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## Third Committee

### Summary record of the 21st meeting

Held at Headquarters, New York, on Tuesday, 22 October 2013, at 10 a.m.

*Chair:* Mr. Tafrov . . . . . (Bulgaria)

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*The meeting was called to order at 10.10 a.m.*

**Agenda item 69: Promotion and protection of human rights (A/68/487)**

**(a) Implementation of human rights instruments**  
(A/68/40 (Vols. I and II), A/68/44, A/68/48, A/68/280, A/68/281, A/68/282, A/68/295 and A/68/334)

**(d) Comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action (A/68/36 and A/C.3/68/2)**

1. **Mr. Méndez** (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) said that his interim report to the General Assembly (A/68/295) reflected on the current review process of the United Nations Standard Minimum Rules for the Treatment of Prisoners. It offered an updated set of procedural standards and safeguards from the perspective of the prohibition of torture or other ill-treatment that should be applied to all cases of deprivation of liberty. The international and regional systems that oversaw prison conditions operated with a view to preventing torture and other forms of ill-treatment. The obligation to treat all persons deprived of their liberty with humanity and with respect for their dignity was a fundamental rule, the application of which could not be dependent on the material resources available to a State party. Since their adoption 50 years previously, the Standard Minimum Rules had retained considerable weight as an authoritative set of generally accepted principles and practices. However, their failure to address the prohibition of torture and other forms of ill-treatment was one important indication that the Rules must be reviewed to better reflect recent advances in correctional science and best practices.

2. The open-ended intergovernmental expert group established under General Assembly resolution 65/230 to initiate the process of revision of the Rules had agreed that any changes to the Rules should not lower existing standards. At its second meeting in December 2012, the group had made substantive progress and identified issues for further discussion within the nine preliminary areas that it had identified for consideration. The intergovernmental review process must update the Rules to reflect current standards and ensure their consistency with the existing provisions of international law on the prohibition of torture and other ill-treatment. The process presented an excellent

opportunity to revisit States' commitment to addressing the needs of persons deprived of their liberty.

3. His report identified gaps and inconsistencies where the Rules had not kept pace with the most recent developments in human rights and offered a set of procedural standards that the revised Rules should reflect in the areas of solitary confinement and how to regulate it, the investigation of all deaths in custody and signs or allegations of torture or other ill-treatment.

4. Solitary confinement often caused mental and physical suffering or humiliation that effectively amounted to cruel, inhuman or degrading treatment or punishment. If used intentionally to punish, intimidate, coerce or obtain information or a confession, or for any discriminatory reason, and if the resulting mental or physical suffering was severe, solitary confinement amounted to torture. It should therefore be imposed only in very exceptional circumstances, as a last resort, for as short a time as possible, in strict observance of established safeguards and after obtaining the authorization of the competent authority subject to independent review. The Rules should prohibit the use and imposition of indefinite solitary confinement and alternative disciplinary sanctions should be introduced to avoid its use. The Rules should also prohibit prolonged solitary confinement and the imposition of solitary confinement of any duration for juveniles, persons with psychosocial disabilities, pregnant women, women with infants and breastfeeding mothers. No prisoner should be held in solitary confinement merely because of the gravity of the crime.

5. Given that the burden of proof to rebut the presumption of responsibility for violations of the right to life and for inhumane treatment of persons in State custody rested on the State, its obligation to account for the treatment of such persons in the event of their death was particularly stringent. In that regard, the lack of a prompt, thorough and impartial investigation of allegations of torture and other ill-treatment or death in custody remained a challenge in fighting impunity for such acts. Investigation by an independent external investigative body with no connection to the alleged perpetrators was an obligation, irrespective of whether or not a complaint was filed. To that end, the Rules should provide detailed guidance on the purpose, modalities and overall parameters of effective investigation and documentation of torture and other

ill-treatment, as reflected in the Principles on Effective Investigation and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. More specifically, the Rules should require prison administrations to ensure that all complaints or reports of torture, other ill-treatment or death in custody or shortly following release were transmitted without screening to an external independent body for investigation. If the investigation confirmed the allegations, the victims should be guaranteed rehabilitation and redress and guidelines on due diligence and cooperation with the authorities should be put in place for the prison administration concerned. Furthermore, information on the circumstances surrounding the death of a person in custody should be made publicly accessible and prison administrations should identify and record patterns of death for further examination by independent bodies. Lastly, the Rules should state explicitly that persons potentially implicated in such events should be suspended immediately and for the duration of the investigation from any duty involving access to detainees or prisoners, since they might undermine or obstruct investigations. Regular inspection of places of detention was one of the most effective preventive measures against torture.

6. Unless the Rules were updated to adequately reflect recent advances in standards and best practices, penitentiary staff were unlikely to look beyond what the Rules required. Their revision would help States to live up to their obligations under the binding human rights instruments to which they had acceded since the adoption of the Rules. States should also renew their commitment to humane conditions in any place of deprivation of liberty and spare no effort to ensure the full and effective implementation of the revised Rules, including by allocating adequate resources and properly trained staff.

7. He called on States to remain actively engaged with the expert group on the Standard Minimum Rules for the Treatment of Prisoners in order to exchange information on good practices and challenges in their implementation. He also called on the expert group to consider the suggestions made in his present report, along with those made by the Subcommittee on the Prevention of Torture and other stakeholders, at its forthcoming meeting in December 2013.

