United Nations CCPR/C/SR.2593

International Covenant on Civil and Political Rights

Distr.: General
19 March 2009
English
Original: French

HUMAN RIGHTS COMMITEE

Ninety-fourth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)*
OF THE 2593rd MEETING

Held at the Palais Wilson, in Geneva,
on Wednesday, 29 October 2008, at 11 a.m.

Chairperson: Mr. RIVAS POSADA

CONTENTS

* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.2593/Add.1.

GE.08-44838 (E) NY.09-48621 (E) 190309 220310
0948621

The meeting was called to order at 11.15 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/94/R.1)

1. The CHAIRPERSON invited the Special Rapporteur for follow-up on concluding observations to introduce his report.

2. Sir Nigel RODLEY, Special Rapporteur for follow-up on concluding observations, said that for most States parties no measures had been recommended, even if the situation in many of them would have to be reviewed at the ninety-fifth session. That applied to the following countries: Mali, Sri Lanka, Suriname, Brazil, Paraguay, Democratic Republic of the Congo, Hong Kong (China), Central African Republic, United States of America, Kosovo (Serbia), Republic of Korea, Madagascar, Czech Republic, Sudan, Zambia, Georgia, Libyan Arab Jamahiriya, Algeria, Costa Rica, Tunisia, Botswana and the former Yugoslav Republic of Macedonia. During the current session, he had met with representatives of two countries. On 24 October 2008, he had met with a member of the Permanent Mission of Yemen, who had assured him that his Government would soon inform the Committee when it would submit replies to the Committee's questions regarding his Government's follow-up to the concluding observations. On 31 October, he had had a meeting ith a representative of Bosnia and Herzegovina, who had said that the State party's replies were being drafted and would be sent to the Committee as soon as they had been approved by the Government. The case of Bosnia and Herzegovina was a good example of cooperation in the follow-up procedure. He recommended reviewing the situation regarding those two countries at the next session of the Committee. Honduras had sent its replies to the Committee's questions on 15 October 2008, but it would seem that they were incomplete. He therefore recommended sending a letter to the State party asking it for additional information. The same applied to Chile and Austria, whose recently received replies were also insufficient. He noted in that connection that the Committee had decided to start indicating in its letters of that type which questions required additional information so that the State party knew exactly what was expected of it. The cases of Gambia and Equatorial Guinea were unique. At its previous session, the Committee had informed those States parties of its decision to consider that they had failed to comply with their obligation to assist the Committee in carrying out its functions under Part IV of the Convention. He did not see what the Committee could do, in terms of the follow-up procedure, when faced with such a complete refusal to cooperate. That was why he recommended not to take any more measures with regard to those two countries, but to have the secretariat continue to remind them regularly that their reports were expected. However, members of the Committee might have other proposals for action.

3. A new organization, called the Centre for Civil and Political Rights, devoted much attention to the Committee's follow-up procedure and had issued its own reports on follow-up, often in collaboration with the non-governmental organizations (NGOs) that had participated in the consideration of the country reports. He had found those documents very useful.

4. The CHAIRPERSON thanked the Special Rapporteur for follow-up on concluding observations and invited members of the Committee who so wished to make their comments.

5. Mr. O'FLAHERTY supported the idea of terminating all efforts with regard to Gambia and Equatorial Guinea, but he wondered whether the Committee could not, in addition, officially inform the Office of the High Commissioner for Human Rights of the problem, so that it could take whatever measurers it deemed appropriate. With regard to the documentation of the Centre for Civil and Political Rights, it would perhaps be interesting for the Special Rapporteur to use such information more directly, for example in the qualitative evaluation of the replies of States parties.

6. Mr. SHEARER was of the view that, on the contrary, something had to be done about the cases of Gambia and Equatorial Guinea, as those countries risked completely escaping monitoring by the Committee. Sending an on-site follow-up mission would be even easier in that the two countries were near each other geographically, but it would be even more prudent to bring the matter to the attention of the High Commissioner, as Mr. O'Flaherty had suggested. The High Commissioner could then decide whether to send someone on site, perhaps in the context of a more general visit and propose technical assistance to those States parties to help them prepare their reports. Another possibility would be to organize a new review of the situation in the absence of a report. It should be remembered that, when the Committee had informed the Government of Gambia in 2002 that it intended to undertake such a review, that Government had at least reacted by explaining that it neither the capacity nor the means to prepare its report but that it would send a delegation. The delegation had, however, announced at the last minute that it could not come, which could happen again, but the most important thing was to keep knocking at the door of such countries.

