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Summary record of the 21st meeting
Held at Headquarters, New York, on Tuesday, 18 October 2011, at 10 a.m.

Chair: Mr. Haniff . . . . . (Malaysia)

Contents

11-55238 (E)

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

Agenda item 69: Promotion and protection of human rights (A/66/87)

(a) Implementation of human rights instruments (A/66/40 (vols. I and II),[1] A/66/44,[1] 48, 55, 175, 217, 259, 276 and 344)

(d) Comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action (A/66/36)

1. **Mr. Šimonović** (Assistant Secretary-General for Human Rights), introducing several reports under the agenda item, said that the report of the Secretary-General on measures to improve further the effectiveness, harmonization and reform of the treaty body system (A/66/344) provided information on the workloads of treaty bodies, the current use of available resources and an update on the treaty-body strengthening process. He drew attention to two proposals in the report: presenting a comprehensive request, every two years, for a meeting of all treaty bodies to discuss workload in terms of reports submitted; and setting a fixed calendar based on 100 per cent compliance with the reporting schedule prescribed in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The report highlighted the goal of equitable geographical distribution in the membership of the human rights treaty bodies. Since the Third Committee addressed the operational requirements of treaty bodies in a number of separate resolutions considered on an annual or biennial basis, it would be useful to consider ways to address issues related to the treaty body system as a whole, such as through the proposals contained in the report.

2. The report of the Chairs of the human rights treaty bodies on their twenty-third meeting, held in Geneva on 30 June and 1 July 2011 (A/66/175) included a recommendation that the meeting of the Chairs should be held every other year in different regions with a view to enhancing the implementation of the human rights treaties, raising awareness of the work of the treaty bodies, and strengthening synergies between international and regional human rights mechanisms and institutions. It had been decided that their twenty-fourth meeting would be held in the African region in 2012, and a joint statement on the occasion of the twenty-fifth anniversary of the Declaration on the Right to Development had been adopted.

3. The International Convention for the Protection of All Persons from Enforced Disappearance, adopted in December 2006, had entered into force in December 2010, and 30 States were currently a party to the Convention. On 31 May 2011, a meeting of States parties had elected the first 10 members of the Committee on Enforced Disappearances, which would be holding its first session in Geneva in November 2011. He drew attention to the reports of the Human Rights Committee (A/66/40), the Committee against Torture and the Subcommittee on Prevention of Torture (A/66/44), the Committee on the Rights of Persons with Disabilities (A/66/55), the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (A/66/48) and the Committee on the Elimination of Discrimination against Women (A/66/38).

4. It would be useful for the Third Committee to consider holding dialogues during future sessions with the chairs of other Committees such as the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of Persons with Disabilities. The report of the Secretary-General on the activities of the United Nations Voluntary Fund for Victims of Torture (A/66/276) set out recommendations for grants to beneficiary organizations that were adopted by the Board of Trustees of the Fund and provided information on policy decisions adopted by the Board in implementation of the recommendations made by the Office of Internal Oversight Services.

5. **Mr. Grossman** (Chairperson, Committee against Torture) drew attention to the annual report of the Committee against Torture (A/66/44), and said that the Committee continued to have serious concerns about the reporting delays of State parties. It welcomed the submission of initial reports during the past year by Madagascar and Djibouti and called on the 30 States parties which had yet to present their initial reports — many of which were overdue by more than a decade — to do so. Periodic reports which were past due — of which there were at least 65 — should also be submitted without further delay.

[1] To be issued.

6. The new optional reporting procedure introduced in 2007, known as “the list of issues prior to reporting”, greatly simplified the reporting process, while enriching dialogue, increasing the timeliness and resulting in more specific recommendations. States parties had reacted favourably to that procedure, and the Committee would evaluate and improve it going forward, taking into account suggestions from States parties and civil society organizations. Noting that the treaty body system as a whole was facing serious difficulties owing largely to the inadequate capacity of Secretariat conference services to process and translate documents in a timely manner, he encouraged Member States to reflect on the need for significant additional resources.

7. State party acceptance of the individual complaints procedure under article 22 of Convention was optional. It was regrettable that only 65 of the 149 States parties had made the declaration accepting the Committee’s competence in that regard, and he called on the remaining 84 States parties to accept the procedure. He further noted that the Committee had considered the merits of 17 cases in the last year. Another critical issue for the individual complaints mechanisms was the need for full compliance with article 14 obligations to provide remedies to victims of torture and other cruel, inhuman or degrading treatment or punishment, and the need to ensure that victims obtained full redress.

8. To address its increased workload, the Committee against Torture had increased the number of reports that it examined at each session from 6 to 9 for the November session and to 8 for the May session. It had also increased the number of individual complaints reviewed, deciding 12 individual cases in the last session, as compared with 5 at the previous one. Currently, 106 petitions were pending as a result of the growing number of complaints submitted. While that increase was positive in that it indicated that individuals deemed it important to seek justice through the Committee’s complaints procedure, States parties must endeavour to find permanent solutions to the resource and workload issues.

9. The Committee had dedicated more time to its confidential procedure under article 20. He appealed to the nine States that had declared that they did not recognize its competence in that regard to withdraw their reservations. The Committee had accelerated its work on general comments, adopting a first draft on a general comment explaining and clarifying the obligation of States parties under article 14 of the Convention. A second draft would be prepared at the Committee’s upcoming session. The Committee had also been discussing a document on facts and evidence designed to address important issues, such as the weight that should be accorded to domestic determinations and the proper standard of proof.

