



# General Assembly

Sixty-ninth session

Official Records

Distr.: General  
11 December 2014

Original: English

---

## Third Committee

### Summary record of the 25th meeting

Held at Headquarters, New York, on Thursday, 23 October 2014, at 10 a.m.

*Chair:* Ms. Mesquita Borges . . . . . (Timor-Leste)  
*later:* Mr. Faye (Vice-Chair) . . . . . (Senegal)

## Contents

Agenda item 68: 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*)
- (c) Human rights situations and reports of special rapporteurs and representatives (*continued*)

---

This record is subject to correction.

Corrections should be sent as soon as possible, under the signature of a member of the delegation concerned, to the Chief of the Documents Control Unit ([srcorrections@un.org](mailto:srcorrections@un.org)), and incorporated in a copy of the record.

Corrected records will be reissued electronically on the Official Document System of the United Nations (<http://documents.un.org>).

14-63154 (E)



Please recycle The text "Please recycle" followed by a universal recycling symbol consisting of three chasing arrows forming a triangle.



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

**Agenda item 68: Promotion and protection of human rights** (*continued*) (A/69/383-S/2014/668)

**(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms** (*continued*) (A/69/97, A/69/99,

A/69/121, A/69/214, A/69/259, A/69/261, A/69/263, A/69/265, A/69/266, A/69/268, A/69/269, A/69/272, A/69/273, A/69/274, A/69/275, A/69/276, A/69/277, A/69/286, A/69/287, A/69/288, A/69/293, A/69/294, A/69/295, A/69/297, A/69/299, A/69/302, A/69/333, A/69/335, A/69/336, A/69/365, A/69/366, A/69/397, A/69/402 and A/69/518)

**(c) Human rights situations and reports of special rapporteurs and representatives** (*continued*)

(A/69/301, A/69/307, A/69/306, A/69/356, A/69/362, A/69/398 and A/69/548; A/C.3/69/2, A/C.3/69/3, A/C.3/69/4 and A/C.3/69/5)

1. **Mr. Forst** (Special Rapporteur on the situation of human rights defenders) said that human rights activists were likely to be threatened, intimidated, investigated, harassed, criminalized, become the subject of smear campaigns, have their public freedoms denied, or even be arrested, detained, made to disappear or assassinated. However, the fact that two human rights activists had recently been awarded the Nobel Peace Prize was a sign that the situation was not hopeless. The United Nations should therefore reinforce its advocacy efforts and ensure that human rights defenders received fewer punishments and more awards. Following his initial meetings with human rights defenders, it had become clearer that his mandate should remain focused on the protection of human rights defenders who were most exposed or at risk, including those working for women's rights or economic, social and cultural rights, the rights of minorities, the rights of lesbian, gay, bisexual, transgender and intersex persons, environmental activists and those working on issues of business and human rights.

2. To better understand the challenges faced by groups at risk, he would analyse trends and issues that could help kindle creative thinking on reinforcing protection and support mechanisms. In that context, regional consultations with human rights defenders

would take place in the coming months in order to analyse national and regional trends, assess the threats against specific groups, evaluate the effectiveness of regional and national measures to protect defenders and explore the methods of protection developed in recent years. As repression of human rights defenders was often accompanied by an unwarranted clampdown on their freedom of peaceful assembly and association or restrictions on the freedom of expression, it would be crucial for him to strengthen cooperation with special rapporteurs on related issues. He would also work more closely with country mandate holders to increase protection for defenders and with regional mechanisms to promote synergies. Furthermore, in conjunction with other stakeholders he would also explore new ways to strengthen the implementation of United Nations, European Union and Organization for Security and Co-operation in Europe texts on the protection of defenders.

3. Given the importance of continuous cooperation and constructive dialogue with Governments and other national stakeholders, the lack of State implementation of recommendations made by United Nations human rights mechanisms was a matter of concern. Strategies and mechanisms could not be meaningfully established and implemented without the support, engagement and commitment of States, the ultimate duty-bearers. He would therefore intensify efforts to convince Governments to follow good examples when developing specific legislative and regulatory measures at national level. He would also conduct a series of follow-up visits to countries to review the state of implementation of the recommendations made by his predecessors. He aimed to strike a balance between exposing individual cases of violations and showcasing good practices. He urged Governments, national stakeholders and human rights activists and defenders to work closely with him to rectify the wrong and celebrate the right.

4. Lastly, better follow-up to previous communications and country visits was necessary step to combat impunity. He was particularly concerned by the increasing number of acts of intimidation and reprisals against human rights defenders in connection with their involvement with United Nations human rights mechanisms or regional organizations. Without free and safe cooperation with civil society, the work of the United Nations would lose its legitimacy. He therefore welcomed the joint statement made by a

group of 47 States at the twenty-fifth session of the Human Rights Council calling for organizational coherence and a systematic approach to better protect civil society actors. He urged all delegates to support the designation of the senior focal point on reprisals as soon as possible.