7. Mr. AMOR noted that those State parties for whom the deadline for the sending of information had nor expired should not be listed in the report, in accordance with the Committee's decision at the previous session to have only States for whom the deadline had expired listed. With regard to follow-up as such, it should be noted that in the absence of effective means of applying pressure, the Committee had great difficulty in getting States parties to give effect to its concluding observations, which was also true for the Committee's views. Some NGOs had expressed willingness to participate in follow-up. The Committee should try to establish a regular dialogue with those organizations, perhaps through periodic meetings with the Special Rapporteurs for follow-up. On the other hand, the High Commissioner for Human Rights had, at the opening of the current session, openly offered her Office's assistance to the Committee as needed. The Committee should take advantage of that offer in order to make the High Commissioner aware of its concerns. The modalities of such collaboration needed to be worked out, but the Committee needed to gain the High Commissioner's ear so that its concerns could be included in the compilations prepared by the Office of the High Commissioner in the context of the Universal Periodic Review.

8. Ms. MAJODINA agreed with Mr. Amor that the NGOs should be involved to a greater extent in follow-up activities, which should also involve the participation of national human rights institutions. Those institutions could provide the Committee with first-hand information on possible deficiencies in the way States parties met

their Covenant obligations; the Committee could then publicize that information so as to encourage the States concerned to bring their situations into line with their obligations. Sending a follow-up mission to a country that was not cooperating at all would be desirable, but it was preferable that the decision to do so came from the High Commissioner for Human Rights.

9. Mr. KHALIL said that some thought should be given to how the Committee should share its decisions with parliamentarians, who were often completely unaware of the Committee's work and who could, in a more fully informed way, request explanations from Governments that failed to implement measures recommended by the Committee, and even more so in the case of recommendations that sought to have domestic legislation amended. The Committee should strengthen its contacts with the Inter-Parliamentary Union (IPU), whose headquarters were in Geneva, so as to establish a procedure to ensure that parliamentarians were properly informed of the Committee's decisions.

10. Sir Nigel RODLEY, Special Rapporteur for follow-up on concluding observations, said that he supported the idea of informing the High Commissioner for Human Rights in the absence of cooperation on the part of certain Sates parties. As Mr. Amor had said, it would be useful for the Committee's concerns in that regard to be reflected in the compilations prepared by the Office of the High Commissioner for Human Rights in the context of the Universal Periodic Review. Steps should be taken to make that happen.

11. With regard to publicizing the information sent by NGOs in the context of follow-up procedures, he was of the view that such information, when it was not confidential, should be available on the Office of the High Commissioner's website, as were the replies of States parties and the Committee's decisions. In that connection, it did not seem logical that the report on follow-up to the concluding observations should be a document with restricted distribution, whereas it was considered in open meetings. He therefore recommended that the Committee make that report publicly available, once it had been adopted.

12. Mr. O'FLAHERTY said that he had raised the possibility of a qualitative evaluation of the replies by States parties. That was more than just a possibility, it was a necessity, as the only criterion the Committee used at the present time was to determine whether the replies were complete or not. The Special Rapporteur would submit to the next session an outline of a possible qualitative evaluation system.

13. The idea of sending missions to countries that did not meet their obligations under the articles of Part IV of the Covenant was quite acceptable in principle but the best way to proceed needed to be worked out; that could take the form of an initiative on the part of the Committee or a recommendation by the Committee to the High Commissioner aimed at having her send someone on site in the context of a more general mission. Mr. Shearer had suggested organizing a new review of the situation in those countries that were not complying with their obligations under Part IV of the Covenant, which was an excellent idea. However, there was such an arrearage in the submission of reports by those countries that the Committee tended to set aside countries that had not submitted reports and whose situations had not yet been considered by the Committee, of which there were many. The Committee should include on its agenda at each session the consideration of the situation in a State party that had not yet submitted a report, given that the Committee should assign some priority to countries that it had never reviewed.