10. Turning to the consultation process launched by the High Commissioner for Human Rights to strengthen the treaty body system, he noted that the growth of that system had not been matched with equivalent resources and that measures which led to increased efficiency did not necessarily reduce costs. Making the Committee’s work more effective at the national level required more investment, enhanced cooperation with States and improved time management. Member States had an obligation to provide adequate resources, so that the system that they had created could perform effectively.

11. The numerous international and regional instruments which set out provisions for the unequivocal and absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment had been essential in providing the legal legitimacy with which to advance the values of human dignity embodied in those treaties and conventions. For its part, the Committee had achieved significant progress in transforming countries’ legal norms, investigating and punishing perpetrators of torture, and excluding confessions extracted through torture from legal proceedings.

12. In spite of those developments, acts of torture continued to be perpetrated: there were cases of failure to implement the Convention’s provisions; refusals to adopt a clear definition of torture, to criminalize torture or to set out adequate penalties; and continued “rendition” of suspects to countries that used torture as a means of investigation and interrogation. Moreover, forced disappearances continued to deny persons their basic legal safeguards, and rehabilitation and redress were rarely provided to victims or their families. In that respect, States parties needed to recommit themselves to the full realization of the goals of the Convention.

13. It was important to keep sight of the human dimension in discussing torture, and the women, men and children who were victims. He highlighted a recent

case in which the Committee's conclusion of substantial grounds for believing a complainant would be at risk of being tortured if returned to her country had been complied with by the State party in question, thus giving the victim of torture a chance at a new life.

14. **Mr. Evans** (Chairperson, Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) said that, during the course of 2010, the number of States parties to the Optional Protocol to the Convention against Torture had passed 50 and the number of members to be elected by States parties had increased from 10 to 25, making the Subcommittee the largest of the United Nations human rights treaty bodies. In 2010, the Subcommittee had conducted full visits to Lebanon, Bolivia and Liberia. It had also conducted its first follow-up visit, to Paraguay, which had proved useful, confirming the belief that the best way to ensure implementation of recommendations was by continuing direct discussion with the authorities who had day to day responsibility for detention issues in the countries concerned.

15. The report contained the Subcommittee's definitive guidelines on national preventive mechanisms. It was of great concern that nearly half of all States parties had not designated such mechanisms as set out in the Option Protocol, since that was the single most significant thing that a State could do to prevent torture and ill-treatment from occurring over time. In that regard, it would be helpful for Subcommittee members to meet with States parties as soon as possible after they became parties to the Protocol in order to discuss the establishment of national preventive mechanisms.

16. The report also set out the Subcommittee's approach to the concept of prevention, explaining that the prevalence of torture and ill-treatment was influenced by a broad range of factors, including general human rights, the rule of law, the level of poverty, social exclusion, corruption and discrimination. There were 61 States parties to the Optional Protocol, and that number was expected to increase significantly. As in 2010, the Subcommittee would only be able to conduct three full visits in the current year — to Brazil, Mali and Ukraine. That rate of visits was insufficient, and a far more dynamic engagement with States parties and with their national preventive mechanisms was envisaged, especially with the expansion of the Subcommittee. That problem could only be fully solved by increasing resources to support its work, but the Subcommittee was also aware that much could be done by reordering its own methods to make better use of the time and resources at its disposal.

17. In that respect, a number of changes had been made. The Bureau was currently composed of five members — a Chairperson and four Vice-Chairpersons, who were each responsible for a different area of activity. Regional task forces had been established to oversee national preventive mechanisms; and a system of informal meetings during plenary sessions had been set up to make better use of meeting time. The Subcommittee was also exploring the possibility of using its visiting mandate more creatively, tailoring visits to address the most pressing elements in the country concerned, and was seeking new ways of cooperating within the United Nations system, particularly with members of the Committee against Torture and the Special Rapporteur on torture, to find a comprehensive approach to tackling torture and ill-treatment. In that respect, the Subcommittee would be more open and transparent in its work, whilst fully respecting the principle of confidentiality in its work.

18. The Subcommittee welcomed that over half of the 12 reports from country visits transmitted to States parties had been released to the public, as that greatly facilitated prevention, and hoped that the remaining States would do likewise. Nevertheless, the Subcommittee remained concerned that the responses to its reports were not always received within the prescribed six-month period, nor did they always systematically and fully address the issues raised. Lastly, he was pleased to report that the Special Fund to help finance the implementation of recommendations of the Subcommittee as well as education programmes of the national preventive mechanisms, was nearly operational.

19. **Mr. Gálvez** (Chile) said that he welcomed in particular the efforts by the Committee against Torture to facilitate the reporting of States, which were especially helpful for developing countries and also its efforts to make better use of the resources at its disposal in the light of the increase in its report workload and meetings. The system of redress for victims was a particularly delicate issue for Chile. Since 1990, his Government had been implementing a system for redress for the victims or their immediate

family. The symbolic redress was also important, as that helped to heal the wounds of society.