5. **Ms. Mollestad** (Norway) said that Norway supported the proposal made in the Special Rapporteur's report on the situation of human rights defenders (A/69/259) to increase the number of follow-up visits, given that the implementation gap was serious. The fact that only 45 per cent of States responded to communications was also a matter of serious concern. Her delegation would like more information on how the Special Rapporteur planned to raise the visibility of the work of human rights defenders and increase public awareness of his mandate.

6. **Ms. Tschampa** (Observer for the European Union) said that the European Union was concerned that the action of human rights defenders was being curtailed in a number of countries by the introduction of legislative and administrative provisions that unduly hindered their work. She asked if the Special Rapporteur had any initial recommendations for addressing the issue. She would also like to know if he had encountered instances of a disproportionate impact of such legislation on women human rights defenders and how the gender perspective would be incorporated into his work. She further asked how cooperation with the other United Nations mandate holders would be strengthened and how Member States could contribute to the protection of human rights defenders, particularly those cooperating with the United Nations, against reprisals.

7. **Ms. Nescher** (Liechtenstein), speaking on behalf of Austria, Croatia, the Czech Republic, Denmark, Ireland, Iceland, Montenegro, Norway, Poland, Slovenia, Sweden and Liechtenstein, said that note had been taken of the Special Rapporteur's intention to use modern communications technologies as a means of increasing the visibility of human rights defenders' work. It should be noted, in that regard, that several human rights defenders had been arrested or otherwise faced reprisals for their social media activities even though social media use was an exercise of freedom of expression and thus subject to the same rules and possible narrow exceptions defined in international law.

8. She drew attention to the situation of human rights defenders in Bahrain. The Government of Bahrain had toughened sentencing guidelines for whoever insulted the King of Bahrain, or the flag or national emblem of Bahrain, and had imposed new restrictions on freedom of assembly and freedom of expression in July 2013 despite accepting the recommendations made during the universal periodic review in 2012. Information on the engagement of the Special Rapporteur's office with the Government of Bahrain, in particular with regard to the scheduling of a visit to the country, would be appreciated.

9. **Mr. Vorobyev** (Russian Federation) said that the issue of human rights defenders had unfortunately become excessively politicized. Work on the issue was complicated by the fact that the concept of "human rights defender" was not defined in international law. The only instrument that States had agreed on was the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders). His delegation hoped that the Rapporteur would adhere to the provisions of the Declaration and uphold the principles of objectivity, non-bias and constructive cooperation in his work.

10. **Ms. Hrdá** (Czech Republic), noting that human rights defenders were still frequently exposed to threats and attacks, asked if new trends worldwide had been detected in that regard. The Czech Republic had established special shelter cities where human rights defenders and their families who were under threat in other countries could temporarily stay, receive health care, further their education or simply rest and recover until the threat had disappeared. She asked the Rapporteur whether he considered such support useful. As to communications and country visits, follow-up was crucial, and she wished to know what the opinion of the Rapporteur was on the follow-up visits carried out since he had assumed his mandate.

11. **Ms. Walker** (United Kingdom of Great Britain and Northern Ireland) said that her delegation was concerned about the restrictive laws and practices that seemed to curtail civil society's ability to operate and asked to what extent the Special Rapporteur would challenge such laws and practices. She also asked what plans the Rapporteur had for engaging civil society and ensuring that the views of human rights defenders,

especially those working in difficult situations, were taken into account.

12. **Ms. Juodkaitė-Putrimienė** (Lithuania) said that human rights defenders working in the most threatening situations were often not duly protected. She asked the Special Rapporteur to outline the challenges encountered in analysing the situation of those operating in situations of armed conflict and asked how States could facilitate efforts to address the situation of human rights defenders at risk, including those working in besieged areas.

13. **Ms. Glavey** (Ireland) said that the freedoms of assembly, association and expression were key to the work of human rights defenders and in that regard her delegation applauded the Special Rapporteur's plan to cooperate with other mandate holders. She asked what impact increased follow-up might have on unresponsive States, especially in terms of combating impunity and reprisals.

14. **Ms. Schmidt** (Switzerland) said that her delegation shared the Special Rapporteur's concern about reprisals against human rights defenders who worked with the United Nations and urged all Member States to take the necessary measures to stop them. Human rights defenders from indigenous, minority or poor communities were particularly vulnerable and often viewed as obstacles to natural-resource-based development projects. What could be done to better protect human rights defenders in sectors like the oil, gas and mining sectors and to instil an approach to development that systematically incorporated human rights? Also, the impunity enjoyed by those who attacked human rights defenders was a major concern. What recourses did the international community have if a State was unable or unwilling to investigate such attacks?

15. **Mr. Rodríguez Hernández** (Cuba) said that his delegation shared the concern raised by the Russian Federation. The intensified cooperation with other mandate holders, referred to in paragraph 21 of the report of the Special Rapporteur on the situation of human rights defenders (A/69/259), especially with the country rapporteurs, could result in selectivity or politicization of some kind, and measures must be taken to ensure that no bias whatsoever entered into his work.

