



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

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Summary record of the first part (public)* of the 1044th meeting**

Held at the Palais Wilson, Geneva, on Thursday, 17 November 2011, at 10 a.m.

Chairperson: Mr. Wang Xuexian (Vice-Chairperson)

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.1044/Add.1.

** The summary records of the 1043rd meeting appear as documents CAT/OP/15/SR.6 and Add.1.

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In the absence of the Chairperson, Mr. Wang Xuexian, Vice-Chairperson, took the Chair.

The meeting was called to order at 10.15 a.m.

Consideration of reports of States parties under article 19 of the Convention

(continued)

Report on follow-up to concluding observations (documents without symbols distributed in the meeting room in English only)

1. **Ms. Gaer** (Rapporteur on follow-up to concluding observations) said that the follow-up procedure had been instituted in 2003. She drew attention to an informal analysis of the current situation contained in three documents distributed to the Committee.
2. The first document listed topics identified by the Committee in its concluding observations during the period from the thirtieth to the forty-sixth session for follow-up by individual States parties.
3. The second document contained tables showing trends in the topics identified by the Committee. Since the initiation of the procedure, 109 States parties had been reviewed once and 92 had been reviewed twice. The number of follow-up issues identified for different States parties was also shown. The five most frequently raised issues were: prompt, impartial and effective investigations; prosecution and punishment of persons responsible for violations of the Convention; implementation of fundamental legal safeguards; establishment of the right to complain and consideration of cases; and training and awareness-raising.
4. The third document compared follow-up issues raised in concluding observations with questions raised in lists of issues prior to reporting, the new procedure introduced in 2009. States parties were asked in the concluding observations to provide follow-up information within one year. Between 70 and 75 per cent of States parties provided such information within the time limit; others took longer and some failed to respond at all. The list of issues prior to reporting comprised follow-up questions concerning all issues. She asked the secretariat to indicate approximately how long in advance of the due date of a State party's periodic report they were issued.
5. **Mr. Nataf** (Secretary of the Committee) said that the periodicity for reporting to the Committee was four years. The lists of issues prior to reporting were sent to States parties immediately after their adoption by the Committee. The deadline set for a response depended on the session at which the list was adopted. The deadline for lists adopted at the May session was slightly longer than that for lists adopted at the November session. However, it was never less than 16 months and usually about 18 months preceding the due date of the report. Very few States parties replied on time; most of them took between 18 months and 2 years.
6. **Ms. Gaer** said that the follow-up information submitted by States parties was evaluated and a letter requesting further information was drafted if necessary. The instructions governing the preparation of lists of issues prior to reporting had been amended to ensure that the lists reflected such follow-up information and additional requests.
7. The document comparing follow-up issues and lists of issues prior to reporting focused on five States parties, two in Latin America, two in Eastern Europe and one in Western Europe. In most cases the follow-up issues had been incorporated in the list of issues prior to reporting. However, where the follow-up response arrived late and dealt with a large number of issues, it took a considerable amount of time to review the response and the State party might, in the meantime, have received a list of issues prior to reporting for its next periodic report. It followed that the number of follow-up issues raised should

probably be reduced, since more than half of all States parties had been receiving six or more follow-up requests instead of three to five, as originally agreed.

8. Referring to the section of the first document concerning the forty-fifth and forty-sixth sessions, she noted that although only four paragraphs of the State party's report had been identified in the case of Bosnia and Herzegovina, in practice follow-up information on 9 or 10 issues had been required. Five paragraphs had been identified for Cambodia, but paragraph 14 dealt with a large number of issues. The worst case of all was that of Ecuador, since each of the five paragraphs covered a wide range of issues. The situation had not really improved at the forty-sixth session, when eight States parties had been reviewed. Even where only three paragraphs had been identified, the number of issues continued to be very large.

9. She therefore proposed that the Committee should identify follow-up topics rather than follow-up paragraphs when adopting its concluding observations, especially since a large number of States parties had now accepted the procedure involving list of issues prior to reporting.

10. There were regional differences in terms of the most frequently addressed follow-up issues. For example, while most of the top issues addressed in States belonging to the Western European and Others Group were the same as elsewhere, another top issue concerned migrants, non-refoulement and holding centres for asylum-seekers or other migrants. The first four issues in the Eastern European region corresponded to the global list, but the fifth issue was not training but protection of children and minors. The fifth issue in the African region tended to be redress and compensation mechanisms under article 14 of the Convention. The fourth issue in the Asia and the Pacific region frequently related to detention and punishment practices and the fifth to monitoring of detention facilities by an independent body. In the Latin American and the Caribbean region the third issue tended to be gender-based violence or trafficking, the fourth issue training and awareness-raising, and the fifth issue redress, compensation and rehabilitation.

