



International Covenant on Civil and Political Rights

Distr.: General
27 July 2012
English
Original: French

Human Rights Committee

105th session

Summary record of the first part (public)* of the 2893rd meeting

Held at the Palais Wilson, Geneva, on Monday, 9 July 2012, at 10 a.m.

Chairperson: Ms. Majodina

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* No summary record was prepared for the second part (closed) of the meeting.

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The meeting was called to order at 10.05 a.m.

Opening of the session

1. **The Chairperson** declared open the 105th session of the Human Rights Committee. She informed those present that the Committee had received the sad news of the death on 3 June of Rajsoomer Lallah, to whom the members could pay tribute during the meeting.

Statement by the Chief of the Rule of Law, Equality and Non-Discrimination Branch (Research and Right to Development Division)

2. **Ms. Rishmawi** (Chief of the Rule of Law, Equality and Non-Discrimination Branch) paid tribute to the memory of Mr. Rajsoomer Lallah, who had been a member of the Human Rights Committee since 1976. Mr. Lallah had assumed many roles in addition to his membership of the Committee, including those of Special Rapporteur on the situation of human rights in Myanmar and Special Rapporteur on the situation of human rights in Chile. In whatever task he was engaged, Mr. Lallah had always inspired confidence and deep respect for his humanity and intellect among the people who had had the privilege of working with him over the years. She herself had had the privilege of working with him when he had served as Chief Justice of Mauritius between 1991 and 1995. Mr. Lallah had also been an active member of the International Commission of Jurists and the Centre for Independence of Judges and Lawyers. She recalled his passion for legal education and his many ideas about how to make human rights a reality for people across the globe. He would be sorely missed by all those who had known him.

3. She welcomed Mr. Ben Achour, a new member of the Committee and a long-standing human rights defender. He had recently headed Tunisia's Higher Political Reform Commission, which had been charged with overseeing constitutional reform since the fall of the Ben Ali regime.

4. She hoped for further interaction in the future between the Committee, the Human Rights Treaties Division and the Research and Right to Development Division. The Rule of Law, Equality and Non-Discrimination Branch was composed of four sections: the Rule of Law and Democracy Section, the Women's Human Rights and Gender Section, the Anti-Discrimination Section, and the Indigenous Peoples and Minorities Section. It assisted in filling knowledge and capacity gaps in those areas and supported the activities of the High Commissioner and her staff in Geneva and in the field, providing them with legal expertise, analysing policies, documenting good practices and elaborating guidance and tools. The Branch also supported several intergovernmental and expert mechanisms. The promotion and practical implementation of human rights were core concerns of the Branch, including the implementation of two fundamental OHCHR strategies, namely the strategy on discrimination, particularly discrimination on the grounds of race, sex and religion and against other marginalized persons, and the strategy on combating impunity and strengthening accountability, the rule of law and democratic societies. Of course, the International Covenant on Civil and Political Rights played a key role in that regard. Recent developments around the world, including in the Middle East and North Africa, had highlighted the importance of the rule of law and democracy; ever-increasing engagement was necessary to enforce the rule of law and to bring those responsible for violations to justice. Democratic institutions governed by the rule of law needed to be established or re-established to support the transition to sustainable regimes with human rights at their core. Effective mechanisms to hold perpetrators of human rights violations accountable and to provide victims with appropriate remedies also needed to be put in place. The provision of legal expertise and technical assistance in those areas were core tasks of the Rule of Law, Equality and Non-Discrimination Branch and, in particular, of the Rule of Law and Democracy Section.

5. The International Covenant on Civil and Political Rights and the work of the Human Rights Committee contributed to many aspects of the activities of the Rule of Law and Democracy Section, particularly the development of policy guidance and furtherance of the protection of human rights. When developing policy guidance, the Rule of Law and Democracy Section constantly referred to the Covenant and to the Committee's jurisprudence and general comments. For instance, the substantive guidance on human rights and security policies, including counter-terrorism, provided by the High Commissioner through her regular reports to the General Assembly and the Human Rights Council referred extensively to the Committee's work.

6. The Section's work in support of the right of victims to an effective remedy drew heavily on article 2 of the Covenant. In recent years OHCHR had contributed to the design and implementation of transitional justice mechanisms and procedures in about 20 countries throughout the world through various tools relating, *inter alia*, to truth commissions, amnesty laws, prosecution initiatives, reparations and national consultations. OHCHR was currently developing a new tool that would offer practical guidance on the development of national victim and witness protection programmes to facilitate the conduct of effective investigations and prosecutions of international crimes and other gross human rights violations, to protect fair trial rights and to enable victims to claim the reparations and remedies to which they were entitled.

7. OHCHR also relied heavily on the Covenant and the Committee's interpretation of some of its provisions in furthering the protection of human rights in the field. For instance, the Committee's affirmation in its general comment No. 31 and in its concluding observations that human rights instruments continued to be applicable in situations of armed conflict and its recognition of the extraterritorial nature of the obligations flowing from such instruments were of crucial importance for OHCHR's work. The Office had relied on the Committee's work in that area in its guidelines for public authorities, human rights defenders, humanitarian actors and other stakeholders on the application of international human rights law in situations of armed conflict.

8. With regard to the death penalty, the Committee's work, particularly its focus on what constituted the "most serious crimes" and its appeals to some States to review the imposition of the death penalty for certain offences, had assisted in furthering a better understanding and application of article 6 of the Covenant. OHCHR was advocating a global moratorium on executions and hoped that the United Nations General Assembly would adopt a resolution to that effect at its next session. It had recently organized a round table in New York on the subject, during which several national initiatives aimed at the abolition of the death penalty had been presented.