16. Joint action and greater cooperation with other special procedures ran the risk of creating overlaps at a

time when concerns were growing in the United Nations about the lack of resources and the duplication of effort. He asked the Special Rapporteur for his views on the matter.

17. **Ms. Velichko** (Belarus) said that the report of the Special Rapporteur failed to address the issue of how to deal with human rights defenders who masqueraded as peaceful demonstrators in order to provoke the Government into taking action to protect its citizens, and then accuse the Government of repression when it had acted in accordance with international law. The Report stated that States were responsible for fighting impunity and holding to account those who violated human rights, but what measures could States take to deal with human rights defenders who broke the law?

18. **Ms. Kiernan** (United States of America) said that regional bodies played a significant role in combating restrictive environments and providing rapid assistance to human rights defenders in need. Her delegation wished to know how the Rapporteur intended to increase collaboration with regional bodies to address Governments' low response rate to requests for country visits and how, in his focus on the most marginalized groups, he would tackle the social, economic and cultural barriers that members of those groups faced as human rights defenders.

19. **Mr. Rabi** (Morocco) said that his delegation looked forward to working with the Special Rapporteur on arranging a visit to Morocco. His delegation welcomed the plans to develop and disseminate best practices since that positive approach would strengthen States' cooperation with the Special Rapporteur. He asked how the Rapporteur viewed the role of national human rights institutions in supporting his mandate and how human rights training would be integrated into his work.

20. **Mr. El Hacen** (Mauritania) asked if there was a precise definition of "human rights defender".

21. **Ms. Del Colle** (Netherlands) said that the ambitious agenda set out in the report was timely and its priorities were well chosen. Follow-up to communications and recommendations was particularly important, as were efforts to address impunity and to increase the visibility of human rights defenders, and it was to be hoped that the proposed social media activities would raise awareness of the role they played. Her delegation would like more information on the regional consultation with human rights defenders

mentioned in the Special Rapporteur's report (A/69/259).

22. **Ms. Dhanuirtto** (Indonesia) said that part of the mandate of the Special Rapporteur was to promote the effective and comprehensive implementation of the Declaration on Human Rights Defenders through cooperation and constructive dialogue and engagement with Governments, relevant stakeholders and other interested actors. In that regard, her delegation wished to know if he would give equal attention to the responsibilities of human rights defenders, given that there was a gap in their understanding and awareness of what their responsibilities were when carrying out their work.

23. **Mr. Fiallo** (Ecuador) asked how the Special Rapporteur might be able to cooperate in the protection of human rights defenders who were de facto prisoners in embassies because they had been denied permission to exercise their human rights and travel to the country that had offered them asylum.

24. **Mr. Forst** (Special Rapporteur on the situation of human rights defenders), noting that time constraints prevented him from answering all the questions, said that in relation to improving communication and raising the visibility of his mandate and the Declaration on Human Rights Defenders, he intended to put in place innovative tools for ensuring good communication and a regular flow of information between stakeholders. He called on Member States to continue promoting the extension of invitations to mandate holders. The number of country visits needed to increase, especially in the light of the volume of communications received. Those visits could take the form of official visits or participation in events with the permission of the host State to examine the implementation of the recommendations made by his predecessors and discuss possible technical assistance. His cooperation with other United Nations mandate holders and with the pertinent regional bodies included a meeting in the near future to determine the best means of avoiding the duplication of efforts and generating synergies.

25. **Ms. Knaul** (Special Rapporteur on the independence of judges and lawyers) said that, between November 2013 and October 2014, she had undertaken two official country visits, to the State of Qatar and to the United Arab Emirates. She would include her reports on those visits as addenda to her annual

thematic report to the Human Rights Council. She would conduct a country visit to Tunisia from 27 November to 5 December 2014, and the Government of Portugal had issued an invitation for 2015. She encouraged those Governments who had responded positively to her requests for visits to continue engaging with the mandate through her successor.

26. Introducing her report on the independence of judges and lawyers (A/69/294), she said that it was now up to Member States to assume their responsibilities and insert explicit references to human rights standards in the sustainable development goals and targets prepared by the Open Working Group on Sustainable Development Goals. In particular, goal No. 16 should be consistent with and make reference to existing human rights standards, including due process and fair trial rights, equal access to justice and the independence and impartiality of the justice system.

27. In closing, she wished to express serious concerns about reprisals against individuals or groups who cooperated, or sought to cooperate, with the United Nations and its human rights mechanisms. In particular, she drew attention to the situation of Mr. Osama Al-Najjar, whom she had met during her official visit to the United Arab Emirates. He had reportedly been arrested and tortured for his peaceful activities, including his meeting with her, and was still in detention. She called for the immediate release of Mr Al-Najjar and for an independent and serious investigation of the circumstances of his arrest and the serious allegations of torture. His case was sadly not an isolated one, and she added her voice to the calls for the consideration of Human Rights Council resolution 24/24 at the General Assembly to be concluded as soon as possible to ensure the appointment of a system-wide senior focal point for reprisals. Mr. Al-Najjar and many others around the world did not have the luxury of time.

