



**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 FIRST PART (PUBLIC)* OF THE 883rd MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 7 May 2009, at 3 p.m.

Chairperson: Mr. GROSSMAN

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.883/Add.1.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (continued)

Report on follow-up to concluding observations (CAT/C/42/CRP.1/Add.4)

1. The CHAIRPERSON invited Ms. Gaer to present her progress report on follow-up to concluding observations.
2. Ms. GAER, Rapporteur for follow-up to concluding observations, presented a chart summarizing the replies received as of 7 May 2009 on follow-up to concluding observations. She noted that many States parties had sent the information requested by the Committee in its concluding observations. Since the new procedure had been established in 2003, the Committee had examined submissions from 80 States parties from which it had requested information concerning the follow-up to its recommendations. Of the 66 States parties that were due to have presented their follow-up reports before the end of the session, 41 had submitted a reply, 33 of them before the due date or between one to four months afterwards. The reminders sent appeared to have been effective. It had been decided that the letters to the States parties should be published on the Committee's website at the end of each country review.
3. The correspondence with States parties reflected, a number of concerns on which the Committee regularly had to request clarification from States parties and which were identical to those set out in the annual report to the General Assembly (A/63/44, para. 57). Since the presentation of its previous annual report, the Committee had sent a dozen requests for additional information to States parties which had submitted information under the follow-up procedure. The recommendations for which information was specifically requested needed to be on important issues, to concern the protection of rights or of individuals and to be able to be implemented within one year. However, as the recommendations had grown longer, the replies expected from States parties had also become more numerous, and therefore the Committee might wish to consider limiting the number of recommendations requiring follow-up. It would also be useful to attach copies of the correspondence with States parties under the follow-up procedure to the list of issues for discussion, to which the Committee had decided to add an item designed to encourage States parties to reply to letters from the Rapporteur. Finally, the Committee should reflect on what action it could take if States parties did not send the information requested.
4. Ms. SVEAASS said that it would be desirable to establish a protocol to guide rapporteurs in their work. Consultation between the Rapporteur for follow-up to concluding observations, Committee members and country rapporteurs was absolutely essential. It could also be useful to attach a summary of the correspondence and documents exchanged under the follow-up procedure to the lists of issues and the requests for clarification. She asked whether the reminder sent to States parties was a standard letter or was drafted to reflect the situation in the country concerned.

5. Mr. MARINO MENÉNDEZ agreed with the idea of drafting a set of guidelines based on Ms. Gaer's experience. In order to lighten the workload of the Rapporteur for follow-up to concluding observations, who was responsible for communicating with 146 States parties, the country rapporteurs could undertake some of the follow-up for the countries they had dealt with.
6. Ms. KLEOPAS said she thought the follow-up procedure could be an opportunity to remind those States parties whose reports were overdue of their obligations. The information received under the follow-up procedure could be used to draw up the lists of issues for discussion.
7. Mr. WANG Xuexian suggested that the Rapporteur for follow-up to concluding observations and the country rapporteurs should propose for a decision by the Committee as a whole, the recommendations on which the State party would be requested to provide further information. The country rapporteurs should be involved in all stages of the follow-up.
8. Ms. BELMIR said that she had recently participated in Bahrain, with the Association for the Prevention of Torture (APT), in a two-day seminar on the Committee's concluding observations on that country's report. Representatives from the police, the gendarmerie, the judiciary and the administration had taken part in the seminar, the purpose of which had been to find ways to follow up on the recommendations. Exercises on the wording of the definition of torture and a workshop examining ways to improve implementation of some of the provisions of the Convention had been organized. That example showed that there was a need for the Committee to become more involved in the follow-up to its recommendations by establishing direct dialogue with the authorities concerned rather than relying solely on sending letters.
9. Ms. SVEAASS said that the Committee should think about criteria that it could use to determine the issues on which it wished to receive information. The implementation of recommendations within one year could no longer be the sole criterion, in view of the complexity of the questions highlighted by the rapporteurs. Furthermore, all members of the Committee should be kept regularly informed, and good coordination was necessary to ensure that the procedure operated effectively. Finally, correspondence exchanged between the rapporteurs and States parties should be systematically included in the files distributed to members of the Committee.
10. Mr. GAYE said that the work on follow-up had some points in common with the work on preparing the lists of issues, which were drawn up before the periodic reports had been submitted; in both cases, it was a question of identifying the issues that were of particular interest at the time. As it would therefore be useful to link the two tasks, he requested that detailed explanations on each of the procedures should be provided.
11. The CHAIRPERSON said that follow-up to recommendations was one of the Committee's most important tasks. The follow-up procedure flowed discreetly from the meetings at which the State party's report was examined and it therefore focused on the issues highlighted during the review. Consequently, the country rapporteurs should be consulted and Committee members kept informed so that they could respond should the need arise. Furthermore, follow-up should not be limited to sending letters; more tangible measures should be sought. He wished to know whether letters sent to States parties were made widely available and whether both the letters and the replies from Governments were published on the Internet.

