



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### 105th session

#### Summary record of the first part (public)\* of the 2910th meeting\*\*

Held at the Palais Wilson, Geneva, on Thursday, 19 July 2012, at 3 p.m.

*Chairperson:* Ms. Majodina

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*The meeting was called to order at 3.05 p.m.*

### Organizational and other matters

*Report of the Chairpersons of the human rights treaty bodies on their twenty-fourth meeting (A/67/28442)*

**The Chairperson** recalled that the Chairpersons of the treaty bodies had held their twenty-fourth meeting in Addis Ababa (Ethiopia) from 25 to 29 June 2012. They had discussed the report of the United Nations High Commissioner for Human Rights on strengthening the human rights treaty body system, endorsing the vision and recommendations it contained. They had expressed particular support for the proposals to introduce a comprehensive reporting calendar, a simplified reporting process, limitations on the number of pages in reports, the use of modern technologies, and the recommendations on follow-up, non-reporting and translation issues. They had decided that each treaty body should review the recommendations. Several treaty bodies were already implementing some of the recommendations, such as the present Committee, which would introduce the simplified reporting procedure in 2013. Other treaty bodies would need to compare their current methods of work with those recommended in the report in order to ascertain to what degree they could adapt them. Henceforth, all meetings of Chairpersons would include a review of the implementation of the recommendations by each treaty body.

The Chairpersons had held a videoconference with the two co-facilitators for the General Assembly intergovernmental process on strengthening and enhancing the effective functioning of the human rights treaty body system. The Chairpersons' intention had been to ensure that the treaty bodies would be represented within the multi-stakeholder process. Indeed, prior to their June meeting, the Chairpersons had written to those overseeing the intergovernmental process to emphasize the need for the treaty bodies to be invited to participate in that process. However, despite the Chairpersons' requests for such an invitation from the co-facilitators, none had been forthcoming.

Overall, she had been disappointed by the somewhat negative attitude of the co-facilitators during the videoconference. They had asked many questions about the Chairpersons' views on the High Commissioner's report on strengthening the human rights treaty body system, which in their opinion was no more than a reworking of the treaty bodies' recommendations. Informal consultations within the framework of the intergovernmental process had apparently indicated that financial support for the treaty bodies' work would be limited in the future. Moreover, Member States had complained about the treaty bodies' methods of work, accused them of unequal treatment of States parties, spoken of reporting fatigue, and said that the process of strengthening the treaty body system had been driven by the treaty bodies themselves.

The Chairpersons had also held several discussions on the draft guidelines on the independence and impartiality of treaty body members. There had been substantial disagreement on a number of substantive issues; hence the need for several rounds of talks on that document before it had been finalized on the last day of the meeting.

The Chairpersons' meeting with the African regional human rights mechanisms had been well attended. Participants had included several NGOs, a few national human rights institutions and representatives of the African Commission on Human and Peoples' Rights, the African Court of Justice and Human Rights, the Court of Justice of the Economic Community of West African States, the East African Court of Justice, the African Peer Review Mechanism and the African Committee of Experts on the Rights and Welfare of the Child. The exchange had been positive, focusing mainly on harmonization and ways of using each system's reporting and individual-communications mechanisms to benefit the work of the others. The need to synchronize the jurisprudence of the treaty

bodies and that of the African courts had been highlighted. The African regional human rights mechanisms had called on the treaty bodies to contribute more in terms of capacity-building, given the treaty bodies' vast experience.

**Mr. Sarsembayev**, referring to the videoconference with the co-facilitators for the intergovernmental process, asked what proposals the Member States had made to avoid reporting fatigue.

**The Chairperson** said that they had unfortunately made no such proposals. She had attempted to explain the simplified reporting procedure, particularly how the list of issues prior to reporting facilitated the reporting process for States parties. However, the co-facilitators had not welcomed that innovation or the introduction of the comprehensive reporting calendar.