28. **Ms. Tschampa** (Observer for the European Union) said that she would like to hear the Special Rapporteur's views on how the barriers hampering access to justice could be overcome, especially with regard to the poor and vulnerable who often lacked knowledge of their fundamental rights. She asked what non-legislative measures could be implemented where appropriate by States in order to enhance the upholding of international equality and non-discrimination standards and the impartiality of judges and the

judiciary. What assistance could the Special Rapporteur give to States for the comprehensive use of indicators to monitor the functioning of and assess the challenges in their justice systems?

29. **Ms. Al-Temimi** (Qatar) said that the incorporation of access to justice into the post-2015 development agenda could further improve human rights. She asked what measures should be taken to strengthen the rule of law and which aspects should be taken into account to integrate justice into the post-2015 development agenda. She noted the Special Rapporteur's visit to Doha in January 2014 to review the special procedures within the country and underlined her country's full cooperation with the Special Rapporteur.

30. **Mr. Kihwaga** (Kenya) said that he agreed with the report's conclusion that corruption was a cross-cutting issue that undermined both the rule of law and development. States had an important duty to promote the rule of law in tandem with the pursuit of development targets. States should also seek to strengthen the independence, impartiality, integrity and competence of the judicial system and legal profession. The Kenyan legal system was based on the concept of the rule of law and his Government remained committed to ensuring that all persons had effective access to justice on an equal footing. The major challenge faced by many States, including Kenya, was the inability to provide adequate resources for the full realization of that ideal in equal measure to the resources provided for development. In that regard, his delegation concurred with the Special Rapporteur's observation that there was a need for a human rights-based approach to the post-2015 era.

31. **Ms. Kiernan** (United States of America) said that her country had been a strong supporter of the inclusion of a dedicated goal on capable, effective and accountable institutions in the post-2015 development agenda. Studies had shown that when countries strengthened the rule of law they could experience a threefold increase in gross domestic product (GDP). Access to justice and the rule of law could be promoted by increasing the percentage of people with access to effective legal services, strengthening the responsiveness and quality of independent justice institutions, particularly to women and excluded individuals and groups, and curbing illicit financial flows. In that vein, she asked the Special Rapporteur

what other indicators could be used to measure progress on those issues.

32. **Ms. Bardaoui** (Tunisia) said that judges and lawyers had been on the front line during the Arab Spring in 2011 and were very important for the future of Tunisia. Her country's new Constitution adopted in January 2014 had once again consolidated the independence of judges and lawyers. She reiterated her country's invitation to the Special Rapporteur to visit Tunisia for an interactive and fruitful exchange with its judges and lawyers and to witness the efforts that had been made on the ground.

33. **Mr. Fiallo** (Ecuador) said that, in the context of a recent side event on indigenous women's access to justice, it would be interesting to hear how indigenous women's access to justice could be better measured. He would also be glad to know the Special Rapporteur's views on how to better ensure the independence of judges in local, national, regional and international jurisdictions, as it was often compromised by the influence of private transnational corporations.

34. **Ms. Knaul** (Special Rapporteur on the independence of judges and lawyers) said that the rule of law and development were mutually reinforcing concepts. There would be no sustainable progress in one area without the other being fully taken into account in all policies and measures. In its broadest sense, the concept of access to justice involved access not only to the judicial system, but also to other procedures and institutions that helped individuals to claim their rights and deal with State bodies, including national human rights commissions, the Ombudsman and mediation institutions. It was important to understand the consequences of the failure to implement the rule of law, such as fear of violence, corruption, a culture of impunity and lack of accountability, which threatened the legitimacy of social conduct, undermining the rule of law and perhaps even reversing development progress.

35. The United Nations and the Office of the High Commissioner for Human Rights already provided guidance on measuring the rule of law, access to justice and human rights, using specific indicators that were rooted in international human rights and criminal justice norms and standards and could be applied in any kind of legal system. The use of indicators could help to make communications more concrete and effective, enabling the efficient recording of

information and facilitating the monitoring of development issues and outcomes. When designing targets and indicators, there was a need to account for the reality of the situation experienced by people who engaged with the justice system in order to find specific solutions that would improve access to justice for all without discrimination.

36. A human rights-based approach to the new development framework would ground the future development objectives in a universally adopted normative framework. That would provide the necessary push for Member States to agree on a set of sustainable development goals, which would be more inclusive and focus on the interrelation between the rule of law, human rights, justice and development. A development agenda based on the rule of law and justice would allow for the necessary monitoring and accountability mechanisms to be put in place, enabling people to claim their rights and access effective remedies when their rights were violated or neglected.

