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Chair: Mr. Mac-Donald. (Suriname)

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

Agenda item 69: Promotion and protection of human rights (continued)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (continued) (A/67/56, A/67/159,

A/67/163, A/67/178, A/67/181, A/67/226, A/67/260, A/67/260/Add.1, A/67/261, A/67/267, A/67/268, A/67/271, A/67/275, A/67/277, A/67/278, A/67/285, A/67/286, A/67/287, A/67/288, A/67/289, A/67/292, A/67/293, A/67/296, A/67/299, A/67/302, A/67/303, A/67/304, A/67/305, A/67/310, A/67/357, A/67/368, A/67/380, and A/67/396)

(c) Human rights situations and reports of special rapporteurs and representatives (continued) (A/67/327, A/67/333, A/67/362, A/67/369, A/67/370, A/67/379 and A/67/383)

1. **Mr. Darusman** (Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea) said that his report to the General Assembly (A/67/370) was based on his visit to Thailand in June 2012 and on meetings held in Geneva, New York and Jakarta since March 2012, when he had reported to the Human Rights Council (A/HRC/19/65). He had not been granted access to the Democratic People's Republic of Korea since his appointment in August 2010 but had visited neighbouring countries and held talks with their Governments. According to updated information from civil society and United Nations entities, an estimated 16 million people in the country continued to suffer from varying degrees of chronic food insecurity and severe malnutrition.

2. In Thailand, he had been briefed on the problems facing those who fled the Democratic People's Republic of Korea, including the abuse of asylum seekers by traffickers and their detention in transit countries. During the reporting period there had been no sign of improvement in the human rights situation, and reports of abuses continued to be received. Declarations by the country's new leader, Kim Jung Un, that strengthening the military was his sole priority could only be detrimental to the population's well-being. Since the leadership change in December 2011, there had been information on the detention of officials accused of calling into question the smooth

transition amid concerns that they would be subjected to public execution or forced labour, torture or other ill-treatment in the country's numerous political prison camps. In April 2012, about 40 non-governmental organizations (NGOs) had compiled information on the most horrific abuses committed in those camps. It was estimated that 150,000 to 200,000 people were imprisoned for alleged political crimes.

3. According to recent reports the State exploited ambiguities in the Criminal Code to impose severe restrictions on the rights to freedom of opinion, expression and assembly, despite constitutional guarantees. Several articles of the Criminal Code ran counter to international standards or contained vague or undefined terms. Furthermore, many provisions of the Criminal Code stipulated punishment for acts that would not normally be regarded as crimes.

4. In accordance with the social structure of the Democratic People's Republic of Korea known as *songbun*, the population was divided into three groups: the "core", "wavering" and "hostile" classes. Since most of those fleeing the country belonged to the "hostile" class, it could be argued that their departure was motivated by political persecution or membership of a particular social group, qualifying them as refugees under the 1951 Convention relating to the Status of Refugees. Those fleeing the Democratic People's Republic of Korea for economic reasons might become refugees "*sur place*", because of their valid fear of persecution upon their return based on their membership in a specified group.

5. It was an offence for citizens of the Democratic People's Republic of Korea to leave the country without State permission under article 62 of the Criminal Code. That was in clear violation of article 12 of the International Covenant on Civil and Political Rights. There were numerous reports of offenders being punished with up to five years in a prison camp or even death. Article 245 of the Criminal Code, punishing anyone who damaged the State's prestige abroad, might be used against asylum seekers who drew attention to the grim conditions in the country.

6. In his report to the General Assembly (A/67/362), the Secretary-General urged the countries neighbouring the Democratic People's Republic of Korea to respect the principle of non-refoulement under the 1951 Convention relating to the Status of Refugees. Instead of forcibly returning those fleeing persecution from the

Democratic People's Republic of Korea, they should afford them international protection. The Secretary-General also noted that, since his previous report, there had been no substantial changes in the obstacles faced by the United Nations in systematically monitoring and recording the human rights and humanitarian situation in the Democratic People's Republic of Korea.

7. The issue of the abduction of foreign nationals remained unresolved, including about 500 reported cases involving nationals of the Republic of Korea. Nor was there any new information on 12 pending cases of the abduction of Japanese nationals, despite the commitment made in 2008 by the Democratic People's Republic of Korea to conduct a full-scale investigation. That country must stand by its pledge to Japan to re-investigate those cases.

8. The Government of the Democratic People's Republic of Korea should rethink its "military first" policy and reallocate resources to improve the living standards of its people. The international community should at the same time continue to provide humanitarian support to the people of the Democratic People's Republic of Korea without political conditions. The Government must ensure the protection and promotion of human rights in the country in accordance with international instruments and in cooperation with the Office of the High Commissioner for Human Rights (OHCHR). It should repeal any legislative provisions, in particular articles of the Criminal Code that ran counter to international standards.

9. Countries where nationals of the Democratic People's Republic of Korea sought refuge or were in transit should adhere to the principle of non-refoulement and not forcibly return persons seeking international protection. States in the region that were not party to the 1951 Convention should ratify it at the earliest opportunity. The Government of the Democratic People's Republic of Korea should share information with the international community on the status of treatment of persons forcibly returned to the country.