**Ms. Chanet** asked whether the co-facilitators had understood that it had not been the treaty bodies that had proposed the comprehensive reporting calendar. If they had not, that was regrettable since that proposal had come from the Office of the High Commissioner for Human Rights (OHCHR).

**The Chairperson** said the Chairpersons had emphasized the fact that it was the States parties that had created the treaty bodies. The committees merely monitored the implementation of the treaties, as they were mandated to do in the treaties themselves. However, that message had also seemed to fall on deaf ears.

**Sir Nigel Rodley** said that, since the treaty bodies had subsequently been represented at the meeting in New York, the situation had developed since the meeting of Chairpersons. Unfortunately, the Committee was still awaiting the report of the Director of the Human Rights Treaties Division on that meeting. It was indeed regrettable that the videoconference had been less positive than had been hoped and that the co-facilitators had not directed some of their questions to OHCHR, which had proposed many of the recommendations in the High Commissioner's report. He suggested that the Committee should move on to examining the recommendations.

**Mr. Iwasawa**, supported by **Mr. O'Flaherty**, drew attention to the fact that paragraphs 30 and 32 of document A/67/28442 indicated that the twenty-fourth meeting of Chairpersons had adopted several recommendations. However, on 12 July 2012, the Committee had adopted the preliminary statement on the report of the High Commissioner on strengthening the human rights treaty body system, which reflected the Committee's views more accurately than document A/67/28442.

**The Chairperson** recalled that the Committee had not received the draft guidelines on the independence and impartiality of members of the human rights treaty bodies (A/67/28442, annex I) until the penultimate day of its previous session in March 2012. Since there had been no time at that juncture for a real discussion on those guidelines, the Committee had decided to review them using electronic mail. At the twenty-fourth meeting of Chairpersons, she had explained that the Committee had been unable to discuss the guidelines, and had indicated the Committee members' views and proposed amendments to the best of her ability. The guidelines in annex I were substantially different from the original draft the Committee had received in March 2012 and had, in her opinion, been changed for the better. She invited the Committee members to make general observations on the draft guidelines before examining the text in detail.

**Mr. O'Flaherty** said that, in his view, the procedure used to develop the guidelines had been unacceptable. Some time before, the Chairpersons had proposed that they should be empowered to make decisions on behalf of the treaty bodies on issues which had been discussed beforehand in those bodies, and on which the bodies had not subsequently decided to withdraw their support. There had been broad consensus that that was acceptable, and paragraph 1 of the guidelines in annex I made reference to that very procedure. However, that procedure had not been followed in the development of those guidelines. It could in no way be said that the Committee had been consulted on the draft guidelines. Receiving a document on the penultimate day of the session and exchanging electronic messages on its content with colleagues did not constitute consultation within the Committee. While he was willing to accept the process on that occasion, given that the content was broadly acceptable, it should be noted that in future, if the meeting of Chairpersons was going to adopt documents on behalf of the treaty bodies, the procedures to which the treaty bodies had agreed must be fully respected.

**Mr. Thelin** recalled that it had been understood at the Committee's 104th session that, given the time constraints and the dates of the meeting of Chairpersons, the Committee would resort to exchanging views by electronic mail. The Committee had dealt with that situation in an extraordinary fashion. That said, he agreed entirely that such a procedure should not be used as a model for consultation in the future.

**The Chairperson** said that, while the consultation procedure had indeed been extraordinary, the Committee had been left with no alternative. That was why, at the meeting of Chairpersons, she had emphasized that she could not agree to the adoption of the guidelines as the Committee had not had the opportunity to discuss their content. After much discussion and disagreement, the Chairpersons had reached consensus on using the word "endorse" instead of "adopt".

