



General Assembly

Distr.
GENERAL

A/HRC/2/SR.3
3 October 2006

Original: ENGLISH

HUMAN RIGHTS COUNCIL

Second session

SUMMARY RECORD OF THE 3rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 19 September 2006, at 10 a.m.

President: Mr. DE ALBA (Mexico)

later: Mr. GODET (Switzerland)

CONTENTS

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF
15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL" (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Council at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.06-14004 (E) 260906 031006

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

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF
15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL” (agenda item 2) (continued)
(E/CN.4/2006/56 and Corr.1 and Add.1, /CN.4/2006/74, E/CN.4/2006/78 and Add.1-5)

Presentation of reports followed by an interactive dialogue:

Report of the Chairperson of the Working Group on Enforced or Involuntary
Disappearances (E/CN.4/2006/56 and Corr.1 and Add.1)

Report of the Independent Expert on minority issues (E/CN.4/2006/74)

Report of the Special Rapporteur on the situation of human rights and fundamental
freedoms of indigenous peoples (E/CN.4/2006/78 and Add.1-5)

1. Mr. TOOPE (Chairperson-Rapporteur of the Working Group on Enforced or Involuntary Disappearances), introducing the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/2006/56 and Corr.1 and Add.1), said that the Working Group, had been the first United Nations human rights mechanism to be established with a global mandate. It had been established 26 years ago and had transmitted more than 50,000 individual cases to Governments in more than 90 countries. Its current level of activity was unprecedented, collaboration with other special procedures had been strengthened and swift action had been taken in emergency situations. The adoption of the International Convention for the Protection of All Persons from Enforced Disappearance by the Human Rights Council at its first session had generated real momentum in that area of human rights.

2. Despite the clarification of more than 7,000 cases by the Working Group in the past five years, over 40,000 cases remained outstanding. He was concerned that a number of States had never replied to the Working Group's requests for information or had provided irrelevant materials. He urged the Governments concerned to fulfil their obligations under the Declaration on the Protection of All Persons from Enforced Disappearance. In the report before the Council the Group had for the first time listed every country with outstanding cases with a view to further enhancing transparency and accountability.

3. The Working Group was concerned at the considerable number of reports of disappearances submitted over the past year. Enforced disappearance had become a global problem not restricted to a specific region. Once largely the product of military dictatorships, disappearances were now perpetrated in complex situations of internal conflict, in regimes undergoing radical political changes and as a means of political repression of opponents. Potential underreporting of disappearances, particularly in Africa, could result in the submission of large numbers of reports in coming years. While its mandate was limited to violations involving State actors, the Working Group condemned such acts, irrespective of the perpetrators.

4. During the reporting period, the Working Group had conducted a country visit to Colombia at the invitation of that country's Government. The report of the visit, which formed an addendum to the Working Group's report (E/CN.4/2006/56/Add.1), contained

recommendations aimed at halting the continuing pattern of disappearances, protecting the families of victims as well as non-governmental organizations (NGOs) investigating disappearances, addressing the problem of underreporting, aligning domestic legislation with States' obligations under the Declaration and implementing existing legal mechanisms dealing with disappearances more effectively. The report also stressed the gap that was apparent between the existence of a sophisticated legal framework governing disappearances and the lack of practical results. The rights of victims were undermined by a lack of political will to bring perpetrators to justice and the tolerance of such practices by certain law enforcement officials and members of the armed forces. Nevertheless, the Working Group had noted with satisfaction the decision of the Constitutional Court of Colombia to declare ineffective those provisions of the Justice and Peace Law that were contrary to international human rights law.

5. The Working Group's report highlighted four main areas of concern. The first was disappearances of children and persons with disabilities, a critical issue that the Working Group would continue to monitor closely. The second area was the harassment of human rights defenders, relatives of victims, witnesses and legal counsel. In that connection, States were reminded of their duty to protect such persons. Thirdly, concern had arisen over the use by States of counter-terrorist activities as an excuse for breaching their obligations under the Declaration. Reports continued to be received of the existence of secret detention centres controlled by the United States of America where terrorist suspects were transported and held in isolation from the outside world. Disappearances occurred in all of those situations, and disappearance was often a precursor to torture and even to extrajudicial execution. Lastly, in some post-conflict situations, truth and reconciliation mechanisms could give rise to the enactment of amnesty laws that resulted in impunity.

6. The Working Group had always attached importance to the question of impunity, and that concern had led it to adopt a general comment on article 18 of the Declaration, which was reproduced in the report before the Council. All States that enacted or were considering amnesties or similar measures should align their domestic legislation with the guidelines regarding impunity contained in the general comment.

7. The Working Group was concerned that few States outside of Latin America had made enforced or involuntary disappearances a specific criminal offence. Preventive action was crucial to eradication of the phenomenon. Accordingly, the Working Group urged the swift adoption by the General Assembly of the draft International Convention for the Protection of All Persons from Enforced Disappearance.

8. Ms. McDOUGALL (Independent Expert on minority issues), introducing her initial report (E/CN.4/2006/74), said that the core of her mandate lay in promoting the implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. To that end, she had held numerous consultations with representatives of Governments, regional organizations, civil society and academic institutions. She had entered into an extremely fruitful dialogue on minority issues with the Committee on the Elimination of Racial Discrimination (CERD), and similar substantive dialogues were scheduled with other treaty bodies. Meeting representatives of minority communities from all regions at the twelfth session of the Working Group on Minorities had also proved highly beneficial.

9. She had identified four broad areas of concern relating to minorities, which provided a legal and conceptual framework for her work: protecting a minority's existence; protecting and promoting the right of minority groups to enjoy their collective cultural identity and reject forced assimilation; ensuring effective non-discrimination and equality; and ensuring effective participation of members of minorities in public life.

10. She had organized her work around two interlinked thematic priorities. The first priority was to increase the focus on minority communities in the context of poverty-alleviation strategies and the Millennium Development Goals. As the deadline for the achievement of the Goals approached, minorities that had faced long-term endemic discrimination were, owing to their highly marginalized status, failing to benefit from the initiatives under way. Discrimination was often linked to disproportionate levels of poverty, which was both a cause and a manifestation of the diminished rights and opportunities of minority communities. She would soon host a seminar on minorities and development strategies jointly with the United Nations Development Programme and was undertaking a study of reports on the Millennium Development Goals and State practice in order to reveal the extent to which minority issues were addressed in poverty-alleviation strategies.

