



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

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COMMITTEE AGAINST TORTURE

Forty-second session

SUMMARY RECORD OF THE 869th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 28 April 2009, at 3 p.m.

Chairperson: Mr. GROSSMAN

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The meeting was called to order at 3.10 p.m.

MEETING WITH STATES PARTIES TO THE CONVENTION AGAINST TORTURE

1. The CHAIRPERSON welcomed the representatives of States parties to the Convention against Torture, who would perhaps wish to address the question of the Committee's working methods, in particular follow-up to concluding observations, which was especially important in that a treaty body was not only a moral authority; in accordance with the wish of States parties, its primary function was to express opinions that were authoritative and carried legal consequences. Any comments aimed at enhancing the Committee's effectiveness in accomplishing that task would therefore be appreciated.
2. To date, 146 States had ratified the Convention against Torture, producing a substantial workload for the Committee. In the interests of improving the efficiency of the process of considering periodic reports, avoiding time-wasting and highlighting the issues to be addressed as priorities, the Committee had, at its thirty-eighth session, introduced a new optional procedure under which a list of issues was drawn up prior to the submission of periodic reports and transmitted to States parties.
3. Mr. AMR ROSHDY HASSAN (Egypt) wished to know the criteria on which the Committee against Torture based its appointment of rapporteurs and co-rapporteurs for periodic reports and whether the rapporteur for Israel's fourth periodic report, which was to be considered during the current session, had been appointed.
4. Mr. QIAN BO (China) shared the Chairperson's views concerning the Committee's function. Its recent practice, however, necessitated a number of comments, essentially concerning the exercise of its mandate. It was particularly important for the Committee to demonstrate impartiality and cooperate with States parties in a spirit of mutual respect. In the consideration of some reports, however, China had noted that issues raised by Committee members were entirely unrelated to the substance of the Convention, which was gravely detrimental to the Committee's image, called its credibility into question and constituted a violation of the professional ethics by which the members of the Committee were bound.
5. China had no objection in principle to development of the working methods, provided that any change was the outcome of consultation with States parties and did not interfere with the mandate set forth in the Convention, and that the principles of impartiality, transparency and objectivity were respected.
6. The concluding observations prepared by the Committee should illustrate the diversity of views expressed by its members and, in line with the principle of transparency, dissenting views should be duly reflected. By the same token, any comment by a State party on concluding observations should be annexed to those observations.
7. The participation of non-governmental organizations (NGOs) in the work of the Committee had its place, but care should be exercised; some NGOs claimed to protect and promote human rights and yet distorted facts and provided false information.

8. China also encouraged the Committee to devote more attention to the views of States parties and to be more mindful of their concerns.

9. Ms. HENDEL (Algeria) agreed with the representative of China that the Committee's working methods, on which the effective implementation of the Convention and positive interaction between the Committee and States parties depended, should not be changed without first consulting the latter; it was understood that any change in those methods should necessarily fall within the framework set by the Convention.

10. Algeria had presented its third periodic report at the May session, dispatching an important delegation that had made every effort to reply to the various questions from the members of the Committee. Much to the surprise of the Algerian authorities, however, the Committee's observations had completely failed to reflect the views expressed by the delegation, particularly concerning the process for the promotion and protection of human rights in Algeria despite significant constraints. In its concluding observations, the Committee had simply revisited the views expressed by the Chairperson of the Committee at the opening of the debate, disregarding the explanations and replies provided by the Algerian delegation, as if no discussion had taken place. The Committee should not lose sight of the fact that, under Human Rights Council resolution 9/8 on the effective implementation of international human rights instruments, specifically paragraph 3 (g) thereof, treaty bodies were encouraged to provide concrete and practical concluding observations, taking into consideration views expressed during the dialogues with them. It went without saying that States parties were best placed to follow up concluding observations drawn up in that manner.

11. It was regrettable that, despite requests made to that end, the comments of the Algerian Government on the Committee's concluding observations had not been annexed to the Committee's annual report to the General Assembly, in disregard of the principle of open debate. For reasons of equity and transparency, States parties were entitled to have their comments on concluding observations annexed to those observations. That practice was moreover already followed by the Committee on the Elimination of Racial Discrimination, which annexed the comments of States parties on its concluding observations to its annual report to the General Assembly.

12. Algeria's suggestion was that concluding observations should be prepared in such a way as to enable the State party to follow the reasoning by which arguments developed during the consideration of its report were ultimately taken into account or rejected. Such an approach was instructive and also conducive to strengthening the State party's commitment. As an independent body, the Committee was free to assess the relevance of explanations provided by the State party, but respect for the principles of transparency and open debate presupposed that the latter's views would be annexed to the Committee's annual report.