8. He thanked the Governments of Ghana, Georgia and Mexico for their invitations to conduct country

visits and those of Morocco, Tajikistan and Tunisia for their ongoing engagement following his visits. With the support of his Anti-Torture Initiative, he would conduct a number of follow-up visits in 2014 and 2015. His visit to Thailand had been postponed to 2014, while planned visits to Bahrain and Guatemala in 2013 had been postponed at the request of their respective Governments. It was regrettable that the Government of Bahrain, whose failure to propose new dates made the postponement of his visit an effective cancellation, did not seem to share his cooperative approach. He acknowledged the ongoing tensions faced by that Government and planned to remain engaged with a view to securing definitive dates for a 2014 visit. He had reiterated his request for an invitation from the United States Government to visit detainees at its naval base at Guantanamo Bay on conditions that he could accept, while his request to visit federal and state prisons on the United States mainland had been pending since May 2013.

9. **Ms. Medcalf** (United Kingdom of Great Britain and Northern Ireland) said that her Government remained deeply committed to the Special Rapporteur's work and to the full implementation of the Convention against Torture. While it welcomed the establishment of an Ombudsman and an independent prisoners' and detainees' commission to monitor places of detention in order to prevent torture and ill-treatment, it urged the Bahraini Government to reinstate the Special Rapporteur's country visit and enhance its cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR). It urged States to make full use of the instruments available, including national preventive mechanisms, to meet their obligations and to ratify the Convention against Torture and its Optional Protocol if they had not yet done so. She asked the Special Rapporteur what he thought were the best ways to encourage universal implementation of the international standards and framework for combating torture and other cruel, inhuman or degrading treatment or punishment.

10. **Ms. Tschampa** (Observer for the European Union) said that the European Union remained strongly committed to respecting and ensuring respect for the universal and absolute prohibition against torture and cruel, inhuman or degrading treatment or punishment. It shared the Special Rapporteur's disappointment and concern that his visit to Bahrain had been postponed

for a second time and urged the Bahraini Government to reinstate the visit and enhance its cooperation with other United Nations mandate-holders. She asked the Special Rapporteur how he intended to investigate the claims of torture of political prisoners if he remained unable to visit Bahrain and what States could do to improve his working conditions in general or help him tackle obstacles encountered in his work.

11. **Mr. Sparber** (Liechtenstein), speaking also on behalf of Austria, the Czech Republic, Denmark, Iceland, Norway, Slovenia, Sweden and Switzerland, thanked the Special Rapporteur for updating the Committee on his engagement with the Government of Bahrain, in particular with regard to rescheduling his visit to that country. The last-minute cancellation of his previously scheduled visit gave cause for concern. The Special Rapporteur's assessment of the situation in Bahrain with regard to matters falling within his mandate, based on information received from sources other than a visit to the country, would also be welcome. The Government of Bahrain must cooperate fully with the Special Rapporteur's mandate. There were continuing reports of physical and psychological abuse and mistreatment of prisoners in Bahrain and no independent information was available on how the Government intended to end impunity for human rights violations, particularly those falling within the Special Rapporteur's mandate; his visit to Bahrain could provide such information and contribute to political reconciliation within a framework of national dialogue.

12. **Mr. Červenka** (Czech Republic) said that his Government, which was a long-standing supporter of United Nations mechanisms against torture, intended to contribute once again to the OHCHR budget in order to support the work of the Subcommittee on Prevention of Torture and the United Nations Voluntary Fund for Victims of Torture. He asked the Special Rapporteur what he intended to do next with regard to allegations of the use of torture in Bahrain, given the recent cancellation of his visit to that country. His delegation supported the work of the expert group on the revision of the Standard Minimum Rules for the Treatment of Prisoners and agreed with the group's conclusion that any changes to the Rules should strengthen rather than lower existing standards. He urged the group to strengthen existing Rule 55 and to include in the Rules a request for all places of detention to be subject to monitoring without prior notice by governmental agencies and authorities different from those directly in

charge of administering them, as stipulated by the Optional Protocol to the Convention against Torture.

13. **Ms. Alkhalifa** (Bahrain) said that her delegation was aware of the Special Rapporteur's workload, which included a list of over 30 countries to which visits had been requested, in some cases as much as 25 years previously, but from which no invitation had been received. Her Government was intent on adopting tangible measures to fulfil its obligations under the relevant international instruments and to implement the recommendations of the Independent Commission of Inquiry and the Universal Periodic Review mechanism. In Bahrain, visits by mandate-holders were discussed within a specific bilateral mechanism, in line with the mandate that Member States had given to special rapporteurs. Her Government would follow up on setting a date for the Special Rapporteur's visit through that mechanism.

14. **Ms. Loew** (Switzerland) said that her Government shared the Special Rapporteur's concern about the need for the Standard Minimum Rules to take account of all State obligations with regard to the prevention and prohibition of torture and other cruel, inhuman or degrading treatment or punishment and called upon States to resort to disciplinary measures, in particular solitary confinement, as infrequently as possible. Particular attention should also be paid to non-discriminatory access to medical care for persons deprived of their liberty. She welcomed the Special Rapporteur's proposal for an independent medical examination to be conducted upon a person's admission to and release from a place of detention, either routinely or at the request of the detained person. Given the complexity of administering such an examination protocol, she wondered whether he intended to devote a thematic report to the issue. She would also like to know whether the failure to provide medical services in the context of detention might constitute in and of itself a form of torture or cruel, inhuman or degrading treatment or punishment, and whether it should also be addressed in greater depth. Her Government commended the Special Rapporteur for extending the protection of persons deprived of liberty against torture or other cruel, inhuman or degrading treatment or punishment to include all categories of detainee and all forms of privation of liberty, in order not to leave any grey areas.