**Mr. O'Flaherty** said that he had no misgivings about how the Committee had conducted itself, having been obliged to adopt the extraordinary procedure for examining the draft guidelines by being unexpectedly presented with them on the penultimate day of its previous session. He congratulated the Committee on doing all it could to discuss the guidelines electronically and the Chairperson on having represented the Committee members' positions in Addis Ababa. However, the procedures laid down for common decision-making by the treaty bodies must be profoundly respected, or the move to common decision-making by the treaty bodies would not last.

**The Chairperson** agreed that the Committee must in future make sure that the correct procedure should be followed as the meetings of Chairpersons would continue to have a role in spearheading common decision-making. At the meeting in Addis Ababa, the former Chairperson of the meeting of Chairpersons had taken the position that the meeting had been authorized to adopt the guidelines by the Poznan statement on the reforms of the United Nations human rights treaty body system, but the meeting had eventually agreed that the new common decision-making was a learning process and the treaty bodies must have confidence in the way in which the

meeting was conducted so that no treaty body dissociated itself from the process.

**Sir Nigel Rodley** proposed that the Committee formally ask the secretariat to ensure that a proper consultative process took place within and between committees before any proposed action arrived at the meeting of Chairpersons for a decision.

**Mr. Iwasawa** said the Committee should discuss the form that the guidelines would take when adopted by the Committee. The meeting of Chairpersons had recommended that the guidelines be adopted, *inter alia*, through inclusion, in an appropriate manner, in their rules of procedure. The Committee could adopt the guidelines as a separate document, but some of them were not fully consistent with the Committee's rules of procedure, so the rules might have to be changed.

**Mr. Kälin** said that, if the guidelines were incorporated into the rules of procedure, the latter would become very unbalanced as they were very concise. Given that the Committee already had guidelines for the exercise of its functions set by members of the Committee (A/54/40, annex III), it should consider whether to take its own guidelines as a starting point or create a new document.

**Mr. O'Flaherty** said that the guidelines did not have the same appearance as the Committee's rules of procedure, especially the vague political preamble, which he disliked. He asked whether the Committee was expected to adopt the new guidelines *en bloc* without change so that they were uniform across the treaty body system. The Committee members were bound to have concerns about elements of the text. Could the members consider themselves free to make the necessary adjustments?

**Mr. Flinterman** expressed his support for adopting the guidelines, with or without amendment, as a separate document replacing the existing guidelines, with the implications for the Committee's rules of procedures being taken fully into account.

**Sir Nigel Rodley** said that the Committee should look at the text of the guidelines and then ask the secretariat to let the Committee know what changes would be needed to the rules of procedure.

**Mr. Thelin**, supporting that suggestion, stressed that it was important not to forget the benefit that would ensue if the treaty bodies could adopt common values.

**Mr. Ben Achour**, supported by **the Chairperson**, proposed that the guidelines should not be reproduced in the rules of procedure but merely mentioned, for example, in the section that already provided for the independence and impartiality of members. He suggested the wording "The Human Rights Committee, affirming the independence and impartiality of its members, refers to the Addis Ababa guidelines".

**The Chairperson** asked whether the Addis Ababa guidelines should replace the Committee's existing guidelines.

The Committee should discuss the Addis Ababa guidelines and would undoubtedly find points with which it did not agree. She nevertheless drew attention to paragraph 1, where it was recommended the treaty bodies adopt the guidelines "inter alia through inclusion, in an appropriate manner, in their rules of procedure". The phrase "in an appropriate manner" had been much discussed and she believed that the Committee could adopt the guidelines as it saw fit.

**Sir Nigel Rodley** said that the issues of adopting the guidelines and including them in the rules of procedure should be kept separate, as it was much too early to discuss how the rules would be changed. He suggested that the Committee look at the guidelines and then discuss the rules at a later date, informed by a document produced by the secretariat.

**Ms. Chanet** agreed that the guidelines could not be integrated into the rules of procedure, given that some of their provisions concerned States and not the Committee members. The secretariat should produce a document showing the changes to the rules of procedure that would be required.

**The Chairperson** said she took it that the Committee wished the new guidelines to supersede the old guidelines for the exercise of their functions by members of the Committee.