11. The second thematic priority of her work was to increase the understanding of minority issues in the context of promoting social inclusion and ensuring stable societies. Exclusion, discrimination and racism directed at minority groups continued to fuel social unrest in every region of the world. Minority rights and policies of inclusion played a vital role in promoting political and social stability. For practical reasons she had decided to focus her efforts under the second priority on three areas of importance for promoting inclusion and equality.

12. First, drawing on the conceptual work done by the Working Group on Minorities and various regional bodies, she was examining issues related to the policing and maintenance of security in multi-ethnic societies. Police engagement with minority communities could either ignite or quell social unrest, and it was her intention to identify and disseminate good practices in that regard.

13. Secondly, the arbitrary denial of citizenship to certain minority groups had sometimes had consequences that were felt over generations. Having participated in a broad range of consultations on such issues during the past year, she had now begun to work towards regional consultations to help to reveal the extent of the problem and develop practical solutions.

14. The most compelling factor contributing to poverty reduction among disadvantaged minorities was equal access to quality education, which was her third area of focus. Discriminatory practices of segregating disadvantaged minority children in inferior schools were widespread, and such children might also lack access to instruction in their own language. In many countries, school curricula needed to include teaching about the cultures, history, and contribution of minorities to the wider society.

15. She was devoting close attention to the particular situations of women in minority groups. Minority women and girls faced multiple forms of discrimination compounded by gender, which made them particularly vulnerable to violations and denials of their rights in

public and private life. Other individuals within minority communities might face additional discrimination based on disability or the fact that their sexual identity challenged social or cultural norms.

16. In July 2006 she had undertaken a mission to Hungary, where the Government had demonstrated significant political will and dedicated considerable resources to addressing the problems faced by minorities, in particular the Roma minority. A unique system had been established for the promotion and protection of the rights of minorities, particularly with regard to culture and language. The system of minority self-governments established by law afforded significant cultural autonomy to most of Hungary's minority groups. She also commended Hungary for its comprehensive anti-discrimination law. Nevertheless, the situation of the Roma community in Hungary and throughout Europe remained cause for serious concern. Sustainable solutions were required in the fields of education, employment, health, housing and criminal justice, and there was a pressing need to address widespread anti-Roma prejudice in society.

17. Mr. STAVENHAGEN (Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people), introducing his report (E/CN.4/2006/78 and Add.1-5), said that he had once again focused on three major areas: thematic research and development of issues that had an impact on the situation of human rights and fundamental freedoms of indigenous peoples; country visits; and urgent appeals and allegations relating to violations of human rights and fundamental freedoms of indigenous peoples.

18. Over the past decade, which coincided with the first International Decade of the World's Indigenous People, constitutional, legislative and administrative reforms had been introduced in various countries to recognize the individual and collective rights of indigenous peoples. Yet a real "implementation gap" existed between the normative expressions of recognition of those rights and the actual human rights situation of indigenous peoples.

19. Recognition of indigenous peoples' rights was particularly striking in Latin American countries, where constitutional and legislative amendments affirmed those rights in accordance with a new model based on a multi-ethnic, multicultural approach. A trend towards recognition of indigenous peoples' rights through special legislation had also been observed in Asian and African countries. Yet those legislative pronouncements had resulted in few substantive changes in the daily lives of most indigenous peoples.

20. International norms, even when ratified, did not always become part of domestic law, and were sometimes ignored by public officials and in judicial proceedings. Inconsistency between laws, such as laws governing natural resource management and indigenous or human rights legislation, had also been reported. That discrepancy between legislative texts and their practical implementation constituted a violation of the rights of indigenous peoples that must be addressed in the future. The gap was clearly illustrated in public administration structures, which were often characterized by bureaucratic inertia, rigid regulations and a lack of any popular participation.

21. The role of the courts in interpreting and applying of domestic legislation and international human rights standards required sustained attention. The judiciary, particularly superior courts, supreme courts and constitutional courts, had become increasingly involved

in that process, sometimes producing favourable outcomes for indigenous peoples. However, there was still a need for greater and ongoing training of judges and other judicial personnel in that area.

22. Indigenous peoples were increasingly availing themselves of international mechanisms to uphold their human rights. The inter-American human rights system had played an increasingly important role in that respect, and the African regional system, was also starting to have an impact.

23. In some countries the social struggles, demands and protests of indigenous organizations had been countered by the State through the application of anti-terrorist legislation. Not only was the use of exceptional laws counterproductive, but it provided a framework for human rights violations.

24. In 2005 he had visited South Africa and New Zealand to observe the human rights situation of minorities in those countries. His reports of those missions were contained in annexes to his main report. Despite the existence of social programmes in both countries, there were still discrepancies between the situation of indigenous people and that of the rest of the population, particularly with respect to employment, income, health, housing, education and the administration of justice. He had also recently visited Ecuador, and would report to the Council on that mission in 2007.

25. He had had an opportunity to perform a more in-depth analysis of the follow-up to the recommendations he had made in his previous reports. Follow-up had been carried out in Guatemala and Mexico, and he was involved in similar activities in Colombia, Canada, the Philippines and Chile.

26. He concluded by congratulating the Human Rights Council on the adoption at its first session of the Declaration on the Rights of Indigenous Peoples, which had long been awaited by indigenous peoples and the international human rights community. He had no doubt that the Declaration would soon be adopted by the General Assembly and that it constituted a new avenue for the protection and promotion of the human rights of the world's indigenous peoples.

27. Mr. FRANCO (Observer for Colombia), referring to the report submitted by the Working Group on Enforced or Involuntary Disappearances, noted that the Working Group had been invited to visit his country at the invitation of the Colombian Government, in accordance with its policy of transparency. The Colombian Government, particularly concerned at the occurrence of enforced disappearances, had taken steps to combat that serious violation of human rights. As a result, the number of cases reported had declined from 927 cases in 2004 to 210 cases in 2005, and 25 cases in 2006.

28. The Working Group's report addressed many issues that were not within the Group's mandate, including the structure of ministries in Colombia, the manner in which armed groups and their collaborators were tried, and the protection of vulnerable groups. The report did not recognize the demands imposed by demobilization or a peace process and or the need to strike a balance between justice and peace in such situations. An objective analysis of the Justice and

Peace Law and its recent amendments illustrated Colombia's unparalleled commitment to ensuring truth, justice and reparation, as the country's Constitutional Court had recently recognized.

29. His delegation wished to express its concern at the serious, unfounded allegations made against the State. So-called paramilitary groups and networks had been severely dealt with by the current Government, resulting in their demobilization and the trial and imprisonment of many of their leaders. Yet the report appeared to indicate the contrary, based on undocumented claims.

