



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Status of the optional reporting procedure of the Committee against Torture and proposals for its revision

Report by the Secretariat*

I. Introduction

1. At its thirty-eighth session held in May 2007, the Committee against Torture adopted a new optional reporting procedure (see A/62/44, paras. 23 and 24) which consists in the preparation and adoption of lists of issues, known as lists of issues prior to reporting (LOIPRs), to be transmitted to States parties prior to the submission of their respective periodic report.
2. At that same session, the Committee met with States parties to introduce and discuss the new procedure, which will not be applied to States parties' initial reports nor periodic reports already submitted and awaiting consideration by the Committee.
3. The Committee is of the view that this procedure will help States parties to prepare and submit more focused reports. The LOIPRs transmitted to States parties prior to the submission of their reports will guide the preparation and content of their periodic report, facilitate the reporting process of States parties and strengthen their capacity to fulfil their reporting obligation in a timely and effective manner.
4. The LOIPRs will be prepared and adopted, depending on the respective due date of each State party's report (according to conventional periodicity or as established in the concluding observations) and transmitted to the State party concerned at least one year prior to the due date (see <http://www2.ohchr.org/english/bodies/cat/reporting-procedure.htm>).
5. The State party's reply to the LOIPR will constitute its report under article 19 of the Convention.
6. After the submission of the State party's reply to the LOIPR, no further request for information, through a list of issues, will be submitted to the State party before consideration of its report. As such, reports received under this new procedure will be scheduled for consideration by the Committee as a priority in order to benefit from the

* Late submission.

currency of the information provided and maintain the added value of the procedure. If the reports are not considered in a timely manner, new lists of issues would have to be adopted and transmitted by the Committee to States parties to update the information provided, which would defeat the purpose of the procedure.

7. For this reason, only initial reports will have priority over reports submitted under the optional reporting procedure, in terms of scheduling for upcoming sessions.

8. In 2007, the Committee initiated the procedure on a trial basis for periodic reports falling due in 2009 and 2010.

9. Considering the positive feedback received and the high rate of acceptance of the new procedure by States parties, the Committee decided, at its forty-second session in May 2009, to continue with the procedure on a regular basis (A/64/44, para. 27).

10. At its forty-sixth session in May 2011, the Committee undertook a preliminary evaluation of the optional reporting procedure for periodic reports due in 2009, 2010, 2011 and 2012.

11. In addition, it requested the Secretariat (A/66/44, para. 38) to prepare and submit a report on the status of the optional reporting procedure, and to include information on any new development related to the procedure, including with regard to other treaty bodies that have adopted a similar procedure. The present document has been prepared in response to that request.

II. Status of the optional reporting procedure for reports due in 2009, 2010, 2011 and 2012

12. For reports due in 2009, the Committee adopted and transmitted in 2008, lists of issues prior to reporting to 11 States parties, namely Bosnia and Herzegovina, Cambodia, Czech Republic, Democratic Republic of the Congo, Ecuador, Greece, Kuwait, Monaco, Peru, South Africa and Turkey. Out of these 11 States parties, 9 accepted the new reporting procedure,¹ and of those, 8 submitted their reports under the new procedure,² while one (the Czech Republic) submitted its report under the standard procedure. Six of the reports under the new procedure were examined by the Committee at its forty-fifth and forty-sixth sessions, held in November 2010 and May 2011 respectively. The report of Greece, received in 2010, is scheduled to be examined in November 2011, and that of Peru, received in 2011, will be scheduled for a future session. As decided by the Committee, the reports submitted under this procedure must be examined within the shortest possible period of time after their submission.

13. For reports due in 2010, the Committee adopted and transmitted in 2009 lists of issues prior to reporting to nine States parties, namely Brazil, Finland, Hungary, Kyrgyzstan, Libyan Arab Jamahiriya, Mauritius, Mexico, the Russian Federation and Saudi Arabia. Out of these nine States parties, eight accepted the new reporting procedure,³ and of those, four submitted their reports under the new procedure⁴. Two reports (Finland and Mauritius) were examined by the Committee at its forty-sixth session held in May 2011, while two (Mexico and the Russian Federation) will be examined in May 2012.