20. Likewise, it was crucial to ensure that perpetrators of acts of torture and other cruel, inhuman or degrading treatment or punishment were held accountable. Efforts must be made to ensure the full implementation of the Convention. In that respect, he took note of the challenges set out in the report and its recommendations, ranging from the definition of torture, adequate sanctioning and the rejection of the practice of renditions to countries suspected of using torture.

21. **Mr. De Bustamante** (Observer for the European Union) asked whether the Committee, the Subcommittee and the Special Rapporteur on torture cooperated with other mandate holders and agencies, such as the United Nations Fund for Victims of Torture, public authorities, civil society at international, regional and local levels, national human rights institutions and academia. He asked the Chairperson of the Committee against Torture for an assessment of the document on facts and evidence in the context of the confidential procedure under article 20 of the Convention.

22. He also wished to hear what the Chairperson of the Subcommittee thought could be done to promote the benefits of establishing national preventive mechanisms in the light of the fact that nearly half the States parties to the Optional Protocol had not yet established such mechanisms. It would be interesting to know how the Subcommittee was coping with its expansion to 25 members and making the best use of its enhanced capacity. Lastly, he asked what the pros and cons were of the confidentiality approach under the Optional Protocol, in the light of the fact that half the country reports in that context had been kept confidential.

23. **Mr. Frick** (Liechtenstein) asked the Chairperson of the Committee against Torture for his assessment of the system of focused reports, including the benefits and challenges that that posed for the future. He wondered whether the broad scope of the Convention against Torture, for example, its inclusion of measures to prevent domestic violence, did not undermine the prohibition of torture.

24. **Mr. Andrade** (Brazil) said that the Subcommittee's recent visit to Brazil had been useful and that the discussions between his Government and the Subcommittee had been fruitful. He was confident that the Subcommittee's recommendations would help his Government to improve its national policies for the prevention of torture. As regarded implementation of the Optional Protocol, the President of Brazil had recently sent to the Congress a draft law for the establishment of a national preventive mechanism, the structure of which would be in accordance with the Principles relating to the status of national institutions. That mechanism would be a committee for the prevention of torture, with 23 members appointed by the President, who would in turn appoint 11 experts. That mechanism would be able to freely access places of detention without prior notification, and if needed, would make time-sensitive recommendations to the heads of those places of detention.

25. The Federal Government was also promoting the establishment of preventive mechanisms by State and municipal authorities, noting that two such mechanisms had already been set up. A draft law for the establishment of a national truth commission had been approved by the lower chamber of Congress and was currently under consideration by the Senate. The establishment of that body would be a significant step towards recognizing the efforts of those who had fought for the redemocratization of Brazil and the right to memory and truth. The commission would have a mandate to investigate human rights violations that had occurred from 1946 to 1988 and would be composed of seven members appointed by the President, with the power to request information from public bodies, call on witnesses to testify, request technical and forensic analysis and promote public hearings. Lastly, he asked the Chair of the Subcommittee what measures could be taken to enhance the mechanism of country visits to States parties.

26. **Mr. Luhan** (Czech Republic) said that his Government regularly contributed to the OHCHR budget to support the work of the Subcommittee. He asked how the work of the Subcommittee had changed since its establishment and what main challenges lay ahead.

27. **Mr. Butt** (Pakistan) said that the dialogue and interaction with the mandate holders on torture was very useful and interesting. With regard to the overdue initial and periodic reports of States parties and the backlog in the Committee's consideration of reports, he asked how resources had been allocated initially and what mechanism was in place to help the Committee to

adapt to the changing requirements for the submission and consideration of reports in the light of the anticipated new States parties acceding to the Convention.

28. **Ms. Syed** (Norway) asked the Chairperson of the Committee against Torture for more information on the impact of the new optional reporting procedure and whether it had been producing the intended effects so far. She also wished to hear what main trends had emerged regarding States parties' follow-up on the recommendations and the extent to which they submitted information on follow-up measures. It would also be interesting to know how the Committee was addressing the issue of States parties' overdue reports.

29. **Ms. Raabyemagle** (Denmark) asked both Chairpersons whether the three mandate holders in relation to torture cooperated with other United Nations agencies and bodies which also played an important role in combating torture, including the Human Rights Committee and Special Rapporteur on extrajudicial, summary or arbitrary executions, or with regional bodies. She also wished to know what the desired end-result of the comprehensive review of the treaty-body system was and whether any special training was provided to the expanded Subcommittee in the light of the special skills sets that its mandate demanded as compared with other treaty bodies.

30. **Mr. Grossman** (Chairperson, Committee against Torture), responding to questions and comments, said that he agreed that reparations were essential and that assurances of non-repetition of acts of torture was crucial. Financial compensation was not enough for victims of human rights violations, since the dehumanizing effect of the treatment that they received often touched on their very identity and reputation, and the effects extended to their families. It was thus important to ensure that a mechanism was in place for full, comprehensive redress.

31. He agreed that cooperation was needed between a range of national and international bodies and instruments to provide training and education, and more could be done in that regard. Institutionalization of the reporting procedure across various treaty-bodies was crucial to ensuring the legitimacy of the work of the various committees. The Committee against Torture thus examined the comments, decisions and recommendations of other Treaty-based bodies to ensure coherence. While it regularly held open-ended meetings with the Special Rapporteur in the context of the Optional Protocol, it was working on holding meetings with a specific agenda on main issues of concern. The Committee against Torture worked with civil society in public meetings, in an open and transparent way, and also heeded the views of national human rights bodies. He would welcome suggestions from the Third Committee on how to improve cooperation with various stakeholders.

