



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

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Summary record (partial)* of the 985th meeting; first part** (public)

Held at the Palais Wilson, Geneva, on Tuesday, 10 May 2011, at 3 p.m.

Chairperson: Mr. Grossman

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* No summary record was prepared for the rest of the meeting.

** The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.985/Add.1.

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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 3.10 p.m.

Meeting with the Chairperson of the Subcommittee on Prevention of Torture: fourth annual report of the Subcommittee (CAT/C/46/2)

1. **The Chairperson** welcomed the Chairperson of the Subcommittee on Prevention of Torture and invited him to introduce the Subcommittee's fourth annual report.
2. **Mr. Evans** (Chairperson of the Subcommittee on Prevention of Torture) said that the structure of the fourth annual report differed from that of previous reports. More substantive information was provided not only about current activities but also about developments in the Subcommittee's approach to its mandate. The annual report was one of the few documents that could be made available to the public, since reports on visits to States parties were confidential unless the States concerned consented to their publication. The Subcommittee welcomed all feedback on its reports from the Committee against Torture and organizations representing civil society.
3. Section II of the report, entitled "The year in review", looked at developments in key areas of operation. It was followed by a section entitled "Engagement with other bodies in the field of torture prevention". The bodies in question included the Committee, other bodies attached to the Office of the United Nations High Commissioner for Human Rights (OHCHR), regional and international organizations and civil society. Section IV dealt with "Issues of note arising from the work of the Subcommittee during the period under review". He drew attention, in particular, to the subsection concerning issues arising from visits to States parties, which contained reflections on generic issues and concerns. Reference could not, of course, be made to specific issues addressed in the confidential reports. The section basically served as a prelude to section V concerning "Substantive issues", which was designed to present a more formal summary of the Subcommittee's views on key topics. The two subsections of section V concerned guidelines on national protective mechanisms and the Subcommittee's approach to the concept of prevention of torture under the Optional Protocol. The Subcommittee reflected at each session on the types of issues that it wished to cover in sections IV and V of the report.
4. The reporting period had been revised in 2010 and now coincided with the calendar year. The next report would therefore reflect the recent change in the size and structure of the Subcommittee. The number of States parties had increased to 57 and he noted with satisfaction that ratifications and signatures were being attracted from all regions of the world. The most recent signatory was Greece, which had signed the Optional Protocol in March 2011.
5. The most important organizational development had occurred in October 2010 when elections had been held for 5 existing members and 15 new members. The expanded 25-member Subcommittee had met for the first time in February 2011 and had elected a new 5-member Bureau. Four country visits had taken place in 2011: three first-time visits to Lebanon, Bolivia and Liberia, and a follow-up visit to Paraguay. The follow-up visit was an important new departure and the Subcommittee hoped to draw fully on the experience thus acquired.
6. He was pleased to announce that authorization had been received from States parties for the publication of five reports and two follow-up replies. The Subcommittee hoped that the trend thus set in motion would continue. Paragraph 19 of the report referred to delays in the receipt of replies from some States parties. However, he could now report that Benin had submitted a full reply and Lebanon a partial reply.
7. He drew attention to subsection II.F on contributions to the Special Fund under article 26 of the Optional Protocol. As noted in the report, the Subcommittee welcomed the agreement in principle on an interim scheme to operationalize the Fund. It was also pleased

with the donations received to date and indications that many more would be forthcoming as soon as the Fund was operational.

8. Turning to subsection IV.A, he said that article 24 of the Optional Protocol had given rise to difficulties of interpretation because of differences between the language versions. It allowed States parties to defer the implementation of their obligations pertaining to visits or national protective mechanisms for up to three years. According to two language versions, a declaration postponing implementation could be made at any time following ratification. According to the four other language versions, such a declaration had to be made upon ratification. The United Nations Office of Legal Affairs had confirmed the “upon ratification” version. The Subcommittee noted in section IV.B on its working practices that it had so far been unable to devote sufficient time to the question of national protective mechanisms. It planned to remedy that situation in the future, since the mechanisms were a key element of the Subcommittee’s mandate.

9. Responding to queries regarding the statement in paragraph 45 of the report that the Subcommittee was “tending towards a model by which it would seek to visit States parties as soon as possible following their ratification of the Optional Protocol”, he said that it would have been more accurate to state that the Subcommittee was attracted to such a model. It was not currently taking any practical steps in that direction.

10. With regard to confidentiality, he drew attention to the statement in paragraph 48 that the Subcommittee did not consider either its activities or the approaches it took to its work to be confidential as such, and it welcomed the opportunity to make them as widely known as possible. While it fully respected the confidentiality of reports, it was committed to ensuring the transparency of its working practices and to enhancing working relations with other bodies.

11. Turning to the issues arising from visits to States parties, he said that the Subcommittee invariably stressed the need for close cooperation on the part of the relevant authorities. Overcrowding in pretrial detention was a very common problem and all States parties were reminded of their obligations in that regard.

12. As noted in paragraph 53, the Subcommittee wondered why States parties should think it sufficient to put in place laws and procedures providing for preventive safeguards, when the safeguards were manifestly not respected in practice. The Subcommittee sought to ensure that the persons whom it met during its visits did not suffer reprisals. Another important issue was that of prison self-governance systems.

