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Chair: Mr. Gunnarsson (Iceland)

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The meeting was called to order at 10.05 a.m.

Agenda item 72: Promotion and protection of human rights (*continued*) ([A/72/40](#), [A/C.3/72/9](#) (to be issued))

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(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) ([A/72/279](#), [A/72/281](#), [A/72/322](#), [A/72/382](#), [A/72/394](#), [A/72/493](#), [A/72/498](#), [A/C.3/72/2–S/2017/798](#), [A/C.3/72/3–S/2017/799](#), [A/C.3/72/4–S/2017/800](#), [A/C.3/72/5–S/2017/816](#), [A/C.3/72/6–S/2017/817](#), [A/C.3/72/7–S/2017/818](#), [A/C.3/72/8–S/2017/819](#), [A/C.3/72/10–S/2017/852](#) (to be issued) and [A/C.3/72/11](#) (to be issued))

1. **Mr. Zerihoun** (Assistant Secretary-General for Political Affairs), presenting the report of the Secretary-General on strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization ([A/72/260](#)), said that the United Nations had provided about one third of Member States with primarily technical assistance or strengthening capacity of national electoral authorities over the past two years.

2. The Under-Secretary-General for Political Affairs was responsible for ensuring comprehensive coordination and system-wide coherence in electoral assistance by continuing to expand the internal policy framework of the Organization and strengthening the roster of qualified and pre-cleared experts. Beyond the United Nations, progress had been made in supporting the development of electoral capacities of regional and subregional organizations with measures including activities in collaboration with the League of Arab States and the Organization of Islamic Cooperation, and a new electoral partnership with the Caribbean Community (CARICOM) secretariat. The Electoral

Assistance Division of the Department of Political Affairs had also maintained a senior expert in the United Nations Office to the African Union to support both entities in electoral matters.

3. On the question of women's political participation and representation, the global average percentage of women in lower or single houses of parliament had almost doubled since 1997 to 23.4 per cent but was still far short of gender balance. While more women than ever before took part as voters, candidates, polling agents, election officials and observers, violence against women prevented them from exercising their right to participation, hampered opportunities for equal representation in decision-making and weakened democratic processes.

4. Elections could ensure conciliation, give voice to citizens and facilitate peaceful transitions, but also had the potential to deepen divisions, lead to exclusion or trigger violence. Credible elections required those involved to lower the stakes and reduce zero-sum dynamics in advance, address structural issues of contention and root causes of conflict, and guarantee a role for the opposition while protecting human rights. It was also necessary to adopt electoral rules through dialogue and political consensus, pursue the inclusion and participation of marginalized groups, and emphasize the responsibility of political leaders to engage in constructive behaviour without recourse to incitements, threats or unfounded allegations.

5. Available to help Member States overcome the challenges faced in conducting elections, the United Nations electoral support system offered political impartiality, decades of international expertise, multifaceted assistance from system-wide entities, and a global focal point. Electoral assistance was designed to complement other United Nations activities, particularly in support of peaceful transitions, democratic governance, the rule of law, human rights and gender equality.

6. **Ms. Lu Hui** (Chief of the Intergovernmental Affairs, Outreach & Programme Support Section, Office of the High Commissioner for Human Rights (OHCHR)) said that she was highlighting a selection of reports from a total of fifteen on human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms.

7. The report of the Secretary-General on globalization and its impact on the full enjoyment of all human rights ([A/72/132](#)) summarized views received from Algeria, Argentina, Iraq, Madagascar, Morocco, the Philippines, Portugal, Senegal and Serbia, and

identified common concerns including migration, the activities of transnational corporations and other businesses, corruption and good governance, and the sustainable development goals. Concluding that globalization was a multifaceted process with both positive and negative political, economic, cultural and social effects, the report made recommendations for addressing the impact of globalization on the full enjoyment of human rights.

8. The report of the Secretary-General on the role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights (A/72/230) reflected the responses to a questionnaire on the legal basis of the creation and functioning of those institutions, their funding, roles and activities, best practices, cooperation with international and regional organizations and networks, and obstacles encountered.