10. In 2011, he had asked the Committee what action should be taken on all the reports on the situation of human rights in the Democratic People's Republic of Korea issued since 2004. For several decades, egregious human rights abuses in that country had been extensively documented by various actors, including

United Nations entities. Lastly, he called on the international community to consider setting up a more detailed mechanism of inquiry, based on an assessment of the underlying trends following a comprehensive review of the relevant documentation.

11. **Mr. Köhler** (Observer for the European Union) urged the Government of the Democratic People's Republic of Korea to cooperate with the Special Rapporteur. The European Union would again be presenting a draft resolution on the situation of human rights in the Democratic People's Republic of Korea. His delegation would appreciate more information on the impact of restrictions on the rights to freedom of opinion, expression and assembly, in particular use of the media and the Internet, on people's daily lives, education and development. It also wished to know what issues needed to be most urgently addressed in terms of cooperation with the Office of the High Commissioner for Human Rights.

12. **Mr. Shin** Dong-ik (Republic of Korea), noting that asylum seekers forcefully repatriated to the Democratic People's Republic of Korea faced harsh punishment, urged all of the countries concerned to adhere rigorously to the fundamental principle of non-refoulement. Deeply disturbed by the large number of political prisoners in the country and the ill-treatment to which they were subjected, his delegation called for their immediate release. The Special Rapporteur should indicate whether he intended to cooperate on that issue with other human rights mechanisms and, if so, how that would be done. His delegation urged the Government of the Democratic People's Republic of Korea to take effective measures to tackle the deteriorating food production and distribution situation, to address the issue of foreign detainees, including abductees, Korean War prisoners and separated families, and to cooperate fully with the Special Rapporteur.

13. **Mr. Kodama** (Japan) expressed his delegation's disappointment that the Democratic People's Republic of Korea had again refused to recognize the Special Rapporteur's mandate and to act on the recommendations made following its universal periodic review. Urging the Government of that country to take immediate action to protect its most vulnerable citizens and allocate more resources to the provision of food, he asked the Special Rapporteur to elaborate further on how he intended to follow up that issue. Expressing his delegation's concern at the situation of political

prisoners and asylum seekers, he urged all countries to adhere to the principle of non-refoulement.

14. His delegation was heartened by the Special Rapporteur's expressed intent to pursue the matter of the abduction of foreign nationals, which was of universal concern as a violation of basic human rights. The issue of Japanese citizens abducted by the Democratic People's Republic of Korea remained unresolved, despite its Government's 2008 agreement to launch an investigation. Lastly, his country called for close cooperation in that regard with the Special Rapporteur and asked him how he intended to pursue the matter.

15. **Ms. Skácelová** (Czech Republic) asked the Special Rapporteur whether, in the light of the systematic and widespread human rights violations mentioned in his report, he saw any possibility of holding individuals to account and whether he recommended setting up an investigative mechanism.

16. **Mr. Lazarev** (Belarus) said that his delegation regretted the politicization of the Human Rights Council, including the establishment by certain groups of States of country-specific mandates, undermining key principles on which the Council had been founded. Country-specific resolutions and mandates served no purpose if the Governments concerned did not recognize them. The Government of the Democratic People's Republic of Korea had never recognized the mandate of the Special Rapporteur, and nothing could be done to force it to cooperate. Instead, human rights bodies should establish a dialogue with the Government in question. The human rights situation in countries should be assessed on the basis of the universal periodic review, not the subjective approaches followed by separate groups of States.

17. **Ms. Robl** (United States of America) expressed concern at the provisions of the Criminal Code of the Democratic People's Republic of Korea mentioned in the report. She asked the Special Rapporteur for his opinion on the most appropriate way for the international community to encourage the Government to bring the Code in line with international practices and on the main obstacles to achieving that objective.

18. **Mr. Duddy** (United Kingdom) called on the Government of the Democratic People's Republic of Korea to end all discrimination in terms of access to basic needs and services, urging it to give welfare priority over military expenditure. His delegation

supported the Special Rapporteur's calls for the Government to repeal all provisions of the Criminal Code that fell short of international standards and for all countries to apply the principle of non-refoulement with regard to asylum seekers. It also wished to know how the international community could best respond to the situation of political prisoners in the country.

19. **Mr. Sjoberg** (Norway) asked the Special Rapporteur how the international community could, in practical terms, bring humanitarian assistance to the people of the Democratic People's Republic of Korea and, in view of the absence of major economic reforms, what his thoughts were on the so-called economic adjustments being made in the country. His delegation commended the Special Rapporteur's emphasis on asylum seekers in his report and encouraged him to continue his efforts in that area.

20. **Ms. Fontana** (Switzerland) urged the Government of the Democratic People's Republic of Korea to cooperate with all international human rights instruments and repeal all provisions in its Criminal Code that did not meet international standards. Her delegation hoped that the Special Rapporteur would focus more on the plight of political prisoners in his future reports and asked what steps the international community could take to ensure that economic cooperation with the Democratic People's Republic of Korea had a positive impact on human rights.

