of achievement enshrined in the Universal Declaration of Human Rights; fourth, human dignity and rights are the soul of democracy and one cannot exist without the other; and fifth, democracy elsewhere serves to inspire those who are engaged in their own struggles for dignity and freedom. He added that the protection and promotion of human rights must be pursued in recognition of the fact that people are only convinced by their own rich cultures, drawn from the deep roots of their own civilizations. They should be encouraged to achieve human rights on the wings of their own cultures, inspirations and teachings. One challenge is to help those who aspire, and who are struggling, to achieve democracy to appreciate both Western political philosophy and their own sacred texts in order to arrive at an optimal equilibrium in which dignity, freedom and rights can be secured.

6. Professor Beetham observed that there has been increasing convergence between democracy and human rights in the past decade. Any perceived conflict or contradiction between the two is based on a misunderstanding of the former. Democracy is to be defined by its key principles of popular control and political equality, and only secondarily by the institutions through which these principles are realized. A framework of guaranteed citizen rights, a system of representative and accountable political institutions subject to electoral

change, and an active civil society are needed to realize these two principles. Some common and persistent misconceptions need to be addressed. First, majority rule is not always or necessarily democratic. Insofar as it leaves a minority impotent, it should be regarded more as a device for resolving disagreement than as the acme of democratic perfection. Special institutional provisions may be needed to protect the rights of minorities and ensure them a due share in political and public office. Secondly, diverse societies and circumstances require different arrangements if democratic principles are to be effectively realized. These arrangements can be seen as different forms of power-sharing which also guarantee that minorities participate in the polity. Thirdly, although democracy has historically been associated with a market economy, the free market has significant negative consequences for human rights and democracy, for which government action is needed to mitigate. Since such action can be frustrated by the policies of international bodies and multinational corporations, the former need to be made more representative and accountable, and consideration be given to making the latter subject to human rights and environmental standards and regulations. Fourthly, independent enforcement of human rights by the courts against a democratically elected Government is not undemocratic, especially where these rights have been endorsed by popular referendum as well as by the legislature. Dealing with threats to democracy without compromising human rights or democratic processes is one of the most difficult challenges facing democracies today. Fifthly, although democracy requires an agreed "demos", or people, enjoying exclusive rights of citizenship, the standards against which its rights and institutions are to be judged have become increasingly internationalized. Sixthly, democracy is a matter of degree, and any country's institutions and practices can be assessed to determine the extent to which democratic principles are realized within them. Because democracies in practice involve a compromise between popular forces and existing powers, the process of democratization is never complete.

7. Professor Gutto observed that democracy is about the way in which society is organized and governed. This conceptualization incorporates both the institutional forms, norms and processes of political rule, and the cultural, economic and social factors that determine and define the conditions and quality of peoples' lives. How society is governed involves values and institutions of governance, those who govern, and how people participate in the processes of governance. Modern democracy also has the principles of equality and self-determination as two of its main attributes. Equality and non-discrimination cement social cohesion and contribute to peace and security. Democratic systems claiming adherence to human rights must aspire to the attainment of political as well as social and economic democracy. Democracy also entails free and fair elections. However, competitive elections constitute only one element of democracy and serve the purpose of facilitating renewal of leadership and expanding the choices available to the electorate. The critical principle that should inform the choice and construction of any democracy-friendly electoral system should be the optimization of representation of marginalized groups. Elected representatives can play a democratic role only to the extent that enabling institutions of governance, with clear systems and procedures that are secured by norms and laws, exist. Beyond elections, the structure, role, powers and functions of the executive, the legislature and the administration of law, including the judiciary, need to be effective, efficient and constitutionally empowered. The principles of equitable representation and participation of diverse peoples in these institutions and processes are important elements in modern democracies. Effective participation is generally enhanced where power and public resources and service delivery institutions are decentralized. These branches of government, and the

people as a whole, should be capacitated to check and balance one another. Accountability by the institutions and the people who manage them is essential to checking the distribution of resources and the delivery of services as well as serving to discourage and punish the abuse of power and corruption. Further, independent and corrupt-free legislatures and judiciaries are central to the accountability of Governments and the protection of the masses against arbitrariness, tyranny and oppression. Democracies also need activist and vibrant civil society. The antithesis of genuine democracy is unbridled capitalism in which wealth is concentrated in the hands of a few, while the masses are marginalized and social inequities abound. Further, in this increasingly “globalizing” world that exerts contradictory pressures of empowerment and marginalization, the spheres of governance are local and national and also regional and international.

