



## International Covenant on Civil and Political Rights

Distr.: General  
21 January 2013  
English  
Original: French

---

### Human Rights Committee

#### 106th session

#### Summary record of the 2940th\* meeting

Held at the Palais Wilson, Geneva, Thursday, 31 October 2012, at 3 p.m.

*Chairperson:* Mr. O'Flaherty (Vice-Chairperson)

### Contents

Organizational and other matters, including the adoption of the report of the pre-sessional working group on individual communications

*General discussion in preparation for a General Comment on article 9*

---

\* No summary records were issued for the 2938th and 2939th meetings.

---

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Editing Unit, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

*The meeting was called to order at 3.15 p.m.*

**Organizational and other matters, including the adoption of the report of the pre-session working group on individual communications**

*General discussion in preparation for a General Comment on article 9 (liberty and security of person) of the International Covenant on Civil and Political Rights*

1. **The Chairperson** welcomed the representatives of non-governmental organizations and invited Mr. Neuman, Rapporteur for the draft General Comment on article 9, to take the floor.
2. **Mr. Neuman** (Rapporteur for the draft General Comment) noted that the Committee had thought it important to adopt a new General Comment on article 9 because that article was often at the centre of its concluding observations and recommendations. He looked forward to hearing the opinions of the NGO representatives on the issues on which the Committee should focus its work.
3. **Mr. Ramu** (Amnesty International) said that, to encourage compliance with the provisions of article 9, the Committee should urge States parties to take effective steps to prevent enforced disappearances and prolonged incommunicado detention, as well as torture and ill-treatment. It should also take account of the direct relevance of articles 17, 18 and 22 of the International Convention for the Protection of All Persons from Enforced Disappearance to article 9 of the Covenant. The matter of establishing effective and accessible judicial control mechanisms, which was fundamental to ensuring compliance with article 9, was another issue to which the Committee should give its full attention.
4. In its General Comment, the Committee should point out that the prohibition of arbitrary detention was a peremptory rule of international law (*jus cogens*) and that States parties may never invoke article 4 of the Covenant to justify such practice. The principle of non-refoulement was fundamental, and the absolute and universal prohibition of torture and arbitrary detention went together with the prohibition on States returning a person to a country where he or she was likely to be tortured. The issues of extraterritorial application and the horizontal effect of article 9 also needed to be addressed.
5. **Mr. Sands** (Association for the Prevention of Torture) called on the Committee to take account of atypical forms of illegal deprivation of liberty. They were becoming increasingly common, were being used to circumvent the safeguards afforded to persons detained legally, and involved a greater risk of torture or ill-treatment. The General Comment should therefore be worded in sufficiently broad terms to cover such forms of detention. Indeed, in the absence of monitoring by an independent authority or the judicial authorities, the risks of torture, arbitrary detention, illegal prolongation of the period of detention and enforced disappearance were particularly high.
6. Secret detention and incommunicado detention, which were often used to remove the detainee from the protection of the law, could constitute enforced disappearance. To address that issue, the Committee should consider that the procedural safeguards mentioned in article 9 also applied to any person held incommunicado. In the General Comment, it should indicate how a judge's obligation to determine the legality or otherwise of the detention could be made more practical and effective. In the case of derogations to the procedural rights resulting from article 9, particularly the right to habeas corpus, the Committee should base itself on its General Comment No. 29 and thus reinforce the mandatory nature of all the safeguards specified therein.
7. **Mr. Grassy** (International Federation of Action by Christians for the Abolition of Torture (FIACAT)) drew the Committee's attention to the fact that States in situations of internal armed conflict often invoked security considerations to justify cases of arbitrary

detention, the number of which was growing. Furthermore, many arbitrary arrests and detentions were carried out by non-State armed groups. The Committee should take all such situations into account.

8. By leaving it up to States to assess on a case-by-case basis what constituted a “reasonable time”, the Committee had opened the way to interpretations of the article that could sometimes be abusive. It would therefore be helpful to specify a maximum permissible period of custody or pretrial detention. States should also be invited to keep a register of arrests, detentions and releases, and equip court registries with appropriate computer services to allow the monitoring of persons deprived of their liberty. Finally, as arbitrary arrest and detention were frequently accompanied by acts of torture, part of the General Comment could usefully deal with psychological assistance for the victims.