30. Turning to some of the past year's important achievements in combating enforced disappearances, he noted that a single registry of disappeared persons would be publicly available as of October 2006. The Procurator's Office of Colombia had recently collected sufficient information to enable the exhumation of more than 2,500 persons who had been buried illegally. Agreement had been reached on a national plan of action for the investigation of disappeared persons, and a significant appropriation from the national budget was under consideration to finance the plan. The National Reparation and Reconciliation Commission had been providing care to families of victims and putting pressure on the State to find the disappeared persons and bring their perpetrators to justice.

31. He was pleased to inform the Council that one of the recommendations made by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples regarding the protection of communities threatened with extinction had subsequently been taken up as a recommendation by the Office of the High Commissioner in Colombia. That had led to the formulation of a plan for temporary resettlement and land recovery for the Nukak-Maku people, who had been displaced by guerrilla groups.

32. Ms. MTSHALI (South Africa) drew attention to the report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples on his visit to South Africa and said that the brevity of that visit had prevented the Special Rapporteur from consulting with all the interested parties; accordingly, she invited him to return to her country. In the short time since South Africa had achieved freedom from apartheid it had established a constitutional order based on democracy, good governance, the rule of law and respect for human rights. The Government faced the challenge of rectifying a long past of dispossession, domination, disenfranchisement and marginalization. South Africa still had a society of haves and have-nots, drawn mostly along racial lines. The Government had undertaken many programmes to advance the rights of indigenous peoples, including the resuscitation of languages that had been on the verge of extinction and the revival of cultural practices and indigenous knowledge systems. It had given priority to the restitution of land to indigenous peoples as an inherent component of the national land reform policy.

33. The commonly used definition of indigenous peoples as articulated in the Indigenous and Tribal Populations Convention, 1957 (No. 107), and the Indigenous and Tribal People's Convention, 1989 (No. 169), of the International Labour Organization (ILO) could not be strictly applied to South Africa, as they would effectively render all black South Africans non-indigenous.

34. Mr. MACKAY (Observer for New Zealand) noted that the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples had visited his country in November 2005 to gain a better understanding of the situation of the Maori indigenous people. The report of that visit had given rise to considerable discussion in New Zealand. In the Government's view, while historical injustices must be addressed, overall social and economic policies were best determined on the basis of need. New Zealand had established sophisticated mechanisms to address historical and contemporary grievances, and had been cited by United Nations treaty bodies as being exemplary in that regard. New Zealanders had a fundamental belief in equal treatment under the law, although views sometimes differed on how that was best achieved. The Special Rapporteur's report raised the question of constitutional change, on which there was currently no consensus in New Zealand. Any agreed change would be brought about through the free and full exercise of democratic prerogatives of Maori and non-Maori citizens.

35. Mr. LARENAS SERRANO (Ecuador) welcomed the fact that in his report on his recent mission to Ecuador, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples had acknowledged that Ecuador was quite advanced in its constitutional protection of indigenous peoples. However, the report referred to a lack of secondary legislation to give effect to constitutional provisions. Yet certain important secondary laws had indeed been adopted, and were even mentioned in the report. Ecuador had made great strides in advancing the protection of indigenous peoples, for example by establishing a number of institutions for that very purpose. According to the report, those institutions were underfunded, but that was not entirely true, as the Council for the development of Nationalities and Peoples of Ecuador (CODEMPE), for example, had an annual budget of roughly \$20 million. The report also mentioned the deprivation of indigenous groups in the northern border area, but such deprivation occurred chiefly in areas where mainly mixed-race marginalized groups lived in large numbers.

36. Mr. CERDA (Argentina) confirmed that in 2007 the Working Group on Enforced or Involuntary Disappearances was expected to visit Argentina to hold its regular session and carry out a country mission. In the Commission on Human Rights, his delegation had proposed a resolution on the right to truth, and he hoped that the Working Group would be able to support that proposal. Like the Working Group, his delegation also hoped for the prompt adoption by the General Assembly of the draft International Convention for the Protection of All Persons from Enforced Disappearance.

37. The report of the Independent Expert on minority issues contained only a brief mention of the possible establishment of a voluntary fund on minority-related issues. His delegation believed that such a fund could give new impetus to the promotion of minority rights.

38. Mr. JAZAÏRI (Algeria) said that although the report of the Working Group on Enforced or Involuntary Disappearances stated that hundreds of enforced disappearances in Algeria had been the result of oppression of political opponents, such disappearances had not taken place since the 1990s, when they had been largely attributable to the terrorist activities of armed groups and not to the State security services. The Algerian Government had cooperated faithfully with the Working Group, and held that any statement to the effect that impunity was

a problem in Algeria stemmed from a poor or politically biased interpretation of the country's Charter for Peace and National Reconciliation, which recognized the need to punish those responsible for such disappearances, whoever they might be. The Algerian Government unreservedly supported the adoption of the draft International Convention for the Protection of All Persons from Enforced Disappearance.

39. Turning to the report of the Independent Expert on minority issues, he said that the Independent Expert had delivered an inspiring statement which typified the commitment and objectivity to a worthy cause that she had shown in the past. The Independent Expert had exceptional credentials and high moral integrity; she had always been value-driven in her work and had never succumbed to politicization, thereby increasing the moral impact of her work. Minorities around the world could find no better advocate.

40. Mr. LOULICHKI (Morocco) welcomed the adoption by the Council at its previous session of the draft International Convention for the Protection of All Persons from Enforced Disappearance and said he hoped that it would promptly be adopted by the General Assembly. He called for greater cooperation and coordination between the Working Group on Enforced or Involuntary Disappearances and other United Nations bodies with related mandates in order to avoid overlapping. It was also imperative to ensure that the Working Group remained free from any politicization. Given the importance of information sources to the Working Group's activities, the Group must show the utmost vigilance in ensuring the reliability of those sources, especially when political motivations were involved. When a State worked in good faith with the Working Group and responded promptly to requests for information on allegations, the mere fact that the party making the allegation rejected the information provided should not be enough to keep a case open: the burden of proof must fall on the source. In Morocco, the Equity and Reconciliation Commission had apprised the Working Group of the considerable work it had done to shed light on all human rights violations that had taken place prior to 1999.

41. Ms. POHJANKUKKA (Finland) asked the Chairperson of the Working Group on Enforced or Involuntary Disappearances whether he could provide examples of best practices for ensuring that the complex legal measures required to combat terrorism were consistent with a State's obligation under the Declaration on the Protection of the Rights of All Persons from Enforced Disappearance. She also wished to know how the Working Group would describe the situation in Sri Lanka as compared with those in other countries affected by conflict.