8. Sakiko Fukuda Parr explained that the *Human Development Report 2002*, entitled “Deepening democracy in a fragmented world”, concluded that human rights, democracy and socio-economic development are essential to human development and are mutually reinforcing in theory. In practice, the links are often weak and, many wrongly believe, contradictory. Democracy is the only form of governance which encourages rulers to act in the interest of the people. This is because its institutions and processes provide for contestation of power, accountability of the powerful and participation of people. However, things are not so simple. The trends of the 1980s and 1990s moved 81 countries to democratize, but only 47 are now considered fully democratic. There was a rapid rise in the ratification of human rights treaties; however, implementation remains deficient. The decade of the 1990s was one of lost promises. While it was a decade of democratization, it was also the decade of stagnation in poverty alleviation and socio-economic progress. This led to the impression that democracy had failed. People fought for democracy in the expectation of a democracy dividend or a better standard of living. Was it democracy that failed to produce this dividend? It is not true that authoritarian regimes accomplish poverty reduction. The evidence shows that there is no trade-off between democracy and socio-economic development. Democracy has strong links with civil and political rights but not with egalitarian forms of socio-economic progress. However, democratization and socio-economic progress have to be pursued in parallel as two independent projects. While democracy provides the opportunities for leaders to act in the interest of the people, its responsiveness is broken by the concentration of power, including of media ownership, and elite capture of global decision-making. This undermines the egalitarian purpose. The response is to strengthen links beyond the institutional and procedural and to ensure participation beyond elections. Alternative modes of participation today include judicial activism, investigative media, civil society and global networks. The *Human Development Report 2002* showed that the links between democracy and equitable socio-economic progress are not automatic but can be strengthened by active participation of the citizenry and by institutions of democracy.

### **III. THE RULE OF LAW, PARLIAMENTS, THE MEDIA AND CIVIL SOCIETY**

9. This part draws on the background papers, as applicable, and the presentations of Diego García-Sayán, Dimitrina Petrova, Anders Johnsson, Jerome Sacca-Kina Guézéré, Mohammad-Mahmoud Ould Mohamedou, Keith Richburg and Nancy Thede, though any of the presented views cannot be necessarily associated with one expert or another.

### **A. Protecting human rights by the rule of law and the administration of justice**

10. The enjoyment of all human rights by all persons is the ultimate purpose of democracy. The achievement of high levels of human rights protection is a measure of the success of a democracy. The rule of law in a democratic society is a prerequisite and main vehicle for the protection of human rights. The need for human rights to be protected by the rule of law derives from the functions of law in society and the nature of human rights claims. Law can be one of the means by which domination is established and reproduced; however, it can also ensure that domination is not absolute and that power is not exercised arbitrarily, thus protecting the weaker. The legal defence and promotion of human rights fulfil the protective function of law in society. While human rights are inherent, their enjoyment is not automatic. Judgement must be exercised in weighing certain rights against other rights and the public interest. To the extent that human rights are enshrined in the law, the individual has to access them as legal rights. As long as law remains the form of normative regulation of social interaction, the rule of law is indispensable to human rights protection. While the protection of human rights depends on a strong legal culture, human rights are not an automatic consequence of the rule of law.

11. An effective judiciary that deals properly with individual or collective complaints about human rights violations is vital for strengthening democratic processes and guaranteeing the effective exercise of human rights. Judicial shortcomings can be grouped in seven thematic areas: (a) lack of independence of judges and of the judicial system in relation to political and other forms of power. This weakens or even destroys the judiciary's ability to act as a check on political power and to settle disputes neutrally; (b) international human rights norms are often not incorporated in domestic legal systems and there is often limited connection between international human rights developments and jurisprudence and the reasoning and decisions of national judges and courts; (c) denial of justice to individuals in the form of lack of access, slow procedures, criminal procedures in disaccord with international standards, lack of minimum standards of detention and imprisonment and violations of fair trial procedures; (d) corruption and shortcomings in mechanisms intended to ensure accountability impair the judicial system, as actions and decisions are swayed by factors other than the law. Disciplinary systems that rely on special bodies and procedures within the judicial system itself, and active civil society are necessary to combat the damage inflicted by corruption; (e) poor administration and functioning of the courts, including poor use of existing resources. The juridical function of administering justice and the organizational function of managing human and financial resources should ideally be separated to ensure greater efficiency; (f) very limited resource allocations in national budgets to this essential public service; and (g) the lack of training and a rewarding "career path" make those in the profession vulnerable to external political pressure. Efforts to professionalize the judiciary are necessary, including through rigorous selection, appointment and promotion of judges and lifelong training and development of their expertise, including interpreting domestic legislation in accordance with international law.

12. The issue of democratic processes and judicial control in respect of human rights poses certain problems. The principle of constitutionalism helps to ensure that the essential content of fundamental rights remains out of the realm of democratic voting and judicial discretion. Constitutions should provide safeguards against populist or judicial abuse of power, thereby

fortifying human rights. Equal access to justice for all subject to judicial scrutiny, promptness in the administration of justice, and free justice in case of need are important principles. Strategies for heightening public interest in defending human rights, including economic, social and cultural rights, need to be strengthened.

### **B. The role of parliaments and parliamentarians in defending and promoting human rights**

13. Democracy is also a form of government that presupposes the existence of well-structured and functioning institutions that enable people to participate in the conduct of the affairs of the State. For parliaments to be effective, it is essential that they represent all groups, including minorities and the opposition, and the views that are held in society. Parliamentarians must be free to exercise their freedom of expression and cast their votes without fear of any harassment, threat or prosecution. The parliament has an important role in ensuring that diverse and sometimes conflicting ideas achieve positive results for the nation as a whole. Parliaments have historically played an important role in codifying human rights and making certain, by overseeing the executive, that the relevant regulations are applied. Parliament can play an important role in ensuring that rights-based approaches would be taken into account in the national budget. Human rights criteria should also play an essential role in overseeing the actions of the executive, e.g. in the framework of questions addressed to plenary and committees' debates. There are also procedures in parliament for interacting directly with individuals and organizations, including those dealing with human rights. Parliamentary delegations can investigate a situation on the spot as in the case of unannounced visits to detention facilities and prisons. Parliaments can also work with other national institutions, ombudsmen, trade unions and human rights organizations to secure a better understanding of issues and to inform their actions in this regard.