13. The Committee members should exercise caution concerning information communicated by NGOs, not forgetting that some NGOs were in fact political opposition movements that were guilty of the most flagrant human rights violations and lacked all legitimacy as providers of information. In the context of harmonizing the practices of treaty bodies, which was also

recommended in the aforementioned resolution, the Committee should seek to identify a method for analysing and dissecting information by source in order to ensure that more caution was exercised in the matter.

14. The CHAIRPERSON said that the implementation of an instrument could give rise to various types of monitoring: political, carried out directly by Government representatives - a route not chosen by the States parties to the Convention - jurisdictional, leading to binding decisions, or quasi-jurisdictional, combined with political monitoring. The Committee performed quasi-jurisdictional monitoring of implementation of the Convention; it established facts, was based on a legal tradition and conducted its activities fully independently. More specific information ought to be provided on cases where the Committee would be out of keeping with the principles of objectivity and neutrality.

15. Committee members could express a dissenting opinion in the observations adopted, as had been done, for example, in the Agiza case with regard to extraordinary renditions and diplomatic assurances. The absence of any dissenting opinion in the observations led to the conclusion that they had been adopted by consensus. It was important, however, for experts to have guarantees as to the confidential nature of their discussions.

16. Article 18 of the Convention provided that the Committee should establish its own rules of procedure. For an expert committee to consult with States parties on its rules of procedure could not but compromise its independence and consequently its impartiality and objectivity. The appointment of rapporteurs was the culmination of a process and was based on consensus.

17. Information derived from NGOs was dealt with by independent experts, who were widely experienced, knew how to take matters into consideration and accepted no information without first having weighed and examined it. The United Nations gave no say to NGOs that supported terrorism and took no account of their views, but terrorists also had the right not to be subjected to torture, in accordance with the Convention, not to be victims of enforced disappearance and not to be held in a place of secret detention. The Committee was empowered to receive communications from all persons, including terrorists, and, while denouncing their wrongdoings, it nonetheless condemned all instances of their torture or enforced disappearance.

18. Mr. AMR ROSHDY HASSAN (Egypt) again asked who had been or was to be appointed as rapporteur for Israel and on the basis of what criteria.

19. Mr. MADSEN (Denmark) said that his country attached great importance to the independence of the Committee. While it was vital to persevere in improving the Committee's working methods, States should not play a major role in the matter; the Committee was best placed to judge any changes that should be made. On that subject, he asked whether the Committee believed that other improvements could be made in future and what the nature of its cooperation with other committees was.

20. Further details of the Committee's view concerning the role of NGOs in its work and means of improving cooperation with NGOs would be welcome.

21. The Committee should state its views on the matter of additional meeting time, given that the backlog in its work was diminishing and uncertainties remained as to the functioning of the new system for the list of issues for consideration. In particular, it should indicate how it intended to use the potential additional time allocation, whether other possibilities were available and whether the matter had been taken up with other committees.
22. Ms. HENDEL (Algeria) shared the Chairperson's view concerning the need to maintain the Committee's independence. She stressed, however, that concluding observations were intended for States parties, the views of which should to some extent be taken into account in the interests of their receptiveness to and acceptance of those observations. The question of the preparation of concluding observations posed another question, namely that of the Committee's interactions with States parties. The Chairperson had rightly emphasized that the Committee was a quasi-jurisdictional body, meaning it was at liberty to take into consideration or not the views of a State party. However, if the State party was given no indication of why its views had not been taken into account, the concern to ensure respect for the principle of open debate - one of the fundamental principles on which the functioning of a quasi-jurisdictional body depended - demanded that they be annexed to the annual report submitted to the General Assembly.
23. Ms. MORAWIEC MANSFIELD (United States of America) commended the Committee's efforts to improve its working methods, particularly in the area of follow-up to concluding observations, which played a part in making States accountable for the manner in which they discharged their obligations. It was important for the Committee to conduct its activities fully independently, without being subjected to political or other pressures. She associated herself with the questions posed by Denmark concerning the Committee's working methods and wondered in particular how those methods would evolve in future, bearing in mind the adopted system of preparing the list of issues for consideration prior to the submission of periodic reports.
24. Mr. QIAN BO (China) agreed that it was for the Committee to determine its working methods but stressed that those methods should fall within the framework of the Convention and exceed neither the mandate of the Committee, nor the principles and purposes of the Charter of the United Nations.
25. China supported Egypt's remarks concerning the criteria for the selection of rapporteurs, who should be chosen in accordance with the principles of transparency and fairness, thereby assuring States parties that the Committee functioned on a fully independent basis.
26. China expressed the hope that the Committee would successfully identify specific practical rules for guaranteeing the reliability of information from NGOs; useful as it was for the Committee to gather information from such organizations, there was nevertheless room to improve the methods used to do so and avoid some of the uneven practices observed in the past.
27. The CHAIRPERSON was pleased to note that States parties attached great importance to the Committee's independence.