9. The report of the Secretary-General on the right to development (A/72/201) examined the implementation of that right and provided recommendations including fundamental changes to global financial, economic and developmental policies to facilitate development with renewed multilateralism and international cooperation, equality and non-discrimination, a rights-based approach and more democratic space at all levels. Reforms necessitated international trade and investment by integrating human rights and environmental protection to prevent adverse effects and fairly distribute benefits. Participatory people-centred development called for increased investment in inclusive, equitable and sustainable development, and public sector revitalization to create policy space for development, equitable access to basic services and social protection for the poor.

10. The report of the Secretary-General on human rights and cultural diversity (A/72/289), which looked at regional, national and international efforts to enhance the recognition and importance of cultural diversity among all peoples of the world, summarized the information received from States on the legal and policy framework and on interventions aimed at promoting multiculturalism and tolerance and protecting groups at particular risk and cultural heritage. The submissions recognized the critical role of education in promoting tolerance and the value of cultural diversity.

11. The report of the Secretary General on the effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistics Minorities (A/72/219) summarized activities implementing General Assembly resolution 70/166 from October 2015 to June 2017. It highlighted

human rights challenges, measures undertaken to address related global and national concerns, written replies of stakeholders regarding follow-up activities by OHCHR, and findings and conclusions in reports from United Nations bodies and mechanisms.

12. The report of the Secretary-General on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/72/316) highlighted human rights concerns of the United Nations system including accountability, respect for the rights of victims, the impact of national counter-terrorism legislation, surveillance policies and practices, due process considerations, and detention-related issues including the prevention of torture. The report also emphasized the invaluable role of the Organization in providing risk analysis, early warning, technical cooperation and practical guidance for States and other duty-bearers in counter-terrorism, and highlighted the importance of the United Nations Office of Counter-Terrorism in enhancing coordination across the Counter-Terrorism Implementation Task Force to ensure that counter-terrorism measures were rooted in respect for obligations under international human rights law.

13. The report of the Secretary-General on the steps taken by States to combat intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons based on religion or belief (A/72/381) underscored the critical need for more action to stem the prevailing tide of religious intolerance and for improved implementation of the action plan based on Human Rights Council resolution 16/18. It also considered the importance of governments and religious officials speaking out against religious intolerance, and addressed interfaith and intercultural dialogues, hate crimes, radicalism and extremism, and public information campaigns.

14. The report of the Secretary-General on the safety of journalists and the issue of impunity (A/72/290) focused on the risks faced by women journalists, proposing a gender-sensitive approach and the urgent need for systematic monitoring of violations; collection and analysis of data disaggregated by gender and other factors; political will to address the issue; legislative and policy development and implementation; and accountability. A multi-stakeholder consultation in June 2017 to strengthen the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity had resulted in an outcome document containing 30 action-oriented options.

15. **Mr. Moussa** (Egypt), speaking on behalf of a cross-regional group comprising Belarus, the Russian

Federation and all Organization of Islamic Cooperation (OIC) member states except Albania, said that their statement must not be considered a form of engagement or cooperation with the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, whose mandate Egypt did not recognize, having been established by a highly divisive resolution adopted by a vote by a slim margin. The imposition of controversial notions outside the internationally agreed human rights legal framework contradicted fundamental universality and would lead to polarization.

16. OIC had stated its position on social and family issues at the forty-third session of its Council of Foreign Ministers. The Human Rights Council and mandate holders must respect relevant historical, cultural, social and religious sensitivities while exercising mandates, especially where addressing matters with no basis in international human rights law. Respecting different religions and beliefs was important for the work of the Council, and attempts to impose sets of values contradictory to the religion and belief of 1.5 billion Muslims around the world would do more harm than good to the promotion and protection of human rights.