### **C. The media in democracies: reporting human rights issues**

14. Three global changes have promoted a supportive role of the media for democracy and human rights. First, the information explosion has meant that there is more news available on world events. Second, the communications revolution means that we can receive information almost instantaneously. Third, democracy is sweeping the world. These changes enhance the importance of the role of the media in defending and challenging democracies, particularly fledgling ones. The media have always had an advocacy function, in addition to its normal function of transmitting information. The notion of a free press is itself an essential element of one of the most fundamental human rights, namely the right to freedom of opinion and expression.

15. Media organizations are generally favourable to human rights issues. However, within this general consensus there is a great deal of difference on the media's role in promoting human rights. Some journalists argue that the promotion of human rights is not necessarily the media's role or responsibility, while others advocate that human rights need to be promoted if only by disclosing the facts. The increasing concentration of ownership of the media and the emergence of high-speed communications and print technology have transformed the nature of the information environment, impacting on the quality of the information conveyed. As the human

rights dimension has become a more pronounced consideration by the media, the nature and scope of media coverage of human rights and its quality are of concern. Some human rights issues remain underreported and there is more emphasis on civil and political rights and crisis situations than on economic, social and cultural rights. News tends to be focused less on content and more on presentation. This has led to a number of inaccuracies and inconsistencies in the coverage of international human rights stories. News can often be reductionist and sensationalist which can disseminate stereotypical and racist images of people, communities and conflicts. Part of the difficulty is that human rights involve questions of law, morality and political philosophy as well as practical problems and how to deal with them, whereas journalism is concerned primarily with facts on the ground, or “what happened when”. Journalists should be trained in human rights.

#### **D. Civil society and democracy**

16. In its modern sense, civil society is conceived as a sphere of interaction autonomous from the State. However, it is the State which is the necessary guarantor of the space in which civil society operates and of the rules by which its activities are governed. In the history of established democracies, civil society movements were the principal agent in the demand for the codification of civil, political and social rights. The recognition of those rights and the structures of governance that arise from them are the quintessence of democracy. The United Nations Secretary-General has stated that “a vibrant civil society is central to a successful democratization process”. Civil society ensures that a democratic system actually functions, and continues to democratize, for there is no perfect democracy. It is the vehicle for citizens to articulate and debate their interests, while monitoring the actions of the State. Civil society includes many types of organizations, processes and movements. A democratic civil society can best develop in an appropriate cultural, institutional and legal framework where the rule of law is respected and tolerance is promoted. In all democracies, some sectors of the population are marginalized from full participation in democratic institutions and full access to the right to participate. Civil society participation - seen as the collective capacity of systematically marginalized groups to articulate their policy proposals and to gain access to processes and institutions of democratic decision-making - is the key to effective democratic development. Civil society, as an agent of the demand for and development of rights, plays an ongoing role in the construction and functioning of democratic systems, both old and new, and remains a crucial vehicle for ensuring that people participate in the debates and decisions that shape their lives. Civil society also faces important challenges, in terms of both its internal structures and its relations with public authorities. Politicians and civil servants are often concerned that civil society institutions are not representative because they have not been elected, and that they are not accountable within the structures of the State. However, civil society institutions do also have specific mechanisms of accountability to their constituencies. The value of civil society is that it can draw attention to public issues concerning the common good that are not necessarily given adequate consideration within the formal institutions of governance. In recent years, there has been a spectacular growth of transnational civil society and its impact, including contributions of the international human rights movement, and work in areas of debt relief and trade.

17. In the Millennium Declaration, States Members of the United Nations collectively recognized the importance of partnership with civil society. To strengthen civil society, a consistent effort should be made by Governments, international institutions and civil society itself to ensure its participatory nature. Like democracy, civil society strengthening is a long-term process and support is most productive when it is provided over a long period of time. Such support should pay attention to the historical specificity and diversity of the countries where civil society operates. Participation in international policy forums by civil society organizations from the countries of the South needs to be expanded, including by making available resources to achieve this objective. The debate and reflection with civil society on issues of representation, legitimacy and accountability should be broadened, deepened and systematized and common criteria and standards, codes of conduct, etc. should be considered. Human rights defenders require increased protection domestically and internationally.

#### **IV. INSTITUTIONS OF DEMOCRACY AND HUMAN RIGHTS SAFEGUARDS IN DEMOCRACIES**

18. This part draws on the reports that were presented to the plenary by Kevin Boyle and Claudio Cordone, based on the conclusions of the seminar's two discussion groups.

