



## International Covenant on Civil and Political Rights

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### Human Rights Committee Ninety-seventh session

#### Summary record of the 2683rd meeting

Held at the Palais Wilson, Geneva, on Thursday, 29 October 2009, at 3 p.m.

*Chairperson:* Mr. Iwasawa

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*The meeting was called to order at 3.25 p.m.*

**Organizational and other matters** (*continued*)

*Possible establishment of a working group on working methods*

1. **The Chairperson** reminded Committee members that the question of the establishment of a working group on working methods had been raised at the previous session in connection with the outcome of the ninth Inter-Committee Meeting. Time constraints had precluded an in-depth discussion of the matter at the time.
2. **Mr. Thelin** said that the two key issues, in his opinion, both concerned backlogs. More than 400 communications were currently pending and the Committee dealt with only 90 cases on average each year. Citizens of States parties would be entitled to perceive delayed justice as a denial of justice. It would be helpful if a working group were to consider how the Committee's work on communications could be facilitated and expedited, for instance by having two separate "communication chambers" operating in parallel. He was aware, however, that the shortage of secretariat staff would constitute an impediment to any such initiative.
3. The second backlog to be reviewed by a working group concerned reporting. The Committee had decided to take up at its next session the question of some 30 States parties whose initial reports were seriously overdue. Other States parties had failed to respond to requests for follow-up information. With regard to the periodicity of reporting, there were currently only three possible deadlines for the submission of a State party's next periodic report: within three, four or five years. A working group could consider the possibility of introducing alternative deadlines at both the upper and lower ends.
4. Another issue that might be discussed was the interrelationship with other treaty bodies and the universal periodic review mechanism.
5. **Mr. O'Flaherty** said that he fully agreed with Mr. Thelin on the areas in which reform was required. The Committee's working methods had been constantly evolving since its establishment, so the need for continuing reform was beyond dispute. The point to be decided was what kind of mechanism would prove most efficient in delivering the requisite improvements. He enquired, for instance, about the procedure for selecting the members of a working group. It was important to ensure that its proposals would be acceptable to the Committee as a whole.
6. Another challenge was the establishment of appropriate terms of reference, prioritization of activities and access to resources. It was unclear whether the working group would meet during the Committee's regular sessions and whether it would require interpretation services, in which case plenary meeting time would be forfeited.
7. It was important to ensure that any work on the interrelationship with other treaty bodies was consistent with the existing inter-committee process.
8. He was also curious about the relationship between a working group on working methods and the Bureau of the Committee, which had proved quite efficient to date in identifying areas in which reforms were required.
9. **Mr. Lallah** asked how the proposed new working group would differ from those established in the past on various aspects of the Committee's working methods, such as communications and follow-up to concluding observations. How many working groups would there be? With regard to harmonization, the Committee already appointed representatives to attend inter-committee meetings. It might be helpful to review the evolution of working methods over the past 10 or 15 years.

10. **Mr. Pérez Sánchez-Cerro** agreed with Mr. Thelin that two 5-member chambers were needed to deal with communications instead of the existing 10-member Working Group.

11. He suggested that States parties should not be required to respond in writing to the list of issues. The delegation could present the replies orally during its dialogue with the Committee. That would solve the perennial problem of translation of documents into all working languages. For instance, the periodic report of the Russian Federation consisted of some 9,000 words but the replies to the list of issues amounted to some 33,000 words.

12. He was somewhat sceptical about the prospects for harmonization because of the clear differences between the Committee's work and that of the other treaty bodies. He suggested that the Committee should discuss the possibility of drafting a substantiated petition for an amendment to the Covenant increasing its membership from 18 to 27 in order to deal with the backlog in communications and State party reports. As Mr. Thelin had said, justice delayed was justice denied.

13. **Mr. Salvioli** said that 18 members were, in his view, sufficient. In any case, the Covenant could be amended only by the States parties.

14. He agreed with Mr. O'Flaherty that the Bureau should be the driving force behind all strategic decisions, for instance on the establishment of a working group or the appointment of a rapporteur. He also agreed that working groups should not encroach on the meeting time of the plenary.

15. The Committee should decide on the extent to which harmonization with other treaty bodies should be pursued. The representatives who attended inter-committee meetings had not been given a specific mandate. The Bureau should, in his view, provide more guidance on such matters in the light of discussions in the plenary.

16. The fact that documents were rarely available in advance of meetings was a major problem, since Committee members were not adequately prepared to participate in the discussions.