21. **Mr. Dempsey** (Canada) said that his Government remained deeply disturbed by reports of serious violations of human rights in the Democratic People's Republic of Korea and of the cruel treatment of political prisoners. The humanitarian situation continued to be of serious concern, with severe flooding affecting the most vulnerable members of society, whose health was already threatened by severe food insecurity. Despite widespread starvation, the Government continued to spend heavily on weapons programmes and, while its people continued to live in isolation, oppression and misery, it appeared to delight in irritating the international community. His delegation asked whether humanitarian workers were able to reach those in need and would appreciate the Special Rapporteur's advice on ways in which Member States could help him fulfil his mandate.

22. **Ms. Thomas** (Cuba) said that her delegation had always objected in principle to United Nations country-specific mandates based on political motivations rather

than the real situation of human rights in the countries of the South. The exercise was incompatible with the aim of normalizing human rights situations around the world, and such mandates were doomed to failure. The universal periodic review was the optimal way to protect human rights and help the States concerned, as it was unbiased and imposed equal conditions on all.

23. **Mr. Kim Song** (Democratic People's Republic of Korea) said that his delegation categorically rejected the Special Rapporteur's report and the groundless allegations made by some delegations. His Government would never recognize the mandate of the Special Rapporteur, whose report was product of the hostility of the European Union and the United States towards his country. All human rights issues must be addressed in accordance with the principles of the Universal Declaration of Human Rights and the Charter of the United Nations.

24. Until 2003, his Government had successfully cooperated on human rights with the international community, including the United Nations treaty bodies and the European Parliament, and had granted their representatives free access to the country. His country had nothing to hide or fear and was proud of its superior system of protecting human rights. Although it was willing to negotiate with the international community, it would never abandon its principled approach of refusing to cooperate with the Special Rapporteur. No attempt to make use of the report to smear the dignity and prestige of the Democratic People's Republic of Korea could prevail against the strength of its socialist system.

25. **Ms. Li Xiaomei** (China) said that her delegation opposed the setting up of country-specific human rights mechanisms and hoped that the international community would take a more constructive approach to the economic and social challenges facing the Democratic People's Republic of Korea, including providing humanitarian assistance to the country. An objective assessment of the situation would be conducive to development and stability on the Korean peninsula. Persons illegally entering Chinese territory were not refugees but economic migrants. China had always followed the principles of international law.

26. **Mr. Darusman** (Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea) said that he agreed that the best way of helping to improve the situation in the

Democratic People's Republic of Korea was to encourage the Government to comply with the universal periodic review, the most widely accepted channel for dialogue with the international community. Yet the Democratic People's Republic of Korea was the only State that had not complied with that procedure, and many norms and practices in the country continued not to meet international standards. Cooperation between the Government and OHCHR in that regard might open up new avenues for improving the situation.

27. Improving access to the Internet in the Democratic People's Republic of Korea would lead to totally centralized controls. Since only a comprehensive reform process would have a lasting effect, the international community should take a long-term approach. Despite all the challenges facing the Democratic People's Republic of Korea, the regime was not about to collapse. In the meantime, the international community could alleviate the humanitarian problem by continuing to provide aid regardless. He repeated his call for the Government's military spending to be diverted to investment in agricultural reforms.

28. His report had focused on the Constitution and Criminal Code. His role was to serve as a focal point to compile all the information gathered by the United Nations and the very international NGOs cited by the delegation of the Democratic People's Republic of Korea. His report reflected the state of play in the country with regard to human rights. The provisions of the Criminal Code were on record for all to see, including the vague wording that allowed the Government to interpret them as it saw fit, impinging on the freedom of its citizens.

29. **Ms. Shaheed** (Special Rapporteur in the field of cultural rights), introducing her first report to the General Assembly (A/67/287), said that it focused on the enjoyment of cultural rights by women on an equal basis with men. The realization of women's cultural rights was pivotal to the realization of their human rights in general. Women had the right to gain access to, participate in and contribute to all aspects of cultural life. The tendency to view culture as an impediment to women's human rights was a problematic oversimplification diverting attention from the specific actors, institutions and rules that kept women subordinated within patriarchal systems.

30. She called for a shift in paradigm towards ensuring women's equal enjoyment of cultural rights. The struggle for women's human rights was not against culture, religion or tradition. The critical issue was not whether and how culture, religion and tradition prevailed over women's human rights but how to ensure that women owned both their culture and their human rights.. Women must be able to participate on an equal basis in discussions and decision-making processes relating to those issues.

31. Gender-based discrimination was defended by reference to culture, religion and tradition, and no social group had suffered greater violation of their human rights in the name of culture than women. Such practices would not have been tolerated had they been based on racial or other classifications. Some viewed cultures as static and historical while challenging the universality of human rights. Under international human rights law, cultural diversity could not be invoked to limit human rights. International norms clearly opposed the imposition of restrictions on women's cultural rights in order to preserve cultural diversity, as that was tantamount to restricting the principles of non-discrimination and equality.