##### **A. Institutions of democracy**

###### **Group A**

19. This group decided to look beyond the formal institutions of democracy, i.e. the executive, the judiciary and the legislature, to other institutions which also play a role in the functioning of democracy. It discussed civil society, paying particular attention to political parties as particularly important actors. Ombudsmen were deemed to be significant democratic institutions across countries, as were national human rights commissions, including their functions between formal institutions and the citizenry. It was stressed that since the media are an important actor in the democratic process, the need for media accountability has been acknowledged in many judicial pronouncements which recognized its functional role as a watchdog, in addition to its role of transmitting information and analysis. The issue arises, however, as to how to achieve this without interfering with media freedoms. As regards political parties, the question was raised as to whether elected representatives should or could have their mandates revoked or be sanctioned on the basis of a changed affiliation or platform. The importance of independent electoral commissions which oversee and organize elections was recognized. The group arrived at some principles which were considered important to institutions of democracy. These included the competence, integrity and independence of public officials; the integrity of political parties; the accountability and transparency of institutions run by public officials; representativeness or the extent to which electoral systems deliver results close to what the people aspire (especially in the case of parliaments); resources allocated for running institutions; and performance of these institutions. Democratic institutions need to be strengthened, including through broad outreach to and access by people to counter the threat of political elitism. There is also the need to address the disillusionment and disengagement of people from their institutions.

## **B. Human rights safeguards in democracies**

### **Group B**

20. Democracy is an aspiration and a process. Respect for human rights is needed to pursue and consolidate democracy. Popular participation is important in order to avoid a situation whereby representative bodies work above or against the people. Human rights are essential safeguards of this process. Firstly, we need to pursue all rights with the same emphasis to preserve democracy. For example, in Latin America and the Caribbean, inequality and poverty are leading, for some, to disenchantment with democracy, especially in areas where democracies now exist after authoritarian rule. As many as 50 per cent of the people think that democracy has not delivered on its promises. The progressive realization of economic, social and cultural rights is important in this regard. Secondly, since the free media play an important role in promoting democracy, the law should act against concentration in this area. Codes of conduct adopted by media organizations can be helpful in countering misuse of the media, including defamation, promoting hatred, etc. Thirdly, although terrorism requires a firm response, it is vital to avoid unlawful or excessive responses by Governments. When confronted with threats to their security, people sometimes accept that Governments adopt more stringent regulations, hence the importance of ensuring that the rule of law, a multiparty political system, a free and active civil society and media, and national human rights institutions are in place to protect human rights. Fourthly, the free market can, under certain circumstances, be a threat and some policies of international financial institutions limit the exercise of democracy. Fifthly, corruption can destroy the entire fabric of democracy and the United Nations should help to address this. The group identified some areas for future attention. In particular, structural discrimination such as the situation in which women are formally represented in parliament, but do not have equality within society at large, needs to be addressed. Both formal changes and education are needed and civil and administrative capacities, including ensuring access by all groups of society to legal aid and promoting strategic litigation that benefits the public interest, need to be advanced. In many cases, appointees are not accountable, making it necessary to look at this to measure progress in democracy. Benchmarks for economic, social and cultural rights need to be applied. Finally, ratification of human rights instruments and their operationalization in the local context are important.

## **V. THE UNITED NATIONS AND DEMOCRACY**

21. This part draws on the presentations of Roman Wieruszewski and Danilo Turk.

### **A. Contribution of the treaty bodies and special procedures to encouraging democracy**

22. Both International Covenants on Human Rights recognize the right of all peoples to self-determination. This right lends the basis for participation of people in the process of political decision-making and constitutes the foundation of the democratic elements in the Covenants. The International Covenant on Civil and Political Rights (ICCPR) protects a broad range of political rights and freedoms, and article 14 thereof is the basis for equality before the law and due and fair process. During the past decade, the Human Rights Committee (HRC), in

its general comments, concluding observations and views identified various democratic principles which contribute to the proper enjoyment of the Covenant's rights. Its General Comment No. 25 states that article 25 of ICCPR "lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant". In several concluding observations, HRC noted that participatory democracy is crucial for human rights protection, and endorsed the establishment of multiparty and pluralistic democracy, the organization of elections, greater press freedoms, and strengthening the rule of law and women's participation in the conduct of public affairs. The Committee criticized intolerant attitudes towards dissent and criticism, lack of legislative limits on the power of the executive and the growing concentration of power, including in law-making, in the hands of the executive, without judicial control. The Committee also noted that impunity for gross violations of human rights constitutes an impediment to efforts to consolidate democracy. According to its interpretation, article 25 of ICCPR provides for electoral systems which give equal opportunity to all categories of voters. In several of its views concerning individual complaints on articles 25 and 19, HRC clarified and strengthened the scope and application of these articles. In its general comments on the articles of and obligations under the International Covenant on Economic, Social and Cultural Rights, the Committee on Economic, Social and Cultural Rights (CESCR) invoked several democratic principles such as public scrutiny of government policies and participation of various sectors of society in the formulation, implementation and review of the relevant policies and democratic political systems which respect human rights. In several of its concluding observations, CESCR observed that democracy and the rule of law are essential for implementing the Covenant and considered the judiciary to be an important element in the implementation and protection of economic, social and cultural rights. The International Convention on the Elimination of All Forms of Racial Discrimination and the Committee on the Elimination of Racial Discrimination (CERD) advocate full enjoyment of political rights, in particular the right to participate in elections, without distinction of any kind. The general comments made by CERD call, for example, for the participation of indigenous and Roma groups in public life, and endorse democratic development. CERD strongly pushed for ethnic or religious groups and minorities to be included in political and public life. The Convention on the Elimination of All Forms of Discrimination against Women prohibits discrimination against women in political and public life. General Comment No. 23 of the Committee on the Elimination of Discrimination against Women (CEDAW) interprets how equality in those spheres should be understood. The concluding observations of CEDAW place strong emphasis on women's political and public participation, including participation in decision-making bodies, and advocate democratization. It noted that societies which exclude women cannot be described as democratic and that democracy as such does not offer adequate responses to structural discrimination against women. The special mechanisms of the Commission on Human Rights on freedom of opinion and expression, independence of judges and lawyers, and human rights defenders have all recognized the importance of areas covered by their mandates to democratic development and human rights protection.