32. The matter of facts and evidence was a complex one that involved both civil responsibility and State responsibility. Generally, where civil responsibility was concerned, the concept of the preponderance of evidence was used, whereas for criminal responsibility, it was that of "beyond a reasonable doubt", requiring a higher level of proof. Determining the responsibility of a State was complex, and a standard for proof was still under discussion, with a view to the best possible outcome and to ensure the credibility of the Committee. He noted that regional authorities like European Court of Human Rights had set out principles for the responsibilities of domestic judicial authorities; and the Inter-American Court of Human Rights had a similar system.

33. States parties' responses to the list of issues prior to reporting were only relevant and useful if provided within a year of receiving the list. It was thus crucial that they limit the delays in their responses, as well as the length of their reports, in order to ensure the best use of resources. It was also important to set priorities rather than limits in relation to the work of the bodies addressing torture. Lastly, he recalled that the Committee against Torture had two rapporteurs to follow-up to specific articles. Some recommendations stipulated deadlines of one year for follow-up, although the Committee realized that it was not realistic to expect that a legal system could be changed within that time. The Committee thus sought continuing dialogue with States parties.

34. **Ms. Morgan-Moss** (Panama), noting that her country had ratified the Optional Protocol to the Convention against Torture earlier that year, said that she would like to know what the formal procedure for beginning a constructive dialogue with the Subcommittee, including a country visit, entailed.

35. **Mr. Evans** (Chairperson, Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) said that the

Subcommittee and the Committee against Torture were experimenting with ways to make their annual joint meeting as useful as possible given the increased membership in both bodies, by focusing on relevant procedural and substantive issues. Most cooperation with colleagues was informal and took place through conversation and information-sharing. The Subcommittee paid careful attention to the work of all mechanisms and regional bodies in thinking about its own visiting programmes and operations, and it had good connections with civil society. Cooperative work was based on building partnerships.

36. The Subcommittee endeavoured to assist States parties in promoting the benefits of national preventive mechanisms and had established a more robust set of guidelines to that end. Given the challenges of the Subcommittee's expanded membership, its working practices were being reformed in order to ensure that all 25 members were fully and effectively engaged, in accordance with Optional Protocol's provisions. Working on a confidential basis with States parties had both benefits and drawbacks. While it gave the Subcommittee the opportunity to enter into close relationships with States and receive open and honest responses from them, it also prevented other interlocutors from benefiting from its recommendations, which also remained confidential, thereby limiting the benefits of the Subcommittee's visit. He therefore hoped that the initial need for confidentiality would give way to greater openness as those exchanges moved into the public domain.

37. He was pleased to hear that the Subcommittee's visit to Brazil had been helpful for that country and that procedures had been put in place for the establishment of a national preventive mechanism at the federal level to complement existing state-level mechanisms. Follow-up could be improved by responding to reports within the six-month time frame requested and ensuring that the responses focused on the point made initially by the Subcommittee. Beyond that level of interaction, opportunities for informal exchange, dialogue and discussion with the Subcommittee should be sought.

38. The challenges currently faced by the Subcommittee were, in a sense, the same as those that it faced in earlier stages, but were magnified by the passing of time and the increase in the number of States parties. Conducting country visits on a regular basis posed an ongoing challenge for the Subcommittee. In that regard, national preventive mechanisms helped fill gaps in the cycle of country visits by serving as local interlocutors for the Subcommittee and by conducting preventive work in the country. He stressed the importance of following up on visits, rather than adding more visits, each of which commenced a new, discrete process that was difficult for the United Nations Secretariat and OHCHR to service and support.

39. While it was certainly necessary to engage a wide range of actors in fulfilment of the Subcommittee's mandate, not only within treaty bodies but also across the United Nations system, such engagement posed practical challenges. With regard to enhancing the compliance of States parties with their treaty obligations, reforming the work done by treaty bodies was only one step in the process. It was also necessary to avoid duplication of effort among treaty bodies and to find better channels whereby information might be shared.

40. The expanded Subcommittee membership had made it possible to put together visiting teams with a wider range of skills. Training was important to try to integrate experiences into common working practice. There were ongoing attempts to establish groups within the Subcommittee to examine such issues as negative consequences and potential reprisals targeting persons with whom the visiting team had met. Some of the difficulties posed by training included the lack of a language common to all members of multilingual visiting teams, which made working outside the formal plenary more complicated if the Subcommittee was to draw upon the resource pool of the entire membership.

41. Engagement with States parties to the Optional Protocol formally began when the Subcommittee decided to conduct its first country visit. He hoped that the Subcommittee would be able to visit newly ratifying States on an informal basis to explain the Protocol system in greater detail, including the process of designating national preventive mechanisms within the first year of ratification. Although the Subcommittee should be engaging with States within that crucial year, the current modus operandi impeded such early engagement because it was built around formal visits alone.

42. **Mr. Méndez** (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) said that his first interim report to the

General Assembly (A/66/268) presented his findings on the use of solitary confinement. Defined in his report as the physical and social isolation of individuals confined to their cells for 22 to 24 hours a day, solitary confinement was global in nature and subject to widespread abuse. Prolonged or indefinite solitary confinement was of particular concern given its increase in various jurisdictions, especially in the context of the "war on terror" and efforts to counter "threats to national security".