37. **Mr. Emmerson** (Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism) said that the central message of his report (A/69/397) was that mass surveillance of the Internet posed a direct challenge to article 17 of the International Covenant on Civil and Political Rights. The obligation under that article to respect the privacy and security of digital communications implied in principle that individuals had the right to share information and ideas with one another without interference by the State, secure in the knowledge that their communications would reach and be read by the intended recipients alone. Measures that interfered with that right must be authorized by domestic law that was accessible, precise and conformed to the requirements of the Covenant. They must also pursue a legitimate aim and meet the tests of necessity and proportionality.

38. One of the recommendations contained in his report was that States should revise and update domestic legislation to ensure consistency with international human rights law. Where the privacy rights of the entire digital community were at stake, nothing short of detailed and explicit primary legislation should suffice, providing an opportunity for Governments to be transparent about the degree of their Internet penetration and to justify mass surveillance programmes to the public. His report also recommended that States should establish strong and

independent oversight bodies that considered applications for authorization not only against the requirements of domestic law, but also against the necessity and proportionality requirements of the Covenant.

39. **Ms. Schmidt** (Switzerland) said that it was of paramount importance to find a balance between society's concern for the protection of online privacy and the needs of effective counter-terrorism. In that connection, it was important to distinguish between targeted surveillance, which required prior suspicion, and mass surveillance without suspicion. Her country shared the Special Rapporteur's view that it was urgent for States to revise their national laws regulating modern forms of surveillance in a transparent legislative process. She asked the Special Rapporteur to explain how that legislative process could be guided, accelerated and sustained. She also asked for his opinion on how the extraterritorial dimension of mass surveillance, whereby each State party must respect and guarantee the rights of all nationals and non-nationals under its territorial jurisdiction as well as those outside its jurisdiction, could be addressed at the international level.

40. **Ms. Tschampa** (Observer for the European Union) said that it would be interesting if the Special Rapporteur could elaborate further on the issue of evidence-based justification. She asked whether there was any legislation currently under discussion or preparation that might serve as a good example of evidence-based public justification for the necessity of mass surveillance. With regard to the assessment of the necessity and proportionality of surveillance measures, she asked the Special Rapporteur to elaborate on how those two conditions had or had not been applied. How did the Special Rapporteur think the debate on striking the balance between the societal interest in online privacy protection and the undoubted imperatives of effective counter-terrorism and law enforcement would evolve and what role did he think the United Nations would play in that regard?

41. **Mr. Barriga** (Liechtenstein) said that his country foresaw a long public debate on the issue, because there were different views on the required elements at every stage. It was not clear whether some of the digital surveillance actually triggered the rights in question. There were discussions as to whether there was a reasonable expectation of privacy in certain forms of online communications and whether it was

reasonable to expect a certain degree of transparency in legislation. He asked the Special Rapporteur if he could think of any possible acceptable justification for mass surveillance. When was a threshold reached so that a threat could really justify mass interference? He asked whether the Special Rapporteur was optimistic that such a discussion was possible, given the underlying current of secrecy in digital surveillance, and extraterritorial surveillance in particular. How was it possible to have that discussion when those taking measures were extremely reluctant to acknowledge that they were doing so?

42. **Ms. Wang Yi** (China) said that her country stood firm against terrorism in all its forms and manifestations and supported the international community's fight against terrorism. When countering terrorism, the international community needed to abide by the purposes and principles of the Charter of the United Nations and other basic norms governing international relations. It needed to address both the symptoms and the root causes of terrorism and must not use double standards in that regard. Basic human rights must not be sacrificed in the name of security. The use of armed drones causing civilian casualties with no regard to due process was unacceptable, as was the invasion of privacy. Her country shared the view of the Special Rapporteur and the former High Commissioner for Human Rights that States were legally obliged to afford the same privacy protection to nationals and non-nationals alike, including those living outside their jurisdictions. It encouraged the Special Rapporteur to work with other relevant special mechanisms and treaty bodies to continue to put forward focused observations and recommendations on privacy protection in the digital era.

43. **Ms. Walker** (United Kingdom of Great Britain and Northern Ireland) said that the tests of legality, legitimate aim, necessity and proportionality were applied to all of her country's intelligence activities where they had the potential to interfere with individuals' right to privacy. Her country believed that the use of covert investigative techniques by the State should be based on those principles. All States should ensure that their security services operated on a clear legal basis and that there were adequate and effective guarantees against abuse, as was the case in her country. She asked the Special Rapporteur to expand on what features should appear in legislation to balance

the need to protect individual rights and freedoms with the imperative to combat terrorism.

44. The United Kingdom agreed that the prevention and suppression of terrorism was a public interest imperative of the highest importance that must be balanced with international obligations to protect fundamental freedoms, and that position underpinned all her country's activities around surveillance and the gathering and use of intelligence. Her country had used secret intelligence to protect and promote fundamental rights and freedoms, while deploring its use for political repression and State control, as was the case in some countries.