15. **Ms. Kotoed** (Denmark) asked what were the main reasons for States' reluctance to become parties to

the Convention against Torture and its Optional Protocol, what the Special Rapporteur was doing to increase ratifications and how States parties might contribute to achieving the universal ratification of both instruments. She asked the Special Rapporteur whether the suggestions contained in his interim report with regard to a set of procedural principles and safeguards would also apply to persons deprived of their liberty as a result of or in the context of armed conflict and, if so, whether he had taken the relevant provisions of international law into account and identified discrepancies between those provisions and human rights law.

16. **Mr. Valoni** (Argentina) reiterated his Government's support for the Special Rapporteur's mandate and welcomed his report's emphasis on the revision of the Standard Minimum Rules for the Treatment of Prisoners. His delegation called on all Member States to participate in the expert group's work and agreed that any changes to the Rules should not lower existing standards but instead strengthen them.

17. **Mr. Zheglov** (Russian Federation) said that his delegation acknowledged the importance of the issue of prevention of torture and called on States that had not yet done so to ratify the Convention against Torture as soon as possible. The Special Rapporteur should exercise caution in his statements about States' obligations under the Convention, however, as those statements were not legally binding. His delegation took particular issue with the Special Rapporteur's view that failure to provide opiate substitution treatment to drug users was a form of torture and called on him to adhere strictly to his mandate and observe the Code of Conduct for Special Procedures Mandate-Holders.

18. **Mr. Ulibarri** (Costa Rica) reiterated his Government's support for the Special Rapporteur's mandate. As part of its commitment to cooperating with United Nations special procedures, it had extended an open invitation to all mandate-holders to visit the country. He asked the Special Rapporteur what basic commitments an open invitation should contain in order to facilitate the adequate and effective organization and conduct of special rapporteurs' visits.

19. **Ms. Bentes** (United States of America) said that the Special Rapporteur's interim report furthered the discussion of important issues within and among

Governments. Her Government was actively involved in the expert group on the Standard Minimum Rules for the Treatment of Prisoners, which it was committed to updating in order to ensure that they reflected current standards and best practices. Her delegation was concerned, however, at the Special Rapporteur's extension of the application of the Rules to categories of prevention other than crime prevention and criminal justice, which were beyond the scope of the Rules, and felt that his recommendations in that regard raised process concerns. However relevant some of the provisions of the Rules might be to persons detained outside the criminal justice system, they remained an integral part of the United Nations system of standards and norms for the administration of justice. Extending their application to circumstances of detention not envisaged by the Member States when the Rules had been adopted might undermine States' support for them and their willingness to amend them in the future. The Commission on Crime Prevention and Criminal Justice, which oversaw the Rules, had no mandate to address confinement or detention unrelated to crime prevention or criminal justice. Moreover, detention pursuant to the law of armed conflict was already governed by existing international instruments. Extending the Rules to additional categories of detention would create confusion and ultimately undermine State support for United Nations standards and norms on crime prevention and criminal justice. She asked the Special Rapporteur whether he saw any tension between the intent and State involvement requirements of article 1 of the Convention against Torture and statements in his report that might be perceived as endorsing State responsibility for acts of torture based on negligence theory?

20. **Mr. Méndez** (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) said that in October 2013 he had sent the Government of Bahrain a message regarding the indefinite postponement of his visit to that country. While he appreciated the undertaking given by the representative of Bahrain, his mandate required that the Bahraini Government specify a date for his visit. He could not visit any State without a formal invitation from its Government, which left the final decision up to each State. It was true that many countries had not issued invitations despite years of requests, but that did not prevent him from remaining abreast of changes, both positive and negative, in the situation in the countries concerned. In Bahrain's case, his office

continued to receive reports of arrests, cases of mistreatment and confessions allegedly obtained under torture. While he welcomed the report of the Bahrain Independent Commission of Inquiry, he had received information that its implementation had been significantly delayed. He would continue to follow the situation closely, but would be able to analyse the information he received far better if he were able to visit the country.

21. He appreciated delegations' support for the extension of the Standard Minimum Rules for the Treatment of Prisoners and acknowledged that the Rules had originally applied only to criminal justice. It was nevertheless important for the revision process to extend them to all forms of deprivation of liberty; in his experience, many violations of human dignity had occurred in situations of detention and had been excused because the detention was unrelated to the administration of justice. Applying the Rules *mutatis mutandis* to different situations, while also recognizing that some situations were covered by other normative standards, should not pose a problem. He had not analysed what contradictions might arise, but the Rules could easily overcome any contradiction by stating that in situations of armed conflict, the application of international human rights law and the international law of armed conflict was coextensive and that the Rules did not supersede other norms more specific to the type of detention in question.

22. He welcomed the suggestion by the representative of Switzerland that a thematic report should be prepared on medical examinations for persons deprived of their liberty. In the course of his country visits, he had found that countries needed to invest more resources in order to meet the minimum standards currently in place. The denial of medical services constituted, at the very least, cruel, inhuman and degrading treatment or punishment. If the intention was to inflict suffering, such denial could amount to torture. He had never claimed that negligence in implementing State obligations could constitute torture, however. The definition of torture clearly established the principle of intentionality. Only in cases where the intention was to inflict severe pain or suffering could one speak of torture. Cruel, inhuman and degrading treatment or punishment did not require intent. Solitary confinement could be cruel and inhuman but did not necessarily constitute torture,

except where the isolation was intentional and sufficiently severe.