43. While prolonged solitary confinement might itself amount to prohibited ill-treatment or torture, there was no international standard for the permissible maximum overall duration of solitary confinement. He called for a limit of 15 days between "solitary confinement" and "prolonged solitary confinement", based on documented findings regarding the point at which some of the harmful psychological effects of isolation could become irreversible, and proposed a worldwide ban on prolonged or indefinite solitary confinement. One of the harmful elements of solitary confinement was social isolation, as the resulting level of social stimulus was insufficient for the confined individuals to remain in a reasonable state of mental health and led to serious health problems regardless of the specific conditions of their detention or pre-existing personal factors. Moreover, some of the negative health effects, such as lasting personality changes, were long-term.

44. It was important to maintain a clear distinction between solitary confinement and various forms of segregation that were necessary in places of detention for the safety of vulnerable detainees, though such separation must not hinder their social interaction. The adverse effects of solitary confinement had led him to conclude that the practice was a harsh measure contrary to one of the essential aims of the penitentiary system, namely, that of rehabilitating offenders and facilitating their reintegration into society. Juveniles and individuals with mental disabilities should never be subjected to solitary confinement, and alternative ways of treating mental illness should be found. Because of the severe mental suffering inflicted on juveniles and the mentally ill by the practice when used as a punishment, solitary confinement amounted to torture or cruel, inhuman or degrading treatment or punishment in those cases, depending on the severity of the conditions.

45. When used as a form of punishment after conviction, solitary confinement added a measure of inhumanity to the penalty that could not be justified as inherent to what was already a lengthy prison term. It also precluded the possibility of rehabilitation and reform, which should always be the object of the penalty. In the case of pretrial detention, it became a form of undue pressure for a confession or for cooperation with the prosecution of others, objectives that should be pursued strictly as voluntary on the part of the detainee.

46. When applied in pretrial detention because of the seriousness of the offence charged, it also became a violation of the presumption of innocence. In practice, the use of solitary confinement during investigations or in pretrial detention increased the risk that acts of physical or mental torture and other cruel, inhuman or degrading treatment would go undetected and subsequently unchallenged. He therefore proposed a ban on solitary confinement as a penalty, in pretrial detention, indefinitely or for a prolonged period, for persons with mental disabilities and juveniles.

47. Certain physical conditions in places of detention, when combined with the prison regime of solitary confinement, failed to respect the inherent dignity of the human person and caused severe mental and physical suffering. Depending on the severity of the conditions, the length of the solitary confinement regime, and the absence of mitigating factors such as family visits, the isolation of inmates in such conditions amounted to cruel, inhuman or degrading treatment or punishment or — in more severe cases — to torture.

48. He urged States to review their practices of solitary confinement and to respect and protect the rights of detainees while maintaining security and order in places of detention. States should prohibit the imposition of solitary confinement as punishment or as an extortion technique and put an end to the practice of solitary confinement in pretrial detention. Indefinite solitary confinement and prolonged solitary confinement in excess of 15 days should also be prohibited. Solitary confinement should be used only in very exceptional circumstances, some examples of which were mentioned in his report, and with minimum procedural safeguards in place. The Istanbul Statement on the Use and Effects of Solitary Confinement provided States with a tool to promote respect for and protection of the rights of detainees.

49. In cases where the use of solitary confinement might be justified in principle, he urged States to apply a set of guiding principles. First, the physical conditions, prison regime and duration of solitary confinement must be proportional to the severity of the disciplinary infraction for which it was imposed. Second, solitary confinement must be imposed only as a last resort where less restrictive measures could not achieve the intended disciplinary goals. Third, solitary confinement must never be imposed or allowed to continue except where it was determined that it would not result in severe pain or suffering. Finally, all decisions taken with respect to its imposition must be clearly documented and readily available to the detained persons and to their legal counsel.

50. States should also follow minimum internal and external safeguards in order to provide the greatest possible protection of the rights of detained persons in solitary confinement. The justification and duration of the confinement should be recorded and made known to the detained person. Lawyers and families should be notified immediately when an inmate's conditions of confinement had changed. Moreover, the justification for the imposition of solitary confinement should be reviewed regularly. Persons held in solitary confinement must be given a genuine opportunity to challenge both the nature of their confinement and its underlying justification through administrative review internally, and through the courts of law externally.

51. There should be no limitations imposed on the request or complaint. Individuals held in solitary confinement must have free access to competent legal counsel and qualified and independent medical personnel. Any deterioration of their mental and physical condition should trigger a presumption that the conditions of confinement were excessive and activate an immediate review. Additionally, medical personnel should regularly inspect the physical conditions of confinement. After careful review of communications from the public with allegations of torture or cruel, inhuman or degrading treatment or punishment, he engaged the respective Governments in a confidential process. A joint communications report of all special procedures was published regularly, including full versions of each country's response.

