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HUMAN RIGHTS COMMITTEE

Ninety-third session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)\* OF THE 2564th MEETING

Held at the Palais Wilson, Geneva,  
on Wednesday, 23 July 2008 at 11.25 a.m.

Chairperson: Mr. RIVAS POSADA

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\* The summary record of the first part (closed) of the meeting appears as document CCPR/C/SR.2564.

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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 public part of the meeting was called to order at 11.25 a.m.

FOLLOW-UP TO CONCLUDING OBSERVATIONS ON STATE REPORTS AND TO  
VIEWS UNDER THE OPTIONAL PROTOCOL

Report of the Special Rapporteur for follow-up on concluding observations  
(CCPR/C/93/R.1)

1. Sir Nigel RODLEY, Special Rapporteur for follow-up on concluding observations, introduced his report contained in document CCPR/C/93/R.1.
2. Commenting first on Equatorial Guinea and the Gambia, which had never submitted a report, he recommended that both States parties should be declared to be in breach of their obligation to cooperate with the Committee in the performance of its functions under part IV of the Covenant.
3. In the case of Mali, he recommended that the Committee should express regret that the requested additional information had not been received and remind the State party that its report was overdue and should be submitted promptly. In the case of Suriname, he recommended that the State party should be informed that the requested information should be included in its third periodic report, which was overdue and should be submitted promptly.
4. He recommended that reminders should be sent to Barbados, Brazil, the Central African Republic, Chile and Madagascar requesting additional information. If no information was received from Sri Lanka before the ninety-fourth session, a further reminder should be sent. If no information was received from Honduras, consultations should be scheduled for the ninety-fourth session. Consultations should be scheduled with a representative of Bosnia and Herzegovina for the ninety-fourth session. If the Committee received no information from Namibia or Yemen before its next session, consultations between the Special Rapporteur and the State party should be scheduled for the ninety-fifth session. He recommended that Paraguay should include outstanding information in its third report, which was due on 31 October 2008, and that the information already submitted by Ukraine should be considered at the ninety-fourth session.
5. He summarized additional information received under a number of headings. In the case of Sri Lanka, the following information should be inserted under "Date information received": "16 July 2008: partial reply (response incomplete with regard to paragraph 8 concerning the national police complaints procedure and paragraph 10 concerning implementation of the recommendations made by the United Nations Working Group on Enforced and Involuntary Disappearances in 1999)." In the case of Paraguay, the following information should be inserted under the same heading: "Communication of 25 June 2008: partial reply; response incomplete in the case of paragraphs 12, 17 and 21."
6. The following information should be inserted under "Action taken" in the case of the Democratic Republic of the Congo: "17 July 2008: During the ninety-third session the Special Rapporteur met with a representative of the State party, who indicated that there were problems

of coordination in the preparation of the follow-up replies. He would convey the urgency of submitting the replies before the Committee's ninety-fourth session to his Government." He recommended that a reminder should be sent and the situation reviewed at the ninety-fourth session.

7. The following information should be inserted under "Action taken" in the case of Hong Kong (China): "During the ninety-third session the Special Rapporteur met with a representative of the State party, who stated that the issues identified by the Special Rapporteur as requiring further clarification would be transmitted to the Government and to the Hong Kong Special Autonomous Region authorities. On 18 July an aide-mémoire had been sent to the State party summarizing the issues identified by the Special Rapporteur as requiring further clarification." He recommended that the situation should be reviewed at the ninety-fifth session.

8. The following information should be inserted under "Action taken" in the case of the United States of America: "10 July 2008: During the ninety-third session the Special Rapporteur met with representatives of the State party, who indicated that the Special Rapporteur's request to receive additional information on outstanding issues under paragraphs 12, 13, 14 and 16 before the Committee's ninety-fifth session will be conveyed to the Government." He recommended that the situation should be reviewed at the ninety-fifth session.