## **B. Democracy assistance**

23. In 1991, the Secretary-General made democracy one of his priorities for the twenty-first century. Currently, the United Nations democracy assistance activities and programmes can be divided into electoral assistance, institution-building, human rights observance and monitoring, mobilization of civil society, and support to new or restored democracies. The Electoral

Assistance Division of the Department of Political Affairs has received 200 requests for assistance from 93 Member States and territories and has assisted 83. Overall, the United Nations system has provided electoral assistance in a number of ways: organization, conduct, observation and supervision of elections; verification of election results; coordination and support for international and national electoral observers; and technical assistance such as budget organization, civic and voter education, computer applications and training of election administrators. The most frequently requested form of electoral assistance has been technical advice to the electoral authorities on aspects of the electoral law, the composition and remuneration of the electoral commission, procedures and logistics of voter registration and procedures for the conduct of the polls, including ballot design, organization of the poll, vote count and computation of final results. As regards institution-building, the contributions of the United Nations have included advice on key economic and social policy matters relating to a Government's reform strategy, including political decentralization, mobilizing traditional power structures for the long-term development of participatory democracy, and establishing national institutions for the promotion of human rights. Technical assistance for legal institutions, including legal training and education for civil servants, is also essential to the United Nations support programme. Assistance in this regard is especially important in post-conflict situations where fragile institutions need support. The United Nations has also supported the series of Conferences of the New or Restored Democracies, and is playing a significant role as regards the Fifth International Conference, due to be held in Ulan Bator in June 2003. According to the Secretary-General "democracy is not a model to be copied from certain States, but a goal to be attained by all peoples and assimilated by all cultures" (A/50/332). The specific circumstances of each society or culture determine the choice and outcome of democratic processes. The promotion of democracy will continue to be among the important tasks of the United Nations system, particularly in countries where the United Nations has special responsibilities, such as post-conflict peace-building. The imperative at the moment is to study how United Nations democracy assistance has evolved, what its contribution is and how it can be strengthened. The United Nations recognizes that it must be the champion of democratic values and human rights in a complex and diverse world where challenges of economic inequalities, terrorism and unlawful counter-terrorism measures, which violate rights and retard democratic change, persist.

## **VI. REGIONAL PERSPECTIVES**

24. This part draws on the presentations of Justice Bhagwati, Adel Abdellatif, Ayodele Atsenuwa, Renate Weber and Federico Andreu Guzman.

### **A. Democracy in the Asia-Pacific region**

25. It is impossible to define democracy in precise terms since it assumes different forms in different countries. However, democracy is not an abstraction. There are certain core values and processes with which it can be identified. Mahatma Gandhi pleaded for the diffusion of power as a way to build real participatory democracy and this applies not only to India but to all other countries in the region. This can happen only if two conditions exist. The system of governance must be characterized by the rule of law in conformity with human rights standards, including the right to development. A strong and independent judiciary is absolutely essential for the protection of basic human rights and, indeed, for the preservation of democracy. The judicial function is essential for the protection and advancement of human rights, and the courts in some

of the countries of the Asia-Pacific region have shown remarkable courage, creativity and craftsmanship in this regard. It is essential to note that many of the poor have no access to justice in the region. Civil and political rights remain distant for large sections of the region's people who are living in conditions of abject poverty, itself a denial of human rights. The only solution for them would be to remake the material conditions and restructure the social and economic order so that through the realization of economic and social rights, they may be able to enjoy civil and political rights and thereby participate effectively in the governance process. The fallacy continues in some countries that civil and political rights should follow socio-economic rights. The right to development is especially important and if people are to enjoy this right, they must have access to "tangible and intangible property", including education. To retain democracy and achieve human rights, it is necessary to take urgent steps to eradicate poverty, illiteracy and ignorance, create awareness of human rights and empower people to participate in democratic processes.