42. She asked the Independent Expert on minority issues how it would be possible to increase awareness of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and how she planned to promote the interrelationship between minority rights and conflict-prevention. It would also be helpful if she could explain how she intended to identify and promote best practices for the protection of minorities, the promotion of their cultural and social identities, effective non-discrimination and minority participation. Lastly, had she identified any trends in the responses to the questionnaire that she had circulated to Governments?

43. Addressing the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, she asked how the draft Declaration on the Rights of Indigenous peoples would influence his work. She also wondered how could the Council ensure the best

possible representation of indigenous peoples within it and foster the required synergy between the Council and the Permanent Forum on Indigenous Issues. Lastly, she requested further information on efforts to draw up a code of conduct for transnational corporations operating in regions where indigenous communities lived.

44. Mr. VIGNY (Switzerland), noting that the report of the Independent Expert on minority issues highlighted the relationships between conflicts and human rights and between poverty and minorities, asked what the priorities should be for countries torn by ethnic violence, and what priorities should be set for bilateral and multilateral development assistance so that it could better combat discrimination. It was regrettable that her report did not mention any special measures that could be taken to ensure the advancement of minorities under article 1, paragraph 4, of the International Convention on the Elimination of All Forms of Racial Discrimination.

45. His Government believed that indigenous peoples should continue to have a universal forum associated in some way with the Council, so that their representatives could report on their situations to the Council. Such a linkage would also provide them with an excellent position from which to communicate with the Independent Expert on minority issues and with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples. He wished to know whether those two individuals shared that view.

46. Ms. MAHILUM-WEST (Philippines) said that most of the cases of disappearances in the Philippines that figured in the report of the Working Group on Enforced or Involuntary Disappearances dated back to the period of martial law under President Marcos. A legal case had been filed in 1986 against the former President for human rights violations including torture, summary executions and enforced disappearances, and in 1995 a class of 9,539 Filipinos had been awarded \$1.9 billion. The enforcement of that judgement in the Philippines was the subject of an ongoing legal case.

47. Mr. FERNANDO (Sri Lanka) said that close cooperation between his country and the Working Group on Enforced or Involuntary Disappearances had led to a substantial decrease in the number of unclarified cases of disappearance in Sri Lanka. Adequate domestic mechanisms had been put in place, and allegations could be handled by the police, the Human Rights Commission of Sri Lanka and a retired Supreme Court judge, who had recently been appointed to inquire into allegations of abductions, disappearances and killings in all parts of the country. A presidential directive on the rights of arrested or detained persons had been reissued and publicized, and the Sri Lankan Inter-Ministerial Committee on Human Rights had set up a task force to carry out surprise visits to ascertain whether the directive was being enforced.

48. Mr. MARTABIT (Observer for Chile) noted that the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples had referred to the cases of Mapuche leaders who had been accused of terrorism and later acquitted. The persons in question had been arraigned under the 1984 Anti-terrorist Act; however, the Chilean Government had recently undertaken not to invoke that Act in the future for cases that could be brought to trial under other statutes, and Parliament was currently discussing a bill to amend the anti-terrorist legislation so that it no longer covered attacks on property. The Government had undertaken to ratify the 1989 ILO Indigenous and Tribal People's Convention (No. 169) and to recognize indigenous peoples in the Constitution.

49. Chile still had a large number of unsolved cases of disappearance some 30 years after the events had occurred. The Government was committed to determining the whereabouts of the missing persons with truth, justice and compensation for the victims. The President had recently proclaimed 30 August as the National Day of the Disappeared, stating that Chilean society must no longer exclude those who had suffered because of disappearances.

50. He commended the lucid description in the report of the Working Group on Enforced or Involuntary Disappearances of the Working Group's methods, for disappearances were not merely a phenomenon of the past, as the 535 new cases from all regions of the world showed. He called on the Chairperson of the Working Group to clarify the humanitarian aspects of the Group's mandate, especially in the light of the statement in the report that appeals made to the Working Group did not restrict simultaneous use of international or regional treaty-based human rights petition procedures. He also wished to know how the Council could promote better cooperation with the Working Group.

51. Mr. RIPERT (France) said that his delegation greatly appreciated the activities of the Working Group on Enforced or Involuntary Disappearances. The French Government considered the question of disappearances to be crucial and hoped for the prompt adoption by the General Assembly, by consensus, of the International Convention for the Protection of All Persons from Enforced Disappearance. With 40,000 pending cases in 79 countries, the problem unfortunately remained highly topical. When internal conflicts came to an end national reconciliation processes were indeed of the utmost importance. He agreed with the Chairperson of the Working Group that it was vital to ensure that such processes remained consistent with the fight against impunity and disappearances, while at the same time contributing effectively to reducing tensions that gave rise to conflict. He asked how the United Nations could integrate such considerations in its strategies for overcoming crises or in its peacekeeping operations, which increasingly called for participation by the Office of the United Nations High Commissioner for Human Rights (OHCHR). Lastly, what measures could be taken to combat the disappearance of children or to address the needs of the families of the missing, who were also victims of disappearances?

52. Mr. VARELA QUIROS (Observer for Costa Rica) said that, as a former member of the Working Group on Enforced or Involuntary Disappearances, he was pleased to note that in the previous year alone 1,309 cases had been resolved. The Working Group's report contained important recommendations which he believed would help shape the historical memory of humankind on that important matter. He wondered whether the Group had thought about how the Council could broaden its mandate to cover cases involving non-State agents, a situation that was contemplated in the draft International Convention for the Protection of All Persons against Enforced Disappearances.

53. His delegation was especially concerned about the 500 cases of enforced disappearances in the past year that had yet to be clarified, in spite of the international community's efforts. He asked the Chairperson of the Working Group whether he believed that the forthcoming adoption of the Convention by the General Assembly would have a dissuasive effect on such behaviour.

54. Ms. OVERVAD (Observer for Denmark) said that her delegation endorsed the questions raised by the representative of Finland on behalf of the European Union.

55. She asked the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples what practical measures could be taken to help emphasize the need to close the “implementation gap”, mentioned in his report, between existing legislation and administrative, legal and political practice with regard to the rights of indigenous peoples and to develop a programme of action for the human rights of indigenous peoples. She noted in that connection that the recommendations contained in the programme of action for the Second International Decade of the World’s Indigenous Peoples stressed the need to focus on the issue of implementation.

56. Mr. MARTÍNEZ ALVARADO (Guatemala) said that his country was always open to visits in the context of special procedures and looked forward to reading the recommendations that the Working Group on Enforced or Involuntary Disappearances would formulate following the visit it was currently making to his country. Guatemala was committed to addressing the phenomenon of enforced disappearances and to clarifying cases whenever possible, as shown by its participation in the most recent session of the Working Group.

57. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples had surely noted during his visit to Guatemala in May the progress Guatemala had made in responding to some of the recommendations of the Working Group on Indigenous Populations of the Sub-Commission on the Promotion and Protection of Human Rights. His delegation looked forward to hearing about the progress made in the study being conducted, with Mexico and Guatemala as pilot countries, on best practices for implementation of the Special Rapporteur’s recommendations regarding the rights of indigenous peoples in those countries.

58. Guatemala had supported the efforts to ensure the adoption of the draft International Convention for the Protection of All Persons against Enforced Disappearances and the draft Declaration on the Rights of Indigenous Peoples. He hoped that the Chairperson of the Working Group and the Special Rapporteur would do their utmost to ensure that those instruments were adopted by the General Assembly.

59. Mr. MOKTAR (Malaysia) said he was pleased to note that the report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples contained a reference to Malaysia’s Aboriginal Peoples Act of 1954 (E/CN.4/2006/78/Add.1, para. 11). While there was still a fundamental lack of clarity regarding the definition of indigenous people in international discourse, Malaysia’s Act clearly identified its indigenous people as falling into three main groups, with 18 further subgroups. Under the aforementioned Act the Malaysian Government had established the Department of Orang Asli Affairs, which cooperated with other government agencies in ensuring that basic education, health care and social services were accessible to indigenous groups. The Government continued to exercise due respect and care for the cultural and historical heritage of its indigenous people through mainstreaming efforts, while disputes were settled in accordance with the relevant provisions of Malaysian law.

60. Mr. STUEWER (Canada) drew attention to the important role that the Working Group on Enforced or Involuntary Disappearances had played in the elaboration of a legally binding instrument for the protection of all persons from enforced disappearances and said that his

delegation was pleased to have supported the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance at the Council's first session. He asked the Chairperson of the Working Group how he thought the Group should function vis-à-vis that new instrument and how the international community could support changes at the national level to ensure accountability for the most serious international human rights crimes, including enforced disappearances.

61. He welcomed the Working Group's new reporting format, which focused greater attention on countries where disappearances had been reported. He welcomed the impressive progress the Working Group had made in clearing up the backlog of cases, but shared the Chairperson's concerns about underreporting in some countries as a result of restrictions placed on the work of civil society, which sometimes had their basis in discrimination. He wondered how the international community could best help to strengthen groups in that position.

62. He reiterated his delegation's support for the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples and commended him for his work with the Permanent Forum on Indigenous Issues and other United Nations bodies with a view to mainstreaming indigenous issues in the United Nations system. He invited the Special Rapporteur to discuss some of the challenges and obstacles he had faced in fulfilling his mandate and tell how he thought they could be alleviated. Given that the definition of the term "indigenous" had been a topic of debate for some time and posed a challenge in the dialogue among development agencies, he wondered how the Special Rapporteur planned to improve formal access to communities and acceptance of his work by States and their agencies in regions where alternate terminology was used or distinctions denied.

63. Mr. SIMONYAN (Observer for Armenia) said that Armenia attached particular attention to minority issues and had unequivocally supported - and sponsored - the resolution establishing the mandate of the Independent Expert on that topic, which he hoped would fill the existing protection gap and contribute to the mainstreaming of minority issues. His delegation appreciated the systemized and holistic approach being taken towards the promotion and protection of minority rights.

64. He welcomed the views of the Independent Expert on minority issues, especially with regard to her four main areas of concern and her priorities in discharging her initial mandate. He commended her intention to cooperate closely with the Special Adviser to the Secretary-General on the Prevention of Genocide to discuss strategies for identifying early warning and conflict prevention, and thought that the work done by other bodies such as CERD would be of help in elaborating a set of tools and indicators for identifying concerns. He also welcomed her intention to closely cooperate with regional intergovernmental mechanisms.

65. Mr. HEINES (Observer for Norway) said that his country supported the recommendation of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples that Governments should give high priority to bridging the gap between legislative texts and their implementation in practice. He wondered how the Declaration on the Rights of Indigenous Peoples might contribute to bridging that gap.

66. While the Special Rapporteur's latest report focused on the situation of indigenous peoples in Latin America, his delegation would like to see future reports address other regions, such as Europe. He reiterated the Norwegian Government's standing invitation to the Special Rapporteur to visit Norway.

67. He wished to know how much attention United Nations country teams presently gave to indigenous issues and what their level of knowledge was with regard to developments over the last decade in the area of national and international legislation and jurisprudence, including the work of the treaty bodies. He also wished to know how OHCHR could help to improve country teams' performance on those issues.

68. Ms. BARTON (Observer for the United States of America) drew attention to the report of the Working Group on Enforced or Involuntary Disappearances and said she wished to address the Working Group's concerns about the issue of rendition. Her Government recognized that the international community had not always agreed with the United States position in the war on terror; however, renditions were used to transport terrorist suspects from the country where they were captured to another country where they could be questioned, held or brought to justice, and were not inherently unlawful. For decades, the United States and other countries had used renditions to transport terrorist suspects. Furthermore, United States personnel were required to treat all detainees in compliance with United States law and the country's treaty obligations, including prohibitions against torture and cruel, inhuman or degrading treatment, and against transferring persons to be tortured.

69. With regard to the Working Group's concerns about secret detentions, she noted that on 6 September, President Bush had announced that 14 leaders and operatives of Al-Qaida had been moved from classified locations, where they had been held and questioned by the Central Intelligence Agency (CIA), and placed in the custody of the United States Department of Defense. From their new place of detention they could be brought to justice for their crimes. The International Committee of the Red Cross (ICRC) had been notified and would have access to them at the Guantánamo detention centre. No detainees remained in CIA custody.

70. Mr. FUJISAKI (Japan) said that his country highly appreciated the efforts of the Working Group on Enforced or Involuntary Disappearances and its Chairperson. If in some instances those efforts had yet to bear fruit, that was because some Governments, regrettably, had provided only formal responses devoid of relevant information. The Democratic People's Republic of Korea, for instance, had not cooperated sufficiently with the Working Group. Abduction was a form of enforced disappearance and a clear violation of human rights, and he trusted that the Working Group would strongly urge the Democratic People's Republic of Korea to cooperate more sincerely with it and locate the persons who had been abducted. Japan supported the prompt adoption of the International Convention for the Protection of All Persons against Enforced Disappearances and called for the understanding and support of the international community as a whole in addressing the issue of abduction.