11. To sum up, the Committee should be more disciplined in its approach to follow up in the future, limiting itself to the following three issues: the need to ensure prompt, impartial and effective investigations; provision for effective prosecution and sanctions; and the availability of fundamental legal safeguards. The issues could, of course, be fine-tuned for each State party in the light of the review.

12. **The Chairperson** warmly commended the Rapporteur on her in-depth analysis and guidance.

13. **Ms. Sveaass** proposed that monitoring for preventive purposes should be added to the theme of fundamental legal safeguards or that of investigations. She also recommended that the Committee should focus on minors, especially in the light of recent information from the media and NGOs regarding the inhuman treatment of children in certain States parties.

14. **Ms. Belmir** said that the Committee's questions should be more dynamic and focused. States parties' replies to its traditional somewhat static questions tended to be uninformative. It was preferable to focus on practical issues and statistics. States parties that had been guilty of serious violations in the past should be required to report on specific action to address impunity and on the compensation awarded to vulnerable groups.

15. **Mr. Bruni** said that he fully agreed with the Rapporteur's proposals, since they simplified the Committee's decision-making procedures. The three issues she had mentioned were pragmatic and comprehensive. One or two additional issues could be included if the situation in a specific State party so required, but that should be the maximum.

16. **Mr. Mariño Menéndez** welcomed Ms. Gaer's recommendations, which would make the Committee's work more efficient. He suggested that the principle of identifying the same three issues for all States parties and refining them or selecting additional topics to reflect particular circumstances should be applied for a trial period. He also highlighted the importance of redress as a possible topic. Greater coordination with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment could help the Committee to ensure that its questions were more focused, in view of the Subcommittee's experience on the ground.

17. There being no comments from the public, **the Chairperson** invited Ms. Gaer to respond to the points made.

18. **Ms. Gaer** welcomed the suggestion made by Mr. Mariño Menéndez, and proposed that it be followed during the remainder of the current session. Her figures showed that the Committee had in effect been pursuing such an approach already, given the frequency with which the issues of ensuring prompt, impartial and effective investigation, prosecution and sanction of perpetrators, and fundamental legal safeguards had been identified for follow-up. If the practice were institutionalized, its impact on the application of the Convention could be assessed. She drew attention to the need to avoid overlap with lists of issues prior to reporting.

19. **Ms. Sveaass** stressed that the fact that the Convention applied to all forms of deprivation of liberty, including in psychiatric hospitals and similar facilities, should be borne in mind when requesting information on legal safeguards, whether or not the topic was extended to cover monitoring.

20. **The Chairperson**, again expressing appreciation to Ms. Gaer for her valuable contribution, proposed that the Committee should adopt her recommendations and that all country rapporteurs should be requested to follow them in identifying topics for follow-up.

21. **Mr. Bruni** sought confirmation that the three topics highlighted by Ms. Gaer would be used for all States parties, with one or two additional topics to be identified as necessary.

22. **The Chairperson** replied in the affirmative, and asked whether the Committee agreed to his proposal, on that understanding.

23. *It was so decided.*

Consideration of communications under article 22 of the Convention (*continued*)

Report on follow-up to communications (CAT/C/47/3)

24. **The Chairperson** said that, although one of the cases to be discussed under the agenda item concerned the country of a member of the Committee, the fact that a decision had already been reached in the case and the public nature of the meeting meant that the member concerned could participate in the Committee's deliberations.

25. **Mr. Mariño Menéndez** (Rapporteur on follow-up to communications) introduced the draft interim progress report on follow-up to communications, contained in document CAT/C/47/3, covering cases for which information had been received from States parties or complainants since the Committee's previous session. In view of the nature of the cases dealt with, he expressed the view that it was important for the Committee to establish in what circumstances a case could be closed without infringing any of the rights enshrined in the Convention. Factors such as legal obstacles to full implementation of decisions by States parties, partial redress achieved, and the passage of time should be taken into account. He wondered whether future reports should include follow-up to interim measures of protection, which the Committee regarded as binding under the Convention.

26. The Committee had reached a decision on the case *Ktiti v. Morocco* in May 2011, during its forty-sixth session; however, during its consideration of the State party's fourth periodic report at its current session, it had become apparent from comments made by the Moroccan delegation that the State party did not regard the decision as final. The Committee had ruled that extraditing Mr. Ktiti to Algeria would violate the Convention; the State party continued to refer to "postponing" the extradition. In response to Mr. Ktiti's transfer to a different place of detention, his relatives had asked the Committee, on 16 November 2011, to request updated information from the State party on the current situation of the complainant. He proposed that the Committee should continue to follow up the case with a view to ensuring that its decision was implemented.