17. **Ms. Keller** said that the lengthy replies by the Russian Federation to the list of issues had been very much to the point and had served as a sound basis for the formulation of pertinent questions to the delegation. Had the same information been provided in a series of oral replies, it would have proved quite overwhelming. Where States parties cooperated by providing such detailed replies, it was important to ensure that translated versions of the documents were available.

18. She agreed with Mr. O'Flaherty that a great deal would depend on the resources available to a working group. If resources were scarce, it would be more efficient to have single rapporteurs with a specific mandate working together with members of the secretariat.

19. **Mr. Rivas Posada** said that there was little point in listing the shortcomings in the Committee's work. It was more important to establish specific terms of reference for a working group, bearing in mind financial and time constraints and staff shortages.

20. **Mr. Amor** emphasized that the Committee's current debate was focused on its working methods, within the pre-established framework of the Covenant. Some of the Committee's current working methods were satisfactory, while weaknesses could be identified in others. Taking one of many possible examples, he cited the pre-sessional working group on communications, whose work at times did very little to assist the plenary, since even members of the working group sometimes called into question the validity of the draft texts the group had produced. In those cases, the pre-sessional work of the working

group wasted time and money. While that example was an extreme one, the Committee should agree on small changes that could be made to improve the situation.

21. If the Committee agreed that there was a need to review its working methods, he proposed that it could begin with the list of issues Mr. Thelin had raised to decide whether there was room for improvement and whether further issues should be added to the list. As to who should undertake the review, a single rapporteur was a possibility and all the Committee members had relevant experience and ideas that were worthy of examination. However, a joint effort would be welcome, maybe in the form of a group of Committee members, old and new. The Bureau already had a heavy workload and should not be further burdened. It was now up to the Committee to decide which direction it should take, and to entrust some of its members with preparing a paper for consideration by the plenary.

22. It would be useful to decide on a minimum amount of harmonization with the working methods of other treaty bodies, with full respect for each individual human rights instrument. The inter-committee meetings could facilitate an exchange of information on which methods of work could be shared. It was important to be aware that the treaty bodies appeared to be losing credibility with States parties, which were entering increasing numbers of reservations to the treaties, taking less heed of committees' recommendations and demonstrating an almost distrustful attitude.

23. **Mr. Thelin** noted that all members seemed to agree that there was a need to review the working methods. He would appreciate clarification whether a working group was already in existence. The terms of reference of a working group on working methods should be relatively open-ended, the mandate being to review matters that required reform in order to improve the functioning of the Committee. There was a clear need for analysis of which aspects required improvement.

24. The working group should be composed of members with experience of the Committee and be sufficiently broad-based to propose ideas for the Committee to consider in plenary. It should not take up valuable plenary time, but could function between sessions using electronic mail and meet during sessions outside of plenary hours in order to develop a working paper that could be presented to the Committee. There was no need to introduce more bureaucracy or complicate matters, but it was necessary to consolidate ideas on what changes were needed, within the framework of the Covenant.

25. **Sir Nigel Rodley** agreed with Mr. O'Flaherty that the Committee was constantly reviewing its working methods in order to meet the exigencies of new situations. He had misgivings about establishing a standing working group that would be permanently charged with reviewing working methods. If the proposal was not to establish such a standing group, the Committee needed to have a clearer idea about what specific issues the group would be set up to review.

26. He failed to understand why the review of working methods should be carried out by a working group. Since some tasks were better carried out by a rapporteur, some by the plenary and others by working groups, it would be useful to clarify why any particular issue required a group and how the group would be composed. In the past, individual colleagues and groups of colleagues had identified areas for improvement in working methods and had produced discussion papers, which had successfully translated into revised working methods. Depending on the issues that were identified, the plenary might best proceed either on the basis of a report, by merely taking note of an issue, or on the basis of a study by a group of Committee members, always with the input of the secretariat. He proposed that a working paper should be drawn up in order to clarify the current discussion.

27. **Mr. Lallah** recalled that during the first years of its existence, the Committee had had a working group composed of five members to deal with all matters. Thereafter, two working groups had been established, one to handle communications, the other to examine

any issues which the plenary entrusted to it. Over time, only one working group had remained, with more than five members, and it had subsequently disappeared, either through a lack of resources or lack of mandate. The Committee had always faced the problem of a backlog of reports, and the amount of time it took to consider reports was a constant challenge. The Committee should guard against reversing its past achievements. In order to tackle the problem of State party reports, and since consideration of reports sometimes lasted four meetings, the previous working group had introduced the idea of lists of issues in order to achieve a more focused approach. Without written replies, the examination of a State party report would take an inordinate amount of meeting time.