23. The representative of the Russian Federation had referred to a report that he had presented to the Human Rights Council in March 2013 ([A/HRC/22/53](#)) on certain forms of abuses in health-care settings. The report mentioned specific cases in which the denial of opiate substitution treatment could constitute ill-treatment and possibly torture. While that was not true of every case, in certain circumstances the denial of methadone treatment crossed the line into cruel, inhuman or degrading treatment or, in some instances, torture.

24. **Ms. Skarpeteig** (Norway) agreed with the Special Rapporteur that ensuring non-discrimination and special protection for vulnerable groups and individuals was a critical component of the obligation to prevent torture and other ill-treatment and shared his concern about reports of sexual abuse and physical violence against homosexual and transgender prisoners. She asked him to explain how the Standard Minimum Rules could be revised to strengthen the protection of that group of detainees and prisoners.

25. **Mr. Méndez** (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) said that he knew of situations in which lesbian, gay, bisexual, transgender and intersex persons had been subjected to certain forms of detention, including solitary confinement, on the basis of their sexual identity. Any such treatment, when inflicted on a discriminatory basis, should constitute an aggravated form of torture or cruel, inhuman or degrading treatment or punishment. The revision process provided an opportunity to include in the Standard Minimum Rules an explicit reference to preventing discrimination of any kind, thereby clearly establishing the need to specifically prohibit such discriminatory treatment.

26. **Mr. Grossman** (Chair, Committee against Torture) said that, to date, 154 States had ratified or acceded to the Convention against Torture, of whom 27 had never submitted a report and others had submitted only an initial report. Notwithstanding those violations of reporting obligations, the Committee had adopted 328 sets of concluding observations, providing States parties with recommendations for the adoption of effective measures to prevent torture and ill-treatment. Many States had responded by taking a

number of positive steps, such as implementing measures to incorporate the definition of torture into their domestic legal systems, excluding confessions extracted under torture, developing extensive training programmes, ratifying the Optional Protocol to the Convention and using the Istanbul Protocol, which was a valuable guide for preventing and documenting torture.

27. Since only 89 of the 154 States parties to the Convention had made the declaration recognizing the Committee's competence to receive individual communications, its tools for monitoring full compliance with the Convention were limited. To date, the Committee had considered 438 individual complaints and found violations of the Convention in 76 of them, some of them urgent and requiring immediate action.

28. Article 3 of the Convention made it possible to evaluate in actual cases whether there was reason to believe that sending an individual to another country would expose her or him to the risk of torture. Its provisions had made a real difference in the lives of numerous individuals. The rate of compliance with the Committee's decisions was also high. However, the current backlog of cases pending before the Committee severely weakened the system instituted by the Convention, which was after all the creation of the Member States, in that it hampered the delivery of justice to States and individuals within a reasonable time. With respect to inquiries, the Committee had the mandate, upon receipt of allegations of the systematic practice of torture in a State party, to institute a confidential inquiry in any State party that had recognized its competence. He called on all States that had not yet done so to ratify the Convention and all those who were already parties to it to accept all its procedures, in order to enable the Committee to fulfil its mandate.

29. The Committee's recently adopted General Comment on States parties' obligation to ensure that victims of torture obtained redress and had an enforceable right to fair and adequate compensation would further assist States and stakeholders in complying with their obligations. The comprehensive reparative concept entailed restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and referred to the full scope of measures required to address violations under the Convention. The Committee emphasized the importance of victim

participation in the redress process, the ultimate objective of which was restoration of the victim's dignity.

30. The Committee had also reinforced and streamlined its strategy on reprisals against complainants, victims, witnesses, human rights defenders, non-governmental organizations and anyone else who faced intimidation, ill-treatment or any other form of reprisal, especially if they were due to the victim's engagement with the Committee. Reprisals jeopardized the functioning of the human rights system and the Committee's performance of its monitoring mandate. In that context, the Committee had appointed two rapporteurs on reprisals and had created a dedicated webpage where it made public its concerns about cases of reprisals and the responses of the States concerned, in the hope that that would help prevent reprisals and create an environment conducive to the universal enjoyment of human rights.

31. The Committee's work was informed by the principles of legality in the application of the Convention; independence and impartiality of Committee members; efficiency of working methods; sound, rigorous and professional decision-making in a manner that was visible, transparent and accessible; and enhancement of prevention through its concluding observations, its system of communications and other mechanisms.

32. Despite an impressive international legal framework and numerous mechanisms for the prevention of torture, that practice continued. The Committee was constantly searching for new ways to assist States parties in fulfilling their obligations under the Convention. One important innovation had been the adoption of an optional reporting procedure under which States were sent a list of issues prior to their periodic reports and their replies were considered as constituting the State party's report. While that procedure had proved very successful and cost-effective for States, it placed an additional burden on the Secretariat and on the Committee, which had one of the smallest memberships among the human rights treaty bodies.

33. The General Assembly's provision of the necessary financial support to keep the Committee's session at four weeks would enable it to consider additional reports and individual cases and to manage the backlog within an environment of economic

constraints. Noting the extension of the intergovernmental treaty body strengthening process, he expressed the hope that a final, comprehensive and sustainable solution would be reached. He commended Member States for their imagination and commitment in creating a system to protect the inherent dignity of every human being.

34. **Mr. Errázuriz** (Chile) said that Chile attached great importance to combating torture and other cruel, inhuman or degrading treatment or punishment, as demonstrated by the history of transitional justice institutions in Chile, notably the work of various truth, justice and reparations commissions. Victims of torture and their families had been granted various benefits following his Government's allocation of funds for reparations. The Government's ongoing collaboration with the multilateral human rights system, its sponsorship of all resolutions on torture and its establishment of a national preventive mechanism, in fulfilment of its obligations under the Optional Protocol, attested to its engagement in that area.