71. Mr. NEYRA (Peru) said that Peru shared the concern expressed by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples with regard to the "implementation gap" and believed that a body of laws should be consolidated to make actions aimed at the protection of vulnerable groups such as indigenous peoples compulsory. In that regard, he welcomed the adoption by the Council of the Declaration on the

Rights of Indigenous Peoples after more than 10 years' work to that end by the open-ended inter-sessional Working Group, which Peru had had the honour of chairing. His delegation hoped that that instrument would help to bring about real improvements in the conditions of indigenous peoples. He invited the Special Rapporteur to share his thoughts on the rights recognized in the Declaration, and on ways that it might be further improved.

72. While there were a number of national bodies and NGOs in Peru to ensure the implementation of constitutional and other legal norms aimed at improving the situation of indigenous peoples, the country continued to face a number of problems in various regions. There was nevertheless a recognition in Peru that legislation must be implemented responsibly and conscientiously.

73. With regard to the recommendation that an international code of conduct should be developed to govern the activities of transnational corporations operating in regions where indigenous people lived, he asked whether the Working Group had worked in that area with the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises. He also wondered whether any initiatives had been taken at the national level to address the question.

74. Mr. THEUERMANN (Observer for Austria) endorsed the questions raised by the representative of Finland on behalf of the European Union. With regard to the proposals of the Independent Expert on minority issues for incorporating the gender perspective into her mandate, he wished to hear more about ongoing efforts to that end undertaken by other United Nations actors. He asked the Independent Expert whether she had identified substantive challenges facing minorities that did not seem to be properly addressed under the mandates of existing United Nations bodies and mechanisms in general. Lastly, he wondered what positive results and obstacles the Independent Expert had observed with regard to the mainstreaming of minority issues within the United Nations system in general, and how she assessed existing efforts to address minority issues in OHCHR technical assistance programmes and advisory services.

75. Mr. Godet (Switzerland) took the Chair.

76. Ms. ROVIROSA PRIEGO (Mexico) said that the interactive dialogue afforded an opportunity for observing the interrelationship between all human rights and the relationship between specific human rights and specific vulnerable groups. Mexico highly valued the recommendations made by special rapporteurs and others following their visits to the country, including the 2003 visit by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples. The Mexican Government was setting up a programme to follow up on the Special Rapporteur's recommendations. Mexico also supported the Special Rapporteur's study on best practices for the implementation of his recommendations.

77. Mexico had carried out a variety of activities relating to indigenous people, including an international seminar on the rights of indigenous peoples held in Guerrero and a recent workshop, held in Tulum, on the Declaration on the Rights of Indigenous Peoples. Her delegation greatly hoped that the Declaration would be adopted by the General Assembly at its forthcoming session, together with the International Convention for the Protection of All Persons against Enforced Disappearances.

78. Ms. MARTIN (Observer for Nicaragua) welcomed the fact that many countries, namely in Latin America, had amended their constitutions and legislation to recognize the rights of indigenous peoples, and that international mechanisms for defending those rights were increasingly being used. Nicaragua had a number of legal texts that upheld the rights of indigenous peoples, including the 1987 Autonomy Act; the Constitution, which recognized the multi-ethnicity and collective entity of indigenous peoples; and a 2003 law on communal property, which had led to significant progress in the granting of community property titles. In addition, the 2001 ruling of the Inter-American Court of Human Rights in favour of the indigenous communities in Nicaragua had helped the State to promote development projects in indigenous communities and grant property titles to those communities. She hoped that the Declaration on the Rights of Indigenous Peoples would be adopted by the General Assembly and would help to foster cooperation on indigenous issues.

79. Mr. SINAGA (Indonesia) said that Indonesia had various means to protect the rights of indigenous people, including its Constitution, and was currently drafting new legislation to improve protection of all ethnic groups, including indigenous people. He asked whether a list of States' definitions of the term "indigenous" could be compiled with a view to eliciting universal usage, since the specific definitions contained in ILO conventions might not be applicable to all countries, as the representative of South Africa had pointed out.

80. Mr. KHARI JVEYABAD (Observer for the Islamic Republic of Iran) said that the oral presentation by the Chairperson of the Working Group on Enforced or Involuntary Disappearances had contained some vague references that should be clarified. His delegation believed that careful consideration should be given to the role of non-State actors, terrorist groups, traffickers and the unstable situation in neighbouring countries when considering the phenomenon of enforced disappearances.

81. Mr. CHOE Myong Nam (Observer for the Democratic People's Republic of Korea) said that, with reference to disappearances, his country had cooperated closely and sincerely with the parties concerned, and that all cases involving his country had been fully resolved. It was regrettable that those cases had been described as outstanding, but that situation was the result of politically motivated manipulations by the Japanese authorities, who sought to mislead the international community. He wished to know what measures the Working Group had taken and would take to address such manipulations, and he asked it to urge the Japanese authorities to put an immediate stop to such practices.

82. Ms. BALDWIN (Amnesty International) acknowledged that the Working Group on Enforced or Involuntary Disappearances had helped to bring about important improvements in the human rights situation in Sri Lanka in the 1990s but wondered what kind of contribution it could make in the current situation. In his report on his mission to Sri Lanka, the Special Rapporteur on extrajudicial, summary or arbitrary executions stated that he had received information on the re-emergence of the pattern of enforced and involuntary disappearances that had wracked the country in the past. He wondered whether the Working Group had received such information and, if so, what the Government's response had been.

83. With regard to the use of extraordinary renditions and secret detention centres, she noted that the President of the United States of America had recently justified the use of secret

detention facilities on the grounds that detainees had provided vital information that had prevented further terrorist attacks. Given the Working Group's experience, she wondered what the implications were of the use of such practices, and whether they could ever be justified.

84. Mr. ASHAN (Interfaith International) suggested that the Independent Expert on minority issues might wish to look into the question of provincial autonomy in places such as Pakistan, where a conglomeration of ethnic, linguistic, cultural and religious groups chose to live in a shared geographic area on the basis of a common historical experience. While the principle of federalism on which Pakistan had been built was intended to promote such unity and diversity, that system suffered from structural weaknesses: power had been concentrated at the centre of the federation, at the expense of the provinces, and that had seriously harmed the State as a whole. Pakistan was an example of a State in which provincial autonomy could help to solve some of the problems of minorities, and the Independent Expert should consider such problems from that perspective.