28. There was no need for a general working group to sit at every session, or for it to be composed of the same Committee members over time. He suggested that the Committee consider re-establishing the second working group, bearing in mind that there were some issues which were better examined by a single rapporteur.

29. **The Chairperson** said he understood that, prior to the introduction of the task force system, a working group had been responsible for drawing up lists of issues. When the task force system had been adopted, that working group had disappeared, enabling the working group on communications to have 10 members.

30. **Mr. Thelin** said that he did not envisage a permanent working group on working methods, but rather an ad hoc group which would take stock of the situation and prepare a position paper. His current thinking was that the Bureau might appoint five people who would present a paper no later than July 2010, which would take into consideration the current discussion, including the possibility of re-establishing the working group on working methods. Given that it would be a relatively open-ended mandate, there was no need to establish the terms of reference.

31. **Mr. O'Flaherty**, welcoming the clarification provided by Mr. Thelin, considered that a working group on working methods was unnecessary. If a working group were tasked only with identifying areas for reform, it would tell the Committee nothing new; if, on the other hand, it were requested to suggest potential solutions, it would be exceeding the mandate that such a group should have. He endorsed the preparation of a working paper, as proposed by Sir Nigel Rodley.

32. If the Committee adopted an approach based on lists of issues prior to reporting, the former working group on lists of issues might need to be resurrected. Further discussion at a future session was required.

33. **Mr. Salvioli** said that, in view of the confused nature of the discussion, he was not in a position to take any decision.

34. **The Chairperson** said that he and the other members of the Bureau were constantly endeavouring to improve the Committee's working methods. The difficulty lay in how to proceed, given the complexity of reform. In particular, the Committee should reach agreement on whether to adopt an approach based on lists of issues prior to reporting before its future working methods could be determined. Given that there did not appear to be consensus on establishing a working group on working methods, he suggested that the Committee continue by discussing the outstanding issues relating to the draft revised guidelines for State reports.

35. **Mr. O'Flaherty** urged the Committee to agree to the preparation, perhaps by the proponents of the idea of a working group on working methods, of a concept paper on the issue for discussion at a future session.

36. **The Chairperson** said he took it that the Committee endorsed that suggestion.

37. *It was so agreed.*

38. **Mr. Amor** said he regretted that, because of other commitments, he would be unable to participate in drafting the requested concept paper. In suggesting the establishment of a working group, he had not intended to be part of it.

39. **Mr. Thelin** suggested that the Bureau should work on the concept paper, taking into account the views of Committee members, as there did not seem to be a common understanding among members on what reforms were needed. Any concept paper should identify not only problems, but also solutions. In the short time he had served on the Committee, he had seen little real progress towards reforming its working methods. A definite starting point was required.

40. **Mr. Amor** suggested that the Committee needed further time for reflection.

*The meeting was suspended at 4.45 p.m. and resumed at 5.05 p.m.*

*Draft revised guidelines for State reports under the International Covenant on Civil and Political Rights (continued) (CCPR/C/2009/1/CRP.1)*

41. **The Chairperson** invited the Committee to continue its consideration of the draft revised guidelines for State reports, in particular paragraphs 16 to 19, and whether it wished to adopt an approach based on lists of issues prior to reporting.

42. **Mr. O'Flaherty** suggested that the Committee should concentrate on the broader issue of whether to adopt such an approach. The details of its implementation, while relevant to that discussion, could be finalized at a future session.

43. **Ms. Keller** said that the proposed guidelines depended on various conditions. First, a State party's initial report must continue to be submitted in full. Second, both the Committee and the State party concerned must agree to follow the proposed new approach for any given report. If a State party had undergone major political reforms, for example, and wished to submit a full report, it must be allowed to do so. Third, the title of the new process must reflect the fact that documents submitted by States parties in response to lists of issues prior to reporting would have the status of reports, so as to ensure that they were given priority by the translation services.