9. The following information should be inserted under "Action taken" in the case of Kosovo (Serbia), on which a report had been submitted by the United Nations Interim Administration Mission in Kosovo (UNMIK): "22 July 2008: During the ninety-third session the Special Rapporteur met with Mr. Roque Raymundo, senior human rights adviser to UNMIK, who provided additional written and oral information on paragraphs 12, 13 and 18 and undertook to submit further information on: (a) cases where perpetrators of disappearances and abductions were tried and sentenced; access by relatives to information about the fate of victims and measures taken to secure adequate resources for victim compensation schemes (para. 13); and (b) measures taken to implement the strategies and policies to ensure safe and sustainable return, in particular for minority returnees, as well as to ensure that minority detainees benefit from the special rental scheme of the Kosovo Property Agency (para. 18). The meeting was also attended by a representative of the OHCHR Priština Office." It was at present unclear exactly where responsibility lay in Kosovo, since both the territorial Government and the international community were taking transitional measures for the establishment of authorities. The situation needed to be monitored closely and reviewed at the ninety-fifth session.

10. The following information should be inserted under "Action taken" in the case of the Republic of Korea: "21 July 2008: During the ninety-third session the Special Rapporteur met with a representative of the State party, who indicated that additional information on any outstanding issues will be provided in the fourth periodic report. On 22 July an aide-mémoire was sent to the State party summarizing the issues identified by the Special Rapporteur as requiring further clarification." He recommended that the situation should be reviewed at the ninety-fifth session.

11. In the case of all other States parties mentioned, reports were not yet due. That section could perhaps be omitted from future reports. The detailed listing of reminders might also be omitted.

12. Ms. CHANET noted that the Special Rapporteur had a thankless task, since many States parties were reluctant to cooperate. She suggested that provision should be made for contacts between the Special Rapporteur and the various country task forces so that States parties' compliance with follow-up recommendations could be reflected in the list of issues.

13. With regard to Kosovo, it was important to ensure that the Committee retained a contact person once UNMIK was dismantled.

14. The situation in Equatorial Guinea and the Gambia had been considered by the Committee in the absence of a report. If the two States parties persisted in ignoring the Committee's requests for a report, the situation should be considered again.

15. Mr. AMOR expressed support for the suggestion to institute some form of liaison between the Special Rapporteur and the country task forces. He suggested that the Special Rapporteur should attend all task force meetings.

16. He also strongly supported the idea of scheduling a second review of the situation in States parties that had failed to submit a report.

17. In cases where the Special Rapporteur repeatedly requested a meeting with a representative of the State party or sent repeated reminders, it was unnecessary to mention the date in each case.

18. When the deadline set in concluding observations for receipt of States parties' preliminary replies had not yet expired, there was no need to list the States parties concerned in the Special Rapporteur's report.

19. Mr. LALLAH expressed support for Ms. Chanet's suggestion regarding the situation in Kosovo.

20. He warned that the Special Rapporteur would be heavily overworked if he was required to attend every task force meeting.

21. He suggested that reminders to States parties should mention any undertakings made during a meeting between the Special Rapporteur and a representative of the State party concerned.

22. Mr. O'FLAHERTY said that although the suggestion to establish a relationship between the Special Rapporteur and the task forces was a good one, to have him attend every task force meeting would be too onerous and a waste of time. It would be sufficient for the secretariat to make the relevant reports of the Special Rapporteur available to the task forces.

23. Referring to Mr. Amor's comment on the content of the report, he said that the report should not be abbreviated in any way. The detailed, country-by-country information about the various actions taken to meet obligations was useful for the State party concerned, OHCHR, civil society and researchers. It was also useful to include in the report information on States parties for which the deadline for submission of information had not expired, because the report concerned ongoing follow-up to the Committee's requests.