14. With regard to the question as to whether States parties should or not should not be listed in the report on follow-up, the decision adopted by the Committee at its previous session dealt with that report in the form in which it was now included in the Committee's annual report to the General Assembly, not the interim report submitted to each session. Furthermore, the States that had been included in the report when their deadlines had not yet expired had been mentioned, because they had transmitted additional information. In any case, if the secretariat agreed, such States would not be listed in the final public report.

15. Any occasion for exchanging views and information with NGOs was worth taking advantage of. Planning regular meetings between NGOs and the Special Rapporteur would promote ways of strengthening follow-up and of considering how best to get take advantage of each other's capacities for action. The extension of such collaboration to national human rights institutions was also a good idea that the Committee could raise with Mr. Magazzeni, the Chief of the National Institutions Unit of the Office of the High Commissioner, when he next attended a Committee meeting.

16. The idea of collaborating with the Inter-Parliamentary Union (IPU) should be explored. The first thing to do would be to organize a meeting with the appropriate officials to see whether the Committee's work might interest members of IPU and what possibilities there seemed to be for strengthening follow-up.

17. Mr. LALLAH strongly favoured contact with IPU. At the beginning of the current session, he had met representative from various countries during a meeting of IPU. A representative from Mauritius had indicated a desire to attend the Committee's discussions so as to learn more about how it functioned and its work. He had asked the representative whether she knew about the Committee's concluding observations regarding her own country and she had answered that they had not been brought to the attention of representatives. It might therefore be appropriate and very useful to propose to IPU, through the secretariat, that it add the matter of respect for international instruments to the agenda of its next meeting.

18. Mr. BHAGWATI supported Mr. Lallah and said that in his country as well, and in most of the countries of South Asia, very few representatives or people in government knew of the Committee and its concluding observations. Measures should therefore be taken to make parliamentarians, people in government and NGOs aware of the Committee's discussions and its concluding observations, which often remained simply words on paper.

19. The CHAIRPERSON said that Sir Nigel Rodley had proposed, on the one hand, that the report of the Special Rapporteur for follow-up on concluding observations be issued for general distribution and, on the other hand, that the comments of NGOs be used as part of the documentation for the Rapporteur. Those two proposals could be adopted right away. The other comments and suggestions had been made in the form of experimental ideas to be explored. The Committee should consider how to study the many concerns and suggestions expressed so as to find ways of strengthening State parties' respect for the Committee's concluding observations.

Report of the Special Rapporteur for follow-up on views (CCPR/C/94/R.3/Rev.1)

20. Mr. SHEARER, Special Rapporteur for follow-up on views, said, with regard to the *Boucherf* v. *Algeria* case (communication no. 1196/2003), that the draft

charter for peace and national reconciliation had now become law. The author had reluctantly accepted compensation under that law. She felt that she still had the right to know how her son had died and where he was buried, but the State party had not given her that information. The secretariat had tried on several occasions to organize a meeting between the Special Rapporteur and the State party during the current session, but the meeting had been postponed several times because the contact person at the Permanent Mission in Geneva had had to leave town. He proposed therefore to view the dialogue as remaining open and to try again to organize a meeting between the State party and the Special Rapporteur who would succeed him at the ninety-fifth session in New York.

21. In the *Perterer* v. *Austria* case (communication no. 1015/2001), he proposed that the Committee no longer consider the case under the follow-up procedure. It was interesting to note, in connection with draft general comment 33, that the State party had stated that "the Committee's views are not legally enforceable, but it would be inconceivable not to follow up on them. Austria considers those views to be on an equal basis with the decisions of the European Court of Human Rights."

22. With regard to the *Dudko* v. *Australia* case (communication no. 1347/2005), the author's comments had been sent to the State party and the deadline for its replies had not yet expired. He proposed that the dialogue should be seen as still open and that the Committee should await the State party's response before taking a decision.