17. **Mr. Mikayilli** (Azerbaijan), referring to the report on the safety of journalists and the issue of impunity, said that Azerbaijan was among sixteen states contributing to the report and wished to see its contribution reflected therein. Allegations regarding Azerbaijan in paragraphs 48 and 52 of the report were not substantiated by facts and thus were invalid. The Government fully guaranteed freedom of expression and freedom of the media, but journalistic and human rights activities did not exempt individuals from liability for offences committed and subsequent legal proceedings. The principal of equality of all before the law was always observed regardless of origin, occupation or political affiliation

18. **Mr. Moussa** (Egypt), speaking on behalf of Egypt in its capacity as Chair of the African Group for October 2017, said that his statement must be considered a demonstration of the persistent objection to the mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, which the African Group did not believe to have any basis in internationally agreed human rights law. Furthermore, the creation of the office of the Independent Expert did not enjoy consensus as it had been established by an extremely thin margin and challenged by a significant number of Member States in two consecutive votes, serving as a reminder of the pitfalls of creating a mandate that was discordant with the fundamental principles of human rights and would

weaken the integrity of the Human Rights Council and the greater United Nations system.

19. In 2017, the African Group had advised of the need to allow Member States sufficient time to collectively define the basis on which the mandate holder would operate, but the position of the Group had been misrepresented, resulting in the current polarization. The legal capacity of the Human Rights Council for creating special procedures did not eliminate the authority of the General Assembly to oversee the work of the Council and subject the mandate created to the universality of the General Assembly. The African Group wished to state its continued opposition to the office of the Independent Expert given the importance of respect for State sovereignty, national customs and cultural differences while pledging its commitment to promoting and respecting the rights of citizens of all religions creeds and races and working with the United Nations find real consensus on difficult issues.

20. **Mr. Okafor** (Independent Expert on human rights and international solidarity) said that preparation of the draft declaration on the right of peoples and individuals to international solidarity had begun with the delineation of a framework on the deep linkage between human rights and international solidarity, characterized as the first phase of the work of the mandate. The second phase was an in-depth examination of the relevant issues that shifted the focus on international solidarity from principle to right. Phase three involved analysing the results of the previous stages, circulating a preliminary text of the Draft Declaration for consultation, consolidating additional comments and inputs, and finalizing the initial Draft Declaration for submission to the Human Rights Council.

21. The previous mandate holder, Ms. Dandan, had then begun demonstrating the utility of the Declaration by applying it to the work of the mandate, conducting a country visit to Cuba to determine the compatibility of international cooperation and solidarity practices there with the principles in the Draft Declaration. He would present the resulting report in 2018, when he would also visit Sweden as part of his mandate, and expressed interest in visiting Indonesia, Malawi, the Netherlands, the Republic of Korea, South Africa and the United Republic of Tanzania.

22. Presenting a report drafted by his predecessor, he said that it focused on international cooperation with strengthened implementation and revitalized global partnerships, an area of concern that had eventually been reflected in Sustainable Development Goal 17 targeting finance, technology, capacity-building, trade, systemic issues, data, monitoring and accountability. Goal 17

recognized the need for a new global partnership to achieve the most important transformative shift towards a new spirit of solidarity, particularly with the poorest and most vulnerable, that must underpin the post-2015 agenda.

23. As resources were key to sustainable development, the first five targets of Sustainable Development Goal 17 related to finance. The draft declaration built on existing human rights law requiring States to mobilize resources for the realization of human rights through measures including international cooperation and assistance, and emphasized international cooperation and an approach to international financial agreements that was consistent with human rights.

24. While reinforcing international law on cooperation and shared solutions based on common but differentiated responsibilities, the draft declaration also recognized the importance of preventive solidarity in proactively addressing root causes of inequalities between developed and developing countries and structural obstacles that generated poverty worldwide.

25. Preventive solidarity included a vision of shared technological endeavours that should help in finding common solutions to common problems, enable each State to fulfil its human rights obligations, and inform the next set of Goal 17 targets relating to technology and capacity-building. Similarly, trade targets should reflect the call for a human rights-based approach to trade ensuring that benefits were distributed in a manner consistent with human rights principles.

26. The final set of targets under Goal 17 was directed at systemic issues and required a human rights-based approach to create an international system addressing issues comprehensively. Respect for that overarching principle would generate policy coherence and ensure the participation of all stakeholders, especially the vulnerable.