27. *It was so decided.*

28. Turning to the longstanding case *Guengueng v. Senegal*, which related to that State party's failure to prosecute or extradite the former President of Chad, Hissène Habré, **Mr. Mariño Menéndez** said that an extradition request from Belgium remained pending before the International Court of Justice. The State party had stated that Mr. Habré could not be tried under its legislation, while the Chadian authorities had announced that they would prefer him to be extradited to stand trial in Belgium. The State party had demonstrated goodwill in the matter, including on the occasion of the visit by a delegation from the Committee, but should nevertheless be reminded of its obligations under both the principle *aut dedere aut judicare* and the Committee's decision.

29. **Ms. Sveaass** expressed the view that the Committee should issue a strong decision that went beyond simply following up its previous decision, given the importance of fighting impunity for crimes under the Convention.

30. **Mr. Bruni** fully supported her view, and recommended that the Committee should request the State party to extradite Mr. Habré to Belgium.

31. **Mr. Mariño Menéndez** pointed out that Belgium was not the only State competent to try Mr. Habré.

32. **The Chairperson** expressed the view that it would be premature to specify the jurisdiction to which Mr. Habré should be extradited, given that the most recent request from Belgium was still pending. The State party should, however, be reminded of its obligation to either prosecute or extradite.

33. **Ms. Gaer** sought additional information on the case, including with regard to the involvement of the African Union. The principle at stake was clear: the State party must either prosecute Mr. Habré or extradite him for trial elsewhere. She wondered, however, whether it was for the Committee to enter into the particulars.

34. **Ms. Sveaass** said that the main priority was to ensure that Mr. Habré stood trial. If that was impossible in the State party, it followed that he should be extradited; however, it would be acceptable to formulate any such recommendation in a general manner.

35. **Mr. Mariño Menéndez** suggested that wording could be taken from the Committee's original decision, which referred to extraditing Mr. Habré to Belgium or any other competent State. Responding to Ms. Gaer, he explained that the African Union had acted on the political, rather than the judicial, aspects of the matter. He suggested that the Committee should remind the State party of its obligations, ask for Mr. Habré to be extradited to Belgium or another competent State, and request information on the implementation of the Committee's decision. The issue was becoming increasingly urgent, as many of the alleged victims were now elderly and some had already died; however, the Committee would be exceeding its authority by making an unqualified statement that Mr. Habré should be extradited to Belgium.

36. **Mr. Bruni** asked why it was impossible to try Mr. Habré in the State party and enquired about his status there. Was any restriction placed on his movements?

37. **Mr. Mariño Menéndez** replied that he did not have refugee status, but had been granted political asylum. The State party had given assurances that he would be prevented from leaving its territory, which the International Court of Justice had found to be sufficient. Although the African Union had urged the State party to try Mr. Habré, the Court of Justice of the Economic Community of West African States (ECOWAS) had ruled, in a case brought by Mr. Habré himself, that the State party could not prosecute him under its own legislation, which it had specifically amended to apply retroactively. Rather than establishing a special tribunal, the Government of the State party now appeared inclined towards extradition as the best way of resolving the issue.

38. **Mr. Bruni** acknowledged the concerns expressed with regard to identifying the State to which Mr. Habré should be extradited, but pointed out that extradition could take place only at the request of an individual State. Belgium had submitted such a request; if it were granted, it would not be inappropriate to request the State party to comply with it.

39. **Mr. Mariño Menéndez**, conceding the point, proposed that the Committee should adopt a decision based largely on the text of its previous decision, amended to reflect subsequent developments.

40. *It was so decided.*

41. **Mr. Mariño Menéndez**, turning to Serbia, said that the State party had paid compensation to complainants in three cases and was in the process of reaching agreement on compensation in the fourth. In none of the cases, however, had investigations produced a satisfactory outcome or identified the perpetrators. In the case of *Nikolić v. Serbia and Montenegro*, the Supreme Court of Serbia had rejected the request for further investigation and the State party had alleged legal obstacles to proceeding with investigations in the remaining cases. The Committee had to decide whether it wished to insist that the State party continue investigations, given that, under the Convention, statutes of limitations did not apply to crimes of torture. Since compensation had been paid in three of the cases, the Committee could urge the State party to complete negotiations on payment of compensation in the case of *Dimitrov v. Serbia and Montenegro* and agree to the closure of the remaining cases, or at least to that of *Ristić v. Serbia and Montenegro*, for which the Committee had handed down its decision in 2001.

42. **The Chairperson** said that payment of compensation by the State party demonstrated its sincere desire to discharge its responsibilities under the Convention, for which the Committee ought to give it due credit.

43. **Ms. Belmir** wondered whether the complainants and the Committee could rest content with material compensation and drop the question of impunity. The primary goal was surely to establish the truth of the cases. Was the State party truly unable to do so?