¹ Bosnia and Herzegovina, Cambodia, Czech Republic, Ecuador, Greece, Kuwait, Monaco, Peru and Turkey.

² Bosnia and Herzegovina, Cambodia, Ecuador, Greece, Kuwait, Monaco, Peru and Turkey.

³ Brazil, Finland, Hungary, Kyrgyzstan, Libyan Arab Jamahiriya, Mauritius, Mexico and the Russian Federation.

⁴ Finland, Mauritius, Mexico and the Russian Federation.

14. For reports due in 2011, the Committee adopted and transmitted in 2010 lists of issues prior to reporting to 19 States parties, namely Bahrain, Benin, Denmark, Estonia, Georgia, Guatemala, Italy, Japan, Latvia, Luxembourg, Namibia, Netherlands, Norway, Paraguay, Poland, Portugal, Ukraine, United States of America and Uzbekistan. Out of these 19 States parties, 16 accepted the new reporting procedure;⁵ one (Uzbekistan) did not accept it. These reports were due by 15 July 2011; to date, four States parties (Estonia, Japan, Norway and Paraguay) have submitted their reports under the new procedure.

15. For reports due in 2012, the Committee adopted and transmitted in 2010 lists of issues prior to reporting to 36 States parties, namely Afghanistan, Algeria, Argentina, Australia, Belgium, Belize, Bolivia, Burundi, Chad, China (including Hong Kong and Macao Special Administrative Regions), Costa Rica, Croatia, Cyprus, Egypt, Guyana, Iceland, Indonesia, Kazakhstan, Kenya, Republic of Korea, Lithuania, the former Yugoslav Republic of Macedonia, Malta, Montenegro, Nepal, Panama, Qatar, Romania, Senegal, Serbia, Sweden, Togo, Uganda, Uruguay, Venezuela (Bolivian Republic of) and Zambia). Out of these 36 States parties, 22 accepted the new reporting procedure.⁶ These reports are due by 1 August 2012; however, three States parties (Qatar, Senegal and Togo) have already submitted their reports under the standard procedure, and one (Bolivia) is currently preparing its report under the standard procedure. Two States parties did not accept the procedure (Algeria and China); the remaining eight have not yet replied.

16. Since the launch of the optional procedure in 2007, the Committee has met every year with the States parties to the Convention to discuss, inter alia, the new procedure and to keep States parties informed of its advancement. In addition, each year, the Secretariat briefs the States parties concerned on the procedure, upon transmission of the LOIPR.

III. Summary and preliminary assessment of the first reporting cycle, 2009 to 2012

17. Since the adoption of the optional reporting procedure, the Committee has adopted and transmitted lists of issues prior to reporting to 75 States parties in respect of reports due in 2009, 2010, 2011 and 2012:

- a) For the 11 reports due in 2009: 9 States parties accepted the procedure (including 1 that submitted its report under the standard procedure); 2 did not reply;
- b) For the nine reports due in 2010: eight States parties accepted the procedure; one did not reply;
- c) For the 19 reports due in 2011: 16 States parties accepted the procedure; 1 did not accept; 2 did not reply;
- d) For the 36 reports due in 2012: 22 States parties accepted the procedure; 2 did not accept; 8 did not reply; 4 are currently preparing reports or have already submitted reports under the standard procedure.

18. In summary, out of the 75 States parties with reports due between 2009 and 2012, 55 accepted the optional reporting procedure; 3 did not accept; 17 did not reply. Of the latter, five are currently preparing reports under the standard procedure or have submitted reports

⁵ Benin, Denmark, Estonia, Georgia, Guatemala, Italy, Japan, Latvia, Luxembourg, Netherlands, Norway, Paraguay, Poland, Portugal, Ukraine and the United States of America.