45. **Ms. Sukacheva** (Russian Federation) said that it was regrettable that digital espionage had become common practice in several countries. In order to prevent violation of the right to privacy, States must develop effective legal protection measures. Access to personal information was only acceptable when it had been obtained in accordance with national law and did not conflict with the international obligations of the States concerned. Although the report contained a detailed and extensive list of measures for States to adopt at national level, it was clear that such action alone might not be enough to prevent violations of the right to privacy. She asked for the Special Rapporteur's opinion on the steps that the United Nations and its bodies could take to minimize the negative consequences for the international community and individual States of the use by individual countries of digital surveillance programmes such as the PRISM programme of the United States of America.

46. **Mr. Al-Obaidi** (Iraq) said that despite the magnitude of the terrorist campaign against Iraq, his Government affirmed its commitment to international obligations and standards regarding human rights while its security forces continued their efforts to counter criminal terrorist gangs, particularly those that hid among civilians. His Government did its utmost to prevent violations of the rights of civilians and to respect and guarantee their privacy. He asked whether there were any studies, analyses or techniques that could be shared to help those involved in countering terrorism to achieve the optimum practices for combating terrorism while respecting human rights.

47. **Ms. Hullman** (Germany) said that her country attached great importance to the right to privacy as an individual right and would be interested in the Special



Rapporteur's view on how the aggregation of individual rights into a societal interest would safeguard the individual's right to privacy. She also asked what it would take to justify a measure of mass surveillance in terms of proportionality from an ex ante perspective. She asked whether he saw merit in a special procedure on the right to privacy in the digital age, which had been suggested during the Human Rights Council panel debate in September 2014.

48. **Ms. Schneider Calza** (Brazil) said that her delegation welcomed the Special Rapporteur's recommendation on the right to seek an effective remedy for any alleged violation of online privacy rights and would be interested in further elaboration on how that could take place. Her delegation shared the interest of the representative of Germany in hearing the Special Rapporteur's views regarding the possible establishment of a special procedure in the Human Rights Council to address that issue.

49. **Mr. Fiallo** (Ecuador) asked the Special Rapporteur to provide further details on the responsibility of private companies that provided the technology, materials, services and other inputs that made it possible for States to commit such violations of human rights in their efforts to combat terrorism, or for other purposes. He would be interested to know how it could be ensured that there was no impunity for those companies. Second, Ecuador shared the concerns voiced by many delegations with regard to global surveillance leading to the violation of the right to privacy and also on the use of armed drones, and would be interested in hearing the Special Rapporteur's thoughts on that issue.

50. **Mr. Emmerson** (Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism) said that the absence of clear, up-to-date and precise legislation created an environment in which arbitrary interferences with the right to privacy could occur without commensurate safeguards. Explicit and detailed laws were the only means of ensuring legality and proportionality within the terms of the Covenant and were an indispensable means of enabling individuals to foresee the circumstances in which there might be interference with their communications.

51. With regard to the form that legislation should take, he had recommended in his report that a public legislative process involving explicit and detailed

primary legislation could suffice, providing an opportunity for Governments to justify mass surveillance measures to the public and enabling the public to appreciate the balance that had been struck. Where delegated legislation had been used, there was evidence to suggest that secret interpretations had been adopted, leaving a process in place that failed to meet the transparency requirements of article 17 of the Covenant.

52. Responding to the question about the extraterritorial dimension, he said that the non-discrimination obligation in article 26 of the Covenant required States to ensure equal privacy protection for nationals and non-nationals within their territorial jurisdiction, as well as for those that were within and outside their jurisdiction. Given the consistent view of the Office of the High Commissioner for Human Rights that the obligations set out in the Covenant applied extraterritorially in such circumstances, there could be no justification for a marked difference of treatment.

53. In response to questions regarding evidence-based justification, he said that it was not sufficient for States to make general and vague references to the duty to protect against the threat of terrorism or to national security. In order to make a proper evaluation of proportionality, it was necessary to have some account in reasonable detail of the tangible benefits that were said to accrue from that very substantial interference with the right to privacy. Although the information would be the subject of national security secrecy claims when it came down to individual investigations or operational methods, that did not preclude giving a meaningful public account of the benefit in national security terms of having that technology. Those who had seen the products of that type of surveillance had indicated in public that there was very little evidence that direct terrorist plots had been intercepted. Nevertheless, there were other ways in which the investigation of the preparation and instigation of acts of terrorism could be thwarted. Some public discussion in order to justify or provide the means by which to evaluate the justification for that degree of intrusion was absolutely essential.

54. Regarding the question about the threshold test, he said that the conclusion of his report was that mass surveillance programmes could be compatible with article 17 of the Covenant on the basis of counter-terrorism justifications only if the States using them

were in a position to justify as proportionate the systematic interference with the Internet privacy rights of a potentially unlimited number of innocent people in any part of the world. So far, there had been no transparent public engagement. However, States using the technology referred to were under an obligation to be transparent about the nature and degree of their Internet penetration and provide justification of analogical magnitude if they wished to go beyond a certain threshold.