35. **Ms. Tschampa** (Observer for the European Union) said that the Committee's General Comment No. 3 on States parties' implementation of article 14 of the Convention was interesting. She asked whether the Special Rapporteur had received States' views on the general comment and whether he planned to develop other general comments in the future.

36. **Ms. Almeida Watanabe Patriota** (Brazil) said that her Government would be hosting the next meeting of the open-ended intergovernmental expert group in December 2013. The meeting was expected to result in decisions that took into account the experience of the Latin American countries, whose common past had strongly influenced their approach to correctional science. With one of the fastest growing prison populations in the world, her Government was making every effort to improve overall prison policy and prisoners' living conditions and it was participating actively in the review of the Standard Minimum Rules for the Treatment of Prisoners. The Rules should embody advances in a number of areas of international human rights law, such as the requirement to address the specific needs of vulnerable groups, protect against discrimination based on age, ethnicity, culture, gender identity, sexual orientation or religion and open up prisons to independent and regular inspection and control. Her Government also supported the right of persons deprived of their liberty to communicate with

the outside world without their fundamental rights being violated. The provision of multidisciplinary health care was also a concern.

37. Her Government had recently enacted a law establishing a national system for the prevention and eradication of torture, in compliance with the Optional Protocol to the Convention. The law enabled a committee to visit any place of detention, social or educational institution or psychiatric hospital without prior warning to check on possible violations. Experts would be able to make recommendations directly to prison administrators and set deadlines for their implementation. There would be a system of community and state prison councils and police ombudsmen. An agreement on improving the prison system had been concluded among the judiciary and the legislative and executive branches, under which the Government undertook to update and provide greater access to the legal system, improve the social reintegration of former prisoners and expand educational services in prisons. Steps would also be taken to reinforce the integration of the prison system's information system with those of different Government entities. She renewed her Government's standing invitation to the Special Rapporteur and all other special procedures mandate-holders to visit Brazil in order to participate in those efforts.

38. **Mr. Grossman** (Chair, Committee against Torture) welcomed the victim-based approach adopted by the Chilean Government, which mattered more than technical discussions on such issues as improving time management. The main objective of preventive mechanisms was to protect human rights on the ground and an effort should be made to measure their effectiveness. It was essential to prevent human rights violations wherever possible. However, while the principle with regard to standards of rehabilitation and compensation had always been to try to give victims back a semblance of their previous life, it was unlikely that a victim of torture could be compensated fully. Allowing violations and impunity for violations was tantamount to supporting their recurrence.

39. Hearing Member States' views during the adoption of general comments was vital. Such a dialogue, especially on issues such as reparation and the strengthening of domestic mechanisms, was important, as were the valuable contributions received from civil society, which the Committee welcomed even though it took instructions from no one. The



Committee was considering a number of options for general comments, for instance on evaluating the burden of proof in communications. As a subsidiary body, the Committee did not hold hearings, it only received written communications. The Convention did not make any provision for principles such as reasonable proof in criminal law and weight of evidence in civil liability cases, which existed in the British and North American legal systems. As a result, there were cases before the Committee where it had to decide which standards of evidence to apply. It was important to clarify the criteria for assessing evidence. The Committee's legitimacy lay in the reasoning behind and the transparency of its actions and he hoped that States would continue to benefit from its general comments.

40. **Ms. Diaz Gras** (Mexico) said that her Government had recently presented its combined fifth and sixth periodic report to the Committee against Torture and was currently conducting an inter-agency campaign to implement the Committee's recommendations thereon. It recognized the need to expand the scope of the Standard Minimum Rules and the protection they afforded. It was considering the possibility of organizing a country visit in early 2014. A new amparo act had been adopted which made it possible, inter alia, to bring amparo proceedings even in cases of human rights violations, including illegal detention. The Mexican Congress was currently considering a draft amendment to the Federal Law to Prevent and Punish Torture in order to give legal backing to the competence of the National Human Rights Commission to carry out visits with a view to identifying and prosecuting cases of torture in places of detention.

41. **Mr. Evans** (Chair, Subcommittee on Prevention of Torture) recalled that in 2012, he had reported that the Subcommittee had concluded that it could conduct its work most effectively by undertaking an increased number of shorter visits, with fewer members and a more targeted focus, and that it planned to undertake six visits: three full visits to Argentina, Kyrgyzstan and Gabon and three visits in fulfilment of its mandate with regard to national preventive mechanisms, known as "advisory visits", to Honduras, the Republic of Moldova and Senegal. Advisory visits had proved an unparalleled success and had led to tangible, positive changes in the operation and resourcing of the national preventive mechanisms in question. Those

improvements notwithstanding, the Subcommittee had been unable to visit Gabon due to a staff shortage in its secretariat, which had also prevented it from adding that visit to the six visits scheduled for 2013. The Subcommittee had thus far visited New Zealand, Germany, Peru and Armenia and its members frequently attended meetings at the invitation of States and civil society organizations. Such meetings, although significant, were no substitute for official visits, however. The current cycle of visits to States parties fell far short of the desired frequency of four to five years and the current 10-year backlog was incompatible with the objectives of the Optional Protocol.