27. The Draft Declaration on the right to international solidarity anchored global partnerships and advanced international commitments with respect for human rights law and principles. He called on Member States to incorporate the Draft Declaration into efforts to complete the 2030 Agenda for Sustainable Development and create a truly global and sustainable partnership.

28. **Mr. Suárez Moreno** (Bolivarian Republic of Venezuela), speaking on behalf of the Non-Aligned Movement, said that international solidarity and human rights were fundamental historic values upon which the Non-Aligned Movement was based. Solidarity was a fundamental component of relations among nations in all circumstances. South-South cooperation was an

expression of solidarity and cooperation among States that contributed to their national wellbeing with respect for sovereignty, national ownership and independence, equality, non-conditionality, non-interference in the internal affairs of other States, and mutual benefit. The response of the international community to pandemics and various natural disasters was similarly exemplary.

29. At the September 2016 summit of the Non-Aligned Movement, the Heads of State and Government had recognized solidarity as a broad concept encompassing sustainable international relations, peaceful coexistence, and the transformative objectives of equity and empowerment of developing countries. Further initiatives including enhanced solidarity on shared issues were agreed to achieve multilateral cooperation on economic development and social progress, peace and security, and human rights for all.

30. **Mr. Rodríguez Hernández** (Cuba) said that the July 2017 visit to Cuba by the previous mandate holder had been fruitful, and his Government looked forward to the report to be presented to the Human Rights Council in 2018. International solidarity and its various components must be a fundamental tool for addressing the different problems on the international agenda. Cuba hoped that the new mandate holder would follow up on the declaration and ensure support from Member States for its full implementation.

31. **Mr. Almansoori** (Qatar) said that his country believed that international cooperation was a broad concept encompassing international relations and peaceful coexistence between nations, not merely the provision of local humanitarian assistance. The State of Qatar had made every possible effort to support the previous Independent Expert in executing her mandate by hosting regional consultations in January 2016 with representatives from the Middle East and North Africa. Qatar supported international solidarity by respecting the sovereignty of countries to achieve common goals and enhance peace, security and human rights.

32. **Ms. Haidour** (Morocco) said that international solidarity was enshrined in the Constitution, with a focus on partnership in solidarity with the other States. Morocco's policy had been founded on principles including openness, moderation and dialogue, and its effective aspects included initiatives promoting sustainable development in Africa. The Government strategy on international cooperation entailed humanitarian action, technical cooperation and triangular cooperation. Numerous projects had been implemented with funding from donor countries or supported by international organizations.

33. In consideration of the 2030 Agenda goal of leaving no one behind, Morocco fully promoted South-South cooperation with an African dimension, and had the instruments needed to reinforce its commitment to international solidarity and human rights. She asked whether the right to international solidarity was a vector for revitalization of the international partnership for sustainable development, and also requested details of measures to be implemented by States for the purpose of preventive solidarity.

34. **Mr. Okafor** (Independent Expert on Human Rights and International Solidarity) said that the main examples of preventive solidarity to date related to different natural disasters around the world, to which other States often responded in order to stem further loss of life and provide resources, shelter and security. One could also envisage preventive solidarity extending beyond natural disasters to the limitation of consequences such as the effects of climate change or to more extensive cooperation on migration issues.

35. **Mr. Surya Deva** (Chair, Working Group on the issue of human rights and transnational corporations and other business enterprises), presenting the report of the Working Group on Business and Human Rights, said that the Human Rights Council had unanimously endorsed the United Nations Guiding Principles on Business and Human Rights in July 2011, creating the first global standard for preventing and addressing business-related human rights abuses and providing a roadmap based on three pillars: the State duty to protect human rights; the corporate responsibility to respect human rights; and access to remedy, the focus of the current report.

36. As rights without remedies meant little in practice, realizing access to effective remedies was a priority for the Working Group, which had continued to receive information on business-related human rights abuses against human rights defenders, environmentalists, migrant workers, women, children, indigenous communities and other individuals since its previous report to the General Assembly. It was important for States and businesses to prevent such abuses and ensure effective remedies where prevention failed.