28. On the subject of rapporteurs, it should be stressed that, in accordance with the Convention, all Committee members were independent experts, who consequently took instructions from no one. Any Committee member could be elected as a country rapporteur and, where necessary, declare himself incompetent in the event of a conflict of interest or on any other grounds. Rapporteurs were nominated by a collective and transparent decision-making process based on specific criteria, such as nationality and knowledge, and taking into account as much as possible the issues of parity and language. It was possible for States parties to know the identity of rapporteurs, whose work was made public, well in advance. It should be recalled that concluding observations were not only the work of the rapporteur but the outcome of collective decisions taken by the Committee as a whole.

29. In the further interest of transparency, the Committee might conceivably draw inspiration from the Inter-American Commission on Human Rights and webcast its public meetings, which would widen its audience and promote respect for the principle of responsibility. It would be interesting to know the views of States parties on that subject.

30. The Committee still had 16 periodic reports to consider, in that 11 more were expected in 2009, and it also needed to prepare lists of issues for consideration prior to the submission of periodic reports (9 for 2009, 9 for 2010 and 22 for the subsequent years). The disturbing fact was that 38 countries had not yet submitted their initial report and the second periodic reports of 49 countries had not been submitted on time, with delays sometimes exceeding 10 years. Given that States were the guarantors of the system they had created, it was essential that they honoured their obligations, into which they had freely entered.

31. As it was, the Committee was considering seven country reports per session and could do no more, which explained the backlog in the consideration of such reports. The number of State reports to be considered was growing and the organization of additional meetings was therefore vital to the Committee's fulfilment of its monitoring functions.

32. Harmonization of the various treaty bodies was essential; several of the international instruments under which those bodies had been established contained similar provisions and it was therefore imperative that they were interpreted in the same way by the different treaty bodies concerned. Several initiatives to that end had already been taken, including inter-committee meetings and meetings of chairpersons of international human rights treaty bodies, but more still should be done.

33. The Committee would consider with due attention the proposal that the comments of States parties on concluding observations relevant to them should be annexed to the Committee's annual reports. Those concluding observations were already posted on the Internet, which was a key source of information worldwide.

34. Concerning follow-up to its comments and concluding observations, the Committee was keen to point out that respect for temporary protection measures was just as important and that States parties were able to attend the public meetings at which the Committee considered the follow-up to its observations.

35. The Committee had a dual function with regard to its rules of procedure in that it was empowered both to establish and interpret those rules. States parties should not forget that they also had important tools available to them, including the ability to nominate the Committee's experts and make criticisms.

36. Mr. MARIÑO MENENDEZ stressed that, in order to ensure the efficiency of its work, the Committee followed a number of good practices in nominating country rapporteurs. First of all, it systematically appointed two experts, a rapporteur and a co-rapporteur, to examine a country's situation, taking into account their respective experience. Further, if a member of the Committee had already served as rapporteur for the country under consideration, the Committee took account of the fact that the member already had some knowledge of the subject. Moreover, in order not to overburden experts, they were allocated no more than two reports per session, a demanding task in that the 10-member Committee was required to consider between seven and eight reports per session, in turn requiring the appointment of between 14 and 16 rapporteurs and co-rapporteurs for each session. Language considerations and possible conflicts of interest, whether owing to nationality or other considerations, were also taken into account. Any Committee member was free to put himself forward or declare himself incompetent for the position of country rapporteur. The final decision, however, lay with the Committee.

37. The Committee observed equally strict principles when it came to gathering information. Hence, it was bound to disclose its sources if a State contested certain items of information. Relevant NGO reports used as reference tools were also published on the Committee's website and any State party could openly question the reliability of a source or the accuracy of information and disseminate its comments. NGO documents were therefore universally accessible, in conformity with the principles of transparency and responsibility.