42. Despite being the most under-resourced of the treaty bodies, the Subcommittee had consciously avoided requesting additional resources and endeavoured to work efficiently within available budgetary resources. However, a stable, core secretariat was essential for it to fulfil its current work plans. It remained a matter of conjecture how, in the longer term, the Subcommittee could continue to meet the ever-increasing desire of States parties and national preventive mechanisms to work with it. In the short term, it had found innovative solutions, such as restructuring its sessions and meeting in smaller regional teams and working groups in order to cover more ground more effectively. All members of regional teams acted as country rapporteurs, allowing the Subcommittee to have an informed discussion of compliance with the Optional Protocol by the 69 States parties and to take appropriate and timely action. Its unique working method also allowed it to work in conformity with the core principles set out in article 2, paragraph 3, of the Optional Protocol and there were currently 45 officially designated national preventive mechanisms. The number of non-compliant States was therefore declining and the Subcommittee was in contact with many of those States to encourage and assist them.

43. In just seven years, the Optional Protocol and the Subcommittee's work had made regular visits to places of detention, as part of an international system of torture prevention, a reality in many States. Despite increased interest in the Special Fund of the Optional Protocol, which had received over US\$ 400,000 in contributions in 2012, the Subcommittee was anxious to ensure that donations remained commensurate with the needs that it was intended to address. The second

call for applications for funding in 2012 had yielded 30 applicants, resulting in grants totalling \$280,000. A third call for applications had been issued recently and it was hoped that the Fund would continue to be able to support practical projects for the effective prevention of torture and ill-treatment. The Subcommittee continued to work with other United Nations agencies in the field, as well as with other regional and international organizations, and while much of the substance of its visiting work was confidential, there were opportunities for partners to contribute in areas that were not confidential. It was necessary to raise awareness and to develop such partnerships in order to maximize the potential of the Optional Protocol.

44. **Mr. Al-Hamadi** (Qatar), supported by **Mr. Aljarallah** (Kuwait) and **Ms. Aldhaheeri** (United Arab Emirates), commended the efforts made by the Government of Bahrain and expressed full support for the measures that it had taken to preserve the stability and well-being of its citizens.

45. **Ms. Medcalf** (United Kingdom of Great Britain and Northern Ireland) asked how Member States could best assist countries in establishing national preventive mechanisms. She asked the Chair of the Subcommittee how it was seeking to fulfil its obligation to engage in a dialogue with States to ensure the implementation of its recommendations following country visits.

46. **Ms. Tschampa** (Observer for the European Union), noting that the Chair of the Subcommittee had recently emphasized the need for States to go beyond improving accountability for reprisals and take measures to prevent them, asked him to give examples of preventive “best practices” that States could follow, based on the advice provided to States during country visits. She also asked whether the Subcommittee was currently taking measures to minimize the risk of reprisals against persons who provided it with information and to ensure accountability should such persons subsequently be subjected to a sanction or otherwise prejudiced as a result of their cooperation with it. Lastly, she would like to know the timeline for the policy on reprisals.

47. **Mr. Evans** (Chair, Subcommittee on Prevention of Torture), replying to the representative of Denmark, said that the Government of Burundi had ratified the Optional Protocol on 18 October 2013, bringing the number of States parties to 70. One of the factors affecting the decision to ratify the Optional Protocol

was the precise, practical implications of the obligation to establish an effective and independent national preventive mechanism. The Subcommittee had found that the best approach was to establish contact with States that were contemplating ratification and expand the technical advice and assistance offered at an early stage. That approach had facilitated the speedy entry into force of the Convention and the timely establishment of national preventive mechanisms, which was a complex undertaking.

48. The Subcommittee had found that early visits were crucial to ensuring that States parties fully understood the Guidelines on national preventive mechanisms and the implications of their effective operation. It had cooperated closely with several States that were seeking to develop sound legislation, it established ongoing links with national mechanisms once they were set up and its regional teams considered the annual reports submitted to the Subcommittee and provided feedback and assistance where necessary. It received frequent requests for assistance from national preventive mechanisms on how to fulfil their mandate, but sometimes had difficulty responding. Since there was no substitute for direct contact with national preventive mechanisms, they were sometimes invited to the Subcommittee’s sessions in Geneva when visits to them were not possible.

49. With regard to seeking a dialogue on implementation, the Subcommittee had found it helpful to draw on the presence of other organizations or United Nations agencies in the field. As it scrupulously respected the confidentiality of unpublished reports, such collaboration occurred only where reports had been made public and there had been direct contacts and visits with States to discuss the Subcommittee’s recommendations and their implementation. It was also useful to engage national preventive mechanisms as partners in discussions on implementation, since their presence on the ground meant that they were better placed to maintain a close dialogue over time.

50. The timeline for written contributions to assist the formulation of a policy on reprisals had been posted on the Subcommittee’s website. A working group would examine submissions and finalize a position paper in November 2013 and more substantive information should be available to the General Assembly in 2014. It was important to note that the Subcommittee conducted a rigorous risk assessment before undertaking any visits and factored in the

potential risk of reprisals; its role was not to make matters worse. That issue was also raised with focal points prior to country visits in order to devise an action plan. Reprisals could come from many quarters, including other detainees. If incidents still arose despite advanced planning to minimize risk, the Subcommittee would contact the authorities immediately and take action. The presence of national preventive mechanisms following visits was an invaluable safeguard and the Subcommittee relayed to them any information on potential risks with a view to preventive follow-up.

51. **Ms. Cedeño Rengifo** (Panama) said that one of the flagship projects of the President of Panama for addressing the problem of overcrowding in the country's prisons was the construction of a new prison complex, in which more than US\$ 158 million had been invested. The prison, with capacity for some 5,000 detainees, services and accommodation facilities for prison officers, would be completed by the end of the month and should be operational by January 2014. Designed to be one of the most modern and secure prisons in Latin America, it also met all the specifications for ensuring decent living conditions for detainees.

