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Chair: Mr. Tommo Monthe (Cameroon)

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The meeting was called to order at 3 p.m.

Agenda item 68: Promotion and protection of human rights (*continued*) (A/65/336)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/65/87, A/65/119,

A/65/156, A/65/162, A/65/171, A/65/207, A/65/222, A/65/223, A/65/224, A/65/227 and Add.1, A/65/254, A/65/255, A/65/256, A/65/257, A/65/258, A/65/259, A/65/260 and Corr.1, A/65/261, A/65/263, A/65/273, A/65/274, A/65/280 and Corr.1, A/65/281, A/65/282, A/65/284, A/65/285, A/65/287, A/65/288, A/65/310, A/65/321, A/65/322, A/65/340 and A/65/369)

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

(A/65/331, A/65/364, A/65/367, A/65/368, A/65/370 and A/65/391)

1. **Mr. Singh** (Special Rapporteur on the right to education) said that the right to education was perhaps the best example of the interdependence and interrelation of all human rights. His predecessor's report (A/65/162) addressed the issue of sex and reproductive health education, and affirmed that the obligation to provide such education related to the right to the highest attainable standard of physical and mental health and could contribute directly to the advancement of women.

2. Several treaty bodies had emphasized the right to health-related education for children, including education on sexual and reproductive health. Public health studies also stressed the importance of such education, especially to prevent HIV/AIDS and other sexually transmitted diseases. Nevertheless, sex education was a sensitive matter for all societies and the previous Special Rapporteur had noted a worrying lack of sustainable and comprehensive strategies to ensure the adequate inclusion of sex education in educational and health policies. His report concluded with a long list of recommendations for States and other stakeholders to ensure broader access to adequate sex and reproductive health education.

3. Turning to his own views and aspirations for his mandate, he emphasized that education was both a right and also a means of enjoyment of other rights.

However, over 70 million children, mostly girls, did not attend school, and educational quality remained a serious concern worldwide, even for those who were able to do so. His mandate required him to examine the reasons behind the gap between commitment and reality, and the most relevant steps to ensure more sustainable progress.

4. The core principles of equality and non-discrimination in all human rights treaties called for specific attention to the right to education of those living in vulnerable circumstances. One of his concerns would be to develop a clearer understanding of how human rights instruments could guide efforts to eliminate discrimination and ensure equal opportunities in the context of education, with particular attention to gender equality. Moreover, greater efforts were required to ensure that the education provided met reasonable quality standards. He also intended to look at innovative forms of financing for education.

5. Effective protection of the right to education depended upon its justiciability. As States had a duty to incorporate the international obligations they assumed under human rights treaties into their domestic legal order, he would examine the measures adopted to strengthen legal frameworks and enforcement mechanisms that protected the right to education.

6. Education systems and school management played a central role in realizing the right to education. He would pay particular attention to the mechanisms ensuring that all educational entities, both public and private, complied with the standards established by human rights law.

7. He also intended to address the emerging concern of violence in schools in direct collaboration with the Special Representative of the Secretary-General on violence against children. Lastly, he would be preparing an update to his predecessor's 2008 report on the relevance of education in the context of emergencies, based on the work and the partnerships he had developed.

8. Open discussions and dialogue with Member States were probably the most important references to guide the work of special procedure mandate holders and he looked forward to beginning his mandate with the exchange of views that would follow.

9. **Ms. Karim** (Malawi), speaking on behalf of the Group of African States, said that the last report

submitted by the previous Special Rapporteur on the right to education, Mr. Muñoz, reflected an attempt to introduce controversial notions and a disregard for the Code of Conduct for Special Procedures Mandate-holders and his mandate as outlined in Human Rights Council resolution 8/4. She expressed alarm at the reinterpretation of existing, internationally agreed and universally accepted human rights instruments, principles and concepts. The report also selectively quoted general comments and country-specific recommendations made by treaty bodies and propagated controversial and unrecognized principles, including the so-called Yogyakarta Principles, to justify his personal opinion. Such an approach only served to undermine the credibility of the whole special procedures system and should not be tolerated.

10. The Group of African States was disappointed that the previous Special Rapporteur had not chosen to address the continuing challenges and obstacles facing efforts to realize the right to education and achieve Millennium Development Goals 2 and 3. It had and would continue to support the special procedures system and the Human Rights Council, encouraging cooperation and dialogue. However, in view of those violations, the Group rejected the report of the previous Special Rapporteur.