44. **Mr. Thelin** expressed the view that the process should be more flexible in terms of whether the Committee was obliged to prepare a list of issues for every case in which it might be used, and in what circumstances the proposed approach should be followed. In his view, a list of issues could potentially replace everything but a State party's initial report under the Covenant. He suggested that the reference in paragraph 17 to when the Committee had decided to implement the new procedure would be superfluous unless the decision was taken at a different session from the adoption of the draft revised guidelines.

45. **Mr. Lallah** requested clarification on which reports the new approach would apply to. The proposed approach represented a fundamental change to reporting under article 40 of the Covenant, as the initiative would rest with the Committee. How would the Committee decide which States parties should receive lists of issues prior to reporting? Would distinctions be made depending on how many reports a State party had already submitted? He endorsed Ms. Keller's comment that the name of the process should reflect the status of the documents to be prepared by States parties. Possible options included "reports based on lists of issues" or "focused reports". The Committee should also consider what would happen in the event that a State party fell behind in its reporting obligations or failed to reply to a list of issues for some years. Further to Mr. Thelin's comment on paragraph 17, he said that the paragraph should state when the new process came into effect. It was important that the Committee should remain fully in charge of organizing its own working methods, in order to avoid being placed under pressure by States parties.

46. **Ms. Motoc** echoed the concerns expressed by Mr. Lallah. Further time for reflection was needed.

47. **Mr. Amor** said that paragraph 15 of the draft revised guidelines should be amended to remove any ambiguity regarding the adoption of provisional and final concluding observations. With regard to the proposed new approach to reporting, he pointed out that the issue had been discussed some years previously, in response to calls by States parties to simplify the reporting process, and that a similar solution had been proposed. The Committee should examine whether the measures then suggested were still viable. As to how many full reports were required from States parties, he expressed the view that an initial report and a second periodic report would suffice in most cases.

48. **Sir Nigel Rodley** said that his recollection of the Committee's previous discussions on the matter matched that of Mr. Amor. He was pleased that the Committee seemed to be moving towards a degree of consensus on the issue.

49. He recalled that one of the triggers for first exploring the option of a new reporting system had been the burden that producing reports placed on States parties. He had been informed by representatives of some large States with powerful civil services that they felt great sympathy with the challenge that smaller States must face in compiling the reports required by various treaty bodies.

50. Reports also placed a burden on the resources of the secretariat. He had recently attended a meeting between the Bureau and the secretariat at which problems relating to documentation, editing and translation had been discussed. Only certain specific types of document were mandated for translation, and those that were not could not be assigned higher priority. Furthermore, whether translations were mandated or not, they all had to be produced on the basis of existing resources, of which too much was already being demanded.

51. He asked Ms. Keller to confirm his understanding that, under the new reporting system, there would be two types of list of issues: one would always be prepared in advance of the State party's appearance before the Committee, as at present; the other would be used in advance of certain periodic reports as an indication of what the Committee expected the State party to report on, in order to relieve the reporting burden and focus the subsequent discussion. The latter list would not restrict either the Committee or the State party, both of which could still raise any other matters under the Covenant. The text of the draft also gave both the State party and the Committee the right to insist on the use of a full report rather than the new approach.

52. In his view, an important issue that remained to be decided was the stage at which the new reporting system should come into effect. His preference would be for it to be used for all reports after the initial report, but he hoped that the Committee could at least agree to introduce it from the second periodic report onwards.

53. **The Chairperson** provided more information on the meeting between the Bureau and the secretariat referred to by Sir Nigel Rodley. A number of recent translation problems had been discussed at that meeting, including one very serious problem where a State party's written replies had been substantially longer than its report and Conference Services had been unable to provide those replies in the working languages in good time. Part of the problem had been that written replies, unlike reports, were not a mandated document and therefore could not be given any special priority. Under the new approach, the State party's report would consist of replies to a list of issues from the Committee, which would make it possible to avoid similar problems in the future.

54. **Mr. Rivas Posada** asked for clarification on why the use of the new reporting system was set out explicitly as being voluntary for the State party.

55. **Ms. Majodina** said that she broadly supported the new reporting approach, but still had a number of concerns. In particular, she pointed out that the initial reports of States parties varied widely in quality. She asked whether the Committee would permit a State party to use the new reporting method despite serious inadequacies in its preceding full report. If criteria were applied to determine whether it was appropriate for a State party to report using the new approach, what would those criteria be?

56. **Mr. O'Flaherty** said that he generally supported the initiative of the new reporting approach. He still had two main concerns: Committee members must reserve the right to raise any question they wished under the Covenant when a State party presented its report, without being restricted by what had been included on a list of issues; and the new approach should be adopted for a specified pilot period, perhaps three or four years, to enable it to be evaluated.