37. The Working Group welcomed efforts by Member States to improve regulatory frameworks to address business-related human rights abuses, and had provided recommendations on the business and human rights dimension of the sustainable development agenda, as development that did not respect human rights could not be sustainable. It was also developing guidance to assist businesses in respecting and supporting human rights defenders and preserving civic space in line with the

Guiding Principles, the gender dimension of which was examined in a recently launched project. It commended the efforts of Member States to produce national actions plans on business and human rights, and was engaged in consultations in different world regions to facilitate the sharing of experiences.

38. The report detailed an effective remedy under the Guiding Principles, a way for States and businesses to ensure that rights holders were central to the remedy process, and an approach informing the action of all relevant stakeholders to realize effective remedies for those affected by business-related human rights abuses. Access to an effective remedy had both procedural and substantive aspects. Both States and businesses should implement mechanisms that could deliver remedies that were effective in both process and outcome.

39. Any process for remedying human rights violations should take rights holders and their suffering seriously, and the opinions of informed and empowered rights holders should matter most in determining the effectiveness of remedies. The remedy process should be sensitive to their diverse experiences, as they were not a homogenous group. Different groups of rights holders, especially the vulnerable or marginalized, experienced the impacts of business-related human rights abuses differently and might have varied expectations of remedies. Some groups also faced additional barriers in seeking access to effective remedies.

40. Remedies should be accessible, affordable, adequate and timely from the perspective of the affected rights holders, who might be prevented from availing of seemingly effective remedies in practice where they feared victimization. States should ensure that those adversely affected by business activities faced no obstacles in accessing remedial mechanisms, and businesses should cooperate with States by ensuring that actions to defend corporate interests did not have a chilling effect on the legitimate exercise of seeking effective remedy.

41. Rights holders should be able to seek, obtain and enforce a “bouquet of remedies”. Multiple forms of remedies might be required where no single remedy was effective, and different remedies might be more appropriate in different situations. Available remedies should also combine elements of prevention, redress and deterrence to ensure overall effectiveness.

42. The report highlighted the need for adopting an “all roads to remedy” approach in which access to effective remedy should be taken as a common thread running through all three interconnected and interdependent pillars of the Guiding Principles. The

realization of effective remedies in the field of business and human rights also required concerted action by key players.

43. States had individual and collective responsibility to ensure that victims of business-related human rights abuses had access to effective remedies, which was also facilitated by the independent but complementary interaction of business enterprises, civil society organizations and human rights defenders. Effective remedies could be sought in diverse settings, including consumer courts, labour tribunals and environmental courts, and mechanisms were in place to avoid negative impacts of other parallel regimes, such as dispute settlement under trade or investment agreements.

44. **Ms. Haidour** (Morocco) said that the human rights responsibilities of companies were the focus of public opinion in Morocco. In addition to the national legislative framework aimed at ensuring balance between social fairness, human rights compliance and economic viability, awareness-raising campaigns had been conducted encouraging companies to incorporate the Guiding Principles. Ensuring recourse and remedy was very important. She asked whether there were good practices for incorporating human rights and preventing all violations available to small and medium-sized enterprises without the financial resources of corporations and transnational companies.

45. **Ms. Mkhwanazi** (South Africa) said that discussions on transnational corporations and other business enterprises with respect to human rights centred on the inextricable link between protection of the rights of victim communities, access to effective legal remedies and zero tolerance for impunity of human rights violators. To ensure protection and justiciability, her Government had called for the elaboration of standards in international human rights law, for which the Guiding Principles on Business and Human Rights did not represent the minimum threshold. It was difficult to hold transnational corporations and other business enterprises to account without effective enforcement and remedial measures. Access to remedy should be seen the rule rather than the exception. She asked for more information on how the Guiding Principles would ensure zero tolerance for impunity.

46. **Mr. Ariturk** (United States of America) said that his country supported both the right of non-governmental private sector companies to do business and accountability for human rights abuses such as forced labour. While the Guiding Principles represented an important global consensus, it was important to make tangible progress on improving the ability of rights

holders to achieve access to the bouquet of remedies mentioned in the report.