23. In the *Sanjuán Brothers* v. *Colombia* case (communication no. 181/1984), which was a very old case as the views had been adopted in 1989, the problem was that the Committee had recommended a remedy that did not mention any financial compensation. Colombia was one of a few countries whose legislation allowed for compensation, in particular the payment of damages, on the basis of decisions handed down by international bodies, of which the Committee was one. However, since the Committee's decision had not mentioned that the compensation should take the form of damages, the State party was of the view that it was not obliged to indemnify the victims under Act No. 288/1996. The Committee had perhaps failed to make itself clear, but the case was very old and the Committee's jurisprudence had perhaps not been fully established. Under the heading "Further action taken/required" three other cases were mentioned where the Committee had not specifically mentioned damages and the Ministerial Commission had therefore not been able to recommend damages under Act No. 288/1996. The Committee Bureau should perhaps study the matter to see whether those cases could be re-opened so as to recommend damages. The matter should be put on the Bureau's agenda for the next session; members could consider the problem before the session. The problem was unusual and perhaps specific to Colombia, as few States had a law of that kind. He proposed considering that the dialogue remained open.

24. In the *Haraldsson* v. *Iceland* case (communication no. 1306/2004), the Committee had recommended appropriate damages and a review of the fisheries management system. The State party had on 11 June 2008 requested the Committee to clarify what it had meant by "review", unsure whether that meant to request a government commission to study the Committee's recommendations and decide whether or not to change the system or whether more radical changes were required and, if so, what manner of changes. The State party had also stressed that to accept the Committee's views and radically change the fisheries management system would

have a deep impact on the Icelandic economy and that it seemed in certain respects impossible to make the system more flexible. The authors, on the other hand, requested the Committee to insist that the State party undertake a complete revision of the system for paying damages. Comments had been received from an Icelandic opposition party, which was represented in Parliament and had submitted a draft resolution in Parliament advocating respect for the Committee's views. The case involved serious political and economic interests. The deadline for replies had not yet expired. The Committee could therefore consider that the dialogue remained open and could await the replies of the State party.

25. The *Pimentel et al.* v. *Philippines* case (communication no. 1320/2004) dealt with a collective action undertaken by 7 504 people against the estate of former President Ferdinand Marcos. The authors had obtained a decision from a United States court and now sought execution of that judgement in the Philippines. On 26 February 2008, the Chief Judge of the regional court of first instance had issued an order deciding that the case would be handled in a court procedure for settling disputes, which was a procedural form that was less formal than a public hearing. Given the confidential nature of the procedure, no new information on the progress of the procedure had reached the Committee. Under the heading "Further action taken/ required", he had indicated that "the Rapporteur will perhaps want to request additional information from the State party regarding the date on which it is expected that the regional court of first instance will take up the case". He proposed that the Committee should consider that the dialogue remained open. In addition, the secretariat should be requested to send a note to the State party requesting that information.

26. In the *Azamat Uteev* v. *Uzbekistan* case (communication no. 1150/2003), which dealt with acts of torture, the State party had rejected the Committee's views. It had not participated in the procedure and had communicated with Committee only after the views had been adopted, claiming that the Committee was mistaken. He proposed that the Committee should assert that the information furnished by the State party should have been sent before the Committee began considering the case. He considered that the State party's response had not been satisfactory and that the dialogue should be continued. However, a reply from the author was also expected, as the State party's comments had been sent to him only on 26 September 2008 and he had until the end of November to respond.

27. In the *Chongwee* v. *Zambia* case (communication no. 821/1998), the remedy recommended had been to take the measures needed to protect the author's personal security, to conduct an independent investigation and to pay damages. The case had dragged on for some time. At the end of 2005, the Government had offered the author $60 000 dollars, without precluding other measures, a proposal that the author had rejected. According to the author, the State party had not given effect to the Committee's views, had not guaranteed his security and had not assisted him in resettling in Zambia when he had returned from Australia. He considered the compensation offer to be a small advance that he had been forced to accept because it had been offered on a "take it or leave it" basis. He had been in contact with the Attorney General, who was trying to find an outcome for the case that might satisfy all parties. Their discussion on 15 July 2008 had not produced immediate results. He proposed that the Committee should consider that the dialogue remained open. The author's letter had been forwarded to the State party, but the deadline for a reply had not yet expired. Consideration of the case would continue in 2009.

28. Mr. O'FLAHERTY said that the Committee had considered the follow-up to the *Haraldsson* v. *Iceland* case at the ninety-third session and that it had been able to clear up a few points regarding the concerns of the Icelandic Government and had made some progress in the case. In particular, the Committee had concluded that it had not requested the Government to revise its system, but only to review it. The Government had already informed the Committee that the review was underway or planned and that the Committee should take note of that step. With regard to the compensation, he was of the view that the Committee's findings had been rather clear. They had perhaps not been what the author had expected. Some appropriate channel would have to be found to inform Iceland of the results of the discussions in July, or some completely different way was needed to point out to the Government the exact nature of the remedy recommended, which was much more limited in scope than had been described in other forums.

