



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

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COMMITTEE AGAINST TORTURE

Thirty-ninth session

SUMMARY RECORD OF THE 809th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 23 November 2007, at 9.30 a.m.

Chairperson: Mr. MAVROMMATIS

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The meeting was called to order at 9.40 a.m.

DRAFT GENERAL COMMENT ON ARTICLE 2: IMPLEMENTATION OF ARTICLE 2 BY STATES PARTIES (continued) (CAT/C/GC/2/CRP.1/Rev.3)

Paragraph 3

1. Mr. MARIÑO MENÉNDEZ said that he, Ms. Gaer and Mr. Wang Xuexian had agreed on the following wording for the beginning of the paragraph: “The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and cruel, inhuman or degrading treatment or punishment are interdependent, inseparable and complementary. The full efficacy of the obligation to prevent torture is necessary for the efficacy of the prevention of inhuman treatment.”
2. The CHAIRPERSON asked the secretariat to produce a final version of the paragraph in English that reflected the proposal made.
3. Paragraph 3, as amended, was adopted on that understanding.

Paragraph 4

4. Paragraph 4 was adopted.

II. Absolute prohibition

Paragraph 5

5. Ms. BELMIR proposed that, in the last sentence, the phrase “juridical obstacles” should be replaced by the word “impediments”
6. Paragraph 5, as amended, was adopted.

Paragraph 6

7. Mr. MARIÑO MENÉNDEZ said that, in the third sentence in the Spanish version, an alternative should be found for the word “obligatorios”. He proposed that the words “ya que”, which followed “obligatorios”, should be replaced by the word “y”.
8. Paragraph 6, as amended, was adopted.

Paragraph 7

9. Paragraph 7 was adopted.

III. Content of the obligation to take effective measures to prevent torture

Paragraph 8

10. Ms. GAER, Rapporteur, explained that “the definition of torture” had been replaced by “the elements of torture”.

11. Paragraph 8 was adopted.

Paragraph 9

12. Paragraph 9 was adopted.

Paragraph 10

13. The CHAIRPERSON suggested that paragraph 10 be left in abeyance until the French version could be read out, as requested by Ms. Belmir.

14. It was so decided.

Paragraphs 11 and 12

15. Paragraphs 11 and 12 were adopted.

Paragraph 13

16. The CHAIRPERSON queried the term “impartial judicial mechanisms” in the last sentence. In most countries the mechanisms for visits and inspections were non-judicial, and the more effective for being so. He suggested deleting the term “judicial”.

17. Paragraph 13, as amended, was adopted.

Paragraph 14

18. Paragraph 14 was adopted.

IV. Scope of State obligations and responsibility

Paragraph 15

19. Mr. MARIÑO MENÉNDEZ queried the use of the expression “or otherwise under colour of law” with reference to conduct which was by definition unlawful. He suggested “or otherwise under its direction or control”.

20. Ms. BELMIR said family and domestic settings seemed to have been excluded from the contexts of custody and control. It was important not to ignore them; some States argued that there was no right of intervention in the private sphere.

21. Ms. GAER said the reference to “omissions” by State officials and agents, and to “others” would extend to domestic settings in view of the obligation of due diligence. Protection from domestic violence was one of her particular concerns.

22. Mr. MARIÑO MENÉNDEZ said the point was in any case covered by the reference in paragraph 18 to failure to exercise due diligence.

23. Paragraph 15, as amended, was adopted.

Paragraphs 16 and 17

24. Paragraphs 16 and 17 were adopted.

Paragraph 18

25. The CHAIRPERSON said the phrase “remedy victims” in the second sentence should be amended to “provide a remedy for victims”.

26. Mr. WANG Xuexian asked how it would be possible, in practice, to judge whether State authorities or others had “reasonable grounds” to believe that acts of torture or cruel, inhuman or degrading treatment or punishment were being committed. Secondly, he noted that “non-State officials or private actors” were referred to further on simply as “non-State actors”.