### **B. *The Arab Human Development Report 2002***

26. In general, the Arab region is much richer than it is developed. While it has made significant achievements, many challenges remain. On the positive side, life expectancy has increased, infant mortality is down and it has the lowest regional incidence of extreme poverty. On the other hand, 64 million adults are illiterate, 29 million have no access to health services, and the rate of population growth is the highest in the world. The economic indicators reveal a pattern of regression. The region faces two major challenges for peace and development in the new millennium: freedom from fear and from want. Freedom, rights, equity and knowledge are integral to good governance as well as to development. Specifically, the region faces deficits in freedom, women's empowerment and knowledge. By some measures, scores for civil and political rights, voice and accountability are among the lowest in the world. Secondly, women's political and economic participation, literacy, and scope for leadership are all of serious concern. Seven Arab countries have not yet ratified CEDAW. Thirdly, knowledge acquisition and effective utilization are also lacking. In order to develop more fully, these countries need to strengthen respect for human rights and freedoms as the cornerstones of good governance, to empower women and to better disseminate knowledge and information.

### **C. *Prospects and challenges of the New Partnership for Africa's Development (NEPAD)***

27. NEPAD represents a pledge by African leaders to eradicate poverty and place their countries on the path to sustainable growth and development, and to participate in the world economy and body politic. African leaders committed themselves, inter alia, to promoting and protecting democracy and human rights by developing clear standards of accountability, transparency and participatory governance at the national and subnational levels. To the extent that NEPAD aims to eradicate poverty and foster sustainable development, it may be described as a programme for furthering the enjoyment of human rights. Recognizing that conflicts are one of the most brutal causes of the non-enjoyment of human rights and democracy on the continent, and that the neglect of human rights and democracy are the major causes of conflict, NEPAD contains a Peace and Security Initiative which, if well implemented, can be expected to go a long way in addressing these twin problems and moving Africa along the path to human

rights and democracy. The Democracy and Governance Initiative recognizes the link between democracy and economic governance, and contains commitments to create or consolidate governance processes and practices. NEPAD has been criticized for its perfunctory allusion to human rights and more can be done to synergize NEPAD and the existing human and peoples' rights mechanisms under the African Union. NEPAD does include provisions to ensure significant popular participation in evolving national priorities and development plans. Its Peer Review Mechanism, which aims to keep African leaders under check, is a necessary and commendable development, and the structure and direction of the new African Union are expected to play a major role in the realization of the objectives of NEPAD to foster human rights and democracy on the continent.

#### **D. Minority rights in Europe: towards a policy of inclusion**

28. Several countries in Central, Eastern and South-Eastern parts of Europe paid a significant price for not understanding that democracy and minority rights go together and must be given the same protection. On the one hand, minorities whose national, religious or linguistic identity had been suppressed during the communist era embarked on claiming their explicit rights in the post-communist era. Emerging democracies proved to be weak when challenged by nationalistic discourse and conduct. Almost all of the countries in the region went through moments of violence against one minority or another, and ethnic wars even took place. At the same time, European legislation, initiatives and institutions during the past decade tended to be inclusive, with protection of minority rights conceived as part and parcel of the democratic evolution of a society. As early as 1990, the Organization for Security and Cooperation in Europe (OSCE), while addressing the relationship between democracy and human rights, emphasized the need for special attention to minority rights. OSCE has been particularly helpful in conflict prevention in many places within the former Soviet Union or in Central and Eastern Europe. Indisputably, various European institutions were politically and legally unprepared for the wars within the territories of the former Yugoslavia, although, subsequently, great efforts were made to prevent ethnic conflicts. The European Council agreed in December 1993 that the Pact on Stability in Europe was intended to contribute to stability by preventing tension and potential conflicts in Europe, to promote good neighbourly relations, and to encourage countries to consolidate their borders and to resolve the problem of national minorities. The collapse of communism, the resurgence of nationalism and the wars in the former Yugoslavia convinced the Council of Europe to develop new legal instruments. In 1995, a Framework Convention for the Protection of National Minorities was adopted and, together with the European Charter for Regional or Minority Languages, provides the minimum standards necessary for the preservation of national minorities and their rights. Work still needs to be done to convince all European countries to adopt these legal documents and each constitution should have its own chapter on minority rights. At the level of European institutions, it is clear that although democracy is a prerequisite for human and minority rights, it is not enough, and more efforts have to be made to protect the rights of individuals belonging to national minorities, including special legal and institutional measures.

#### **E. Democracy in Latin America and the Caribbean**

29. Since the 1990s, there has been progressive consolidation of democracy and human rights in the region. The era of transition led to the adoption of new innovative legal regulations which

include a variety of advanced principles on human rights. The region also experienced the emergence of national jurisprudence taking account of human rights. Numerous laws were adopted which made human rights violations offences under criminal law. Seven countries adopted legislation criminalizing enforced disappearances. The 1990s were, however, also characterized by the fragility of the rule of law apparatus. As regards economic, social and cultural rights, despite greater constitutional and legislative recognition, there has been an alarming process of degradation. Foreign debt has increased, recession has set in, and there continues to be a deep imbalance in wealth distribution, and social factors of injustice, especially concerning land reform. To this can be added the privatization policies of education and social security and services, which have led to a degradation of economic, social and cultural rights and to an increase in the number of people living in absolute poverty. Conflicts are escalating. While the State has modernized, many of its traditional attributes and responsibilities have been lost. Often foreign investment goes hand in hand with labour deregulation and reforms which deny workers their rights. This has resulted in an increase in social tensions and reinforced demand for respect for economic, social and cultural rights. Attempts at authoritarian ways of resolving conflicts in this context are to be noted.