13. In the Subcommittee’s view, national protective mechanisms could assume a variety of forms provided that they operated effectively in the State party concerned. The Subcommittee had issued preliminary guidelines in its first annual report. It now proposed to revise and develop them in the light of its experience.

14. The Subcommittee had frequently been asked to elaborate on its approach to the concept of prevention and sought to respond to that query in paragraphs 103 to 107 of the report. It was not the Subcommittee’s role to develop a legal concept or to set out the jurisprudential parameters of legal obligations. What was more important was to develop guiding principles to be taken into account by the Subcommittee when operating in a preventive capacity in the context of country visits.

15. The expansion of the Subcommittee’s membership from 10 to 25 experts posed challenges, particularly given the budgetary constraints facing all treaty bodies, but it also presented opportunities. The key was to make the most effective use of the expertise of the 25 members. Until its enlargement, the Subcommittee had carried out only three or four country visits per year. It was time to see whether country visits, which lasted around 10

days, could be supplemented by more frequent but less complex visits focusing on such areas as follow-up or liaison with national preventive mechanisms.

16. In the framework of streamlining the Subcommittee's internal workings, it had been decided that its expanded Bureau would have four vice-chairpersons responsible respectively for: country visits; national preventive mechanisms; relations with international and regional organizations; and the Subcommittee's jurisprudence. Regional teams would be established to help refine the Subcommittee's work on national preventive mechanisms. Team members would work with national preventive mechanisms in specific regions but would not necessarily be drawn from those regions. The teams would report at the plenary meetings of the Subcommittee, which hoped that the new approach would generate more concrete input into its discussions on national preventive mechanisms than had previously been possible.

17. The Subcommittee would visit Brazil, Mali and Ukraine in 2011. The size of the visiting teams would be expanded to ensure that all new members became acquainted with the workings of visits and national preventive mechanisms as quickly as possible. It was hoped that, in the future, the Subcommittee would be able to conduct a greater number and wider variety of visits.

18. **The Chairperson** commended the Subcommittee on its creativity and on what it had accomplished thus far and said that the process of establishing national preventive mechanisms was moving in the right direction.

19. **Mr. Bruni** asked what role national preventive mechanisms played in determining the choice of countries for follow-up visits and to what extent interaction between the Subcommittee and national preventive mechanisms influenced decisions on follow-up action.

20. Noting that the Subcommittee had expressed surprise in its report at the difficulties it still sometimes encountered when trying to gain access to persons deprived of their liberty, he wondered whether the Subcommittee really could not understand why such difficulties arose in certain States parties.

21. Observing that the Committee had published the results of its inquiry into reports of the systematic use of torture in Brazil, which the Subcommittee intended to visit in the current year, he asked whether it took such available information into account when planning visits and whether the existence of such a report might alter its approach.

22. **Mr. Evans** (Chairperson of the Subcommittee on Prevention of Torture) said that the Subcommittee was still on a learning curve with regard to the role that could be played by national preventive mechanisms in follow-up and what procedures worked best. Where a report of the Subcommittee had been made public and was therefore known to the national preventive mechanism, the mechanism itself was frequently best placed to monitor the implementation of the Subcommittee's recommendations and could help assess whether a follow-up visit by the Subcommittee was appropriate. The more quickly States parties fulfilled their obligation to establish national preventive mechanisms and the more that was done to ensure that they were strong, independent and effective, the better placed the Subcommittee would be to focus on countries that required closer attention.

23. With regard to difficulties sometimes encountered when the Subcommittee attempted to gain access to persons deprived of their liberty, senior officials who were aware of the States parties' obligations under the Optional Protocol could be deliberately obstructive. States parties needed to impress upon all officials that they were obliged to cooperate with the Subcommittee.

24. With regard to the planning of country visits, although it was not for the Subcommittee to act as a follow-up mechanism for other bodies, it would be derelict in its

duty if it failed to take fully into account any information available prior to visits and it always tried to do so.

25. **Ms. Sveaass** asked how the apparent reluctance of some States, especially those in the Group of Western European and Other States (WEOG), to ratify the Optional Protocol might be explained. Some appeared unwilling to do so because they had not made sufficient progress on the establishment of national preventive mechanisms, but similar shortcomings had not prevented other States parties, such as many in Eastern Europe, from proceeding with ratification. It would also be useful to know how the Subcommittee's report on its follow-up visit to Paraguay had been structured and how the visit had been organized, as that State party was due to present its periodic report to the Committee in the near future. Lastly, she requested more information on how the Subcommittee and the International Committee of the Red Cross worked together, especially since both bodies observed strict policies of confidentiality in the context of their country visits.

26. **Mr. Mariño Menéndez** said that, while he understood that the task of preventing torture went beyond purely legal considerations, he would like to know to what extent the Subcommittee made use of international law on the prohibition of torture, for example when it made recommendations to States parties after initial and follow-up visits. He asked whether the Subcommittee had ever been tempted to report, albeit confidentially, cases of systematic violations of the prohibition of torture it had encountered during its visits and whether the Subcommittee could envisage serving as a kind of early warning system for such cases. In order to better understand how the Subcommittee functioned, he also wished to know how its special rapporteurs were organized, for instance by geographic region or by theme.