11. **Ms. Boissiere** (Trinidad and Tobago), speaking on behalf of the Caribbean Community (CARICOM), said that she wished to express deep concern that the former Special Rapporteur had chosen to ignore his mandate, as laid down in Human Rights Council resolution 8/4, and to focus instead on the so-called "human right to comprehensive sexual education". Such a right did not exist under any internationally agreed human rights instrument or law and his attempts to create one far exceeded his mandate and that of the Human Rights Council. CARICOM recognized the importance of and the need for sexual education, based on science and introduced at an appropriate age. However, the Special Rapporteur should not have indulged his personal interests at the expense of Member States. The report attempted to usurp or undermine the universally accepted rights of parents to determine the quality of their child's education and to provide appropriate direction and guidance in the child's exercise of his or her rights; of Member States to educate their citizens in a manner consistent with their culture and particular situation; and of all citizens to freedom of thought, conscience and religion.

12. CARICOM Member States had hoped that the former Special Rapporteur would examine the obstacles to the effective access to education and provide recommendations on how to promote and protect the right to education and to achieve the Millennium Development Goals, in particular Goals 2 and 3. She called for a new report to be produced, in line with Human Rights Council resolution 8/4 and the internationally accepted human rights and obligations.

13. **Mr. Ould Cheikh** (Mauritania), speaking on behalf of the Group of Arab States, said that he looked forward to open dialogue and full cooperation with the new Special Rapporteur on the right to education during his mandate, on the basis established by the Human Rights Council. The Group of Arab States believed that protection of all human rights was supported by education, which was a right of all citizens. Nevertheless, religious and cultural particularities must be taken into account when realizing that right.

14. While the Special Rapporteur's mandate, as defined by relevant Human Rights Council resolutions, entailed promoting education with a view to achieving the Millennium Development Goals, in particular, Goals 2 and 3 on education and on women's empowerment, it did not entitle him to reinterpret those goals or to redefine established concepts of sexual and reproductive health education, or of human rights more broadly.

15. The immunity granted to special rapporteurs, as well as the agreement on the part of Member States to cooperate with them in order to ensure effective performance of their mandated duties, required that they, in turn, should respect their mandate, especially the conclusions and recommendations made in respect of States. Regrettably, during his tenure as Special Rapporteur, the previous mandate holder had violated that principle by promoting controversial doctrines that did not enjoy universal recognition in various forums. While emphasizing its full support of the mandate of the Special Rapporteur on the right to education, in accordance with the Code of Conduct and relevant resolutions, the Group of Arab States expressed dismay at the approach adopted by the previous Special Rapporteur and reiterated its conviction that mandate holders should be committed to the framework established by the mandates they had pledged to uphold.

16. **Ms. Bouhamidi** (Morocco), speaking on behalf of the Organization of the Islamic Conference, said that the Organization attached considerable importance to the right to education and assured the new Special Rapporteur of its full cooperation in the discharge of his duties in accordance with his mandate and the Code of Conduct.

17. Nevertheless, the Organization had strong reservations concerning the last report by the previous Special Rapporteur, who had attempted to redefine the right to education and to reinterpret existing internationally agreed human rights instruments, which clearly exceeded the mandate of any special procedure. If allowed to continue, that approach would undermine the credibility of the whole special procedures system.

18. The report failed to reflect objective facts based on reliable information from credible sources that were duly cross-checked, as established in the Code of Conduct. The facts had not been considered in a comprehensive and timely manner, in particular information provided by the States referred to in the report on situations relevant to his mandate. The Special Rapporteur had failed to present his conclusions and recommendations to the Human Rights Council in cases where they were relevant to all special procedures and other human rights mechanisms.

19. The Special Rapporteurs were mandated by Member States to conduct specific research and studies. The previous Special Rapporteur had dedicated his report to refuting principles enshrined in international human rights conventions, and discussing controversial notions that did not enjoy universal recognition. In addition, the Code of Conduct directed mandate holders to exercise their functions in strict observance of their mandate and, in particular, to ensure that their recommendations did not exceed it, or the mandate of the Human Rights Council itself.

20. For those reasons, the member States of the Organization of the Islamic Conference could not accept the report.

21. **Ms. Zolotova** (Russian Federation) said that the Russian Federation had always believed that the activities of the Special Procedures of the Human Rights Council should foster respect for human rights in the relevant thematic area and develop constructive interaction with Member States. The conclusions and recommendations of the special procedures should

promote consolidation of the United Nations, rather than causing rifts among its Member States.