52. **The Chair** invited the Committee to begin its general discussion of sub-items (a) and (d) of agenda item 69.

53. **Ms. Tschampa** (Observer for the European Union), speaking also on behalf of the candidate countries Montenegro, Serbia, the former Yugoslav Republic of Macedonia and Turkey; the stabilization and association process countries Albania and Bosnia and Herzegovina; and, in addition, Armenia, Georgia, the Republic of Moldova and Ukraine, said that the European Union was unwavering in its support for the ratification and implementation of international human rights treaties and would be an ever-vigilant guardian of that process. It commended the High Commissioner for Human Rights, her predecessors and her staff for their relentless efforts over the 20 years since the World Conference on Human Rights. It was incumbent on the international community to maintain the resources of OHCHR. It must also be remembered that the laudable goal of standard setting was not an end in itself but must be accompanied by a vigorous focus on the implementation of existing standards. Technical assistance and expertise were essential to that end.

54. The European Union continued to support the treaty body strengthening process and was committed to reaching a concrete and timely outcome. The General Assembly process should not be used to block the steps taken by the treaty bodies to enhance their functioning, which must respect the competences and autonomy of the various actors and emphasize the continuing importance of the contributions and participation of all stakeholders. The European Union also supported all efforts to use the existing human rights expertise of the Human Rights Council and its special procedures to strengthen United Nations operative capacities.

55. Despite the recognition of non-governmental organizations as indispensable human rights partners, sadly, civil society actors faced intimidation, harassment and attacks in many countries. The European Union strongly rejected attempts to hinder the work of human rights defenders and believed that the Human Rights Council must remain a safe space for civil society to raise issues. The European Union would vigorously oppose all efforts to limit debate and subject human rights defenders to reprisals. It reiterated its commitment to equal protection of the rights and freedoms of all persons without discrimination and welcomed the entry into force of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. In line with the Vienna Declaration and Programme of Action, the European Union would always place human rights at the centre of its work. Although much had been achieved since the Vienna Conference, there was no room for complacency.

56. **Mr. Kandeel** (Egypt) said that while regional and international cooperation in promoting human rights had increased over the past 60 years and the objectives of respect for human rights and equality were universally accepted, there was no agreement on the specific steps to achieve them. Cultural differences, disguised interventionism and political bickering were just some of the obstacles that stood in the way. Domestically, many countries faced challenges in striking a balance between security concerns and human rights and between economic and social rights and political and civil rights. Globally, the challenge was to balance the role of the international community with that of sovereign States, with many countries voicing concerns about the possible misuse of human rights issues as a pretext for intervention. However,

those challenges should not inhibit attempts to achieve a consensus on promoting international human rights instruments and protecting fundamental rights for all.

57. The international community's focus should therefore be to define the scope of human rights to include economic, social and cultural rights on the same footing as civil and political rights and to respect differences between societies. It should also refrain from imposing narrow cultural standards, recognize that its role was to support national capacity-building efforts without affecting the territorial integrity of States, address the development gap in order to mitigate the adverse consequences of globalization and immigration and avoid double standards and the politicization of human rights issues. The Arab revolutions had shown that democratization was a home-grown process, reflecting the value systems, realities, needs and priorities of a society. The international community should respect those priorities and support peoples' efforts to consolidate democracy and promote human rights.

58. His Government was fully committed to strengthening regional and international compliance with human rights instruments and was currently finalizing arrangements with OHCHR for hosting its regional office in Cairo. It would continue to cooperate with partners in the international community to strengthen international human rights institutions.

59. **Mr. Errázuriz** (Chile) said that while the Vienna Declaration and Programme of Action had led to normative and institutional progress in the field of human rights, 20 years later the implementation of those rights was being held back, if not reversed, by the erosion of fundamental norms in the name of security, the restrictions placed on the activities of civil society and the downplaying of the universality of human rights in the interests of cultural relativism or traditional values. The international community must work more closely with the various mechanisms of the multilateral system for the protection of human rights, particularly OHCHR, whose global presence and support to Member States, even with limited resources, had come to embody the third pillar of the United Nations. His Government was continuing its fruitful collaboration with OHCHR in areas ranging from women's rights to the rights of indigenous peoples and attached particular importance to its efforts to combat impunity and enhance accountability and the rule of law. Ensuring democracy and the rule of law through a

rights-based approach was an inescapable challenge for all States, involving assistance in establishing national human rights institutions and requiring Government-led capacity-building to ensure the enjoyment of human rights.

60. A broader vision of human rights must be included in the post-2015 development framework. Growing inequalities within and between societies were eroding the right to participation and the very foundations of democracy. Future objectives and indicators for sustainable development must therefore be in line with civil, political, economic and social rights. The treaty bodies performed a crucial role in monitoring the implementation of human rights instruments in a critical situation to which the General Assembly had yet to respond. Chile, like many other countries, had participated constructively in the treaty body strengthening process, which had already identified a number of viable solutions, and looked forward to a successful outcome in February 2014.

61. Civil society played an invaluable role in the promotion and protection of human rights and in the work of the United Nations. Democracy in Chile had benefited from that role and his Government was concerned at the increasing restrictions being imposed on civil society organizations in many countries. It had promoted a range of activities to ensure enabling environments for a committed civil society: it had co-sponsored a resolution at the twenty-fourth session of the Human Rights Council and supported a draft Council decision to establish a special fund to enable civil society to participate in the Social Forum, the Forum on Minority Issues and the Forum on Business and Human Rights.