⁶ Argentina, Australia, Belgium, Belize, Chad, Costa Rica, Croatia, Cyprus, Guyana, Iceland, Kenya, Korea, Lithuania, the former Yugoslav Republic of Macedonia, Malta, Montenegro, Romania, Serbia, Sweden, Uruguay, Uganda and Zambia.

under the standard procedure and have clearly indicated that the preparation of the report, under the standard procedure, was close to completion at the time the LOIPR was received. Therefore, the status of the new procedure is as follows:

- Acceptance: 73%
- No reply, other: 23%
- Refusal: 4%

19. This clearly indicates that the procedure, under the current format, has received substantial support from States parties.

20. With regard to reports submitted to the Committee, only those due in 2009, 2010 and 2011 can be considered, since the reports for 2012 are not yet due:

- a) For reports due in 2009, out of nine State parties that accepted the procedure, seven reports were submitted;
- b) For reports due in 2010, out of eight States parties that accepted the procedure, four reports were submitted;
- c) For reports due in 2011, out of 19 States parties that accepted the procedure, 4 reports were submitted;

21. In summary, out of the 36 States parties that accepted the optional procedure for reports due in 2009, 2010 and 2011, 15 submitted reports (42 per cent). However, there are still a few months remaining in 2011, therefore only reports due in 2009 and 2010 are being considered at this stage. Out of the 17 States parties that accepted the procedure for 2009 and 2010, 11 have submitted reports (65 per cent). This relatively high reporting rate clearly shows the interest of States parties to use this reporting procedure in order to fulfil their reporting obligations.

IV. Similar procedure adopted by other treaty bodies

22. The Secretariat prepared a paper (HRI/ICM/2010/3) for consideration by the 11th Inter-Committee Meeting, held 28–30 June 2010, on the lists of issues to be transmitted to States parties prior to reporting, with a view to submitting targeted and focused reports. The paper gave an overview of the procedure and proposed ways to improve the procedure. Other treaty bodies have since adopted similar procedures, namely the Human Rights Committee and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.

A. Human Rights Committee

23. At its ninety-seventh session, held in October 2009, the Human Rights Committee decided to adopt a new reporting procedure whereby it would send States parties a list of issues prior to reporting, and consider their written replies to the list of issues in lieu of a periodic report. Under the new procedure, the State party's reply would constitute the report submitted under article 40 of the Covenant. States parties concerned would be given at least one year to reply to the LOIPR, that is, to prepare their focused report based on the LOIPR procedure (CCPR/C/99/4).

24. The list of countries whose reports will be examined according to the new procedure would be made public on the website of the Office of the High Commissioner for Human Rights, to the extent possible, at least nine months prior to the session during which the LOIPR will be considered by the Committee.

25. When scheduling reports to be considered at upcoming sessions, the Committee will prioritize only initial reports over reports based on the LOIPR procedure. This is to ensure that reports under the LOIPR procedure are examined in a timely manner so as to avoid the loss of relevance of the information contained in the report and the need for another list of issues and replies.

26. Given the need to adopt standard lists of issues as well as LOIPRs at each session, the Committee will only have the capacity to adopt five LOIPRs per session during the pilot period. Therefore, five standard lists of issues and five LOIPRs will be adopted at each session, for a total of 30 lists of issues (standard and LOIPRs combined) per year.

27. The five States parties to which LOIPRs will be sent at each session will be selected according to the following cumulative criteria:

(a) States parties concerned will primarily be selected from among the list of States whose reports are due in 2013 and beyond, and which have informed the Committee of their agreement to follow the new reporting procedure;

(b) LOIPRs may be sent to States parties whose periodic reports are at least 10 years overdue, and which have agreed to follow the new reporting procedure;

(c) States parties will be selected in chronological order according to the date on which their next periodic report is due. When several reports are due on the same date, they will be selected according to the date on which they informed the Committee of their agreement to follow the optional reporting procedure.