32. Only through a full understanding of cultural diversity could a response be made to the promotion of cultural relativism. Individual identities promoted characteristics distinguishing between people, while collective identities privileged similarities within a group. Those identities were constantly being defined, refined and redefined in response to external factors and internal reflection. All individuals belonged to multiple, diverse and changing communities and must not be forced to identify themselves only in terms of one aspect of their identity, including gender. The protection of multiple identities helped to resist and overcome forces that sought to deny pluralism and gender equality.

33. Combating cultural practices that were detrimental to human rights did not jeopardize the existence and cohesion of cultural communities but stimulated discussions that facilitated developments in favour of human rights. Women's perspectives, concerns and contributions should move to the centre of the processes that created, interpreted and shaped culture. States must take all necessary measures to ensure that women were equal spokespersons and were authorized to reshape every community that they wished to be part of and create.

34. Cultural rights could transform and empower, providing vital opportunities for the realization of other human rights. The lack of equal cultural rights, combined with economic and social inequalities, made it very difficult for women to enjoy personal autonomy, exercise their civil and political rights and, in particular, participate in political life. Merely asserting the principle of equality was insufficient. The effective implementation of human rights standards required measures that turned law into reality.

35. Equality had to be embraced by society and human rights had to be "vernacularized" by grounding the related concepts in diverse cultural traditions and by enforcing culturally sensitive norms that ensured adherence by means of input from and the consent of the governed. Human rights practice must provide protection from imposing outsiders' ideologies while overcoming community practices and norms that perpetuated women's subordination. Internal discourses and cross-cultural dialogues must be incorporated, respectively to achieve legitimacy and to ensure that perspectives are reciprocally shared.

36. In her report, she had proposed a set of questions to be asked whenever gender-biased social arrangements were defended in the name of culture. The report contained a number of suggestions to States for assessing the level of implementation of women's cultural rights on the basis of equality. Special attention must be paid to women's participation in community decision-making and to the due diligence to be exercised with respect to discriminatory conduct by non-State actors, in particular cultural, religious and educational institutions and the media. Lastly, she encouraged academic institutions, scholars and civil society to gather evidence of the diversity of practices and identify any measures that could catalyse transformative equality processes in cultural life.

37. **Ms. Kaljulate** (Observer for the European Union) asked how States could enable women to address cultural practices and identities that infringed on human rights. Her delegation would appreciate suggestions as to how to eradicate structural and systemic discrimination. The Special Rapporteur had called for a re-examination of the contextual framework in order to promote women's cultural rights. Her delegation wished to know what the best way of achieving that goal was.

38. **Ms. Thomas** (Cuba) said that she agreed that the promotion of cultural diversity was essential for the full respect of cultural rights. Her delegation supported the Special Rapporteur's emphasis on gender mainstreaming in the creation and definition of culture and wanted to know what actions could be developed nationally and internationally to translate that aim into reality.

39. **Ms. Shaheed** (Special Rapporteur in the field of cultural rights) said that States should first assess the situation by answering the questions contained in her report. Above all, women and girls must have equal opportunities to participate in and contribute to cultural life, including leisure and sport activities. In many countries, women's contributions to history and the formation of culture must be made more visible. Those women claiming their rights must have a legitimate voice to bring about change.

40. More needed to be done to identify and document good practices, as the situation on the ground was often more complex than was suggested by legislation and other outward signs. With the help of civil society, States should step up their reporting to treaty bodies, in particular the Committee on the Elimination of Discrimination against Women, with greater focus on women's participation in cultural life, an aspect that had largely been neglected. All States should lend more support to women's initiatives and discussion of the issue among young people. It was the State's responsibility to exercise due diligence with respect to non-State actors, whose actions often prevented women from enjoying their cultural rights.

41. **Mr. Selvanathan** (Chair of the Working Group on the issue of human rights and transnational corporations and other business enterprises) said that the annual debate of the General Assembly had highlighted some of the global challenges facing the United Nations, including armed conflicts, scarce resources and the impact of human activity on the environment and climate. Within the United Nations system, attention to those challenges had focused on State responsibility under international law for human rights. Yet any effective understanding of the contemporary human rights situation must reflect the interdependency of traditional State responsibilities and the role of businesses.

42. The contribution of commerce to civilization had been overwhelmingly positive, but actions associated

with the manufacture, distribution, financing and innovation of some products and services could negatively impact human rights and the environment and continued to cause avoidable conflicts. The interdependency of States and businesses should inform approaches to addressing global challenges, above all the deliberations on the sustainable development goals, agreed upon at the Rio+20 Conference and in the post-2015 development agenda.

43. In 2011, the Human Rights Council had endorsed the Guiding Principles on Business and Human Rights, following six years of work and extensive global and regional consultations. While affirming the duty of States to protect human rights in the context of business, the Guiding Principles clearly set out the corporate responsibility to respect human rights. Endorsement of the Principles had established them as a global authoritative standard for actions to be taken by States and businesses to address the negative effects of business activity on human rights and ensure effective access to remedies. It rewarded decades of efforts at the United Nations to address the issue of human rights and business, providing a common framework for multi-stakeholder cooperation and progress in every region and every sector, to increase the prevention and mitigation by States and business of any negative effects as well as accountability and access to remedy when those effects were felt.