62. Concerted action was required to address the challenges of a globalized world and ensure the universal enjoyment of human rights. Member States should coordinate efforts in the Fifth Committee to increase the regular budget for human rights and emphasize the urgent need to continue making voluntary contributions, if possible to a common fund.

63. **Ms. Sumi** (Japan) said that since its inauguration in December 2012, Japan's new Government had been advocating diplomacy that emphasized universal values and was working enthusiastically in the area of human rights, particularly women's rights, in multilateral and bilateral settings. In June 2013, the new Cabinet had adopted the Japan Revitalization Strategy, designed to

promote a socioeconomic environment in which women participated actively. In addition to its domestic efforts, the Government intended to increase its support for efforts to address international challenges to women's rights and to work on the formulation of Japan's National Action Plan for the implementation of Security Council resolution 1325 (2000). It was up to date with its reporting obligations to the various human rights treaty bodies.

64. The Convention on the Rights of Persons with Disabilities had been submitted to the Diet of Japan for ratification. Since Japan had signed the Convention in 2007, important domestic legislation and policies had been introduced: the Basic Act for Persons with Disabilities had been amended to prohibit the denial of reasonable accommodation; a domestic framework had been established to monitor the implementation of the Convention; legislation had been adopted on the elimination of discrimination against persons with disabilities; and the existing legislation on employment and education had been amended for the benefit of persons with disabilities. Japan's domestic system was thus in keeping with the provisions of the Convention and the Government would continue its efforts to safeguard the rights of persons with disabilities and would cooperate with all partners to improve the situation of human rights at both domestic and international level.

65. **Mr. Zhang** Guixuan (China) said that, over time, treaty bodies had become increasingly beset by problems such as onerous reporting obligations and the overstepping by some treaty bodies of their mandates. His Government therefore supported the necessary reform of the treaty body system. All parties should continue to engage in negotiations to formulate a universally accepted, comprehensive and sustainable outcome document for the reform process, which should focus on facilitating constructive dialogue between treaty bodies and States parties with a view to ensuring the objectivity and impartiality of the work of the treaty bodies and avoiding politicization and selectivity. The Vienna Declaration and Programme of Action had stressed the universality of human rights and reiterated the right to development as an inalienable right. However, the realization of that right for developing countries was being impeded by obstacles such as the global financial crisis, climate change and regional conflicts. His Government called

on all stakeholders to keep up their efforts to promote the cause of international human rights.

66. His Government valued the important role of international human rights instruments. It had acceded to 26 such instruments and faithfully fulfilled its obligations thereunder. It had taken measures to bring China's domestic legislation and judicial and administrative practice into line with treaty provisions and had also supported the Hong Kong Special Administrative District and the Macao Special Administrative District in fulfilling their treaty obligations. It would continue to comply with its reporting and other obligations and would do more to strengthen its dialogue and cooperation with treaty bodies and to contribute to advancing the international human rights cause.

67. **Mr. Marzooq** (Iraq) said that human rights were one of the pillars of his country's new democratic system. As a young democracy, its human rights institutions attested to the country's evolution since 2003, following years of suffering under the previous regime. Constitutional guarantees notwithstanding, terrorism was one of the greatest challenges that his Government faced in seeking to protect human rights; no sector of the population was safe from its brutal impact. The Government was putting in place national legislation and strategies to combat terrorism and compensate its victims. It had succeeded in addressing the issue of internal displacement resulting from terrorist activity and had enacted laws to protect journalists targeted by terrorists.

68. The Government's measures to promote human rights had included the establishment of specialized government entities to monitor the human rights situation, prepare reports, adopt legislation and address and prevent the recurrence of violations. It had adopted a long-term national human rights plan and a national strategy to combat violence against women. Specific human rights legislation had been adopted with regard to persons with disabilities and former political prisoners.. The situation of persons deprived of liberty was monitored regularly in order to prevent violations of their rights. A human rights module had been introduced into all educational curricula and media campaigns had been undertaken to disseminate a culture of respect for and awareness of human rights. At the international level, Iraq had acceded to several international human rights instruments, most recently

the Convention on the Rights of Persons with Disabilities.

69. **Ms. Sithidej** (Thailand) said that her Government had made significant progress over the past year in the implementation of human rights instruments. Proposed amendments to the Criminal Code and Criminal Procedure Code, which would introduce various legal measures, including the definition of a specific offence of torture, the establishment of universal jurisdiction for that offence and assistance for victims, had been submitted to Parliament for consideration. Thailand had been the first country to ratify the third Optional Protocol to the Convention on the Rights of the Child, which was an important step towards ensuring that children had equal access to justice. A national subcommittee on the third Optional Protocol was to be set up under the National Committee on the Promotion of Child and Youth Development to consider complaints received from children and take appropriate measures to address them.

70. Positive developments with regard to the implementation of the Vienna Declaration and Programme of Action included the approval of the third National Human Rights Action Plan 2014-2018, which incorporated recommendations derived from the Universal Periodic Review and treaty body recommendations, as well as information gathered from relevant agencies and lessons learned from the second Plan. An in-depth study had been commissioned on the possibility of abolishing the death penalty and there were plans to conduct countrywide consultations and awareness-raising campaigns on the justice system and capital punishment. The Government also intended to launch a human rights e-learning programme for teachers and students, developed jointly by the Rights and Liberties Protection Department and the National Human Rights Commission.. At the regional level, the ASEAN Intergovernmental Commission on Human Rights (AICHR), in collaboration with the region's universities, was promoting human rights education as a key to changing societal attitudes. Her Government actively supported the work of AICHR, which was one of the most important actors for the promotion and protection of human rights at the regional level.

*The meeting rose at 12.50 p.m.*