27. **Mr. Wang Xuexian** said that section IV.D of the Subcommittee's fourth annual report (CAT/C/46/2), which addressed issues arising from visits, was particularly relevant to the Committee's work. Consideration should be given to how the Subcommittee and the Committee could share information in order to strengthen each other's work while maintaining scrupulous respect for the principle of confidentiality. He asked whether, when deciding which countries to visit, the Subcommittee took account of which States parties were scheduled to come before the Committee. Likewise, the Committee should take account of the Subcommittee's work when engaging in dialogue with States parties.

28. **Ms. Gaer** said that, since paragraphs 62 and 64 of its fourth annual report stated that the Subcommittee did not, and did not intend to, formally assess the extent to which national preventive mechanisms conformed to the requirements of the Optional Protocol, she wondered who should conduct such an assessment. She wished to know who had the right to file a complaint or report in the event that visits by national preventive mechanisms were restricted or that they were prevented from conducting private interviews with detainees or unannounced visits. Were there any measures in place for monitoring the relationship between national preventive mechanisms and States? Had the possibility of ranking those mechanisms been considered, and who would be responsible for doing so? Had there been any explicit instances in which prisoner self-governance had been a specific problem, and with whom the Subcommittee communicated its concerns in that event: the prisoner self-governance committee in the prison concerned, the prison administration or the State?

29. **The Chairperson** suggested that the Committee could encourage States parties that were also parties to the Optional Protocol and had not yet done so to establish national preventive mechanisms. Were there any common reasons stated for delays in ratification of the Optional Protocol and failure to establish national preventive mechanisms? How many designated national preventive mechanisms satisfied the requirements of the Optional Protocol? He finally asked how those mechanisms could be monitored.

30. **Mr. Evans** (Chairperson of the Subcommittee on the Prevention of Torture) said that some States had rushed to ratify the Optional Protocol, while others were taking a more measured approach. Some had discovered, after ratification, that the establishment of a national preventive mechanism was more complex and costly than they had anticipated. Others were establishing such mechanisms before ratification. He noted that there was considerable peer pressure in the Group of Western European and Other States, many of which were likely to ratify the Optional Protocol in the near future.

31. Regarding the follow-up visit to Paraguay, he said that the visit had been conducted in four days, and had focused on discussions of the Government's response to the Subcommittee's initial recommendations, rather than on visits to places of detention. The modalities of cooperating with the International Committee of the Red Cross (ICRC) had been discussed in the Subcommittee's plenary meetings. One of the main concerns of both parties was to ensure that they did not visit the same places of detention at the same time. The focus therefore remained largely on logistical cooperation.

32. While the Subcommittee used international law to inform its decisions, efforts were made to ensure that the language used in its recommendations was accessible to all. At the end of each country visit, the Subcommittee issued its preliminary recommendations orally, and submitted recommendations in writing at a later date. The Subcommittee recognized that there was no limit to what it could recommend with regard to prevention, and that while countries were not bound by law to take certain preventive measures, the Subcommittee would still encourage them to do so.

33. The Subcommittee should take account of the Committee's reporting cycle and its concluding observations when selecting countries to visit. It did not deem it necessary or appropriate to rank national preventive mechanisms, but rather focused on advising and assisting States in designating and strengthening their national mechanisms. The Subcommittee explained to States its interpretation of how national preventive mechanisms should function, rather than assessing and accrediting them. Complaints of national preventive mechanisms being impeded in their work were communicated to the Subcommittee by the mechanisms themselves or by civil society. There was also an increasing network of peer-to-peer monitoring between national preventive mechanisms. He pointed out that a number of non-signatory States were considering establishing national preventive mechanisms, despite not being party to the Optional Protocol.

34. Prisoner self-governance was widespread and widely reported on. The comments that had been made in that regard reminded States that their role was more than one of perimeter security in such instances. However, while prisoner self-governance could provide valuable structure within a prison community, the dangers must also be recognized. The relevant paragraph sought to face the realities, balance them with ideals and find an appropriate response. At the same time, it sought to establish a bottom line for the system of prisoner self-governance.

35. The Subcommittee was most appreciative of the Committee's highly significant role in reminding States of their obligations to establish national preventive mechanisms. There appeared to be no overarching reason why some States had not established them but many of the difficulties that prevented them from doing so could be overcome if they were reminded of their obligations and offered guidance and assistance. The Subcommittee was placing increasing emphasis on national preventive mechanisms and would focus on States parties that had not yet established them. It recognized that the process was not always easy, but it was always looking for signs that States parties were positively engaged in the process.

36. **Mr. Gallegos Chiriboga** said that he would like to know how the Subcommittee envisioned better cooperation with the Committee in order to undertake together to eliminate and prevent torture.

37. **The Chairperson** said that that important question could be addressed during the closed part of the meeting.

The public part of the meeting rose at 4.35 p.m.