47. While effective domestic remedies were critical in protecting rights and exposing wrongs, an active independent media and effective independent judicial system were also key elements for all countries to cultivate. Multiple remedies should be concurrently available to rights holders, as different remedies might be more effective in different situations. His Government encouraged companies to develop effective stakeholder engagement and employee grievance mechanisms. The United States looked forward to sharing best practices and lessons learned at the 2017 United Nations Forum on Business and Human Rights, and asked what key takeaways the Working Group hoped would emerge there.

48. **Mr. Rodríguez Hernández** (Cuba) said that access to justice, objectivity and fair administration were essential. It would be useful for the Working Group to elaborate on the consolidation of national and international efforts in constructing a comprehensive protection and remedy framework for victims of violations, and to address the human rights implications of treaties promoting regional foreign interventions that protected investors to the detriment of the state while affecting the local population's enjoyment of human rights. He asked how to address the phenomenon whereby dispute resolution bodies outside national jurisdictions rendered rulings that favoured investors to the detriment of the State and excluded considerations of the victims of violations committed by international companies.

49. **Mr. Forax** (Observer for the European Union) said that ensuring the centrality of rights-holders throughout the remedy process would require a transformative shift in both remedial mechanisms and interactions among all relevant stakeholders. The report urged proactive measures to address power imbalances between the corporations committing human rights abuses and the affected rights holders. He asked for more elaboration on practical measures that could be taken to empower individuals and communities subjected to business-related abuses to realize their rights to adequate and effective remedies and for more information on the role of civil society in addressing existing power imbalances between enterprises and right-holders, and in ensuring that judicial and non-judicial remedial mechanisms could provide effective remedies in practice. The European Union had already taken significant steps to ensure genuine and effective access to remedy.

50. **Mr. Ríos Sánchez** (Mexico) said that his country had always fully supported the promotion and

implementation of the Guiding Principles and had established corresponding national policies. The advancement of human rights was a priority for Mexico, as demonstrated by the development of a national business and human rights programme whose aims included disseminating remedy mechanisms, developing protocols for aiding victims of human rights violations, and strengthening effective and accessible mechanisms of conciliation. The Government was aware of the need to strengthen the normative framework regarding businesses and human rights in the areas of justiciability, access to justice and availability of remedies.

51. With regard to cooperation between States in the prevention and handling of transnational human rights violations, he asked which good practices among States had been identified for promoting the development of remedies. He also wished to know which specific measures in national action plans gave individuals better access to effective remedy measures for human rights violations, and to what extent arbitration proceedings in commercial and investment cases filed by States against transnational companies favoured the effective remedy of business-related human rights violations suffered by individuals.

52. **Ms. Muraki Gottlieb** (Observer for the International Chamber of Commerce) said that respecting and advancing human rights was a priority for her organization, which had endorsed the Guiding Principles to its members around the world and promoted other government-backed instruments for responsible business conduct. It continued to assist businesses in meeting their human rights responsibilities and had called for the operationalization of a range of remedies, noting that no single solution suited all situations. The International Chamber of Commerce had been stressing to its members the importance of action on remedies and had provided information at various meetings on human rights remedies of its members to provide input to the dialogue among stakeholders. The organization had been mobilizing its global network of national committee representatives to call on their respective governments to develop a national plan that would align national laws with the Guiding Principles.

53. **Ms. Joubli** (Switzerland) said that attacks on many of those expressing their concerns about the negative impacts of economic projects affecting surrounding communities reduced civic space and freedom of expression. States were still obliged to proactively meet their obligations to protect human rights in the face of economic risks and take the necessary steps to require all businesses operating in their jurisdiction to respect human rights. In December

2016, the Government had published its national action plan for implementing the Guiding Principles with a view to promoting respect for human rights among companies based in Switzerland, meeting its protection obligations by implementing non-legally binding measures together with complementary legal requirements where necessary. Her delegation looked forward to the scheduled exchanges on implementing access to effective remedies at the upcoming United Nations Forum on Business and Human Rights in Geneva. She asked the Chair of the Working Group for his thoughts on collective implementation of the forum results by all stakeholders, which Switzerland considered essential.