28. The first five States parties for which LOIPRs will be adopted in October 2011 will be requested to submit their report under the LOIPR procedure by 31 March 2013. If the reports are received by the set deadline, the first focused reports will be scheduled for consideration in 2014. During its 101st session, held from 14 March to 1 April 2011, the Committee announced the first five States parties for which LOIPRs would be adopted at its 103rd session from 17 October to 4 November 2011.⁷

B. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

29. At its fourteenth session in April 2011, and after having considered the issue over two sessions, the Committee on Migrant Workers adopted a procedure whereby a list of issues focusing on priority issues would be adopted prior to the submission of the State party's report. This new procedure was inspired by the LOIPR procedure adopted by the Committee against Torture.

30. During the session in which the LOIPR procedure was adopted, the Secretariat provided the Committee with an overview of three options to streamline its reporting procedure:

(a) Approach inspired by the list of issues prior to reporting (LOIPR) procedure implemented by the Committee against Torture;

(b) List of themes approach implemented by the Committee on the Elimination of Racial Discrimination;

(c) Synthesis of the two approaches.

⁷ Those States parties are Cameroon, Denmark, Monaco, Republic of Moldova and Uruguay.

After discussing the benefits and limitations of each approach, the Committee decided that the procedure adopted by the Committee against Torture was more suitable for its work. The LOIPR approach is also in line with the treaty bodies strengthening process.

31. State parties' replies to the LOIPR will constitute their reports submitted under Article 73 of the Convention. The new procedure will apply only to periodic reports; the Committee will continue to request comprehensive initial reports from States parties, to be prepared in accordance with its reporting guidelines.

32. On 11 July 2011, the Secretariat sent a letter to those States parties whose periodic reports were pending, informing them about the new procedure and requesting them to reply, by 1 September 2011, whether they wished to avail themselves of the new procedure or whether they would continue to follow the standard procedure. To date, El Salvador has replied positively to the new procedure. At its fifteenth session in September 2011, the Committee will discuss how to further implement the procedure.

V. Preliminary assessment and further decision

33. At its forty-sixth session in May 2011, the Committee against Torture undertook a preliminary evaluation of its optional reporting procedure for periodic reports due in 2009, 2010, 2011 and 2012. It took note of and valued the Secretariat's informal paper containing proposals for the revision of the procedure and decided, as a preliminary evaluation:

- (a) To consider the procedure as a positive step, as also indicated by States parties;
- (b) To continue the procedure for the next reporting cycle;
- (c) To seek prior acceptance of States parties that have not yet agreed to avail themselves of the procedure, for reports due in 2013.

34. In addition, the Committee also decided that:

- (a) The procedure should be evaluated with regard to each of the States parties that have submitted a report under the LOIPR procedure (two Committee members considered that this evaluation should include an external component);
- (b) Country priorities should be discussed and established according to the provisions of the Convention;
- (c) Procedural aspects, such as, inter alia, deadline for reporting, number of questions, page limit of report, reminders, guidelines, extended validity of adopted lists should also be considered;
- (d) The Committee will again evaluate the procedure at its forty-seventh session scheduled for November 2011.

35. The Committee further identified States parties whose reports are due in 2013 and which are eligible for the optional reporting procedure, namely Azerbaijan, Chile, Colombia, El Salvador, Honduras, Israel, Moldova, New Zealand, Nicaragua, Slovakia, Spain, and the Philippines. The Committee subsequently sent notes verbales to those States parties, requesting that they indicate, by 1 September 2011, if they wished to avail themselves of the optional procedure, so that it could prepare and submit the relevant lists of issues, as necessary.