44. In 2011, the Working Group, whose report he was introducing (A/67/285), had been entrusted by the Human Rights Council to support dissemination of the Guiding Principles and encourage States and businesses to implement them and offer them guidance. The Guiding Principles provided a solid foundation for progress, but no behavioural norms for avoiding harm to human rights and providing remedies could be established unless States and businesses took real action. The Working Group had therefore adopted a strategy and presented it to the Human Rights Council in June 2012. In addition to promoting implementation by States and businesses, the strategy focused on reinforcing convergence of other standards around the Guiding Principles and embedding the latter in key global governance frameworks.

45. There had already been some significant progress and initiatives. Several global and regional institutions had taken important steps since the Guiding Principles had been endorsed and the Working Group looked forward to cooperating further with regional bodies to

support their implementation. Regional organizations, civil society and business associations had mobilized to create tools for implementation, inter alia developing guidance for specific economic sectors. The Working Group would be cooperating in that area, ensuring that all tools were coherent and aligned with the Principles.

46. The Secretary-General's report on the contribution of the United Nations system as whole to the advancement of the business and human rights agenda (A/HRC/21/21) contained a list of important recommendations for the system and its individual agencies and programmes. It had been welcomed by the Human Rights Council and the Working Group, which called on Member States to contribute to United Nations efforts to implement the recommendations, in particular those on capacity-building and the establishment of the proposed global multi-stakeholder fund. More needed to be done to raise awareness and build capacity in order to implement the measures in the Guiding Principles. The Working Group was ready to provide guidance and assistance and was developing initiatives to facilitate peer learning and the establishment of national plans of action.

47. The Working Group had recently made its first country visit to Mongolia, where it had learned about the opportunities for the State and enterprises to apply the Guiding Principles, in particular with regard to the mining boom. The Working Group had made recommendations on how to implement the Principles and reduce the potential impact of the boom on human rights and the environment. Under the Working Group's guidance, the first Forum on Business and Human Rights would take place in Geneva on 4 and 5 December 2012. It would enable States, enterprises and civil society from around the world to share experiences on dissemination and implementation, learn from initiatives elsewhere, identify challenges and discuss solutions.

48. **Mr. Sjoberg** (Norway) asked the Chair of the Working Group to elaborate on the main challenges to State implementation of the Guiding Principles and how they could be overcome. Information on best practices for mainstreaming the issue of business and human rights in the United Nations system that could be held up as a reference would also be appreciated.

49. **Ms. Isella** (Switzerland) said her delegation wished to know the priorities of the Working Group for the first half of 2013, in particular with regard to

country missions, which were crucial for the implementation and dissemination of the Guiding Principles, and what activities it intended to carry out to improve integration of the business and human rights agenda in the United Nations system. Her delegation would also appreciate information on the Working Group's plans to promote relations between States and those businesses operating within their jurisdictions.

50. **Ms. Kaljulate** (Observer for the European Union) said that the European Union had presented various initiatives on business and human rights, introducing the notion of corporate social responsibility, while the European Commission was working on the development of national plans for implementing the Guiding Principles. Her delegation wished to know how the business-related human rights dimension should be integrated into the preparations for and negotiations on the post-2015 development agenda and what the short-, mid- and long-term perspectives were for implementing the Principles.

51. **Ms. Chase** (United States of America) said that her country had taken a number of steps to support the Working Group in its efforts to implement the Guiding Principles, such as hosting workshops and backing civil society initiatives. Her delegation would like to know the Working Group's opinion on areas requiring immediate focus with regard to strengthening State obligations and asked whether the Working Group believed that priority should be given to certain industrial sectors when implementing the Guiding Principles and, if so, which ones.

52. **Ms. Mozalina** (Russian Federation) pointed out that, in view of the world economic crisis, it had become even more important to ensure that transnational corporations respected human rights. Her delegation wished to know the specific plans of the Working Group for disseminating information on the Guiding Principles among the general public and, in particular, among vulnerable groups, to improve their access to legal and administrative measures and the enjoyment of their social and economic rights.

53. **Mr. Selvanathan** (Chair of the Working Group on the issue of human rights and transnational corporations and other business enterprises) said that, in order to overcome the main challenges to State implementation of the Guiding Principles, Governments should improve coordination on

policymaking among ministries, agencies and other bodies and step up their cooperation on investment and other strategies with the private sector and businesses. Mainstreaming business and human rights throughout the United Nations system had proved a challenge owing to the different mandates and objectives of the bodies within the system. The successes achieved in promoting and protecting women's and children's rights and labour rights might serve as examples for how to address business and human rights.