22. In that connection, the Russian Federation expressed its disappointment and fundamental disagreement with the report of the previous Special Rapporteur contained in document A/65/162. It was opposed to attempts to discriminate on any basis, and had confirmed that position in the United Nations and elsewhere. At the same time, it could not agree with the attempt to advance confrontational and controversial concepts that had not been agreed to at the intergovernmental level having to do with the supposed right to comprehensive sexuality education. The former Special Rapporteur saw that right as a supposedly inalienable component of human rights education.

23. As justification for his conclusions, he had cited numerous documents which had not been agreed to at the intergovernmental level, and which therefore could not be considered as authoritative expressions of the opinion of the international community. In particular, he referred to the Yogyakarta Principles and also to the International Technical Guidance on Sexuality Education. Implementation of various provisions and recommendations of the latter document would result in criminal prosecution for such criminal offences as corrupting youth.

24. The Russian Federation found the report unacceptable from the standpoint of respect for the principles of the activity of the special procedures of the Human Rights Council and called upon the new Special Rapporteur not to repeat his predecessor's mistakes.

25. **Mr. Sammis** (United States of America) said that his Government strongly supported the right to education and believed that all persons deserved a quality education. He expressed his delegation's disagreement with several conclusions reached in the former Special Rapporteur's report, however, especially as there was no internationally recognized human right to sexual education. He regretted that the report had not focused on improving implementation of the right to education or achieving the objectives of the Education for All programme or the Millennium Development Goals, which would have been a more timely and appropriate contribution to global efforts to promote education, as much remained to be done to meet those goals by 2015.

26. **Mr. Wu** (Australia) said that his Government had been a long-standing supporter of the valuable work and independence of the special procedures mandate holders. It was imperative that the new Special Rapporteur should be free to work independently within his mandate to address issues, including gender perspectives in education, a topic that Member States had requested him to investigate.

27. As education was the basis for other development objectives, the Australian Government had placed education at the centre of its aid programme and was providing more resources to ensure that all children were enrolled in schools, including those with disabilities, and to improve the quality of education. Noting that one third of children who did not attend school were children with a disability, he asked the Special Rapporteur how he viewed his role in promoting the rights of those children to go to school and to receive a good education.

28. **Mr. Matjila** (South Africa) said that the report by the former Special Rapporteur was indeed very controversial, especially as issues of health did not fall within the mandate of the Special Rapporteur on the right to education. The right to education was a national priority for South Africa, given the critical need to achieve all of the Millennium Development Goals by 2015, and its efforts in that area would be guided by existing human rights instruments in the field. The Government had introduced HIV and sex education as part of the wider Life Orientation curriculum for schools, which included topics such as diversity, democracy and human rights.

29. The quality of education was also fundamental to the right to education; however the shortage of classrooms, laboratory equipment, poor sanitation and learning materials in developing countries, in particular in Africa, was a cause for serious concern. He therefore asked the new Special Rapporteur how he intended to address the question of financial resources in the realization of the right to education.

30. **Reverend Bené** (Observer for the Holy See) said that international instruments had consistently affirmed that it was the right and responsibility of parents to educate their children. The Convention on the Rights of the Child had made it clear that the best interests of the child was the basic concern of his or her parents, who had primary responsibility for the upbringing and development of their child, not the State. Any attempt

to create a division between the primary responsibility of parents and the best interests of the child, which the report appeared to do, did a disservice to the child, parents, marriage and the family.

31. **Ms. Chevrier** (Canada) said that her Government strongly believed that giving Special Rapporteurs the freedom to explore topics that fell within their mandates without influence, condemnation or fear of reprisal would enhance the impartiality and effectiveness of human rights mechanisms. Her delegation welcomed the opportunity to comment on the issues raised in the report, as access to sexual health education was essential in combating sexual and reproductive health concerns that resulted from inadequate levels of education and knowledge about human sexuality. In an effort to tackle those issues her Government had published the Canadian Guidelines for Sexual Health Education which advocated access to sexual health education for all. Another matter of concern was the risk of mental health problems among members of sexual minorities due to discrimination and harassment and a lack of sexual health education and services.

32. Her Government supported the call for accessible sexual health education for persons with disabilities, especially in the context of HIV/AIDS. Comprehensive sexual health education programmes with a lifespan approach also needed to be adopted to ensure the sexual health of persons of all ages, particularly in light of the increasing number of older adults affected by sexually transmitted infections.