52. The Special Rapporteur had visited Tunisia earlier that year to examine violations and abuses committed under the previous regime and during the revolution that began in December 2010 and to identify measures needed to prevent torture and ill-treatment. He looked forward to continued engagement with the Interim Government of Tunisia, with whom he had shared a draft report of his findings and recommendations. The final version would be presented at the forthcoming session of the Human Rights Council in March 2012. Arrangements for country visits to Iraq, Kyrgyzstan, Bahrain and Tajikistan were being finalized, and he had formally conveyed his interest in visiting Ethiopia to that country's Government. Follow-up activities included a regional consultation on the implementation of recommendations from country visits undertaken in the Americas and the Caribbean and a joint secret detention study published by four special procedures mandate holders.

53. **Ms. Dali** (Tunisia) said that, while it awaited the results of his final report, her country was fully committed to increased cooperation with all special procedures and to the promotion of human rights more broadly.

54. **Mr. De Bustamante** (Observer for the European Union) said that he would like to know how cooperation with other special procedures mandate holders and relevant actors would proceed. He also enquired about the prevailing trends in the development of torture-prevention methods, and wondered whether the Special Rapporteur's approach to solitary confinement differed from his consideration of incommunicado detention.

55. **Ms. Martin** (United States of America), expressing appreciation for the Special Rapporteur's engagement with her Government, said that there was no international standard for the permissible duration of solitary confinement or for the circumstances in which it was legitimately employed. Her country's Constitution protected the rights of individuals confined in institutions, protections that its Supreme Court had interpreted to prohibit cruel and unusual punishment and to require prison officials to provide humane conditions of confinement. The right to constitutionally adequate medical care included mental-health care.

56. Those standards dictated that solitary confinement should not be used without a careful analysis of its nature, duration and reasons, as well as of the risk of unreasonable psychological or physical harm that might result from extended isolation. In

practice, the use of solitary confinement should be dependent on such variables as the risk of an individual to himself or others, the severity of the charge or offence, and the existence of satisfactory facilities and conditions of confinement. The United States Constitution required that such factors must be weighed to determine whether the use of isolation was justified.

57. As the Special Rapporteur's report made clear, the principles highlighted therein to assist States in reevaluating and minimizing the use of solitary confinement, or abolishing it outright, were not legal obligations and therefore might go beyond what was required by international law and the practice of most States in line with their legal systems. Nonetheless, in presenting them for consideration, the Special Rapporteur had furthered the discussion and evaluation of solitary confinement within and among Governments. She enquired whether the Special Rapporteur could indicate areas on which he intended to focus on in the coming year and whether the question of peaceful demonstrators would remain one of them.

58. **Mr. Roch** (Switzerland), welcoming the Special Rapporteur's contribution to the debate on solitary confinement, said that his Government found the discussion in the report of the adverse impact of indefinite detention on detainees especially relevant. In that connection, he would like to know how the Special Rapporteur had decided on a 15-day limit for solitary confinement. Also, given the widespread nature of solitary confinement and, consequently, the likely prevalence of torture and other cruel, inhuman or degrading treatment, he wondered what measures might be taken to encourage the prohibition of solitary confinement as a punishment. Lastly, he enquired whether it would be possible for a future report to address the link between torture and other cruel, inhuman or degrading treatment or punishment within the framework of the transitions to democracy that had gotten under way that year, in order to make better use of the opportunities and lessons learned throughout that process.

59. **Ms. Syed** (Norway) said that relevant stakeholders in her country would study with interest the Special Rapporteur's recommendations to help States reevaluate and minimize the use of solitary confinement. Norway agreed that all persons deprived of liberty must be treated with humanity and respect for the inherent dignity of the human person. With regard to the Special Rapporteur's call for States to abolish the practice of solitary confinement in pretrial detention and adopt effective measures at the pretrial stage to improve the efficiency of investigation and introduce alternative control measures in order to segregate individuals, protect ongoing investigations, and avoid detainee collusion, she wondered whether he might provide examples of effective alternatives.

60. **Ms. Raabyemagle** (Denmark) said that her delegation would like to know whether the Special Rapporteur had practical suggestions on how States might better assist him in his efforts, and whether he might comment on his impression of States' preparedness to receive him and grant him favourable working conditions. More detailed information on his victim-oriented approach would also be welcome, especially with regard to the rehabilitation of torture survivors. Did the obligation to rehabilitate them, stipulated by the Convention against Torture, also apply to States not responsible for the torture, in which the victims might find themselves as refugees?

61. **Mr. Méndez** (Special Rapporteur on torture and other forms of cruel, inhuman or degrading treatment or punishment) thanked Tunisia for its active support of his mandate during his country visit and in general. Cooperation with other mandate holders, while it could be more effective and productive, was already taking place, in the form of joint communications to States, for instance. OHCHR was making efforts to foster collaboration among all mandate holders.

62. With regard to preventive measures, it was crucial to support the work of the Subcommittee on Prevention of Torture and to encourage States parties to the Optional Protocol to the Convention against Torture to establish a national preventive mechanism. Moreover, there was a duty to investigate, prosecute and punish each incident of torture, as it was a qualitatively different kind of human-rights violation and failure to do so would replicate the conditions in which it occurred. It was also important for States to fully involve victims in the prosecution of torture cases and in the design of rehabilitation-related services.

63. In cases where solitary confinement was used, legitimately, as a means of preventing collusion among persons accused of a crime, incommunicado detention must be imposed as a strictly exceptional measure, for fewer than the 15 days that he had proposed in the ban on prolonged solitary confinement, and it must be

supervised by legal authorities and subject to very strict guarantees.