## VII. CONCLUSIONS

30. **The following are the Chairperson's final conclusions:**

- **Democracy and human rights are interdependent and inseparable. Human rights standards must be seen to underpin any meaningful conception of democracy, and democracy offers the best hope for the promotion and protection of all human rights.**
- **The High Commissioner for Human Rights opened the seminar with a call for a concept of democracy that is holistic, encompassing the procedural and the substantive, formal institutions and informal processes, majorities and minorities, males and females, Governments and civil society, the political and the economic, the national and the international.**
- **There is no single model of democracy or of democratic institutions. Indeed, the ideal of democracy is rooted in past and emerging philosophies and traditions from all parts of the world, including particular philosophical writings, ancient texts, spiritual traditions, and traditional mechanisms originating in east and west, north and south. Thus, we must not seek to export or promote any particular national or regional model of democracy or of democratic institutions. On the contrary, a key strength of this approach is its recognition that each society and every context has its own indigenous and relevant democratic institutional traditions. While no single institution can claim democratic perfection, the combination of domestic democratic structures with universal democratic norms is a formidable tool in strengthening both the roots and the reach of democracy, and in advancing a universal understanding of democracy.**

- **The basis of democracy is its principles, norms, standards and values, many of which are enumerated in international human rights instruments. Democracy thus goes beyond formal processes and institutions, and should be measured by the degree to which these principles, norms, standards and values are given effect and the extent to which they advance the realization of human rights.**
- **The language of democracy has sometimes been misused. There is a value in helping the international community to be consistent in its use, by emphasizing its internationally agreed normative human rights content and by further clarifying its constituent principles and elements.**
- **Giving effect to democratic principles and to the standards contained in the human rights instruments necessitates the building of strong institutions of democratic governance, based on the rule of law, and including an accountable executive, an elected legislature and an independent judiciary. Democratic institutions ensure popular control of power. Free and fair elections are essential, as are appropriate and effective institutions for popular participation and consultation between elections. Ombudsman offices, national human rights commissions, well-constituted electoral commissions, national oversight mechanisms, public audit offices and other such bodies can all contribute to enhancing democratic governance in a society.**
- **Popular participation and control, collective deliberation and political equality are essential to democracy, and these must be realized through a framework of accessible, representative and accountable institutions subject to periodic change or renewal. Democracy is a mechanism of self-determination, and must be based on the freely expressed will of the people, through genuine elections, with free information, opinion, expression, association and assembly.**
- **In a democracy, the rights, interests and “voice” of minorities, indigenous peoples, women, disempowered majorities such as some populations of post-colonial societies, and vulnerable, disadvantaged and unpopular groups must be safeguarded.**
- **Democracy is never “achieved” and the process of democratization is never complete. Popular vigilance is required. All countries, and the international community itself, are engaged in ongoing processes of democratization, and these processes should be strengthened and supported.**
- **The appeal of democracy includes its association with the advancement of the quality of life for all human beings. There is an inextricable link between democracy, all human rights and socio-economic progress and development. There is no “either-or” dichotomy between socio-economic progress and democracy. On the contrary, democracy, development and human rights are interdependent and mutually reinforcing, and should thus be pursued together.**

**Meaningful and informed political participation is in fact dependent upon the fulfilment of economic and social rights such as the right to food and the right to education. The right to development is itself a crucial area of public affairs in every country, and requires free, active and meaningful participation.**

- **In the current context of globalization, whereby decisions affecting people's lives are often taken outside the national context, the application of the principles of democracy to the international and regional levels has taken on added importance. What should be pursued is a continuum of democratic governance, extending from the village to the State, to our regional and international institutions and back.**
- **The effective application of the rule of law and the fair administration of justice are vital to the good functioning of democracy. Democracy thus demands attention to ensuring judicial independence, applying human rights law in judicial decisions, combating corruption in judicial systems, strengthening judicial administration, assuring adequate resources for the justice sector, and enhancing judicial training and education.**
- **The essential role of democratically elected legislatures requires particular emphasis. Properly constituted legislative bodies represent a vital institutional link between the people, their democracy and their human rights.**
- **The media should play an important role in democracies by contributing to the dissemination of human rights information, facilitating informed public participation, promoting tolerance, and contributing to governmental accountability. To do so, however, they must promote tolerance and social responsibility and be careful in their use of terminology and fair and responsible in their reporting. At the same time, concentration of media power can undermine democracy.**
- **A freely functioning, well-organized, vibrant and responsible civil society is essential to democratic governance. This presumes an active role for non-governmental organizations, women's groups, social movements, trade unions, minority organizations, professional societies and community groups, watchdog associations and others. Such groups have historically made important contributions to the formulation and advocacy of democratic rights. Civil society must itself adhere to the principles of human rights and democracy.**
- **Democracy, in form and substance, is threatened by concentration and abuse of power, poverty, corruption, foreign occupation and aggression, inequality, discrimination, repression of minorities, exclusion of women, terrorism, abusive counter-terrorism measures, inadequate education, ineffective and unaccountable civil service, and, in general, all abuse of human rights. Building, protecting and consolidating democracy means, necessarily, countering these threats.**