33. **Mr. Giaufret** (European Union) said that sexual education was an important tool for the full realization of human rights, especially for women and girls. It enabled girls and boys to take conscious decisions regarding their own sexuality and thus contributed to a sense of self-worth and human dignity, which was ultimately the essence of human rights. Furthermore, it was of capital importance for the realization of the Millennium Development Goals, particularly Goals 3, 4, 5 and 6.

34. The European Union supported the independence of special procedures mandate holders regarding the manner in which they chose to exercise their mandate. It was perfectly possible to agree or disagree with the content of their reports, without criticizing them for the way in which they had carried out their mandates. The interactive dialogue between delegations and mandate

holders permitted delegations to engage on different aspects of the report and ask for clarification or guidance. Nothing in the Code of Conduct precluded special procedures from addressing relevant issues within their mandates. It further guaranteed that special procedures should be able to conduct their work without interference.

35. He asked the Special Rapporteur how he intended to achieve equality of opportunity and eliminate discrimination in education and what contribution he would make, in the framework of his mandate, to the follow-up to the General Assembly resolution on education in emergency situations. He would also appreciate additional information on possible innovative forms of financing in education.

36. **Ms. Mårtensson** (Sweden) said that her delegation fully shared the view expressed by the previous Special Rapporteur that comprehensive and adequate sexual education directly contributed to the advancement of women and the elimination of various forms of discrimination, as well as the achievement of the Millennium Development Goals. Furthermore, it would help girls, boys, women and men to enjoy their rights, including the rights to life, health and education. The report highlighted that sexual education programmes should include a gender perspective and often failed to address the issues of disability, diversity and rights, which was welcome.

37. Sweden strongly supported the independence of special procedures mandate holders from any interference in how they chose to exercise their mandate and placed great value on their work and the dialogue between Special Rapporteurs and Member States. It was inevitable that not all States would agree with the positions taken by the special procedures on what were often very sensitive human rights issues, but their disagreement could be expressed without having to call into question the conduct of the mandate holder. The relationship between the right to education and the issue of sexual education, as well as how various treaty bodies had addressed those issues, was fully within the mandate of the Special Rapporteur on the right to education.

38. **Ms. Cargnel** (Argentina) said that her delegation would like to know more about the role of education, particularly sexual education, in bringing about gender equality and transforming outdated, negative gender stereotypes.

39. **Mr. Vigny** (Switzerland) said that his country attached great importance to sexual education, particularly in terms of reproductive health and prevention of sexually transmitted diseases and their serious consequences. Switzerland also considered the special procedures system to be one of the Human Rights Council's most valuable contributions. As the cornerstone of the system, the independence of rapporteurs must be preserved at all costs in order to ensure the effective promotion and protection of human rights. Moreover, the current system provided the necessary degree of control to ensure that the special procedures system was strengthened in a manner that respected the principles of integrity, independence and impartiality.

40. Switzerland opposed the practice of attacking special rapporteurs because of disagreement with their conclusions. Indeed there would never be full agreement on all recommendations made by special rapporteurs, and therein lay the beauty of a system based on open, interactive and constructive dialogue.

41. **Mr. Sparber** (Liechtenstein) agreed that a comprehensive sexual education was crucial for the effective enjoyment of several rights, including non-discrimination — especially for girls — in addition to being a key success factor for achieving internationally agreed development goals. His delegation would therefore be interested to know how the current Special Rapporteur planned to pursue that issue.

42. **Ms. Vaz Patto** (Portugal) said that her country, as main sponsor of the resolution on the right to education in the Human Rights Council, would follow with interest and lend full support to the work of the Special Rapporteur. She asked him to elaborate on the first task he would undertake in that role.

43. **Mr. Preston** (United Kingdom) said that while his delegation had sympathy for some of the arguments put forward by previous speakers regarding the difficult, even controversial nature of the previous special rapporteur's analysis and recommendations, it could not agree that special procedures could not address questions of discrimination on particular grounds not explicitly defined in international human rights instruments, which prohibited discrimination "of any kind" and by definition included discrimination on the grounds of sexual orientation. Similarly, it did not concur that special rapporteurs should avoid

controversial issues; nor did it constitute, in his country's view, a violation of their mandate or of the Code of Conduct where they had addressed such issues in terms with which some or all Member States disagreed. The ideas and evidence highlighted by human rights special procedures had played an important role in States' elaboration of the international human rights framework, and his country hoped that they would continue to do so.