12. Mr. NATAF (Secretary of the Committee) said the current situation was that rapporteurs' letters and replies from States parties with their comments on the concluding observations were published but that the Committee had not yet taken a decision on whether to publish the information provided by NGOs.

13. Ms. GAER, Rapporteur for follow-up to concluding observations, said that the existing procedure had been in use for five years and that the time had come to take stock. The Committee did not have sufficient information on the results of the follow-up and did not carry out an overall review on the progress achieved by each State party in response to the Committee's action. The procedure certainly enabled the Committee to maintain contact with States parties, but its scope was limited as it covered only those recommendations which could be implemented within one year. The reminders were indeed standard letters, which were sent either with or without the letter accompanying the concluding observations, as well as with a list of the specific issues on which the Committee requested information.

14. Ms. BELMIR had said that she had attended a seminar with the APT on ways to implement the Committee's recommendations. The APT had done remarkable work with States parties in that area and it would be very useful for Committee members to be associated with it. Concerning NGO participation in the follow-up process, for the time being few NGOs submitted information; the Committee might consider inviting them to participate actively in the follow-up.

15. The CHAIRPERSON said that it was important to establish guidelines in order to maintain the consistency that was indispensable to the credibility and legitimacy of the Committee. There appeared to be some inconsistency in the way certain issues, such as abolition of the death penalty, universal jurisdiction and means of redress, had been dealt with. He recalled that he had proposed the drafting of a general comment on means of redress.

16. Ms. SVEAASS said that the list of questions on which the Committee requested information was not sufficiently precise; it should be easy to define more clearly what the Committee expected from each State party. Where the State party had not replied or had replied only partially, the Committee should systematically pick up on the fact and draw attention to it in some way.

17. Mr. WANG Xuexian said that the Committee should be consistent in its follow-up work and should above all seek to promote implementation of the Convention. In relation to the death penalty, for instance, it was obvious that the concluding observations could not be formulated in the same way for countries as different as the United States of America and China. To take account of the specific circumstances in individual countries could be seen as lacking in consistency when, in fact, it demonstrated a consistency with respect both to the situation under consideration and to the spirit of the Convention.

18. Ms. KLEOPAS said that she too thought the question of consistency was crucial. It would be useful to define the priority areas on which the Committee should present a common position.

19. Ms. BELMIR said that, in some cases, States parties did not follow up the Committee's recommendations because they did not know to which recommendations they should give priority. It would therefore be advisable, in the context of follow-up, for the Committee to be in direct contact with the States parties in order to help them to define their priorities.

20. Mr. MARÍÑO MENÉNDEZ said he believed that, despite the shortcomings referred to, the Committee had been consistent in its handling of fundamental issues such as the definition of torture. Interpreting the Convention was not a mechanical task, and the Committee could find itself in the position of drafting different recommendations or questions on situations that were apparently very similar. There were no ready-made solutions that could be applied in all circumstances. For example, with regard to redress, several factors could influence the choice of terms in a recommendation such as: the nature of the victim (whether an adult or a child, a man or a woman, an individual or a group of people) and the economic or political situation of the State party.

21. The CHAIRPERSON emphasized that the search for consistency did not mean that the Committee should deal with all States parties in an identical manner, but that it should measure similar situations against the same yardstick, failing which it might lose credibility. With regard to “redress”, the Committee did not distinguish between the terms “redress” and “compensation”, and it occasionally left out the issue of rehabilitation. The same was true of the death penalty; the Committee had congratulated certain States parties for having abolished it but had not mentioned the subject to others.