44. **Mr. Mariño Menéndez** agreed that that was the dilemma facing the Committee. Noting the troubled recent history of the State party, he proposed that the Committee urge it to continue investigations in all four cases or provide more detailed justification for closing them. He agreed that the State party's willingness to pay compensation should also be duly recognized.

45. *It was so decided.*

46. **Mr. Mariño Menéndez** said that in the case of *Agiza v. Sweden*, the complainant had been released from prison in Egypt and was currently living in Cairo. He had requested, by way of further compensation from the State party, a residence permit to live in Sweden, on the grounds that his wife and children lived there and that he required medical attention.

The State party, however, was of the view that the complainant had already received compensation and that an earlier application for a residence permit had been turned down because he represented a threat to its national security. Nevertheless, it had confirmed that, should he choose to apply again for a residence permit, it would handle such an application in accordance with existing legislation. Supported by **Mr. Bruni** and **the Chairperson**, he proposed that the Committee declare the case closed.

47. *It was so decided.*

48. **Mr. Mariño Menéndez** said that in the case of *Chahin v. Sweden*, a new application for asylum by the complainant had been lodged in August 2011 and was still being heard. The Committee should remind the State party that deportation of the complainant to Syria would be regarded as a violation of article 3 of the Convention. In the case of *Mondal v. Sweden*, the complainant had been granted permanent residence and he proposed that the Committee declare the case closed.

49. *It was so decided.*

50. **Mr. Mariño Menéndez** said that in the case of *Mükerrem Güclü v. Sweden*, the complainant had been granted a temporary residence permit because the Committee had found that her deportation to Turkey would constitute a violation of article 3 of the Convention. The State party had not granted her a different permit because it had determined that her activities in the Workers' Party of Kurdistan (PKK) could be considered as involving in initiating or helping others to commit war crimes or crimes against humanity. However, the State party had provided assurances that she would not be deported while her residence permit was valid or during consideration of her application to renew the permit. He suggested that the Committee take note of the fact that the complainant was under protection for the time being, await the result of her application for renewal and remind the State party that her deportation to Turkey would be regarded as a violation of article 3.

51. **Ms. Sveaass** reminded the Committee that the complainant's husband, Mr. Munir Aytulun, was in an almost identical situation and wondered whether the Committee could make a recommendation to the State party aimed at ensuring that the couple was not split up.

52. **Mr. Mariño Menéndez** agreed that such a recommendation could be made and said that the circumstances applying to the case of *Munir Aytulun and Lilav Güclü v. Sweden* were identical to those of *Mükerrem Güclü*. The Committee should take a similar approach to both cases.

53. **The Chairperson** suggested that the Committee take note that the complainants were not under immediate threat of deportation, recommend that action be taken to avoid splitting up the couple and ask the State party to keep it informed of developments.

54. *It was so decided.*

55. **Mr. Mariño Menéndez** said that the case of *Bakatu-Bia v. Sweden* had been resolved satisfactorily and should thus be closed. In the case of *Jahani v. Switzerland*, he suggested that the Committee also end examination of the communication on the basis of the measures taken by the State party and the partial satisfaction expressed by counsel for the complainant.

56. *It was so decided.*

57. **Mr. Mariño Menéndez** said that the three cases involving Tunisia that were subject to follow-up by the Committee should be looked at in a fresh light given recent events in the State party. In the case of *Barakat v. Tunisia*, the Committee had issued its decision in 2004 and the State party should be urged to accelerate investigation of the case as a matter

of urgency. He noted that family members of Mr. Barakat had requested the presence of a specific doctor to participate in inquiries into the cause of his death. In the case of *Ben Salem v. Tunisia*, the State party should also be urged to complete investigations as soon as possible.

58. **The Chairperson** suggested that the Committee ask the State party to complete investigations regarding both cases as soon as possible and support the family's request in the case of *Barakat v. Tunisia* that an expert doctor of its choice be involved in inquiries into the cause of the victim's death.

59. *It was so decided.*

60. **Mr. Mariño Menéndez** said that the investigating judge had closed investigations in the case of *Saadia Ali v. Tunisia* in February 2009 in the absence of fresh evidence. Supported by **Ms. Belmir**, he said that the Committee should inform the State party that, regardless of that decision, it was under an obligation to implement the recommendations contained in the Committee's decision of 2008 and, as a matter of urgency, to inform the Committee of progress made. If no answer was forthcoming in the ensuing six months, the Committee could consider resorting to other means of exercising pressure, such as inviting the State party's ambassador for consultations on the matter. He noted that the Prime Minister of Tunisia had reportedly stated in May 2011 that the authorities would implement all the Committee's decisions without delay.

61. **The Chairperson** suggested that the Committee inform the State party that it considered the case to be urgent, that proper investigations should be completed as quickly as possible and that it would hold the Prime Minister to his word.

62. *It was so decided.*

The public part of the meeting rose at 12.20 p.m.