55. As to what role the United Nations could play in promoting the debate and the development of sufficient safeguards, he urged States to promote and support further resolutions in the General Assembly. He also called for the Human Rights Committee to update its general comment No. 16 as a matter of urgency in light of the developments in information technology currently threatening the maintenance of the right to privacy. In response to the question from Germany and Brazil, he said he would strongly support the adoption of a new special procedures mandate on the right to privacy of digital communications, which deserved an exclusive focus since it was a threat to an existing established norm of international law.

56. **Mr. de Greiff** (Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence), introducing his report (A/69/518), addressed the topic of reparations for victims in the aftermath of gross violations of human rights and serious violations of international humanitarian law. It was the third in a series of reports addressing each of the four elements of his mandate, and his next report would be on the fourth element, guarantees of non-recurrence.

57. Most victims of gross violations of human rights and serious violations of international humanitarian law still did not receive any reparation. The relatively few reparations programmes that did exist fell significantly short of providing adequate, effective and prompt reparation as enshrined in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

58. States too often manifested a reluctance to admit responsibility. Programmes that failed to explicitly acknowledge responsibility became more akin to mechanisms to distribute indemnification benefits than

reparations programmes, and experience had confirmed that victims, correctly, did not see such benefits as reparations.

59. The meaningful participation of victims and their representatives was crucial in all transitional measures, as it not only contributed to increasing the reparative effect of transitional justice measures, but also helped to improve the reach, completeness and comprehensiveness of the reparation programmes, as well as reducing any gap between benefits and expectations. It also tended to ensure reparations were meaningful both materially and symbolically. However, the safety of victims and the organizations that represented them would need to be guaranteed, as in reality human rights defenders continued to be at risk in most countries in transition. He therefore urged States to abide by their obligations to protect the life and well-being of those who were trying to exercise their rights. Lastly, he reiterated his call for Governments to respond to country visit requests in a timely manner.

60. **Ms. Gandini** (Argentina) said that the right to truth had been a priority for Argentina, which had a human rights policy based on memory, truth and justice. Her delegation therefore particularly welcomed the renewal of the mandate of the Special Rapporteur in Human Rights Council resolution 27/3, which had been adopted by consensus in a joint initiative by her country and Switzerland. Argentina had recognized the need to provide reparations as early as 1984. While financial reparations were not sufficient in themselves, they should be seen as a first step towards justice and the right to truth, and States could not hide behind the argument that they did not have sufficient resources to meet their obligations. Her country also fully supported giving greater attention to the issue of gender in the matter of reparations. She asked whether countries with experience in that area could help raise the awareness of other States, so that they not only made reparations but also provided guarantees of non-repetition.

61. *Mr Faye (Senegal), Vice-Chair, took the Chair.*

62. **Ms. Wang Yi** (China) said that everyone had the right to truth and the right to receive just and fair reparation. The Special Rapporteur attached great importance on history and archives and stressed the significance of reparations for both individuals and the community. China believed that history could serve as

a lesson to prevent tragedies from being repeated. Effective reparations ensured that justice was served but also, and more importantly, promoted social reconciliation, inclusion and development. She hoped that the Special Rapporteur would continue to pay attention to the lessons of history and to the use of historical archives to restore historical truth.

63. **Ms. Tschampa** (Observer for the European Union) said that it was a matter of concern that, as mentioned in the report, most people who suffered from gross violations of their human rights or of international humanitarian law still received no reparation, despite the significant progress made at the normative level, and that there were too few reparations for victims of gender-related violations. She asked the Special Rapporteur to elaborate on the role of civil society in the design and implementation of symbolic reparations as mentioned in his report and it would also be interesting to hear more about the human-rights based approach to reparations that he advocated.

64. The insufficient investigation and prosecution of perpetrators should also be given attention. The European Union agreed that prosecutions should be understood as a critical part of a transitional justice policy, as the investigation and prosecution of those responsible for conflict-era abuses could help rebuild civic trust in public institutions, which was a crucial step in the re-establishment of the rule of law. The European Union was committed to helping post-conflict States strengthen their judicial systems in order to allow them to carry out this crucial process. Lastly, as a steadfast supporter of the International Criminal Court and its role in ensuring accountability where States were unable or unwilling to do so domestically, the European Union would like to know what more could be done to empower States to investigate and prosecute the most serious crimes at domestic level.

65. **Ms. Mollestad** (Norway) said that her country fully supported the mandate and welcomed the report, particularly its focus on the implementation gap, the importance of a human rights-based approach, the meaningful participation of victims in reparations processes and gender-sensitive programmes. Under international law it was uncontested that victims of gross human rights violations and serious violations of international humanitarian law had the right to reparations. The fundamental challenge was the great

reluctance of Governments to establish programmes. The severe consequences for individuals and communities made that scandalous lack of implementation a cause of great concern.

66. International courts and truth and reconciliation commissions were increasingly turning to collective reparations, which usually amounted to people being granted certain social services. Given that the report underscored the importance of linking reparations and development, while cautioning against passing off development programmes as reparations, she asked the Special Rapporteur to elaborate on how to ensure that victims viewed such collective measures as reparations that fulfilled their right to distinct forms of reparation.