38. Mr. GALLEGO CHIRIBOGA understood that States parties were very sensitive to the question of transparency. They could rest assured, however, that the Committee's practice of considering periodic reports in public meetings and of publishing concluding observations and general comments on the Internet was entirely in conformity with that fundamental principle. Furthermore, the Committee's decision-making process was built exclusively on consensus and any member with a personal interest in a procedure under way declined to take part. In such conditions, it should not be assumed that the Committee's independence was compromised by the fact that some of its work was not made public.

39. The Committee had a substantial multiple workload and it was the responsibility of States parties to enable it to carry out that workload by endowing it with the necessary resources and means.

40. Inter-committee meetings and meetings of treaty body chairpersons regularly offered the opportunity for different committees to exchange ideas and proposals on harmonization. Those committees, however, had been instituted pursuant to discrete international instruments that gave rise to their own specific obligations, including in the area of working methods, which could not be modified by administrative procedures.

41. Ms. AL RIFAIY (Syrian Arab Republic) underscored the importance of dialogue between States parties and the Committee and recalled that the States which had ratified the Convention against Torture had all done so voluntarily with a common objective, namely that of eliminating torture. Under its rules of procedure and the Convention, the Committee was free to decide its working methods. Certain modalities were set by the Convention, however, and were not therefore subject to change, unless the text, such as the provision concerning the number of Committee members, for example, was renegotiated.

42. Mr. AMR ROSHDY HASSAN (Egypt), returning to the subject of the choice of rapporteurs, wished to know what criteria the Committee might use as a basis for refusing a member's candidature. For example, if a Committee member was known actively to defend the interests of a State party whose report was about to be considered by the Committee, should he not automatically withdraw from the consideration process, or, failing that, should other members not be obliged to prevail upon him to do so, in the interest of the Committee's integrity?

43. Mr. TINAJERO (Mexico) said that the Committee's independence, which was a prerequisite to its efficient functioning, was also manifested through its working methods, in particular the choice of rapporteurs. In the event of a potential conflict of interests, it would be legitimate for the State party concerned, in the case of the consideration of a periodic report, or the author, in the case of the consideration of a communication, to question the choice of rapporteur. The measures taken to improve effectiveness in the consideration of reports, the new optional procedure and the focusing of discussions on specific points were worthwhile and the efforts in those directions should be pursued. For the time being, however, it did not appear necessary to allocate additional resources to the Committee or to enlarge its membership. One means of improving transparency while also facilitating implementation of the Committee's recommendations by States parties would be to communicate to the latter, in addition to concluding observations, the arguments on which the Committee had based its conclusions.

44. Mr. PINO ÁLVAREZ (Cuba) said that the Committee's independence was unquestionably a prerequisite for the efficiency of its work, but that relations between the Committee and States parties should be no less transparent. In that regard, the Algerian proposal that the comments of States parties on concluding observations should be annexed to the Committee's annual report was fully relevant. The Committee had explained that the plurality of information sources, particularly where NGOs were concerned, was a factor of objectivity. It was essential to know, however, what criteria the Committee used as a basis for determining the reliability of those sources and verifying the accuracy of information obtained from them. The reports of some NGOs cited as references were published on the site of the Office of the High Commissioner for Human Rights. Further details of the criteria to be met by those NGOs would be useful.

45. The CHAIRPERSON, returning to the question of the standard of proof, said that it varied according to context. If an alleged case of torture ranked as part of a situation involving systematic or gross human rights violations attested by credible sources, it did not need to be proved beyond all reasonable doubt, which did not necessarily mean that it was regarded as definitively proven; the burden of proof in that case lay with the State.

46. It was regrettable that the matter of the choice of rapporteurs prompted so many concerns in certain States parties, notwithstanding that the systematic appointment of a rapporteur and a co-rapporteur, the consideration of country reports in public meetings and the collective character of all of the Committee's decisions were also guarantees against the partisan slide that some apparently feared.

47. The Committee welcomed the fact that States parties were intent on promoting transparency and disseminating its work and it would reflect with them on means of improving existing practices in that area, including the webcasting of public meetings. On the other hand, the Committee's deliberations would continue to take place in closed session.

48. The Committee hoped that States parties would find the present dialogue as useful and fruitful as it did, and that the ideas exchanged would provide them with constructive food for thought. It was still not so long ago that any criticism of a State's practice of torture was termed a violation of that State's sovereignty, but in ratifying the Convention against Torture, States had established an international normative framework in which such kinds of argument could no longer be invoked.

The meeting rose at 5.05 p.m.