44. **Mr. Michelsen** (Norway) said that his country recognized sexual education as an essential part of the right to education that directly contributed to the advancement of women, a key priority of the Norwegian Government. Sexual education afforded individuals the opportunity to make informed decisions about their health, their personal relationships and the well-being of their families. Several treaty bodies had pointed to the clear link between the provision of sexual education and various human rights, including the rights to non-discrimination and development. He therefore congratulated the previous Special Rapporteur for tackling that important issue and underlined the need to maintain the independence of mandate holders in order to ensure the quality of their work.

45. **Ms. Murillo** (Costa Rica) said that her Government considered the fulfilment of the right to education and investment in it to be at the heart of building societies that aspired to human development and respect for human rights. Costa Rica therefore attached great importance to sexual education, an element crucial to the achievement of the Millennium Development Goals and to the promotion and protection of human rights. Indeed, the issue of sexual education had been addressed by several United Nations entities, and the opportunity to tackle it from a multicultural perspective was a valuable one. Her Government wished to highlight the importance of the independence of special procedures in the context of promotion and protection of human rights, and in that connection, she asked the Special Rapporteur to elaborate on his vision and plans, particularly with regard to the education of persons in emergency situations and persons with disabilities.

46. **Mr. Singh** (Special Rapporteur on the right to education) thanked all delegations that had welcomed his appointment and expressed willingness to cooperate with him in discharging his new mandate. He agreed that frank discussion of such issues as sexual education

and health were crucial to the achievement of women's empowerment and gender equality. He would communicate to his predecessor the views expressed by several delegations in response to the latter's report.

47. The priorities he had defined for his mandate included, raising the profile of education; reinvigorating the Education For All agenda; and promoting exercise of the right to education in the context of accelerated progress towards achieving the Millennium Development Goals. Several delegations had rightly raised the important point of financing, the lack of which remained the main obstacle to achieving the right to education. Since most financing for education came from domestic resources, it was up to Governments to assume their responsibility to ensure the right to education — the best possible investment in their countries — by mobilizing resources to that end.

48. A task force on education and innovative financing was proposing several mechanisms to fund education, all of which should be considered in the light of existing mechanisms in various countries. Such mechanisms included constitutional provisions that allocated education funding for marginalized groups and laws that set aside a portion of tax monies for education.

49. Achieving equality of opportunity in education remained a major challenge; as noted in various reports on the matter, Governments had thus far failed to address the root causes of marginalization in education and had therefore been unable to ensure equality of opportunity among their populations. A collective approach to the problem was necessary, in the context of which constitutional and legislative measures could be considered. Certain African countries wanted to make the question of educational opportunities, which they had addressed in their constitutions, justiciable.

50. Tangible action was needed to help marginalized groups in particular, in the form of such measures as expansion of entitlements, enforcement of anti-discrimination law and establishment of social-protection programmes. Noting with pleasure the passage of anti-discrimination laws in several countries, including South Africa, Brazil and Germany, he pointed out that progress was being made towards the establishment of domestic legal frameworks that incorporated treaty obligations relating to equality of educational opportunities. Furthermore, best practices

from country experiences with affirmative action programmes would need to be disseminated widely, and the programmes themselves given further impetus.

51. Education in emergency situations was indeed of critical importance, given that a large percentage of children unable to attend school worldwide found themselves in those circumstances, and he noted that Qatar had a particular interest in addressing that issue.

52. His vision entailed advocating for fulfilment of State obligations under international law and international commitments undertaken relative to the right to education, with particular emphasis on equality of opportunity. With regard to gender equality, he had followed the relevant proceedings of the high-level segment of the Economic and Social Council, in addition to contributing some writings of his own.

53. **Mr. Grover** (Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health) said that his report (A/65/255) focused on drug control policy and the right to health. It called on Governments and international organizations to adopt a right-to-health approach to illicit drug control as a matter of priority.

54. The single goal of the international drug control system was a drug-free world, but an assessment of the current overly punitive approach revealed the inadequacy of that approach. Moreover, the costs of criminalization and excessive law enforcement were far too high. Evidence suggested that the approach had failed because it disregarded the realities of drug use and dependence.

55. The right to health contained both freedoms and entitlements and sought to ensure access to quality health facilities, goods and services without discrimination. All too often those who used drugs were deterred from accessing available services owing to the threat of criminal punishment, or they could be denied access to health care altogether. Driving people who used drugs away from health services and programmes made the spread of HIV and other communicable diseases more likely within such vulnerable groups.