64. The issue of solitary confinement was pertinent precisely because there were no international standards in the problem areas that he had identified in his report, on the basis of which States might decide which measures to adopt domestically. Indeed, the purpose of his report and others like it was to establish, through customary practice at the global level, legally binding internationally standards. In the meantime, he intended to move towards that goal by asking States to consider setting certain limits in their domestic legal frameworks. Noting the existence of significant safeguards in some countries, he would welcome information on the extent of domestic access to those safeguards.

65. He had decided on an upper limit of 15 days for solitary confinement — an admittedly arbitrary figure given the difficulty of determining when a practice could be considered torture or cruel, inhuman or degrading treatment and in view of the many subjective factors involved — after studying the literature that documented the psychological effects of such confinement. In some cases, it took fewer than 15 days to cause lasting psychological damage; in any event, he also proposed safeguards to prevent such damage to detainees confined for periods under 15 days.

66. He called on Member States and civil society organizations to provide honest feedback on his report, which he had produced not as the last word on the subject but instead as a way of sparking discussion on the topic. The ongoing movement from dictatorship to democracy in several countries would provide a great opportunity to test new torture-prevention methods. In that connection, he was heartened by his interaction with actors from several Arab countries, in which the conditions for a veritable human-rights revolution were taking root. He would continue to attempt to visit those countries and establish a dialogue on specific cases.

67. With regard to effective alternatives to pretrial solitary confinement to segregate individuals, he reiterated that any segregation imposed must be for short periods of time and that the detainee must have access to legal assistance for the duration of detention. Communication with the outside world could be limited, but the terms of such a restriction must be defined by a legal authority.

68. **Ms. Cavanagh** (New Zealand), speaking on behalf of the CANZ group (Australia, Canada and New Zealand), called on States that had not yet ratified the Convention on the Rights of Persons with Disabilities to do so, and on all States parties to implement it. In 2011, the CANZ group had participated in the Human Rights Council's annual panel debate on the rights of persons with disabilities, and the Conference of States Parties to the Convention had been held, drawing welcome attention to a core principle, namely, that facilitating the full participation in society of persons with disabilities was of benefit to all society. The group also welcomed the continued work to mainstream the rights of persons with disabilities within discussions on achieving the Millennium Development Goals, including the Secretary-General's report on the subject.

69. Australia and New Zealand had submitted their initial reports to the Committee on the Rights of Persons with Disabilities on their implementation of the Convention that year. Canada would be doing so the following year and continued to work to improve the circumstances of persons with disabilities.

70. The large number of States that had acceded to the Convention in such a short time meant that the new Committee was already facing a serious backlog in its consideration of reports. Expressing concern that the brief, two-week period allotted for the Committee's annual session would restrict its efficiency, she endorsed the request before the Third Committee to give the Committee on the Rights of Persons with Disabilities additional annual meeting time commensurate with its workload, and to ensure that the rights of all persons with disabilities were treated equally within the United Nations system. The CANZ delegations also supported the request for the Chairperson of the Committee on the Rights of Persons with Disabilities to appear in an interactive dialogue at future Committee sessions.

71. **Ms. Tschampa** (Observer for the European Union), speaking also on behalf of the candidate countries Croatia, Iceland, Montenegro, the former Yugoslav Republic of Macedonia and Turkey; the stabilization and association process countries Albania, Bosnia and Herzegovina and Serbia; and, in addition, Armenia, Georgia, the Republic of Moldova and Ukraine, said that 2011 had witnessed some advancement towards the universal ratification of core human rights treaties by Member States, a key objective set out in the Vienna Declaration and Programme of Action, along with encouraging movement towards withdrawal of reservations that were incompatible with the purpose of the treaties. The

European Union welcomed the trend of ratification of the Optional Protocol to the Convention against Torture.

72. Nonetheless, domestic implementation of the provisions of human rights treaties remained the key challenge. As part of their treaty obligations, States parties also had a duty to cooperate with treaty bodies in the follow-up to both concluding observations and views of individual cases. Having recently participated for the first time as a party in its own right in the Conference of States Parties to the Convention on the Rights of Persons with Disabilities, the European Union had shared its experience with implementing the Convention.

73. The entry into force of the International Convention for the Protection of All Persons from Enforced Disappearance constituted a milestone in human-rights standard-setting and the culmination of over two decades of tireless efforts on the part of non-governmental organizations, Governments and the families of victims of the heinous practice. Stressing the need to ensure the independence and capacity of the members of treaty bodies in performing their mandated tasks, she welcomed the series of consultations on how to make those bodies more efficient and better equip them to deal with the challenges posed by the growing workload and number of States parties. The European Union valued the efforts of the chairs of treaty bodies to formulate a coordinated approach to enhancing the bodies' effectiveness as well as the possibility of interacting with them in the Committee.

74. Commending OHCHR on its excellent work, she stressed that the independence of the Office was crucial to the efficient performance of its tasks. The European Union had supported a project to boost the Office's capacity to facilitate compliance with the observations and views of treaty bodies. Lastly, she stressed that unhindered cooperation with individuals and civil society was also indispensable to enable the United Nations and its mechanisms to fulfil their mandates, and underscored the appeal by the High Commissioner calling on States to stop acts of intimidation or reprisal against persons who cooperated with the United Nations and instead to facilitate such cooperation.