85. Ms. BOKULIC (Minority Rights Group International), speaking also on behalf of the International Movement Against All Forms of Discrimination and Racism (IMADR), Pax Romana, Baha'i International and the International Federation for the Protection of the Rights of Ethnic, Religious, Linguistic and Other Minorities, said that the mandate of the Independent Expert on minority issues was essential for addressing minority rights violations, providing a holistic perspective on the positive value of minority inclusion and strengthening the often inadequate implementation of the legal framework for the protection and promotion of minority rights. She welcomed the constructive consultation process that the Independent Expert had initiated with some Governments, and she urged all States to follow in the footsteps of Hungary, which had invited the Independent Expert to visit the country; that visit had taken place in June. The cooperation that the Independent Expert had established with the Sub-Commission's Working Group on Minorities and the various regional mechanisms for the protection of minority rights would help strengthen implementation and would be of particular importance in regions where such mechanisms were lacking.

86. She urged the Council to make the Independent Expert's mandate a permanent one, for that mandate was complementary to the mandate of the Working Group on Minorities. Participating NGOs had welcomed Ms. McDougall's participation at the twelfth session of the Working Group, and would like to know what aspects of the Group's work she had found most useful for her own work.

87. Mr. MALEZER (Foundation for Aboriginal and Islander Research Action), referring to the report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, said that the thematic study on constitutional reforms, legislation and implementation of laws (E/CN.4/2006/78/Add.5) recommended that Governments should establish independent mechanisms to monitor performance: the relevant United Nations bodies should examine country performance against those recommendations. In the case of the analysis of country situations and other activities of the Special Rapporteur (E/CN.4/2006/78/Add.1), Botswana should be urged to respond positively to the Special Rapporteur's interest in examining the situation of its Bushmen and their forced relocation from the Central Kalahari. The recommendation made in the report on the mission to New Zealand (E/CN.4/2006/78/Add.3) that New Zealand should give constitutional recognition to the Treaty

of Waitangi and invest the Waitangi Tribunal with enforceable powers warranted support. The Special Rapporteur should continue to bring to the attention of Governments the best practices described in addendum 4 to his report, which should form a framework for the universal periodic reviews of States having indigenous peoples.

88. All too often it was States themselves which violated the rights of their indigenous peoples, sometimes in breach of their obligations under international human rights treaties and always in violation of their obligations as States Members of the United Nations. The United Nations was expected to do something about such cases; the Council had already taken a significant step by adopting the Declaration on the Rights of Indigenous Peoples.

89. Mr. FATTORINI (Mouvement contre le racisme et pour l'amitié entre les peuples), speaking also on behalf of the International Fellowship of Reconciliation, the Society for Threatened Peoples, the Transnational Radical Party, Interfaith International, the Asian Indigenous and Tribal Peoples Network, Pax Romana, the International Federation for the Protection of Ethnic, Religious, Linguistic and Other Minorities, and Forum Asia, said that the nine organizations remained deeply concerned about the disappearance of Gedhun Choekyi Nyima, the eleventh Panchen Lama of Tibet, and his parents, and requested the Working Group on Enforced or Involuntary Disappearances to report to the Council on its current efforts in that outstanding case. The Working Group should also state its views on the recommendation of the Committee on the Rights of the Child that China should allow an independent expert to visit and confirm the well-being of Gedhun Choekyi Nyima.

90. Ms. DALANG (International Work Group for Indigenous Affairs), speaking also on behalf of the Cordillera Peoples Alliance and the International Indian Treaty Council, drew attention to the circumstances of the murder of Alyce Omengan-Claver on 31 July 2006, 1 of the 96 killings of indigenous persons in the Philippines since President Arroyo had come to power. Those 96 cases were just a fraction of the more than 700 political killings reported in the Philippines as of 3 September 2006. The three organizations on whose behalf she spoke would like to know whether the Special Rapporteur had taken note of the situation, whether he had taken any action and whether he had conveyed his concern to the Philippine Government.

91. Mr. TOOPE (Chairperson-Rapporteur of the Working Group on Enforced or Involuntary Disappearances) said that he was grateful for all the useful comments offered, for the Working Group could not function without its close contacts with States, NGOs and the families of disappeared persons.

92. Colombia's legal framework for dealing with disappearances was strong and commendable, but it had not proved effective: there had been many complaints but few prosecutions. His report did mention such issues as the structure of ministries in that connection, but only when directly relevant to effective action. Demobilization of paramilitary forces was a key theme of the report. The delivery of justice and peace meant striking a delicate balance, and he wished to draw the Colombian Government's attention to the Working Group's general comment on article 18 of the Declaration on the Protection of All Persons from Enforced or Involuntary Disappearance, which addressed that question. Parts of the justice and peace legislation had not been upheld by the Constitutional Court, specifically matters relating to sentence mitigation and reduction. The news that the national search plan might be actively

funded was welcome, for it highlighted the need for robust implementation of the law. The Working Group hoped that the Government would consider its recommendations carefully.

93. There was a typographical error in the text of his statement on Algeria: the disappearances in question had indeed occurred in the 1990s. However, he drew the Algerian Government's attention to the general comment on article 18, which constituted an objective statement of the principles which the Working Group believed should apply with regard to mitigation, amnesty, truth and reconciliation. He endorsed the views made on that point by the representative of France.

94. The Government of Morocco was to be commended on its extensive cooperation with the Working Group, which had been most impressed by the 2006 presentation given by the Equity and Reconciliation Commission.

95. He would hesitate to say that the Working Group as a whole would not endorse the suggestion that the burden of proof should be shifted to sources of information. The functioning of the Working Group ever since its inception had been based on acceptance by a disappeared person's family that a case had been clarified.

96. Turning to the points raised by Finland on the fight against terrorism, he said that public acknowledgement of detention was vital. Extradition and criminal cooperation arrangements were the right means of handling transfers of persons suspected of terrorism.

97. The Working Group's report highlighted the cooperation furnished by the Government of Sri Lanka in the past: 6,530 cases had been clarified. That cooperation was continuing in the context of the cases that were now emerging for the first time in several years: 11 urgent actions concerning 17 persons had been transmitted to the Government in recent months, and more were being processed. There was some concern that the patterns seen in the earlier period of conflict were re-establishing themselves.

98. He was grateful to the Government of the Philippines for its offer to pursue further discussions.

99. With regard to the comments made by the representative of Chile, he wished to emphasize the humanitarian nature of the Working Group's mandate: its purpose was not to criticize individual States or determine State responsibility or criminal liability but to discover what had happened to disappeared persons. There was therefore a clear area for collaboration between the Working Group and any new treaty body that might be set up.

100. The problem of non-State actors troubled the whole human rights system of the United Nations. When such actors connived with a State in a disappearance, the Working Group treated the State as responsible. The difficulty arose when a political or armed group was in opposition to the State: the Working Group had no mandate to investigate disappearances in such circumstances.