56. Certain countries imposed compulsory treatment on drug users, infringing the patient's right to informed consent. The right to health required that people dependent on drugs received medically appropriate treatment administered by trained health-care

professionals. In many cases, the current international drug control regime unnecessarily limited access to certain medications, such as morphine, which were treated as controlled substances, violating the enjoyment of the right to health. The complexity of the relevant laws often dissuaded health-care workers from using such drugs for treatment or palliative care.

57. Many alternatives to the current system existed. Numerous countries had introduced interventions that reduced harms associated with drug use very successfully. Decriminalization in certain laws governing drug control would demonstrably improve the health and welfare of people who used drugs and the general population. In his report he had made a series of recommendations in order to move towards a human rights-based approach to drug control, with the right to health as the central component.

58. Over the coming year, he intended to continue his current programme of regional consultation at all levels; to further disseminate information on the right to health, and to raise awareness about the mechanism for receiving individual complaints.

59. In recognition of the world's ageing population, the Human Rights Council had requested him, with the assistance of the Office of the High Commissioner for Human Rights and in consultation with States, United Nations agencies and other relevant stakeholders, to prepare a thematic study on the realization of the right to health of older persons, including the main challenges and best practices.

60. **Mr. Giaufret** (European Union), said that although the General Assembly had consistently adopted the resolution declaring that international drug control must be carried out in full conformity with the Charter of the United Nations and with full respect for human rights, drug control itself was often the cause of human rights violations. He therefore asked the Special Rapporteur to elaborate on the most frequent kinds of violations and on what needed to be done to make human rights and public health central to drug control, given the tendency in the United Nations system to reduce drug control to law enforcement. He also asked for additional information on the recommendation to create a platform, such as an independent commission, through which international human rights actors could contribute to the creation of international drug policy and monitor national implementation, in particular, the

basis for its authority and the financial implications of its establishment.

61. **Mr. Saadi** (Algeria) enquired whether the Special Rapporteur was aware of the Algerian Government's invitation, issued to him and other Special Rapporteurs, to visit Algeria in the context of cooperation with treaty bodies, and whether he planned to carry out such a visit in the coming months.

62. **Mr. Michelsen** (Norway) said that his country had promoted stronger cooperation on the right to health between the international drug-control bodies, the Commission on Narcotic Drugs, the International Narcotics Control Board, the World Health Organization and the Joint United Nations Programme on HIV/AIDS (UNAIDS), in addition to tabling relevant resolutions in the Commission. Heavy drug use must be regarded and treated more as a health than a criminal issue, given the lack of evidence proving that punishment adequately addressed drug addiction. Norway had some problems with the recommendation on decriminalization of the possession and use of drugs which went farther than national legislation. His delegation would like more details on the recommendation to establish a permanent mechanism for the creation of international drug policy and monitoring of its implementation at the national level.

63. **Mr. Farias** (Brazil) asked the Special Rapporteur to elaborate on further steps at the international level to enhance the accessibility and affordability of controlled medicines. His delegation called for comprehensive services for injecting drug users and steps to combat stigmatization; in its view, drug use should be decriminalized. Lastly, he asked for more details of the proposed alternative regulatory framework for drug control based on the Framework Convention on Tobacco Control, bearing in mind that, in general, drugs were illegal and tobacco legal.

64. **Ms. Carnal** (Switzerland) asked if the proposed decriminalization of drug use applied to all substances or only certain types of drugs, and why prevention had not been mentioned in the report. She also asked what the proposed independent commission's relationship to other health and drug authorities such as the World Health Organization would be.

65. **Mr. Grover** (Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health) said that he had indeed received an invitation from Algeria but had

already accepted an invitation from Syria and hoped to arrange alternative dates for his Algeria visit.

66. There had been very credible first-hand reports of human rights violations against people accused of possessing or consuming drugs. Drug addiction required treatment but it should not be compulsory: people in compulsory treatment centres were treated without dignity and forced into rehabilitation. Moreover, criminalization meant no harm reduction programmes — such as needle and syringe exchange and condom promotion — were available to curb HIV transmission, particularly in prisons. Harm reduction was a human right and UNAIDS had used such programmes as a major tool for reducing HIV transmission, notably for prostitutes and injecting drug users. Other United Nations agencies responsible for enforcing drug conventions had not traditionally seen human rights as central; the proposed independent commission therefore aimed to bring those agencies together — as with the creation of UNAIDS — in order to integrate human rights into drug control.

67. In the long term, there was a need for a different way forward, with the Framework Convention on Tobacco Control as a possible model. Tobacco was deleterious to health and a regulated system existed for it; some drugs were also deleterious and a regulatory framework for them was possible. Evidence should be considered and knee-jerk or political reactions avoided. De-penalization and decriminalization removed both the basis of trafficking and the demand for drugs.