75. **Ms. Nwachukwu** (Nigeria), welcoming the recent conclusion of the first cycle of the universal periodic review of the Human Rights Council and that of the review of the work of the Council, said that it was imperative to strike an agreeable balance between civil and political rights on the one hand and economic, social and cultural rights on the other. Failure to do so would render the discussion of human-rights promotion — which focused almost entirely on the former category — meaningless to the vast majority of people around the world, many of whom increasingly understood their human rights as the rapid improvement of their livelihood.

76. Increased development and financial assistance to developing countries, and redirecting human rights mechanisms towards the advancement of economic, social and cultural rights were imperative for the realization of the Millennium Development Goals (MDGs). As some of the countries most severely affected by poverty, conflicts and preventable diseases, African countries saw clearly the connection between security and development, and the obvious consequences for the full enjoyment of human rights.

77. In spite of the concerted efforts of the international community, it was regrettable that racism, racial discrimination, xenophobia and related intolerance persisted worldwide. As the most populous black nation in the world, Nigeria was committed to playing a leading role in combating all forms of racism, through implementation of the Durban Declaration and Programme of Action, and urged other countries to follow suit. Her Government was also implementing broad political and economic reforms in order to create an environment conducive to the full enjoyment of human rights and fundamental freedoms.

78. A party to the core international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women, in addition to relevant regional instruments, Nigeria was particularly active in the promotion of gender equality and the empowerment of women. Her Government had established women's empowerment offices throughout the country in order to enhance women's participation in Nigerian political life. It also supported the efforts of UN-Women. Lastly, her Government's open invitation to special-procedures mandate holders to visit Nigeria further attested to its commitment to promoting human rights through the United Nations system.

79. **Ms. Li** Xiaomei (China) said that her Government had paid close attention to the work of human-rights treaty bodies and the process of treaty-body reform in

particular. While it was necessary for human-rights treaty bodies to become more efficient, they must work in strict accordance with their mandates and steer clear of politicization and selectivity. At the same time, treaty bodies should engage in constructive dialogue with States parties in order to ensure that their conclusions and recommendations matched the specific conditions in those countries and were therefore well-targeted and operable.

80. In preparing their general comments, treaty bodies should seek input from all parties, give attention to the views and suggestions of States parties, and avoid overly broad interpretation of treaty provisions. In that connection, her Government had submitted to OHCHR a written response to the general comments of the Committee against Torture. China endorsed necessary reforms of the treaty bodies that respected fully the views of States parties. Given the considerable differences among States parties, her Government proposed the establishment of an open-ended intergovernmental working group to discuss and achieve consensus on treaty-body reform.

81. A party to 25 international human-rights instruments, China was currently carrying out a series of legislative, judicial and administrative reforms in order to prepare for ratification of the International Covenant on Civil and Political Rights, which it had already signed. Her Government had paid close attention to aligning domestic legislation and policy with treaty provisions and had actively fulfilled its treaty obligations in the relevant work. China had submitted reports on its treaty implementation in a timely manner and maintained good communication with various treaty bodies, whose recommendations it had adopted to the extent possible, in light of national circumstances.

82. Under the principle of "one country, two systems", the Chinese Government had assisted the Hong Kong and Macau Special Administrative Regions in fulfilling their human-rights-related treaty obligations. It had also actively participated and would continue to participate in the development of international human-rights norms, such as the recently adopted draft optional protocol to the Convention on the Rights of the Child.

83. **Mr. Valero Briceño** (Bolivarian Republic of Venezuela) said his Government protected the full enjoyment of liberty, justice, equality and solidarity by guaranteeing economic, social and cultural rights on equal footing with civil and political rights. The standards set forth in human-rights instruments to which his country was a party were only applied domestically to the extent that they contained norms that were more favourable than those already contained in the national constitution. A party to nine international human-rights instruments, including the Convention against Torture, it had recently contributed a sum of $38,000 to the United Nations Fund for Victims of Torture.

84. His Government's policies in the area of human rights aimed at attaining social, economic and cultural equality and guaranteeing the fundamental freedoms of all Venezuelans. The exercise of human rights must be rooted in the principles of objectivity, impartiality and non-selectivity, and the universality of human rights must take into account cultural, political, economic and social diversity. Public policy had reduced extreme poverty significantly over the previous decade. Social investment had registered unprecedented growth and made it possible to attain nearly all the Millennium Development Goals, resulting in a participative democracy where the benefits of development were enjoyed alongside political freedoms. The international community had acknowledged the undeniable achievements of the Bolivarian Republic of Venezuela in that regard, most recently in the context of its report from the universal periodic review, presented earlier that month.

85. His country categorically condemned and refrained from committing any and all acts that infringed upon human rights, including political persecution, torture, harboring of international terrorists, curtailing of freedom of expression and detention of protesters. However, certain powerful countries used the pretext of the so-called war on terror to inflict fratricidal invasions and violate the sovereignty of others, while accusing them of flouting human rights.

86. Universalizing human rights in historically oppressed societies was an urgent task that must nevertheless be achieved gradually, as recognition of the universal nature of human rights in no way constituted acceptance of a single global model of sociopolitical organization. Mutual dialogue and respect between sovereign States and non-interference in their internal affairs were indispensable for the promotion of human rights.

The meeting rose at 1.05 p.m.