*It was so decided.*

*G uidelines on the independence and impartiality of members of the human rights treaty bodies ( Addis Ababa guidelines) (A/67/28442, annex I)*

**Mr. O'Flaherty** said that the Committee should disregard the preamble to the guidelines, given the very political nature of the text. It could be characterized as the preamble of the meeting of Chairpersons to the substantive text, which he considered began at paragraph 1.

**Mr. Thelin** suggested that the Committee could start by considering paragraph 2, as that was really where the substantive content began.

*It was so agreed.*

**Sir Nigel Rodley** proposed that the second sentence of paragraph 2 should read: "Treaty body members are not only expected to be independent and impartial, but should also be treated as such."

**Mr. O'Flaherty** said he understood the phrase to mean that not only should the Committee members be independent and impartial but that observers should perceive them to be so.

**Mr. Thelin**, supporting Mr. O'Flaherty's reading of the sentence, proposed that the words "by a reasonable observer" be deleted.

**Mr. Bouzid**, supported by **the Chairperson**, said that, if the Committee was not going to adopt the preamble or paragraph 1, it

should change the title of the document.

**Mr. Kälin**, supporting Mr. O'Flaherty's reading of the second sentence, said that the Committee could draw inspiration from Covenant article 14 and general comment No. 32 (2007) on the right to equality before courts and to a fair trial, relating to the independence and impartiality of tribunals. In that general comment, the Committee had emphasized that tribunals must be independent and impartial and "appear to a reasonable observer to be impartial". He therefore believed that the two elements were important.

**Mr. Iwasawa** said that, while he was not opposed to improving the language of the guidelines, he acknowledged the merit in Mr. Thelin's comments on the importance of having common guidelines in the treaty body system. If members could accept the language, he inclined towards adopting the document as endorsed by the Chairpersons.

**Mr. Ben Achour** said that, as he understood it, the document was intended for all the treaty bodies. If the Committee were to amend the document, it would mark a return to divergence in the work of the treaty body system, thus jeopardizing work currently being done throughout the system.

**Sir Nigel Rodley** said that if the Committee was to replace its existing guidelines with the Addis Ababa guidelines, it should not just adopt them but should look at them, especially since it had not been able to discuss the latter guidelines. As far as possible, the Committee should work on the presumption that it could accept the existing text if the meaning was clear, despite stylistic and linguistic problems.

**The Chairperson** said the feeling in Addis Ababa had been that the treaty bodies would adopt the guidelines, but with appropriate changes, which was why the meeting had recommended that the guidelines be adopted "in an appropriate manner". It had been clear that not all of the treaty bodies had been happy with the guidelines as they stood. The Committee needed to discuss the guidelines, as it not had a chance for proper discussion prior to the meeting in Addis Ababa.

**Mr. O'Flaherty** said that the treaty body system was changing, so the members needed to develop a novel approach. The work done at the meeting of Chairpersons would not be wasted if all the committees adopted the same sort of language. He was happy to keep the core language, but to make necessary changes. The guidelines were a normative text and the Committee had a duty to correct ambiguity wherever it found it.

**Mr. Rivas Posada** said that the guidelines had been recommended for adoption: that meant that they could be adopted after the Committee had amended the necessary parts. The Committee should not adopt the guidelines without first having studied them in depth. Was the aim of that exercise to take note of and amend the guidelines before adoption or to adopt them first and then review them? He would prefer the Committee to study and take note of the guidelines first, and then decide whether it would adopt part or all of the guidelines.

**Ms. Chanet** said that it would be easier to work on the new guidelines if the Committee had a table showing those guidelines, the Committee's own guidelines and any proposed amendments.

**Mr. Iwasawa** explained that he did not propose that the guidelines be adopted en bloc but that the Committee should give due weight to what had been decided in Addis Ababa when discussing stylistic changes.