9. **Ms. Schulke** (Human Rights Watch) said that the General Comment should clearly state which grounds for detention were permitted under article 9 and list those rights of detainees that could not be derogated, including during states of emergency. The Committee could, in particular, clarify what should be understood by “promptly”, including during a state of emergency. It should also look at the application of article 9 in the case of armed conflict not of an international character and particularly where it involved non-State armed groups.

10. The General Comment should further underline that the detention and deportation of migrants and provisions concerning “material witnesses” should not be used to bypass criminal procedure legislation, particularly in cases related to terrorism. The use of secret evidence as a basis for administrative detention and deportation should also be addressed.

11. In respect of detention for purposes of “treatment” or “rehabilitation”, which were covered by article 9, the General Comment should mention the practice of detaining patients who were not able to pay hospital bills and forbidding them to leave the premises. It should also state that detention of family members or associates of a primary suspect whom the police were unable to find was a form of arbitrary detention. Finally, clarification would be welcome in respect of the meaning of the expressions “promptly” and “reasonable time”, and on cases in which it was justified to favour pretrial detention over a less restrictive measure.

12. **Mr. Conte** (International Commission of Jurists) drew the Committee’s attention to the fact that the Working Group on Arbitrary Detention was currently drafting a deliberation on the definition and scope of arbitrary deprivation of liberty in customary international law and that it had been asked by the Human Rights Council to draw up fundamental principles and directives on the remedies and procedural safeguards in cases of deprivation of liberty. In its General Comment, the Committee could specify that the permissible period of time between arrest and appearance before a judge should be assessed on a case-by-case basis and should be no more than a few days. It could also clarify the meaning of the term “officer authorized by law to exercise judicial power”.

13. The General Comment should address several thematic issues, including the detention of migrants, the application of article 9 during international armed conflicts, administrative detention, and control orders and surveillance orders. The Committee could also look at the role and accountability of legal entities running State or private detention centres. Finally, it would be useful to draw up a timeline for the work and to post it as soon as possible on the website of the Office of the United Nations High Commissioner for Human Rights.

14. **Mr. Perissi** (TRIAL (Swiss Association against Impunity)) reminded the Committee that detention on non-official premises, a situation which lends itself to torture and ill-treatment, and enforced disappearance were violations of article 9, which must be read in conjunction with articles 7 and 10 of the Covenant. In its work on article 9, the Committee

should take account of the International Convention for the Protection of All Persons from Enforced Disappearance, particularly its article 17, compliance with which was fundamental to preventing any violation of article 9 of the Covenant, including in the case of armed conflict. The General Comment should also emphasize the need to guarantee access to places of deprivation of liberty for any officer or institution authorized by the law. The right of the person deprived of liberty to enter an appeal before a court meant that article 9 of the Covenant must be interpreted in the light of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Finally, the Committee should stress that the provisions of article 9 also applied in situations of armed conflict to which the rules of international humanitarian law were applicable.

15. **The Chairperson**, speaking as a member of the Committee, asked whether it was in public hospitals that patients were being detained for non-payment of bills.

16. **Mr. Kälin** wondered how the issue of arbitrary arrests and detentions that were not carried out by officers of the State could be linked, in legal terms, to article 9 of the Covenant.

17. **Ms. Motoc** said that the issue of the obligations of States parties to the Covenant in the matter of arbitrary arrests and detentions carried out by non-State actors raised thorny legal issues, particularly where those responsible were not supported by the State concerned.

18. **Mr. Yadh** asked why the representative of FIACAT considered that article 9 also applied in the case of international armed conflicts.

19. **Sir Nigel Rodley** asked the representative of FIACAT if he really thought that, if the period within which a person arrested or detained must be brought before a judge was not specified, it was then left to the discretion of the State. If so, the Committee could not give any guidance on the interpretation of the expressions “promptly” and “reasonable time”. It would also be useful to know whether TRIAL considered that any detention kept secret constituted incommunicado detention or enforced disappearance and, if so, after how many minutes or hours it could be so described.

20. **Mr. Salvioli** asked whether TRIAL considered that incommunicado detention was of itself a violation of article 9 of the Covenant.