24. Lastly, on the question of qualitative assessment, the Committee had recently agreed to embark on a review of its reporting guidelines. Many members had emphasized that those guidelines should address all stages of the process, which would include the follow-up stage. The Committee therefore had an opportunity to reconsider the guidelines for follow-up in the coming months. One way of introducing a modest qualitative element into the process would be for the Special Rapporteur to share information provided by a State party with the relevant Country Rapporteur, who could assess whether the State had implemented the Committee's recommendations on a qualitative basis. Ultimately, it would be for the Special Rapporteur to make a proposal to the Committee on the situation and steps to be taken.

25. Ms. MAJODINA said that national human rights institutions and NGOs could play an important role in helping the Special Rapporteur to carry out his work. She drew attention to the document entitled "Good Practice National Human Rights Institutions and Treaty Bodies" published by OHCHR and to the work done, for example, by the German Institute for Human Rights in providing training to the German Parliament on human rights treaties.

26. Ms. MOTOC agreed with Ms. Majodina's suggestion of involving national human rights institutions and NGOs in the work of the Special Rapporteur. There should also be a link between him and the media. He might periodically update the press on the status of his work at the Bureau's briefings. Relations with the media should be included in the Committee's overall communications strategy.

27. The CHAIRPERSON said that clarification was needed on the methods which might be used to declare a State party to be in breach of its obligation to cooperate with the Committee in the performance of its functions under part IV of the Covenant.

28. Sir Nigel RODLEY said he had assumed that if his report was adopted, the Committee would take a decision declaring a State party to be in breach of its obligations under the Covenant, which would be communicated to that State party. It might be desirable to indicate in the executive summary that such steps had been taken.

29. Referring to the suggestions concerning cooperation between the Special Rapporteur and the task forces, he said that the secretariat might provide the relevant background information on follow-up issues to the task forces. If at a later stage the task forces considered the presence of the Special Rapporteur to be necessary, then the Committee could take up the question whether he should attend the task force meetings.

30. He took note of the point concerning the need to maintain contact with the representatives of Kosovo during the ongoing transition and trusted that the OHCHR representative in Priština, who was not the same as the human rights officer attached to UNMIK, would provide the kind of vigilance called for by Ms. Chanet.

31. Concerning her question about the two States parties to be declared in breach of their obligations to cooperate with the Committee under part IV, the Committee could request a new report and hold another hearing in the absence of a report if it did not receive one. The issue was for the Committee as a whole to decide. However, further consideration should be given to reverting to States parties on which there had already been hearings, as there were many other States which required attention.

32. As to the format of the report, instead of several lines indicating that reminders had been sent to the State party concerned, there could be one sentence which said “Reminders had been sent on the following dates”. That would facilitate the work of researchers. Regarding States parties whose reports were not yet due, the secretariat should include only States where there had been a response. The suggestion put forward by Mr. Lallah that reminders sent to Governments should mention commitments made during consultations with representatives of the State party was already the practice of the Committee.

33. It might be useful for the Special Rapporteur to inform national human rights institutions when reports were pending after some reminders had been sent so that they could act as go-betweens to encourage the State party to be more cooperative or forthcoming. That could not be done with NGOs, however.

34. The issue of NGOs raised the question of a qualitative appraisal as suggested by Mr. O’Flaherty, which required serious discussion by the Committee. The NGOs played an important role in questioning the substance, rather than the completeness, of information provided to the Committee by Governments. He suggested that a working paper should be drafted on the issue, especially within the context of a review of the reporting guidelines, as Mr. O’Flaherty had suggested.

35. Ms. Motoc’s suggestion to involve the Special Rapporteur in press briefings would broaden the issues on which the Committee provided information to the press. To date, the Committee had briefed the press on States parties which were currently under review at a given session. It might be useful to give a briefing on States whose follow-up had been under review.

36. Expressing appreciation for the hard work done by the secretariat in the preparation of a strong draft, he recalled that the Committee had been informed a number of years previously that action was being taken to recruit a person whose main function would be to assist the Special Rapporteur in the performance of his mandate. That had not happened. The Committee should be informed when such promised support would not be provided or was being taken away.