29. Sir Nigel RODLEY said that, in the *Sanjuán Brothers* v. *Colombia* case, the follow-up to the decision posed certain difficulties owing to the wording of the remedy requested, namely, that the Committee wished to receive information on all of the measures taken by the State party with regard to the views of the Committee and invited the State party, in particular, to inform the Committee of new facts that might emerge during the investigation into the disappearance of the Sanjuán brothers. In fact, the Committee had not indicated any form of compensation at all. That was very surprising, even though the communication had been considered many years ago in 1989, as the Committee already had a body of jurisprudence at that time and usually requested, in cases as serious as the case under consideration, at least some form of compensation and even the opening of an investigation with a view to finding those responsible and punishing them. Today, all the Committee could do was to request the Rapporteur to invite the State party to reconsider the matter in a more open manner.

30. Mr. SHEARER, Special Rapporteur for follow-up on views, said that the Committee had indeed explained to Iceland that it had not requested the State party to revise its system as a whole, but only to review it and consider the possibility of some compensation. The secretariat should check which documents had been sent to the State party and on what date, given the fact that in the report the date of the intended transmission had been left blank. If no documents had been sent yet, the Committee could perhaps add the results of the discussions at the current session to the file, along with an explanation of what the Committee expected of the State party, even if that meant that the deadline for a reply might have to be extended.

31. With regard to the Colombian case, it was indeed surprising that the Committee had not recommended compensation, but that must be the case, since the State party claimed that in four cases, including the *Sanjuán Brothers* case, the Committee had not recommended compensation and that the Government could not therefore consider the possibility of compensation. The wording of the Committee's recommendations in the four cases would have to be verified, and if the Committee had not explicitly recommended some form of compensation, it would be possible to argue that the wording used, whatever it had been, had made an implicit recommendation that the victims receive compensation.

32. Sir Nigel RODLEY said that the Special Rapporteur could specify that the "measures" that the Committee had requested the State party to take should at least include the compensation of the victims, the opening of an investigation into the

facts, the communication of information on the fate of the persons concerned and the initiation of legal action against those responsible.

33. Mr. SCHMIDT (Office of the High Commissioner) said, with regard to the Icelandic case, that the person responsible for following up on the case in the Ministry of Foreign Affairs had had frequent contact with the secretariat. In September, she had met with Ms. Fox and himself in Geneva, who had told her clearly that the scope of application of the Committee's views was much narrower than the author's correspondence might have suggested. It would, however, have to be verified whether a note verbale had been sent to the State party on the subject. The case was delicate from a political point of view. In that connection, the author's lawyer had recently written to the Committee and to the Office of the High Commissioner for Human Rights to request their authorization to send the Committee's views to the Director General of the International Monetary Fund; he had intended to request that the Fund make its financial support of Iceland conditional on the implementation of the Committee's views. The request had been denied.

34. With regard to the *Sanjuán Brothers* case, the wording of the paragraph on a remedy no doubt put the Committee in a delicate position. Nevertheless, there had been many inconsistencies in the implementation of Colombia's Act No. 288/1996, which had established the Ministerial Commission. Follow-up meetings with representatives of the Permanent Mission of Colombia had been planned for the March 2009 session in New York or the July 2009 session in Geneva to discuss the matter.

35. The CHAIRPERSON said that in practice implementation of the law on compensation had no doubt not been consistent but the fact remained that the Ministerial Commission could not recommend the payment of compensation if the Committee failed to indicate the specific form of compensation it had in mind. That made it all the more necessary to maintain dialogue. The Committee should therefore not confine its action to indicating that its decision had not been satisfactorily implemented but should continue the dialogue with the State party, so that both sides could jointly determine what measures could be taken to ensure that the victims obtained compensation.

36. On behalf of the Committee and the secretariat, he thanked Mr. Shearer for his work as a member of the Committee, in particular as Special Rapporteur for follow-up on views.

The first part (public) of the meeting ended at 12.50 p.m.