54. **Mr. Torbergson** (Norway) said that the effectiveness of remedies must be judged with reference to the needs of the affected rights holders. In relation to the contention in paragraph 21 of the report that rights holders should be consulted in creating, designing, informing and operating remedial mechanisms, he asked whether that referred to rights holders seeking remedy through both judicial and non-judicial mechanisms. He agreed that the availability of a non-exhaustive list of remedies was vital for rights-holder access in view of the varied circumstances in which human rights abuses occurred. Individual rights holders might perceive the adequacy of the available remedies differently. He wondered how those individual perspectives could be reconciled with the need to provide equal remedy for the same violation.

55. **Mr. Forman** (United Kingdom) said that the United Kingdom welcomed the assertion that States, businesses and civil societies bore responsibilities as stakeholders, and stressed the importance of implementing all three pillars of the Guiding Principles, which it had implemented through its own national action plan updated in 2016. His country was keen to work with others to share experiences. The need for remedies was essentially triggered when there were already human rights abuses to address through fair and accessible local systems of governance. The United Kingdom supported that emphasis but asked how it should be balanced with the similar or greater need to prevent harm.

56. **Ms. Sukacheva** (Russian Federation) said that it was important to take account of the specificities of various groups of rights holders when considering the provision of legal defence. Justice should be impartial and protect all victims of violations equally to avoid discrimination. Restoring the rights of victims of unscrupulous business activities went hand in hand with informing the public of available legal defences and ways of accessing them. State bodies and civil society

had key roles to play, while the non-governmental sector should focus on constructive cooperation with the authorities to address issues in the promotion and protection of human rights.

57. In discussing targets of victimization seeking remedy for violations, the report mentioned direct victims of unscrupulous businesses but also human rights campaigners, whose inclusion was unexpected and whose rights were not subject to defence by the Working Group in her delegation's opinion. It was unacceptable to cite the recommendations of the Working Group or conclusions of regional agencies as imperative guidelines for States. Regional or international entities proposed advice that Governments could use to provide access to effective remedies.

58. **Ms. Cruz** (Spain) said that effective remedy was essential for practical application of the Guiding Principles. Adopted in July 2017, the Spanish National Action Plan on Businesses and Human Rights had been developed using the guidelines of the Working Group on National Action Plans. Highlighting the role of human rights defenders in ensuring access to remedies, the Spanish plan also examined collaboration with civil society and the development of instruments to disseminate information on accessing remedy mechanisms, and the compilation of good practices on establishing complaint procedures managed by the companies meeting the criteria identified in Guiding Principle 31.

59. The report contemplated the centrality of rights holders in access to effective remedies, discounting unreasonable perspectives yet guaranteeing effective remedy for rights holders with low expectations as a result of their social, economic and cultural circumstances. She asked for further elaboration on the issue.

60. **Ms. Mballa Eyenga** (Cameroon) said that the recommendations in the report related to states and businesses, but her delegation believed that the international community, OHCHR and the regional and country offices could also provide access to recourse and remedies and support for all actors including civil society in defending economic, social and cultural rights. There was a need for outreach and awareness-raising in relation to the Guiding Principles, which were still not well known on the ground. She asked for a recommendation that would assist OHCHR, its offices and in-country United Nations bodies in contributing to social responsibility in businesses.

61. **Mr. Morales López** (Colombia) said that his country was now promoting a new business culture that sought international recognition, dissemination to all

levels of Colombian society, and promotion of the respect for human rights in all activities of the population, State and businesses. The Government had been implementing its national action plan for businesses and human rights since 2015 as a public policy instrument created in collaboration with businesses, civil society and the international community. The agribusiness, mining and energy, and road infrastructure sectors must be prioritized as they posed potential risks for human rights. The plan also recognized that most business-related human rights challenges were to be found in territories historically affected by armed conflict.