**Mr. Ben Achour**, supported by **the Chairperson**, proposed that a small working group be formed to consider the issues involved and make proposals to the Committee.

**Mr. O'Flaherty** said that the guidelines raised new issues that the Committee had never before addressed, and it was therefore necessary to review them in plenary paragraph by paragraph.

**The Chairperson** reminded members that the adoption of the guidelines as presented was only a recommendation and that the Committee could amend them if it saw fit. That was why some of the Chairpersons had insisted on the inclusion of the phrase "in an appropriate manner" in paragraph 1 of the guidelines.

**Mr. Thelin**, supported by **Ms. Waterval** and **Sir Nigel Rodley**, proposed that, before the Committee discussed the guidelines in plenary, the bureau and the secretariat should conduct an analysis to compare the guidelines with the Committee's rules of procedure and the previous guidelines for the exercise of the functions of members of the Committee (A/53/40, annex III).

**Mr. Iwasawa** said that the discussion should be held in plenary and that establishing a working group would not necessarily save time.

**Mr. Sarsembayev** also supported Mr. Thelin's proposal and suggested that the secretariat should prepare a three-column table to compare the previous guidelines with the new guidelines, indicating any discrepancies between the two and the grounds for any proposed amendments to the old guidelines.

**Mr. Salvioli** said that he supported Mr. Ben Achour's proposal to establish a working group, as he did not feel comfortable addressing the issue without first conducting an in-depth study of the problems relating to the independence of treaty body members. He had been very surprised at the previous session to find that the head of one of the State party delegations was also the Vice-Chairperson of a human rights treaty body.

**Ms. Motoc** agreed that an in-depth analysis of the guidelines was required; she suggested that a rapporteur should be appointed to undertake that task on the Committee's behalf.

**The Chairperson** asked the Committee members to indicate by a show of hands whether they supported Mr. Thelin's proposal.

*Ten Committee members voted in favour of the proposal.*

**Mr. O'Flaherty** said that, in his opinion, a vote had not been necessary. The members would follow the Chairperson's lead in deciding how to move forward.

**The Chairperson** said that the discussion of the guidelines would be suspended until the next session; in the meantime the Bureau and the secretariat would conduct the required analysis.

**Ms. Motoc** asked if there was any precedent for the adoption by the Committee of a document prepared by an outside body.

**The Chairperson** said that it was the first time such a situation had arisen. The Committee must do its best to ensure that its values and rules of procedure were properly reflected in the guidelines adopted.

**Ms. Waterval** suggested that the pre-sessional working group on communications might begin the analysis in preparation for the following session.

**The Chairperson** said that the tasks to be undertaken by the working group would be discussed at a later meeting.

*The discussion of the guidelines on the independence and impartiality of members of the human rights treaty bodies (Addis Ababa guidelines) was suspended.*

*Briefing on the visit to the European Court of Human Rights in Strasbourg*

**Mr. O'Flaherty** said that he, Ms. Chanet, Sir Nigel Rodley, Mr. Salvioli and members of the secretariat had paid a visit to the European Court of Human Rights in Strasbourg and had met with the President of the Court and three judges. As they had not agreed on any joint briefing, he would simply give his individual views on the meeting, which he considered to be an excellent and fruitful initiative that had been long overdue. The participants had discussed matters of both procedure and substance and had identified points of agreement and divergence in the practice of the two bodies. Both sides had learned from each of the discussions on various topics. For example, in the discussion on article 26 of the Covenant, the Committee members had alerted the Court to the dominant role that Protocol No. 12 to the European Convention on Human Rights was likely to play in the future. It had been agreed that a similar meeting should be held again soon and that next time the Committee would host the meeting in Geneva.

**The Chairperson**, supported by **Mr. Iwasawa**, welcomed that heart-warming news and hoped that arrangements would be made for ongoing exchanges of that kind.