37. Mr. LALLAH, referring to the Chairperson’s question concerning how to deal with a State party’s breach of its obligation to cooperate with the Committee, said that members should decide on the matter at the current meeting. He suggested adding a part C to chapter III of the annual report of the Committee, which would cover States parties that had not met that obligation. That could resolve the perennial problem of when and how to take non-cooperating States to task and publicize that fact.

38. Mr. JOHNSON LÓPEZ said that it might be useful to include in the report the names or posts of the representatives of States parties failing to provide requested information who had been contacted by the Special Rapporteur. The task forces might also include in the country files and make public the status of implementation of the obligations by a particular State party. Given that there had been sessions in which there was no problem of late submission of information, it might also be helpful to list the States which had met their obligations on time.

39. The draft report of the Special Rapporteur for follow-up on concluding observations was adopted.

Follow-up progress report of the Human Rights Committee on individual communications (CCPR/C/93/R.5)

40. Mr. SHEARER, Special Rapporteur for follow-up on communications, introduced the Committee's progress report on individual communications.

41. In the first case, involving Australia, a detailed response had been received from the State party in May 2008; it indicated that, owing to an amendment to the rules of procedure of the High Court of Australia, most appeal applications were considered on paper, and oral proceedings were only heard in a few cases. Counsel would be assigned in the event of oral proceedings. It was therefore unlikely that cases similar to that of the author would arise again in future. The State party's response had been sent to the author with a two-month deadline for comments. That deadline had not yet been reached, and the Committee could therefore consider the dialogue ongoing.

42. The second case also related to Australia, which was called on to pay compensation to the authors. Detailed information had been received from the State party on changes in legislation that meant it was unlikely that such a case would occur again. The State party's response to the decision of the Committee on the violation of article 9 (4) indicated that the term "lawfulness" referred to the Australian domestic legal system and did not mean "lawful at international law". That was a familiar argument by the State party, which must be taken into consideration. The State party's response had been transmitted to the author, whose reply was still pending. The Committee might therefore wish to await the reply before making a decision.

43. In the third case, there had been a misunderstanding on the part of the State party, Canada, which had been of the view that it was only required to respond to the complaint on admissibility rather than on the merits. When the Committee had decided the case, the State party had been displeased that the information it had prepared on the merits had not been taken into account. It had submitted a great deal of information on the merits, which included highly sensitive material. It had indicated that it could submit even more material, but hesitated to do so on grounds of privacy. It had, in addition, appended a copy of its responses to the Committee on the Rights of the Child, which had also considered the case. The State party's response had been transmitted to the author, who had replied that she expected the Committee to comment on the State party's arguments. Given the State party's explanations as to why it could not implement the Committee's decision, there was no longer any useful purpose in continuing dialogue with it, and the case could be considered moot.

44. In the fourth case, relating to freedom of association in Belarus, the State party had contested the Committee's Views. The author had responded in March 2008, saying that the State party had not taken any measures to implement the Committee's Views, and that the NGO that had been deregistered had not been re-registered. Although the author's response had been transmitted to the State party with a deadline for comments of 26 June 2008, no response had yet been received from it. The Committee should reiterate its decision and express its regret that the State party had failed to respond. The dialogue could be considered ongoing.

45. Turning to the case pertaining to the allocation of fishing licences in Iceland, he said that a long response had been received from the Government, in which it asked whether minor adaptations to the fisheries management system would suffice or whether more radical changes were required. He recalled that the Committee had called for radical changes. The State party had pointed out that the implementation of the Committee's Views would require a radical overhaul of the fisheries licensing system. It had stated that the system could not be dismantled in six months, but that it would take the Committee's Views into account in the context of a long-term reassessment of the system. The author had not yet responded to the State party's comments, and since the deadline for doing so had not yet been reached, the dialogue could be considered ongoing.

46. The next case involved inhuman conditions of detention and absence of legal representation in Jamaica. The Committee had recommended that adequate compensation should be granted and detention conditions improved. The author had informed the Committee that his detention conditions had worsened. His letter had been transmitted to the State party with a two-month deadline for comments but as yet no response had been received. The situation was unsatisfactory, and the Committee should decide how to proceed.