54. The relationship between States and businesses often called for transnational cooperation, as was already the case in regional blocs such as the European Union and the Association of Southeast Asian Nations. Transnational corporations might follow the example set by the cooperation within those bodies. The main challenge facing the Working Group and implementation of the Guiding Principles was awareness-raising among all players. Embedding the Principles in existing and nascent processes, including the post-2015 development agenda, was another priority. The Working Group's interrelationship with Government representatives and the business community offered an opportunity for aligning both sides' interests with regard to business and human rights. When those interests were focused on people's lives and their immediate needs, cooperation could be at its most fruitful.

55. **Mr. de Greiff** (Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence) introduced his first report as Special Rapporteur (A/67/368), which focused on the contributions that the four elements of his mandate could make to the rule of law. He welcomed the Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels. It went well beyond formalism and did not reduce the rule of law to a mere regularity, which offered no real guarantees against gross human rights violations. The Declaration reaffirmed the interrelationship between human rights, democracy and the rule of law and emphasized the mutually reinforcing character of the rule of law and development. His was the first United Nations mandate to examine comprehensively ways of dealing with human rights abuses committed in the past along with serious violations of international humanitarian law.

56. Truth commissions could be powerful catalysts of institutional reform with regard to the rule of law.

Conflict, repression and systematic abuses of fundamental rights often led to the marginalization of women, ethnic and religious groups, and others. Truth commissions offered spaces where persons who had been excluded or silenced could assert their claim to exercise their rights. Vetting, one of the guarantees of non-recurrence, could promote the rule of law by leading to the removal of security and justice personnel involved in gross human rights violations, thus sparing people the ordeal of facing their abusers when seeking State services. That could also dismantle criminal networks whose activities might hamper rule of law reform processes. Moreover, vetting measures demonstrated the willingness of institutions to comply with fundamental rights when recruiting, promoting or dismissing staff.

57. Reparations programmes could promote the rule of law by helping States to honour their obligations, including that of providing effective remedies and fair and equal treatment under the law. They manifested particular rights, while enabling the exercise of others. The restitution of citizenship and the expunging of unjustified criminal records, for example, could have profound effects on individuals' future opportunities. Material reparations could make a difference to people's lives, improving victims' prospects of exercising their rights equally under the law.

58. When violations or conflicts had a collective or group dimension, reparations programmes could have an inclusive redress effect, strengthening the notion of the generality of law and the protection that it afforded. Criminal prosecutions for systematic abuses upheld the principles of the sovereignty of law and equality, according to which nobody was above the law. The complexities of such proceedings helped to develop transferable skills and strengthen the overall capacities of judicial systems.

59. There was also a reflexive dimension to the rule of law, as the measures intended to strengthen it were required to abide by the same principle. Implementation of the four elements of his mandate could contribute to the rule of law, provided they were designed and implemented in a way that complied with all its requirements, including guarantees of procedural fairness, equality and even-handedness.

60. In the light of national successes and international agreements such as the Declaration of the High-level Meeting on the Rule of Law, his desire to

promote the significance of the implementation of the four elements of his mandate might seem superfluous. However, despite progress, there was no room for complacency. National experiences were the fruit of the efforts and even struggles of victims, often in the face of government resistance or reluctance to take measures and even a tendency to trade one measure against another.

61. A great deal of rule of law reform work, as well as development or security programming, with or without United Nations support, proceeded without any attention to the legacy of human rights violations. Many countries that had undergone periods of repression, conflict and systematic rights abuses had found that regimes based on “law and order” or “rule by law” were ultimately ineffective in protecting human rights. It was therefore important to agree not only on a robust notion of the rule of law but also on how best to give it institutional expression nationally and support those efforts internationally.

62. Rule of law reform continued to be a largely forward-looking exercise, often ignoring the legacies of rights violations. It was difficult to see how the developmental or security benefits of the rule of law could be accrued unless institutions were trustworthy or how they could be trusted if they allowed the violation of their fundamental norms to become inconsequential. Trust in institutions rested upon evidence that power was effectively regulated, that people were treated equally and that they had recourse when they were not.

63. The elements of his mandate were intended to contribute to recognizing past abuses and ensuring that past violations were properly redressed. The strength of the rule of law in the present and its prospects for the future depended on what had happened in the past, because the rule of law required the participation of all as equals. Some people had suffered in ways that others could not reasonably expect them to forget. Lastly, he hoped that when the stakeholders discussed the post-2015 development agenda, they would have a robust understanding of the rule of law and would bear in mind the place that transitional justice played in constructing strong rights regimes.

64. **Ms. Kaljulate** (Observer for the European Union) said that her delegation welcomed the Special Rapporteur’s emphasis on a victim-centred approach to the implementation of his mandate, in respect of which

reparations were an important measure. The International Criminal Court (ICC) ruling on reparations in the Lubanga case was encouraging in that regard. Her delegation wished to know the Special Rapporteur’s views on the best way to involve civil society in reparation procedures. It would also appreciate further information on how best to bring about gender mainstreaming in the implementation of his mandate and on establishing the participatory measures that took account of the different needs of men, women and children. Her delegation agreed with the Special Rapporteur that the rule of law and justice needs of each country should be carefully considered in transitional justice processes.