21. **Mr. Conte** (International Commission of Jurists (ICJ)) said that ICJ did not consider that the period within which a person arrested or detained must be brought before a judge should be left to the discretion of the State. It favoured a case-by-case approach, as recommended by the Committee. It would be very useful if the Committee could describe more precisely the factors that ought to be taken into account in such an approach.

22. **Mr. Grassy** (International Federation of Action by Christians for the Abolition of Torture (FIACAT)) said, in respect of the concept of a “reasonable time”, that FIACAT was aware of cases in which a State had invoked domestic law to avoid its obligations.

23. **Mr. Perissi** (Track Impunity Always, TRIAL) said that it was not necessary to include time as a factor in establishing an enforced disappearance. It might easily be considered that a person deprived of their liberty for 48 hours or more had been placed outside the protection of the law. If the authorities refused to acknowledge the deprivation of liberty or to divulge the place of detention, the incommunicado detention then became enforced disappearance.

24. **Ms. Schulke** (Human Rights Watch) said that Human Rights Watch had proof that hundreds of patients unable to pay were being detained in public hospitals in Burundi; the

practice had existed since the 1990s there and in many other African countries, including Kenya, Ghana and the Democratic Republic of the Congo.

25. **Mr. Ramu** (Amnesty International) said, in respect of detention by non-State agents, except for armed groups, that the Committee should look at the horizontal effects of article 9 by adopting the same approach as for article 7. The Committee had addressed the right to security of person in its jurisprudence, notably in the cases of death threats made by non-State actors who had not been brought to justice. Amnesty International considered incommunicado detention to be a violation of article 9, paragraph 1 of which provided that no one may be deprived of his or her liberty except on such grounds and in accordance with such procedure as were established by law. No element of time should be included. In respect of protective detention measures, the Committee should highlight cases in which detention was justified by the need to protect the person concerned, notably against “honour” crimes or sexist violence.

26. **Mr. Neuman** said that the text of the draft General Comment on article 9 should be ready for the session in March 2013. It could not be predicted how long the first reading would take. Any official decision on the subject would be announced on the Committee’s website.

27. **Ms. Pejic** (International Committee of the Red Cross) said that legal protection for persons deprived of their liberty in the context of a non-international conflict, notably one between a State and a non-State armed group, needed to be strengthened. Non-State armed groups were not directly bound by human rights instruments, but if they administered a particular territory over an extended period, they had the responsibility to respect those rights. It was, however, unrealistic to expect them to respect the principles of due diligence, habeas corpus or judicial review.

28. **Mr. Kjaerum** (International Rehabilitation Council for Torture Victims) urged the Committee to examine the need to establish special procedures for vulnerable groups, particularly asylum seekers and refugees.

29. **Mr. Lee** (Finland) said that his country’s written contribution on pretrial detention would be submitted to the Committee subsequently. The length of judicial proceedings and pretrial detention was a serious problem in Finland, exacerbating prison overcrowding. The country had therefore taken measures to reduce their length and was considering using electronic bracelets. It requested the Committee to mention alternatives to pretrial detention in the draft General Comment on article 9.

30. **Sir Nigel Rodley** asked Ms. Pejic her opinion on preventive detention in the context of international and non-international conflicts.

31. **Ms. Saliba** (Child Rights International Network) recommended that the Committee draw attention to the fact that migrant children must not be detained because of their administrative situation. Drug abuse in children should be seen as a health problem, with emphasis put on prevention. Children suffering from mental illness should not be systematically interned. States should monitor the treatment of children held in psychiatric facilities, focusing on the best interests of the child.

32. **Ms. Lee** (International Disability Alliance), speaking on behalf of the World Network of Users and Survivors of Psychiatry, Inclusion International and Down Syndrome International, emphasized that reasonable accommodation must be made in detention facilities to take account of the needs of persons with disabilities. The right of those persons to live in the community must be respected, following, as it did, from the right to liberty. She proposed that the General Comment recommend that States implement those principles.

33. **Ms. Parker** (Advocates for Human Rights) said it was essential that the General Comment be presented, structured and drafted to make it immediately understandable to the reader and easy to disseminate and use in the field. The first paragraphs should give a simple explanation of the rights embodied in article 9 and the objective of the General Comment. It should be produced in a format that was easy to distribute electronically in order to make best use of modern means of communication (mobile telephones, social networks). To ensure its broad dissemination, the official version of the final text must be given more publicity, for instance through a webcast press conference, or by taking advantage of another important event. The Committee would find other proposals in the written submission of Advocates for Human Rights.