27. The CHAIRPERSON said the phrase in each instance should be “non-State officials or private actors”.

28. Mr. MARIÑO MENÉNDEZ pointed out that both State officials and non-State officials bore responsibility in the circumstances described in paragraph 18.

29. Ms. GAER said the phrase “reasonable grounds” had been used to replace “should have known” in response to an objection originally raised by Mr. Wang Xuexian. In response to a comment by Ms. Sveaass, she suggested amending “gender violence” to “gender-based violence”.

30. Paragraph 18, as amended, was adopted.

Paragraph 19

31. Ms. GAER drew attention to the need to amend “or has not implemented adequate safeguards” to “and has not implemented adequate safeguards”.

32. Paragraph 19, as amended, was adopted.

V. Protection for individuals and groups made vulnerable by discrimination or marginalization

Paragraph 20

33. Paragraph 20 was adopted.

Paragraph 21

34. Ms. GAER, referring to the second sentence, drew attention to the need to replace “economic reason” by “economic or indigenous status, reason”.

35. Ms. BELMIR requested that a sentence to the effect that States parties could not invoke grounds of religion or tradition to justify torture be included in the text.

36. Ms. GAER said that she would incorporate that sentence in a more relevant section of the draft general comment.

37. Paragraph 21, as amended, was adopted on that understanding.

Paragraph 22

38. Mr. MARIÑO MENÉNDEZ said that a specific reference to the implementation of the Convention with respect to children should be included.

39. Mr. WANG Xuexian said that he would like to see a separate paragraph on the subject of children.

40. Ms. GAER said that she would include references to children in all relevant paragraphs.

41. Paragraph 22 was adopted on that understanding.

Paragraph 23

42. Ms. GAER said that, in accordance with the decision taken with regard to paragraph 22, in the last sentence the words “and women” should be changed to “children and women”.

43. Paragraph 23, as amended, was adopted.

Paragraph 24

44. Paragraph 24 was adopted.

VI. Other preventive measures required by the Convention

Paragraph 25

45. Mr. MARIÑO MENÉNDEZ queried the inclusion of the words “the drafters and” in the first sentence.

46. Ms. GAER said that the words “the drafters and” could be deleted.

47. Paragraph 25, as amended, was adopted.

VII. Superior orders

Paragraph 26

48. Mr. KOVALEV queried the expression “high-ranking officials” and suggested that it be made clear that the paragraph concerned officials who had the right to issue orders.

49. Mr. WANG Xuexian suggested that the words “retaliation of all kinds” at the end of the paragraph be replaced by “retaliation of any kind”.

50. Ms. GAER said that the expression “high-ranking officials” would be replaced by the words “superior officials”. “Retaliation of all kinds” would be replaced by “retaliation of any kind”.

51. Paragraph 26, as amended, was adopted.

Paragraph 27

52. Paragraph 27 was adopted.

53. Ms. GAER said that a number of members had raised the issue of whether to use the expression “ill-treatment” or the lengthy “other cruel, inhuman or degrading treatment or punishment”. She suggested that the latter expression be used the first time, and a footnote added to indicate that the term “ill-treatment” would be used thereafter.

54. It was so decided.

55. Ms. BELMIR wondered whether an addition could be made to the effect that States parties were requested to allocate budgetary resources for the prevention of torture.

56. The CHAIRPERSON said that there was no time for a discussion on that matter.

57. The draft general comment as a whole, as amended, was adopted.

CLOSURE OF THE SESSION

58. Ms. GAER, speaking on behalf of the Committee, thanked the outgoing members Mr. Mavrommatis and Mr. Camara for the excellent work they had done as Chairperson and Vice-Chairperson respectively, and for their commitment to the eradication of torture worldwide.

59. The CHAIRPERSON said that his work with the Committee had been a particularly rewarding experience, and expressed his thanks to all members of the Committee, the secretariat and the Committee Secretary.

60. He declared the thirty-ninth session of the Committee against Torture closed.

The meeting rose at 11.05 a.m.