68. More important was the lack of access to controlled medicines under criminalization regimes. Drugs such as opiates were required by cancer or HIV/AIDS patients for pain relief but were not available due to criminalization.

69. The long-term consequences of criminalizing drug possession or consumption did not support the ultimate objective. Criminalizing cannabis or Ecstasy opened the door to police corruption and, because of the huge price difference between legal and illegal drugs, gave power to criminals.

70. Prevention had indeed been mentioned in his report. Decriminalizing drug use would create opportunities to educate people. Culture was also a factor: for example, people continued to smoke cannabis at religious ceremonies in his country, India, even though it had been banned. He was not

advocating legalization: only de-penalization and decriminalization.

71. The proposed independent commission must be funded by United Nations agencies and involve State actors, the International Narcotics Control Board (INCB), the Human Rights Council and civil society organizations.

72. **Mr. Nowak** (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) said that his mandate had enabled him to get to know countries through the eyes of detainees with a broad variety of backgrounds, including irregular migrants and asylum-seekers, convicted criminals, drug offenders, victims of domestic violence, abandoned children and suspected terrorists. However, they all had one thing in common: they were deprived of their liberty. While some were held in adequate conditions, the vast majority were detained in inhuman and degrading conditions, deprived of most of their human rights and fundamental freedoms; moreover, many had been imprisoned based on confessions extracted by torture.

73. Irrespective of what they had done, detainees were among the most vulnerable groups in society and detention conditions constituted a litmus test for the situation of human rights in the respective society. Even the most dangerous criminals and the most marginalized outcasts of society were human beings and had human needs and rights. In the course of his prison visits, the only people who had threatened him had been the prison personnel. The detainees had welcomed the fact that his team treated them as human beings, with the corresponding respect. The right to human dignity had a much greater significance for detainees than for most other human beings.

74. Fact-finding missions were one of the cornerstones of his mandate, and he expressed his gratitude to those Governments who had invited him and had been ready to open up places of detention to external scrutiny. However, the Special Rapporteur on torture was only able to carry out his mandate, to assess situations independently and objectively, if the working methodology was fully respected. Since torture overwhelmingly took place in detention, without witnesses, such assessments required visits to be made to any place where people were deprived of their liberty unannounced and at any time; access to be granted to all relevant documents and records; private

and confidential interviews with detainees to be permitted; the expertise of an independent forensic medical expert, and documentation with photo or video equipment of traces of ill-treatment and detention conditions. Consequently, the terms of reference of the Special Rapporteur on torture had to exceed those of other special procedures.

75. Governments had repeatedly attempted to undermine his terms of reference. But compromising the working methodology of special procedures was like blinding and deafening them. He therefore appealed to the General Assembly and the Human Rights Council formally to confirm the working methods of the Special Rapporteur on torture and to strongly urge Governments to respect them fully.

76. In his 2009 report he had referred to a global crisis of detention and urged Governments to adopt a specific convention on the rights of detainees. In his current report he drew the attention of the General Assembly to the three most important positive obligations of States to prevent torture and ill-treatment set out in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in its 2002 Optional Protocol, his mandate having shown him that most States parties to the Convention failed to live up to their treaty obligations. New standards for the eradication of torture were not required; rather, Governments must demonstrate the political will to implement the standards already established in the Convention.

77. His report dealt with the question of impunity; it called on States to provide support to torture rehabilitation centres as part of their obligations, and on all States parties to the Convention to ratify the Optional Protocol and to establish fully independent national preventive mechanisms.

78. During recent missions to Jamaica, Papua New Guinea and Greece, he had found isolated cases of torture, but was deeply concerned about detention conditions, above all in police custody, that revealed a complete disregard for the dignity of detainees and could only be qualified as inhuman and degrading. In Greece the situation was compounded by the influx of irregular migrants and refugees, many of them returned to Greece from other European Union countries. The problem called for a joint European solution, not merely a reinforcement of European borders. The European Union should rethink its asylum and

migration policy and replace the Dublin II Regulation with a fairer system of burden-sharing.

79 In the case of Kazakhstan, he had been invited to conduct follow-up activities and the open, frank and constructive attitude of the Government constituted a best practice in dealing with special procedures.

80. The current global detention crisis and the widespread practice of torture and ill-treatment were alarming phenomena and could not be resolved immediately. They resulted from shortcomings in the administration of justice, including corruption, poverty, insufficient training of law enforcement personnel and a lack of political will.