65. **Mr. Errázuriz** (Chile) said that the rule of law must be promoted in connection with democracy and human rights, while the victims of conflicts and human rights abuses must be recognized as such in the eyes of justice. The gender perspective must be included in the implementation of the Special Rapporteur’s mandate, as women were at the forefront of the defence of human rights in transitional justice situations.

66. **Mr. Achgalou** (Morocco) recalled that Morocco, along with Argentina and Switzerland, had initiated the resolution establishing the Special Rapporteur’s mandate. In view of the huge global demand for assistance with transitional justice, in connection with that mandate, his delegation wished to know if the Special Rapporteur had received specific requests for assistance, in particular from countries that had yet to frame policies or set up bodies to implement the necessary measures, and what his plans were for assisting countries in that regard. Emphasizing the importance of the gender perspective, in particular with regard to reparations, he urged the Special Rapporteur to take into account the specificity of each country and society in the implementation of his mandate.

67. **Ms. Fontana** (Switzerland) said that her delegation supported the Special Rapporteur’s emphasis on victims’ rights and the gender perspective in his work. Moreover, on the tenth anniversary of ICC, it was vital for States to establish the truth and combat impunity by cooperating with national and international initiatives. Her delegation would like to know the Special Rapporteur’s recommendations to States on how to reinforce the interconnection between the four pillars of his mandate and the connection between them and the construction of peace and also

inquired about his objectives for work in the future and cooperation with other special rapporteurs.

68. **Mr. Sjöberg** (Norway) said that his delegation agreed with the focus on gender equality for the implementation of the Special Rapporteur's mandate. It was also right to focus on the needs of victims, especially marginalized groups, in situations of transition. He asked the Special Rapporteur which policies States should adopt in order to address the needs of all marginalized groups, including minorities, and how the United Nations could best contribute to the rule of law by supporting transitional justice measures.

69. **Mr. de Greiff** (Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence) recalled that he had begun work under his mandate as recently as May 2012. In order to take into account national and regional specificities, he intended to begin with a series of regional and subregional consultations. The first such consultations would take place shortly, at the invitation of the Government of Egypt and with the cooperation of other Governments and civil society organizations in the region.

70. The Latin America regional consultation meeting, hosted by the Government of Argentina, would be held in December 2012. Three more regional consultations would follow, with the aim of exploring his mandate in cooperation with Member States and civil society and determining how States had already undertaken the difficult task of transitional justice. Despite the resource limitations that all special rapporteurs faced, his office would do its best to meet all requests for technical and other assistance.

71. Transitional justice measures to date had tended to underserve the interests of women and marginalized groups. That was surprising given the key role played by women in the preparations for those measures and the disproportionate impact of conflict and human rights abuses on women. Progress had been made in some countries, however, towards addressing that impact and offering women reparations; the experience of Morocco, for example, was of particular interest in that regard. One of his first tasks would be to try and systematize best practices throughout all situations of transitional justice.

72. The main thematic priority areas for the implementation of his mandate were the interrelation

between its four elements, the need to increase the effectiveness of the measures taken in certain contexts and the means of closely linking the four elements of the mandate with broader issues of security and development. It was vital to address the tendency to design and implement policies as if no human rights abuses had taken place. He concluded by calling for all stakeholders to turn rhetoric into practice.

73. **Ms. Shaheed** (Special Rapporteur in the field of cultural rights), reading out the statement of the Special Rapporteur on the situation of human rights defenders on her behalf, said that her report (A/67/292) focused on ways in which the use of different types of legislation affected the activities of human rights defenders. Those included legislation to combat terrorism and to ensure public security, as well as legislation relating to public morals or governing the registration, functioning and funding of associations. Official secrets and defamation were two other areas covered in her report.

74. The Special Rapporteur on the situation of human rights defenders had received reliable accounts of legislative steps taken recently in many Member States that tended to restrict defenders' working space. That worrisome trend could be traced in part to the legislative provisions concerned but also to the application of certain forms of legislation, which seemed to call for guidance to be given. The report therefore offered observations on different types of legislation and explained why the restrictions observed did not comply with international human rights law, in particular the Declaration on human rights defenders, adopted by the General Assembly in 1998.

75. The Special Rapporteur recalled in her statement that the principle of non-discrimination was enshrined in the Declaration on human rights defenders, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The principle was fundamental to the rule of law and, therefore, to the way in which legislation regulated the activities of defenders. It was closely linked to the right to equality before the law, as provided for in the Universal Declaration and the International Covenant. Human rights defenders must not be prosecuted for anything that would not constitute a violation of the law. Moreover, the legislation needed to identify exactly what constituted an offence and leave no room for individual interpretation or inconsistent application. However, the stigmatization of human rights defenders

by Government officials and the judiciary made that difficult to achieve. Member States must address those problems in a comprehensive manner.