67. **Ms. Hullman** (Germany) said that the work of the Special Rapporteur was promoting a much-needed common understanding in the field of transitional justice, and her country had been honoured to host the regional consultations for Europe and North America in May 2014. Her delegation welcomed the most recent report and agreed that the status of victims as right holders needed to be strengthened and that reparation programmes should take a human rights-based approach. The report mentioned a lack of political will to implement large-scale programmes as one of the reasons why victims did not receive reparations, and it seemed likely that in some cases political will would be fostered by disseminating more information on the far-reaching positive effects of well-designed reparations programmes and asked the Special Rapporteur to elaborate on that issue and, in particular, those positive effects.

68. **Ms. Schmidt** (Switzerland) said that her delegation shared the Special Rapporteur's concern with regard to the implementation gap. The varying socioeconomic situations of countries that had implemented reparations programmes supported his suggestion that the lack of serious cost analyses for programmes was in fact an indication of a lack of political will. She would be interested to hear more about any examples of good practices for preliminary cost analyses for potential reparations programmes. She welcomed the report's emphasis on the historical exclusion of victims of gender-based violence and encouraged States to update national policy to reflect progress that had been made in the legal domain, for example by the International Criminal Court, to simultaneously rehabilitate and empower victims. Furthermore, given that the inclusion of access to justice and measures to protect human rights in the

post-2015 development agenda had been discussed in 2013, she asked whether the Special Rapporteur was satisfied with how the preparatory work was progressing and whether he had any suggestions for Member States regarding the future negotiations.

69. **Ms. Schneider Calza** (Brazil) said that her delegation particularly welcomed the report and the comprehensive approach that went beyond material reparations. Her delegation would welcome further information on the implementation deficit in reparation programmes and was interested to hear the views of the Special Rapporteur on how to address that issue. She was particularly interested in his thoughts on the sharing of best practices or on international cooperation involving countries that had reparations programmes. Accountability and the recognition of State responsibility for violations were important, as they consolidated societal trust in State commitment to non-recurrence, and she recalled Brazil's efforts in that regard through its Amnesty Commission and National Truth Commission. She commended the report's balanced approach to the material and symbolic aspects of reparations and welcomed its recognition of the principle of proportionality in the design of reparations programmes. Lastly, her delegation commended the report's inclusion of a gender perspective in its analysis.

70. **Ms. Rahimova** (Azerbaijan) said that her delegation shared the concern expressed in the report regarding the lack of implementation and the inadequate scale of reparations programmes. Political will and support for programmes were required to address both the root causes of mass atrocities and their consequences. Wrongs that had been left unpunished or unrecognized could impede progress towards peace and reconciliation and even play a role in the eruption of new conflicts or the commission of further crimes. Azerbaijan's consistent focus on that aspect of the problem was based on its own experience. It was important to ensure that mediators and envoys in mediation, peace and preventive diplomacy were able to contribute to ensuring accountability. Perpetrators of serious crimes committed during armed conflict, including gender-based violence, must be excluded from all branches of Government and from any form of amnesty. It was essential that reparations programmes received increased recognition and support as a tool for delivering justice and redress for victims as well as long-term benefits for society and communities.

71. **Mr. de Greiff** (Special Rapporteur on the promotion of truth, justice, reparation and guarantees

of non-recurrence) said that some of the questions had been picked up on crucial aspects of the problem. He had always been interested in insisting that the topic of redress required a comprehensive approach that established links between truth, justice, reparation and guarantees of non-recurrence. That was not only to compensate for some of the weaknesses concerning each of those measures (which resulted at least in part from the implementation gap), but also because of the positive spill-over effects of redress. This was why it was important to take seriously the issue of redress for past human rights violations, including in discussions on the post-2015 development agenda.

72. Reparations had an important role to play in social integration, not only for reasons of legality but also for reasons of expediency. There was a significant difference between the treatment of ex-combatants and victims in post-combat situations. The rhetoric suggested a consensus that all ex-combatants should receive benefits through disarmament, demobilization and reintegration programmes, but there was no nearly comparable commitment to the idea that every victim of the same conflict should receive equivalent benefits through reparations programmes. That disparity was not only problematic from a moral and legal standpoint but also had extremely serious practical consequences, given that the successful social reintegration of ex-combatants depended partly on the willingness of the receiving communities to accept them, which was affected at least in part by how the State dealt with victims of the conflict.

73. Responding to the comment from the representative of China, he said that his work on archives was proceeding apace, including a project supported by Switzerland and the International Committee of the Red Cross. Historical education would be given significant attention in his 2015 report on guarantees of non-recurrence.

74. With regard to the question on gender and the importance of the participation of victims, he said that all his reports had referred to the existing gaps and to some progress that had been made concerning the attention given to women, girls and some marginalized groups. He intended to devote a specific report to mechanisms to enhance the participation of victims, and particularly women, in transitional justice measures.

*The meeting rose at 12.50 p.m.*