**Ms. Motoc** asked whether any timetable or topics of discussion had been established for future meetings, and whether those who had participated in the meeting could elaborate on the procedural and substantive discussions that had taken place.

**Mr. Flinterman** said that he would like to know what had been learned about the issue of interim measures.

**Sir Nigel Rodley** said that, in relation to developments in the Committee's own working methods, he had learned that measures of protection as now issued by the Committee were not envisaged in its rules of procedure. The pre-sessional working group on communications had therefore recommended a review of the relevant rules. The Court did not have a strong interim measures system. It had taken the Committee's lead in deciding that interim measures were binding, and it did find violations of the European Convention on Human Rights in cases where its interim measures were not followed. He had the impression that the Court's interpretation of irreparable harm did not cover as many situations as the Committee's interpretation. That was due in part to the fact that the treaties overseen by the two bodies contained different substantive rules.

No timetable for future meetings had been established, and he suggested that the Bureau might wish to nominate a Committee member to be responsible for such arrangements, not just with the European Court of Human Rights but also with other regional courts and in cooperation with other treaty bodies.

**Ms. Chanet** said that the Court judges had entered the discussion with enthusiasm and had been surprised to find that the Committee had such a well-established body of jurisprudence. She had been responsible for the issue of discrimination and had therefore explained to the Court all of the Committee's jurisprudence relating to article 26 of the Covenant. Although the articles on discrimination within the two treaties were worded differently, the Committee's jurisprudence might still be of some use to the Court when it interpreted Protocol No. 12 to the European Convention.

**Sir Nigel Rodley** said that one noteworthy example of diverging practice was that the Court had issued interim measures in respect of the author of a communication, calling on the author to abandon a hunger strike pending discussion of the issues. The majority of the discussions had been on substantive issues and had centred on an in-depth analysis of the jurisprudence of the two bodies.

**Mr. O'Flaherty** said that the members of the Court had shown great interest in the formulation of general comment No. 34 and in the whole concept of general comments, and he had sensed some frustration that other bodies did not have the capacity to issue such comments. Developments in the Court's jurisprudence, particularly with regard to freedom of access to information, would be of interest to the Committee in the light of its own work on general comment No. 34. The President of the Court had asked each of the participants to submit in writing their own commentary on the meeting with a view to publishing a public record of the event.

**Mr. Salvioli** said that he had been pleasantly surprised to see how much importance the Court attached to the Committee's work. Both bodies were facing similar situations with regard to forced disappearances in that neither treaty addressed the issue. Over time the Court and the Committee had drawn on each other's work and also on the work of the Inter-American Court of Human Rights. The European Court was currently reviewing several cases of forced disappearance and was therefore looking closely at the Committee's most recent jurisprudence on the subject. He believed it was important for the Committee to arrange similar meetings

with other bodies that dealt with human rights issues.

**Mr. Sarsembayev** asked if there had been any discussion of differences in the implementation of the Court's decisions compared with those issued by the Committee.

**Ms. Chanet** said that, out of respect, the Court judges would not have told the Committee members that their work did not have the same value as that of the Court.

**The Chairperson** asked if the Court had issued a press release about the meeting.

**Ms. Edelenbos** (Secretariat) said that to her knowledge it had not, but the secretariat planned to publish an article about the meeting in the Treaties Division newsletter.

**Mr. O'Flaherty** suggested that the Working Group on Communications should take a preliminary look at material relating to working methods prior to the Committee's following session in October 2012 if it completed its work on communications before the end of its five-day session. The plenary should authorize the Bureau to refer such material to the Working Group.

**Mr. Thelin** expressed support for Ms. Waterval's suggestion that the Working Group should discuss the Addis Ababa guidelines.

**Mr. Kälin** said that some issues needed to be considered in greater depth before they were referred to the Working Group.

**Mr. Ben Achour** reiterated his request to include the drafting of Views on communications among the issues listed under the heading of working methods.

*It was so agreed.*

*The public part of the meeting rose at 5.20 p.m.*