47. New information had been received very recently regarding the case pertaining to Serbia, which had confirmed that a compensation agreement had been reached between the Serbian Ministry of Justice and the author, in accordance with which the latter had received 800,000 dinars. No comments had been received concerning the Committee's recommendation to quash the author's conviction. The Committee might wish to contact the State party on that question, and the dialogue could therefore be considered ongoing.

48. Turning to the case relating to detention and disappearance in Sri Lanka, he said that the State party had informed the Committee in 2005 that criminal proceedings were pending against the persons thought to be responsible for the abduction of the author's son. The author had responded by saying that no action had been taken, and in April 2008 had informed the Committee that he had been told that the Human Rights Commission of Sri Lanka had submitted its recommendations to the Attorney General, since which time no further action had been taken. Although the deadline for State party comments on that information had passed, no response had been received. The Committee should decide whether to wait any longer for comments by the State party, or whether to take action immediately.

49. On the case involving Tajikistan, he said that the State party had referred the Committee's Views to the Procurator General and the Supreme Court. The author had informed the Committee that, following the recent re-examination of his case, he had been found guilty on only one charge rather than the original three. His punishment, however, had remained unchanged and his situation had not improved. The Special Rapporteur had met with a representative of the State party, who had discussed the case in a positive manner and suggested that the Special Rapporteur would receive an invitation to conduct a follow-up mission to Tajikistan. Such an invitation had never been received, despite a note verbale on the issue having been sent to the State party. The Committee should consider the State party's response unsatisfactory and the dialogue ongoing.



50. In the case pertaining to Zambia the Committee had recommended the commutation of the author's death sentence. Although the State party was observing a moratorium on the death penalty, the author's sentence had not been commuted. Despite having previously been moved from death row to a facility for long-term prisoners, the author had recently been moved back to death row. His status was unclear, and the Committee did not know whether his death sentence remained pending. He suggested that the Committee should reiterate its decision and consider the State party's response unsatisfactory. The dialogue could therefore be considered to be ongoing.

51. The final case, which was not included in the report, was that of Al-Zery v. Sweden, concerning which the Committee had recently been informed that the author had been awarded approximately 500,000 Swiss francs in compensation by the Government of Sweden.

52. Mr. IWASAWA, speaking on the question of the communication involving Canada, said that the State party's misunderstanding had been particularly unfortunate. While he agreed with the proposed decision by the Special Rapporteur that there was no purpose in continuing dialogue with the State party, it was unfortunate that the State party's response on the merits had not been taken into account in the Committee's decision.

53. Mr. O'FLAHERTY said that Iceland's responses on the fisheries management case had been encouraging, and he felt it reasonable for a State party to seek clarification from the Committee. He recalled that the Committee had merely requested a review of the fisheries management system, and had not stated whether the reform should be major or minor. The State party's response to the Committee's request for compensation to be granted to the author had identified a potential problem of a surge in cases. He wondered whether in some circumstances the Committee should request symbolic compensation. He expressed concern that in certain cases the Committee's recommendation to grant compensation was not wholly appropriate. He wondered whether the Special Rapporteur or the secretariat could present a paper on the question of remedies, so that the Committee could consider them in a more calibrated and systematic manner in relation to each individual communication.

54. Ms. CHANET proposed that the Committee should put pressure on Jamaica and send the Government a reminder before its next session in October 2008.

55. Ms. PALM recalled that although the Committee had reminded Canada on several occasions that it should submit its comments on the merits of the case in question, it had failed to respond. It was important to reflect that fact in the report, in order to demonstrate that the Committee had not dealt with the case prematurely. She requested that the words "despite being reminded on several occasions" should be inserted in the final paragraph of the Committee's decision on the case, after the words "The Committee regrets that". She agreed that there was no useful purpose in continuing dialogue with the State party.

The meeting rose at 1.05 p.m.