101. He had been surprised by the proposition advanced by the representative of the United States of America that rendition was not inherently unlawful, for rendition did seem to lie outside any legal framework. As he had mentioned earlier, the Working Group encouraged the

use of extradition and cooperation arrangements; the secret transfer of persons without notification of their families amounted to a disappearance for the purposes of the Working Group's mandate.

102. The cases in the Democratic People's Republic of Korea had not been clarified precisely because the families of the disappeared persons had not accepted the Government's explanations: in that regard the Working Group was applying its standard working practice.

103. Ms. MCDUGALL (Independent Expert on minority issues) said that she was grateful for the expressions of support for her mandate and for the work done so far.

104. In response to the several questions about her approach to conflict prevention she said that she was focusing her efforts on early warning: the identification of factors in the treatment of minorities which might trigger conflicts. It was necessary to work closely with other bodies active in that area, such as CERD. With regard to countries in crisis she would confine her response to the example of Iraq, where people were struggling to rebuild the constitutional and legal foundations of a peaceful society. There was clearly enormous concern as to how minority rights should feature in the constitutional and legal framework, and the newly established Council on Minorities had requested her to furnish technical assistance and advice.

105. The representative of Switzerland had asked why she had made no mention of positive measures under article 1, paragraph 4, of the International Convention against All Forms of Racial Discrimination. That provision was in fact covered by the third of the broad areas of concern she had mentioned, for it did imply the implementation of concrete measures. The involvement of minority voices in the dialogue in Geneva was indeed a crucial factor in elucidating the issues, establishing the best practices and formulating sustainable solutions. Such voices must be heard in the Council and in all relevant United Nations activities. Such a forum might be established under her mandate or under the auspices of the Working Group on Minorities. The Working Group's most valuable contribution to her work would in fact be to convene such a forum; it had already done much for the development of the conceptual framework of her mandate.

106. Best practices could perhaps be developed and disseminated most effectively by means of country visits, for such practices had to be seen in the country context. Her visit to Hungary, for example, had been of enormous value, and she urged other Governments to allow her to visit their countries and see best practices in action. She was grateful to all the countries that had responded to her questionnaire and urged others to do so, for the information provided on best practices was most useful.

107. Mr. STAVENHAGEN (Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people) said that he was grateful for all the comments made but welcomed in particular the points made by representatives of the countries he had visited, which had a wider significance beyond the borders of those countries. For example, South Africa and some of the Asian countries had raised the important question of definitions. Of course it was not for a special rapporteur or indeed for the Council to offer a precise definition of "indigenous people", for the concept varied from country to country. Of particular

importance in that connection was the work being done by the African Union's Commission on Human and Peoples' Rights, which had set up a working group on indigenous peoples. The draft laws now emerging in some African and Asian countries would help to elucidate the characteristics of the peoples falling within his mandate.

108. The question of definitions was related to another matter raised by South Africa, New Zealand and other countries: the fact that, in principle, all citizens in their countries enjoyed the same rights, including rights to the various public services provided by the State, yet in practice they did not have equal access to such services. He had appealed to States to furnish disaggregated statistics on access to services and on the indices of social, economic and human development, for without such information it was impossible to determine the extent of indigenous peoples' exclusion. That raised the question of compensatory measures or affirmative action focused in particular on the needs of the poorest indigenous peoples: some countries were already implementing such measures; others were not.

109. On the question of the relocation of indigenous peoples, the fact was that under international law States must take account of the right of people displaced by armed conflicts to return to their native parts and not to be relocated without their full consent. Indigenous peoples must therefore be consulted at all stages of development or relocation projects.

110. The representative of Chile had raised the question of the amendment of anti-terrorist legislation that had been used to punish members of social movements. No action had been taken so far in the Senate, but positive developments might be forthcoming in the near future.

111. It was crucial for the Declaration on the Rights of Indigenous Peoples to be endorsed by the General Assembly, for it would open up new avenues for consolidation of those peoples' rights at the international and regional levels, in the work of United Nations agencies, and in terms of the adoption and implementation of domestic legislation. It would also enhance the already fine work being done by such bodies as the Working Group on Indigenous Populations. In fact he saw a continuing and important role in the application of the Declaration for the Working Group, the OHCHR Indigenous Peoples and Minorities Unit, and other bodies, which should bring their work into line with the requirements of the Declaration.

112. He agreed that there was a need for close cooperation with the Working Group on Transnational Corporations and, indeed, with all other bodies concerned with indigenous peoples.

113. Mr. FUJISAKI (Japan), speaking in exercise of the right of reply, drew attention to the statement made by the observer for the Democratic People's Republic of Korea and said that the abduction issue was not a political game but a question of grave violations of human rights. The authorities of the Democratic People's Republic of Korea had apologized for the abductions but had given no satisfactory explanation concerning the fate of the victims. The families of the victims and the Japanese Government and people could not accept the claim that the issue had been resolved. Japan strongly urged the Democratic People's Republic of Korea to supply the necessary information and allow the survivors of the abductions to return to their home countries.

114. Ms. MAHILUM-WEST (Philippines), speaking in exercise of the right of reply to the statement made on behalf of the Cordillera Peoples Alliance, said that the Philippine authorities had received a joint letter from the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples and the Special Representative of the Secretary-General on the situation of human rights defenders concerning the Claver case and were preparing their response. She would respond to the other issues raised in that statement under the appropriate agenda item.

115. Mr. CHOE Myong Nam (Observer for the Democratic People's Republic of Korea), speaking in exercise of the right of reply, said that the abduction issue to which the representative of Japan had referred had been completely resolved. It had been described as an outstanding issue only because of Japan's continuing and despicable hostility towards his country, which was intended to cover up Japan's own crimes against humanity, including crimes against Koreans: the abduction of 8.4 million persons, the fate of hundreds of thousands of whom was still unknown; the genocidal murder of 1 million persons; and the forced sexual enslavement of 200,000 women and girls. Those crimes could not be concealed behind clamour over an issue that was already resolved.

116. Mr. FUJISAKI (Japan) said that his Government could not accept that the abduction issue had been resolved. Japan had acknowledged the facts of history, but past acts could not be used to justify the failure to resolve that issue. Furthermore, the figures given by the representative of the Democratic People's Republic of Korea were unsubstantiated.

117. Mr. CHOE Myong Nam (Observer for the Democratic People's Republic of Korea) reiterated his delegation's rejection of the Japanese allegations: the abduction issue had been completely resolved. He had referred to Japan's crimes against humanity because, like Japan, the Democratic People's Republic of Korea held the lives of its citizens dear. Japan's attitude indicated that it was still an imperialistic and chauvinistic State.

The meeting rose at 1 p.m.