57. **Ms. Keller**, responding to members' concerns and questions, said that it was important to maintain flexibility in the reporting system in view of article 40, which stipulated only that States parties should prepare initial and periodic reports, and not that those reports should comply with the format which the Committee requested. The new approach could therefore be used only with the consent of both sides.

58. The reference in paragraph 17 to the date and occasion of the adoption of the new procedure had been included only for future historical interest; it could be removed if members wished.

59. She reaffirmed the importance of a new heading for the section of the guidelines currently entitled "Lists of issues prior to reporting" and a new designation for the reporting approach, which should make it clear that the document produced by a State party in response to the Committee's list of issues was its report, and thus a mandated document.

60. She agreed that the Committee should determine the steps it would take if a State party failed to reply satisfactorily to its list of issues and should establish the criteria it would use for determining which reporting method a State would be requested to use. However, both were matters for the Committee's working methods, and it was not necessary or appropriate to refer to them in the reporting guidelines.

61. She acknowledged that, once the new guidelines were adopted, it would have to be made clear from what date they would apply. She would be happy to accept the proposal of a pilot period for the new approach. She joined Sir Nigel Rodley and the Chairperson in stressing the impact the new approach could make in reducing the workload of the secretariat. In response to Mr. O'Flaherty's concern, she affirmed that Committee members would indeed retain the right to raise any question they wished under the Covenant.

62. **Mr. Lallah** concurred with Ms. Keller that the criteria for using the new reporting approach should not appear in the reporting guidelines, but felt that it was nonetheless important to establish those criteria before any major decision was taken on the matter. In his view, the new method should be used after the initial report of a State party. Otherwise, too much confusion could be created by the use of multiple reporting methods.

63. **Ms. Majodina** agreed with Mr. Lallah that the criteria for the new approach need not be set out in the reporting guidelines, but should be clearly established by the Committee before it initiated the process of adopting the new system.

64. **Mr. Thelin** considered that the current phrasing of paragraph 18 could be read as hampering the Committee's flexibility. He would prefer the Committee's right to decide which reporting method was to be requested to be indicated more clearly in paragraph 17 in place of the current reference in paragraph 18.

65. He felt that it was not necessary to specify a pilot period for the new approach, but only a date from which it would start. If the Committee quickly found that the new system did not work, it should not be compelled to continue with it for a specific number of years. Any new system should be under constant review.

66. He suggested that the section of the draft guidelines under discussion be headed "Focused report".

67. **Mr. O'Flaherty** regretted the order in which the Committee was attempting to reach its decisions on the matter of the new reporting approach. It was discussing the language to be used to reflect the new approach in the reporting guidelines when it had not yet agreed on and fully defined that reporting approach.

68. He saw his suggestion of a pilot period as providing an automatic institutional trigger for review of the new approach, not as something that would restrict the Committee's freedom to determine its own rules and methods. He would support the use of the new reporting approach starting after the initial report.

69. **Mr. Rivas Posada** said he did not feel that use of the new system would conflict with article 40, and so he still did not see the need for the use of the system to be dependent on the State party's consent.

70. **Sir Nigel Rodley** said that he could see the logic behind the positions of both Ms. Keller and Mr. Rivas Posada on the question whether States parties should be able to choose the system under which they wished to report. States parties had always had the right to report as they saw fit, and the Committee could not compel them to use any particular format. However, he saw no need to draw attention to that right in the reporting guidelines and therefore believed that the reference to the State's option of submitting a full report could be safely removed.

71. **The Chairperson** acknowledged that certain practical questions remained to be resolved. He asked Ms. Keller if she would be prepared to write a note clarifying those issues, which would be considered by the Committee at its following session.

72. **Ms. Keller** said that she would be willing to write such a note if the Committee took a decision in principle to proceed with the new reporting system.

73. **The Chairperson** said he took it that the Committee wished in principle to proceed with the new reporting approach, and to request Ms. Keller to write a note clarifying practical issues.

74. *It was so decided.*

75. **Sir Nigel Rodley** suggested that the Committee should also take an immediate decision on the stage at which the new reporting method should be used.

76. **The Chairperson** said he took it that the Committee wished the new approach to be used for all reports after a State party's initial report.

77. *It was so decided.*

*The meeting rose at 6 p.m.*