34. **The Chairperson** thanked the speakers and invited the members of the Committee to ask any additional questions they might have.

35. **Mr. Neuman** (Rapporteur for the draft General Comment) noted that the contributions had mainly addressed the right to liberty, but that the right to security of person had hardly been considered at all. He would like to hear the participants' opinions on that other element of article 9.

36. **Mr. Ramu** (Amnesty International) said it would be a good idea to emphasize in the General Comment that the right to security of person applied not only in the context of deprivation of liberty, and to underline the right to security of witnesses and other categories of persons, such as human rights defenders, who may be exposed to reprisals by State agents, persons acting on behalf of the State or non-State agents. There were many such examples in the Committee's jurisprudence.

37. **Mr. Robertson** (Quaker United Nations Office) said that women detainees and children living in prisons with an incarcerated parent, generally their mother, were particularly vulnerable groups with specific needs. The Committee might usefully refer to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) and the recommendations adopted by the Committee on the Rights of the Child in 2011 after its day of general discussion on the rights of children of incarcerated parents.

38. **Mr. Kjaerum** (International Rehabilitation Council for Torture Victims) said that refugees and asylum seekers, who were often held together with convicted prisoners, were another vulnerable group whose right to security ought be taken into consideration.

39. **Ms. Saliba** (Child Rights International Network) said that the rights of children who were parties to criminal proceeding as victims or witnesses also needed to be addressed. The Committee might like to refer to the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime and the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

40. **Mr. Ben Achour** said that article 9 should be read in conjunction not only with other human rights instruments but also with other articles of the Covenant, particularly article 6 (right to life), article 7 (protection against torture and ill-treatment), article 10 (treatment of detainees) and article 17 (respect for privacy).

41. **Mr. Neuman** (Rapporteur for the draft General Comment) thanked all the speakers for their contributions. He had taken particular note of the interest shown in the relationship between article 9 and certain provisions of other international human rights instruments and international humanitarian law, and of the application of article 9 to detention in the context of armed conflicts and the detention of persons belonging to particularly vulnerable groups.

42. **The Chairperson** thanked the Rapporteur and all those who had participated in the half-day of general discussion, which he considered had been very fruitful and would be a valuable contribution to the Committee's work on the draft General Comment on article 9.

To make best use of the remaining time available, he asked the members of the Committee to give their opinions on how to continue the exchanges with all those interested in the drafting of the General Comment.

43. **Mr. Neuman** (Rapporteur for the draft General Comment) said that he would like to continue to receive contributions from all interested parties through the link on the Committee's website and to publish those contributions.

44. **Sir Nigel Rodley** said it would be useful to ask for contributions specifically from the Special Rapporteur on torture, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances. It should be considered how to make such exchanges as transparent as possible, perhaps by organizing public meetings with the interested parties.

45. **Mr. Iwasawa** asked whether the States parties, of whom very few had taken part in the half-day of general discussion, would be specifically invited to submit their contributions on the draft General Comment.

46. **The Chairperson**, recalling the Committee's standard procedure, said that the draft General Comment would be published after its first reading and that all interested parties, including States parties, would be invited to submit comments. Interested parties could also submit spontaneous contributions at any time during the process. Contributions received would, as far as possible, be published; some might remain confidential in response to specific requests to the Committee.

47. After an exchange of views on the appropriateness of specifically inviting other treaty bodies to submit comments and the possibility of institutionalizing a general discussion prior to the drafting of new General Comments, in which **Mr. Ben Achour, Mr. Flinterman, Sir Nigel Rodley, Mr. Walker** (Office of the High Commissioner for Human Rights) and himself had taken part, **the Chairperson** concluded firstly that the Committee had not rejected the possibility of directly asking other treaty bodies for their contributions, but that he would wait for the secretariat to provide information on the practice adopted by other committees before pronouncing on the matter; and that the members of the Committee were in favour of institutionalizing the practice of holding one or more preliminary general discussion sessions prior to the drafting of future General Comments.

*The meeting rose at 5.55 p.m.*