81. **Mr. Mitsialis** (Greece) said that, despite the recent overall decline in illegal migration to the European Union, almost 100,000 illegal migrants to Greece had been arrested in the first nine months of 2010. The asylum system was also overburdened. Greece was committed to reforming its systems of asylum and migration management, but the financial crisis was depriving it of resources. Greece could not carry the burden of illegal migration alone: the problem was Europe-wide and demanded a change in policy.

82. **Mr. Al Nsour** (Jordan) recalled the Special Rapporteur's concerns about the definition of and penalties against torture in Jordan's national legislation. His delegation regarded that concern as constructive and would continue its cooperation with his successor.

83. **Ms. Popovici** (Republic of Moldova) said that, following Mr. Nowak's visits in 2008 and 2009 the recommendations concerning the human rights situation in Transdniester were being implemented. Moldova was committed to combating impunity in accordance with the Convention against Torture and its Optional Protocol, to which it was a party. It was seeking resources to improve its detention infrastructure and to rehabilitate torture victims and was developing a national torture prevention mechanism. Moldova stood ready to contribute to the promotion of human rights, as a member of the Human Rights Council.

84. **Mr. Wolfe** (Jamaica) said that his Government saw human rights special procedures as critical and had thought a visit by the Special Rapporteur could make a valuable contribution to improving conditions in

Jamaican prisons. The Special Rapporteur had visited the island in February 2010, gaining unobstructed access to detainees, NGOs and officials. His report stated that in Jamaica he had found not torture in the classical sense but numerous cases of punishment beatings, thus making an instant correlation between torture as defined under the Convention and cases of ill-treatment.

85. The situation in Jamaican prisons was indeed unsatisfactory and efforts were being made to improve living conditions, inmate-staff relationships and the protection of children in juvenile facilities. The Government categorically denied that there was no clear separation of remand prisoners from convicts; it was also giving serious attention to the large number of detained children.

86. While acknowledging that the death penalty had not been carried out in Jamaica since 1988, the Special Rapporteur had made a dangerous link between that fact and the rise in fatal shootings by the police and alleged lack of investigation. If that was his intent, the Government found it extremely disturbing. Jamaica faced serious public security challenges, including an alarmingly high murder rate, and the Government remained very concerned about the numerous allegations of extrajudicial killings by the security forces. It had enacted new legislation to investigate all such allegations.

87. Jamaica was actively considering accession to the Convention; it abhorred both torture — which its Constitution expressly prohibited — and other forms of cruel, inhuman and degrading treatment. The Special Rapporteur had made sweeping assessments and drawn conclusions not necessarily substantiated by evidence. The Government took the findings seriously but many of the recommendations could not be implemented without international assistance.

88. **Mr. Siddique** (Pakistan) asked the Special Rapporteur to elaborate on how xenophobia against asylum-seeking torture victims contributed to torture and maltreatment in some societies and how the gap between policy and practice could be narrowed with regard to the failure of some national legislation to criminalize torture. Lastly, he asked what could be done to tackle the growing climate of tolerance of torture and excessive force.

89. **Mr. Selim** (Egypt) said that Egypt had hoped that the facts presented in the report would be verified and

States' responses reflected, but the report had made allegations, without proof, that Egypt's proposed anti-terrorism law would lead to the closure of the El Nadeem Centre for Rehabilitation of Victims of Violence. He questioned the focus on the El Nadeem Centre among more than 26,000 NGOs in Egypt. The Centre did not support terrorist activities, it had operated freely since 1993 and its founder had been shortlisted for the post of Special Rapporteur on torture. In the event that the Special Rapporteur was alleging that it was a terrorist organization, he requested proof. Egypt had not enacted or drafted any new laws to regulate NGO activities since 2002; it saw baseless allegations in the report, which it flatly rejected.

90. **Mr. Giaufret** (European Union) requested an outline of general trends in measures to prevent torture. He also asked for more details on the obligation of Governments to establish rehabilitation centres for torture victims, even in countries which said they were free from torture.

91. **Mr. Vigny** (Switzerland), supported by **Mr. Dornig** (Liechtenstein) asked how it would be possible to end a culture of impunity in relation to torture.

92. **Mr. Sammis** (United States) expressed concern about hostile environments for torture rehabilitation centres and about the unfortunate treatment the Special Rapporteur had received in some of the countries he had visited.

The meeting rose at 6 p.m.