22. Ms. GAER, Rapporteur for follow-up to concluding observations, said that rehabilitation was generally referred to in the context of the consideration of communications under article 22 of the Convention rather than under article 19 of the Convention. Concerning the death penalty, she did not believe that it fell within the scope of the Convention and she did not agree with those who believed that punishment was covered by the provisions of article 16 of the Convention. In general, the Committee referred to the issue of the death penalty where a State party had abolished it or declared a moratorium on executions, by including those measures in the positive aspects in the concluding observations. The positive aspects were in fact an expandable category in which many points that did not fall directly within the scope of the Convention, but which represented progress in the field of human rights, could be cited. On the other hand, the Committee had never made a recommendation on the death penalty in the paragraph of the concluding observations in which it requested information. If the Committee had difficulty in maintaining consistency, it was primarily due to the considerable increase in its workload as a result of the new procedures which had been introduced and the new responsibilities it had assumed, which had not been accompanied by an increase in secretariat staff or by longer sessions. The Committee was trying to do its best with the means at its disposal.

23. Concerning follow-up, ideally the Committee should conduct its activities on site and help States parties to implement its recommendations. To that end, it could establish a list of measures and rank them in order of importance. It could also reflect on the question of whether to reserve on-site activities for countries which had very serious problems, which would provide a valuable opportunity to broaden the scope of article 19 in line with article 20 of the Convention. The Committee could also consider including local NGOs in the follow-up. Finally, she did not believe the idea of establishing a limited list of priority issues was an appropriate one, as all of the components of the Convention were of equal importance.

24. As to general comments, she believed that the Committee should discuss the method it used to select potential topics for such comments; she had drawn up a long list of subjects which merited consideration.

25. The CHAIRPERSON said that the Committee could rely on two provisions of the Convention in calling to account certain States parties which still used capital punishment: article 1, paragraph 2, of the Convention, which stated that the article was without prejudice to any international instrument or national legislation which did or might contain provisions of wider application; and article 16, paragraph 2. If the Committee were to examine the periodic report of a country which was party to an international instrument stipulating that the death penalty should be abolished or that its application should be severely limited, or which had passed a law repealing the death penalty and the Committee concluded that the State had not respected the provisions of the international instrument or the legislation in question, which offered more extensive protection than the Convention, it would be justified in finding a violation of article 1, paragraph 2, or article 16, paragraph 2, of the Convention. For example, the American Convention on Human Rights provided that the death penalty should not be re-established in any States that had abolished it; that in those in which it had not been abolished, it should not be applied to persons who were minors at the time the crime was committed, to pregnant women and to mentally handicapped persons; and that it could be imposed only for the most serious crimes. Some years previously, Guatemala had widened the scope of application of the death penalty, in flagrant violation of the provisions of that instrument, to which it was a party. If the Committee had had occasion to examine the report of that country, it could have noted that, in failing to respect the provisions of the American Convention on Human Rights, Guatemala had also violated the provisions of articles 1 and 16 of the Convention. That reasoning would also hold in the case of a State party which had not respected a law providing for a moratorium on capital punishment. There were at least three international instruments relating to the death penalty: the American Convention on Human Rights; Protocol No. 13 to the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances; and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. The Committee would be justified in indicating to a State party which had acceded to one of those instruments but which had not respected its provisions that it was in breach of the Convention.

26. Ms. SVEAASS said it was her recollection that it had generally been the Committee's practice not to broach the question of the death penalty directly, but to refer to it under article 16 of the Convention in the context of methods of execution and detention conditions on death row, which could be assimilated to cruel, inhuman and degrading treatment.

27. The CHAIRPERSON said he disagreed: during the examination of the third periodic report of Algeria (CAT/C/DZA/3), at the fortieth session, the Committee had discussed the issue of the death penalty with the Algerian delegation but had not addressed it in the context of article 16.

28. Mr. MARIÑO MENÉNDEZ drew the attention of Committee members to a book on the Convention published by the Special Rapporteur on torture, Manfred Nowak, which argued that the provisions of article 16 of the Convention covered many aspects of the death penalty. Whether or not one adhered to that interpretation, the world was undeniably moving towards a total abolition of the death penalty. In view of those developments in international law and in attitudes in general, the Committee was justified in dealing with the question of the death penalty in the context of its consideration of States parties' reports.

29. Ms. GAER, Rapporteur for follow-up to concluding observations, said that she had not wished to enter into a substantive debate on the Committee's position concerning the death penalty. She had merely wanted to note that the question of consistency in respect of follow-up, however essential it might be, did not arise in the same way in the context of the death penalty, an issue which the Committee had never identified for follow-up.

30. The CHAIRPERSON said that the Committee did not need to take an immediate decision on that complex issue and suggested that Ms. Gaer should draft a note on the subject for submission to the Committee at its following session, when it could resume discussion of the subject and agree a common position.

The first part (public) of the meeting rose at 5.15 p.m.