76. Human rights defenders continued to be arrested, convicted and harassed by Governments under the guise of enforcing anti-terrorism legislation. Defenders exercising their rights to freedom of expression, freedom of association and, to some extent, freedom of peaceful assembly had been at particular risk in recent years. Freedom of expression had suffered setbacks in a number of Member States where the Government had sought to regulate social media and other new forms of communication. Arrest, detention and prosecution procedures under anti-terrorism legislation and other laws relating to national security tended to limit access to persons prosecuted under such legislation and to information relating to their arrest. Access to persons detained under such circumstances was of vital importance in order to protect the rule of law, and human rights defenders played a key role in that regard.

77. Legislation relating to public morals had considerable implications for human rights defenders working to combat discrimination relating to sexual orientation, gender identity and sexual and reproductive rights. The situation of defenders working to protect the human rights of lesbian, gay, bisexual and transgender (LGBT) persons continued to be volatile given that same-sex relations between consenting adults were criminalized in more than 75 countries worldwide. Defenders of sexual and reproductive rights also experienced constraints resulting from legislation seeking to preserve public morals. Such harassment should not occur.

78. Member States should repeal laws criminalizing unregistered associations working towards the realization of human rights. It should be up to the associations themselves to decide whether they wished to register in order to benefit from the advantages of that status. It was a matter of great concern that some Member States were seeking to restrict the thematic areas in which associations were permitted to work. Such provisions were contrary to the principles of indivisibility and interdependence.

79. Under the guise of protecting national sovereignty, some States had enacted legislation outlawing associations working to defend political rights if they received foreign funding. That

profoundly and negatively affected the work of human rights defenders, who often depended on funding from abroad to conduct their activities. Defamation legislation was frequently misused by political and economic powers to retaliate for criticisms or allegations of mismanagement or corruption and to exert undue pressure on the media. Criminal prosecution for defamation inevitably led to censorship and hindered expression of dissent. Accordingly, Member States should, therefore, decriminalize defamation.

80. The Special Rapporteur on the situation of human rights defenders concluded by pointing to the need for Member States to pay close attention to the four main principles that had been developed to ensure that human rights and the rule of law were upheld: legality, necessity, proportionality and procedural safeguards.

81. Turning to the statement by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, she said that since her appointment in 2008 the Special Rapporteur had focused on analysis of the dominant role played in the housing sector by the financial markets and its impact on the right to adequate housing, especially for the poor and vulnerable. She had closely followed the financial and economic crises, their links with mortgage markets and responses to the crises in the affected countries. While the concept of housing as a financial asset had disproportionately affected the poorer segments of society, it was still adhered to in developing countries.

82. The obligation to ensure the realization of the right to adequate housing did not oblige Governments to provide State-built housing for all. Housing financing could be an important component of a housing strategy and was especially effective for middle- and high-income groups. However, it could not be the only or principal policy. In order to comply with their international human rights obligations, States must constantly monitor their housing policies and assess their compatibility with the realization of the right to adequate housing without discrimination.

83. The evidence on housing finance was clear: the promotion of access to adequate housing could not be based solely on financial mechanisms. In order to protect and promote the right to adequate housing, including for the poorest and most marginalized, broader State policies and interventions were needed,

including investments in infrastructure and basic services, human settlements upgrading and urban planning. Meaningful consultation and participation were required to ensure that different needs and situations were taken into account, giving priority to the most vulnerable. A mixture of tenure solutions was essential for the promotion of access to adequate housing for different segments of society and in order to shield the housing sector from economic and financial shocks.

84. Turning to the statement by the Special Rapporteur on trafficking in persons, especially women and children, she said that the Special Rapporteur's mandate included the prevention of all trafficking in persons, by State and non-State actors. In most of the cases brought to her attention, the private sector was involved, in particular in the context of labour exploitation, and played a major part in efforts to eliminate trafficking. The Special Rapporteur had therefore dedicated her annual report (A/67/261) to the issue of human trafficking in supply chains, to examine the ways in which trafficking manifested itself in the global economy and to recommend ways in which States and businesses could effectively and sustainably combat that phenomenon.

85. The Special Rapporteur had made a number of recommendations to States, calling on them, inter alia, to adopt laws and take initiatives that encouraged greater corporate compliance with the responsibility to prevent and combat trafficking in persons. Her recommendations to businesses included a call for them to conduct risk assessment for their entire production chain, and to develop and adopt high-level, company-wide policies or strategies to eliminate risks. They should introduce effective monitoring systems, such as social audits, to scrutinize the risks of human trafficking at every level of their supply chain.

86. Earlier in 2012, the Special Rapporteur on trafficking in persons, especially women and children, had made country visits to Gabon and the United Arab Emirates at the invitation of their Governments, whom she thanked for their support and cooperation. The reports on those visits would be presented to the Human Rights Council in 2013.

87. Cooperation and partnership among all stakeholders were critical in the fight against human trafficking and had been discussed at the recent sixth session of the Conference of the Parties to the United

Nations Convention against Transnational Organized Crime in Vienna. Member States and other stakeholders should renew their commitment to fight in concert human trafficking and ensure universal respect for the human rights of all persons.

The meeting rose at 6 p.m.