62. The efforts of Colombia in implementing an action plan that sought to establish a culture of human rights protection in businesses were part of the transition to peace, which presented major difficulties as the country faced new challenges. Civil society and the State had key roles to play in peacebuilding, particularly in complex environments such as zones of armed conflict, where the national action plan would hopefully serve as a transformative tool. The Government remained convinced that prevention was the most effective way to protect human rights. Exhaustive work was underway on right-based remedies and mechanisms that could contribute to peacebuilding.

63. **Mr. Surya Deva** (Working Group on the issue of human rights and transnational corporations and other business enterprises), drew attention to the June 2017 report of the Working Group to the Human Rights Council ([A/HRC/35/33](#)), which contained recommendations on good practices for small and medium-sized enterprises. In relation to human rights due diligence, he understood that different enterprises had different capacities and diverse operations, but noted that small and medium-sized enterprises were increasingly part of the global business production and manufacturing network and were also linked to multinational enterprises, so both small business and larger players might have a responsibility for human rights in that sector.

64. In response to the question on the toleration of impunity, he said that this could be addressed if States were willing to implement national legislation, the Guiding Principles, international conventions and other measures. Good recommendations could be developed from the June 2017 report of the Working Group, which discussed good practices in cross-border situations where abuses occurred across a number of States.

65. As to key takeaways from the Forum on Business and Human Rights, the focus in 2017 was on active remedies for the first time. The hope was that

constructive brainstorming would produce a consensus among all stakeholders on how to improve access to effective remedies. The guidance in the 2016 report to OHCHR was a critical document to be implemented, together with further guidance from subsequent reports. The Working Group was also considering providing further guidance to States and businesses on issues including the gender lens on the Guiding Principles, human rights defenders, and bilateral investment treaties and their impact on access to remedies, while also exploring the possibility of establishing a global network of pro bono lawyers to help affected communities around the world, for which the forum would hopefully provide an impetus.

66. He recognized that global and regional frameworks could be useful in the human rights context, especially as some abuses were transnational, and expected cooperation among multiple states where those violations might have occurred. The Working Group was starting a new project on access to remedy in the case of bilateral investment agreements and hoped to provide concrete recommendations to States in the future. It was not only investors who could take States before arbitration; affected communities could also pursue investors if there were legitimate grounds.

67. A number of practical measures could be taken to correct power imbalances. To address linguistic barriers preventing migrant workers in Europe from being aware of their rights and available remedies, for example, States could provide suitable training for officials as well as literature and capacity-building seminars for the affected communities. Similarly, where a defendant could afford a lawyer but the affected member of the community could not, the imbalance could be redressed by providing legal aid.

68. With regard to the question from Mexico about cooperation among States, he referred again to the June 2017 report containing good practices on corruption, human trafficking and other situations. States could try to implement similar measures in the context of business and human rights. The report also highlighted five elements to be considered when providing effective remedies and restitution.

69. As to whether the consultation with rights holders mentioned in the report was limited to the judicial forum or applied to non-judicial scenarios also, he noted that the report did not focus solely on judicial remedies and addressed consultation in terms of good practice. States should be involved in judicial reforms, the positive or negative impact of which on affected individuals should be assessed.

70. The representative of the United Kingdom had mentioned access to remedies in the context of prevention. While prevention was important, the report highlighted the fact that access to remedy should not be considered an afterthought, and also articulated the concept of preventive remedies whereby an affected community member could seek an injunction before a project had begun, for example. The Working Group considered prevention part of the remedy.

71. As to whether defending human rights campaigners fell within the mandate of the Working Group, he said that the report focused on access to effective remedies and only discussed the role of human rights defenders in that limited context. However, he acknowledged the existence of an independent Special Rapporteur on the situation of human rights defenders with which the Working Group collaborated.

72. In reply to the question concerning unreasonable expectations, he said that the key was to strike a balance between the objective and subjective. An objective test could be used to determine whether or not the expectations were unreasonably low or high.

73. With regard to recommendations for OHCHR to encourage corporate responsibility in respecting human rights, he said that the Working Group collaborated closely on capacity-building and awareness-raising with OHCHR, which had a business and human rights stream. The Working Group and OHCHR provided Member States or other stakeholders with advice to promote further awareness and implementation of the Guiding Principles.

The meeting rose at 12:05 p.m.