36. Out of these 12 States parties, to date, 6⁸ have accepted to report under the optional procedure.

VI. Revising the procedure: options for the 2013-2016 reporting cycle

37. The Committee heard suggestions to improve the procedure at its informal annual meetings with States parties to the Convention. In addition, NGOs indicated suggestions for their increased participation in the procedure. Finally, the Secretariat has met, on several occasions, with States parties seeking clarification on the procedure. In that context, they also provided suggestions to enhance its effectiveness.

38. Based on these considerations and taking into account the preliminary assessment of the procedure, the following options could be considered with a view to improving the LOIPR procedure as well as the effectiveness of the Committee's working methods:

(a) Two of the three main criteria for selecting States parties could be retained:

(i) Procedure to be applied to reports due in a specific year, based on the periodicity schedule or indicated in the concluding observations;

(ii) Procedure not to be applied to reports already submitted and awaiting consideration before the Committee.

(b) The third criterion that the procedure not be applied to initial reports, could be revised in light of the 30 States parties whose initial reports are overdue. Of those States parties, several have initial reports that are overdue for more than 15 years. This situation should not be ignored by the Committee, as reporting is an obligation of States parties under the Convention that they freely ratified. The LOIPR procedure might assist them in submitting an initial report and thereby engaging with the Committee. In the past, other treaty bodies have sent lists of issues in advance of initial reports with positive results.

(c) Reminders could be sent to States parties which have not yet accepted the procedure or which have not yet replied to the LOIPR transmitted to them, indicating, in the first case, that they may report under the optional procedure and, in the second case, that the validity of the LOIPR will be extended for two or three years, to be determined. This would value the work done by the Committee with regard to preparing the lists of issues over the past four years and avoid the preparation of new LOIPRs, if State parties avail themselves of the procedure.

(d) Indication on the Committee's website of the prior acceptance of the procedure by States parties would allow the Committee to seek, in due course, inputs from other stakeholders, including National Human Rights Institutions and civil society organizations in order to obtain information to assist in the preparation of the LOIPRs, as is done currently for lists of issues and concluding observations. Such information would also be posted on the website.

(e) Once adopted, LOIPRs should be transmitted to States parties at least one year prior to the deadline for submission of their reports to the Committee. Technical assistance should be offered to States parties experiencing reporting difficulties.

(f) The Committee should consider adopting simplified LOIPRs for States parties which report regularly, including those which reported under the LOIPR procedure in the previous cycle, and which cooperate with the Committee in all its procedures, including the provision of follow-up reports. This would encourage States parties to further

⁸ Azerbaijan, Chile, Colombia, El Salvador, Moldova and New Zealand.

consider reporting under the LOIPR procedure. The simplified LOIPRs could include a draft template (e.g. an informal reporting template) for presenting the replies to the recommendations in the concluding observations, in addition to the two current sections on new specific information and general information (standard paragraphs), which could consequently be shorter.

(g) The latter option could also include the possibility, if agreed between the Committee and the State party, of the dialogue being conducted through video conferencing, if the State party has difficulty sending a delegation to meet the Committee, or through a desk review. This could also be applied to the examination of other reports.

(h) The Committee could consider indicating to States parties that, if a report is not presented within a certain time frame, under the standard reporting procedure or the LOIPR procedure, it will consider a procedure to review the implementation of the provisions of the Convention in the State party without a report (review procedure). Under certain circumstances, this could also be applied to overdue initial reports.

(i) The Committee could limit the number of issues in the LOIPR (for example, limit the LOIPR to 30 focused questions or paragraphs). This would allow the Committee to emphasize the page limit for States parties' replies, as provided for in the guidelines for the common core document (HRI/GEN/2/Rev.6, para. 19). The length of the reports would also improve the time frame within which reports are scheduled for consideration by the Committee.

(j) The Committee could consider adopting very succinct guidelines for replies to LOIPRs with regard to the format, but also especially on the quality of information to be provided by States parties, thus further assisting States parties in preparing focused reports. This could include a harmonization of the LOIPR and the follow-up procedures with a view to streamlining the reporting cycle.