- **Well-functioning democracies require adequate resources and technical expertise, both of which are appropriate subjects of international cooperation and assistance, where requested by countries seeking to strengthen democratic processes and institutions.**

31. **The seminar identified a number of issues for further attention. These include:**

- **International norms and standards for democracy.**
- **Impact of inequality and poverty on democracy.**
- **Representativeness, accountability, transparency and integrity of public institutions and officials and political organizations and ways and means to enhance this through oversight mechanisms, codes of conduct, and other measures.**
- **Democratic requirements for the functioning, performance and financing of political parties.**
- **Impact of powerful economic actors on democracy.**
- **The challenge of corruption to democracy.**
- **The rights of persons belonging to minorities and disadvantaged and vulnerable groups in a democracy.**
- **Benchmarks for democratic performance.**
- **Technical assistance and exchanges of expertise for democratic capacity-building (institutional and human) to enhance effectiveness and performance of democratic institutions.**
- **Support for human rights and civic education for democracy.**
- **Role of parliaments in linking democracy and human rights.**
- **Role of the media in contributing to democracy and human rights.**

**Annex I**

**AGENDA**

**Monday, 25 November 2002:**

- 10.00 a.m. WELCOMING REMARKS  
Sergio Vieira de Mello, United Nations High Commissioner for Human Rights
- 10.10 a.m. CHAIRPERSON'S INTRODUCTION  
Frene Ginwala, Chairperson
- 10.15 a.m. KEYNOTE ADDRESS  
Surin Pitsuwan, Keynote Speaker
- 10.30 a.m. EXPERT PRESENTATIONS  
  
Current concepts of democracy; its founding principles, dimensions, processes and institutions at the local, regional and global levels; the relationship between democracy and civil, cultural, economic, social and political rights (David Beetham, Shadrack Gutto)  
  
Presentation of the *Human Development Report 2002* (Sakiko Fukuda-Parr)
- 11.30 a.m. DISCUSSION IN PLENARY
- 12.30 p.m. EXPERT PRESENTATIONS  
  
Strengthening the rule of law in building democratic societies: human rights in the administration of justice (Diego Garcia Sayan, Dimitrina Petrova)
- 3.00 p.m. EXPERT PRESENTATIONS  
  
The role of parliaments in promoting and protecting human rights (Anders Johnsson, Jérôme C. Sacca-Kina Guézéré)  
  
The role of media in democracies: rights and responsibilities (Mohammad-Mahmoud Ould Mohamedou, Keith Richburg)  
  
Democracy and civil society (Nancy Thede)
- 4.15 p.m. DISCUSSION IN PLENARY
- 5.15 p.m. WRAP-UP  
(Chairperson)

**Tuesday, 26 November 2002:**

- 10.00 a.m. INTRODUCTION TO DAY 2  
(Chairperson)
- 10.15 a.m. DISCUSSION GROUPS (Rooms XX and XXI)
- GROUP 1 (Room XX) - INSTITUTIONS OF DEMOCRACY  
(Facilitator, Kevin Boyle)
- GROUP 2 (Room XXI) - HUMAN RIGHTS SAFEGUARDS IN  
DEMOCRACIES (Facilitator, Claudio Cordone)
- 11.30 a.m. DISCUSSION GROUP REPORTS  
(Kevin Boyle and Claudio Cordone)
- 12.00 noon DISCUSSION IN PLENARY
- 3.00 p.m. THE UNITED NATIONS AND THE PROMOTION AND  
STRENGTHENING OF DEMOCRACY
- United Nations democracy assistance activities (Danilo Türk)
- United Nations treaty bodies and special procedures and the strengthening of  
democracy (Roman Wieruszewski)
- 3.30 p.m. REGIONAL PERSPECTIVES
- Presentations of the *Arab Human Development Report 2002* (Adel Abdellatif)
- Democracy in Latin America and the Caribbean (Federico Andreu Guzman)
- NEPAD (Ayodele Atsenuwa)
- Democracy in Asia and the Pacific (Justice Bhagwati)
- Minority rights in democratization processes in Europe (Renate Weber)
- 4.30 p.m. DISCUSSION IN PLENARY
- 5.30 p.m. CONCLUDING REMARKS  
(Chairperson)

## **Annex II**

### **LIST OF PARTICIPANTS**

#### **Experts**

Ms. Adel ABDELLATIF	Mr. Anders JOHANSSON
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Mr. Kevin BOYLE	Mr. Keith RICHBURG
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Ms. Sakiko FUKUDA-PARR	Ms. Nancy THEDE
Mr. Diego GARCÍA SAYÁN	Mr. Danilo TÜRK
Ms. Frene GINWALA	Ms. Renate WEBER
Mr. Shadrack GUTTO	Mr. Roman WIERUSZEWSKI
Mr. Federico GUZMÁN	

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