9. In April 2012 the Commission on Crime Prevention and Criminal Justice had adopted a resolution in Vienna establishing new United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. Some interesting points were that the Principles and Guidelines extended the right to legal aid to suspects, contained special provisions on legal aid for victims, witnesses and minors, and indicated that a gender perspective should be incorporated in the implementation of legal aid rights. She noted with interest that the Committee planned to draft a general comment on article 9 of the Covenant. That was a particularly welcome initiative, since the right to liberty and security of the person was at the core of OHCHR work and concerns. Violence and insecurity resulting from criminal activity constituted a growing problem in many parts of the world and presented serious challenges for law enforcement authorities and criminal justice. Some countries relied on the armed forces to protect internal security and to maintain law and order when the law enforcement authorities were unable to cope, or resorted to repressive measures in the name of security. The right to liberty and security of person had been seriously undermined by action against rising crime rates and social violence, especially in

countries where the criminal justice system was ineffective, and OHCHR was increasingly called upon to provide guidance on how best to ensure the right to liberty and security of person in such adverse circumstances. Further clarification by the Committee of the application of article 9 in such contexts would be very useful. As chair of the United Nations Counter-Terrorism Implementation Task Force, OHCHR was drawing up basic human rights reference guides to assist Member States in strengthening the protection of human rights in the context of action against terrorism; one of the guides dealt specifically with detention. OHCHR was also involved in the organization of regional workshops on the right to a fair trial in the counter-terrorism context, which encompassed articles 9 and 14 of the Covenant. The work would draw on the Committee's jurisprudence. Lastly, she drew the Committee's attention to the resolution adopted by the Commission on Crime Prevention and Criminal Justice in April 2012 concerning the revision of the Standard Minimum Rules for the Treatment of Prisoners approved by the Economic and Social Council in 1957. The resolution addressed a number of issues related to the right to liberty and security of person, such as the investigation of all deaths in custody and of any signs or allegations of torture or of cruel, inhuman or degrading treatment or punishment of detainees, the protection and special needs of vulnerable groups deprived of their liberty, and the right of access to legal representation.

10. With regard to the reform of the treaty body system, the Committee would have the opportunity during the session to discuss with Mr. Salama the High Commissioner's report on the strengthening of the human rights treaty body system (HRI/MC/2012/1), a copy of which had been sent to all members of the Committee and which would be officially published on 16 July in New York. On that occasion, Mr. Salama would also brief the Committee on the reactions of other stakeholders to the report and on the next steps in the intergovernmental process. In addition, he would report on the financial constraints that OHCHR was currently facing.

11. **Mr. Thelin** said that Mr. Lallah's death would leave a great void in the Committee, which had just recently lost another eminent member.

12. He noted with interest the activities of the Rule of Law, Equality and Non-Discrimination Branch. With regard to the Committee's work, he felt that Ms. Rishmawi should have mentioned the Committee's general comment No. 34 on freedom of opinion and expression. Political rights, particularly freedom of expression, played a key role in the strengthening of the rule of law and democracy, as had been demonstrated by the "Arab spring".

13. **Mr. Fathalla** expressed sorrow at the passing away of Mr. Lallah.

14. With regard to the High Commissioner's report on the strengthening of the treaty bodies, he wondered whether there was any point in Mr. Salama taking note of the Committee members' views and replying to their questions, given that the document would have been officially published at that stage.

15. **Ms. Rishmawi** said that OHCHR often referred to general comment No. 34, especially in the context of its work relating to articles 19 and 20 of the Covenant and to democratic structures. She had not mentioned it in her opening statement because the principal theme of the statement was criminal justice. If time had permitted, she would have liked to address also themes such as the rights of women, gender relations, minorities, and the interrelationship between freedom of expression, particularly freedom of religion, and the principles set forth in articles 19 and 20 of the Covenant.

16. The members of the Committee had been able to make substantial contributions to the High Commissioner's report on the strengthening of the treaty body system. Mr. Salama, who was currently absent from Geneva, intended to report to Committee members on reactions to the report. In the context of the economic crisis, he also wished to discuss

with them how certain agreed recommendations could be implemented without requiring the approval of other bodies.

Solemn declaration by the newly elected member of the Committee

17. **The Chairperson** thanked Ms. Rishmawi for her statement. On behalf of all the Committee members, she welcomed the new member, Mr. Ben Achour, who had been elected to replace the late Abdelfattah Amor. She invited Mr. Ben Achour to make the solemn declaration required under article 16 of the rules of procedure.

18. **Mr. Ben Achour** made the following declaration: "I solemnly undertake to discharge my duties as a member of the Human Rights Committee impartially and conscientiously." He said that he was greatly honoured to have been elected to the Committee and hoped to be worthy of his eminent predecessor and friend, Mr. Amor.

Adoption of the agenda (item 3 of the provisional agenda) (CCPR/C/105/1)

19. *The agenda was adopted.*

Organizational and other matters, including the adoption of the report of the pre-sessional working group on individual communications (agenda item 4)

20. **Mr. Flinterman** (Chairperson-Rapporteur of the Working Group on Communications) said that the members of the Working Group were Mr. Bouzid, Ms. Chanet, Ms. Majodina, Mr. O'Flaherty, Mr. Rivas Posada, Sir Nigel Rodley, Mr. Salvioli, Ms. Waterval and himself. The Working Group, which had met from 2 to 6 July 2012, had considered 22 draft decisions or recommendations drawn up by the Rapporteur. It recommended to the plenary that it adopt 7 decisions of inadmissibility and consider 14 communications on the merits. The Working Group had deemed admissible a communication in respect of which the Special Rapporteur on New Communications and Interim Measures had acceded to the State party's request to consider the question of admissibility separately from the merits.

21. The Working Group had also considered various questions relating to working methods and had decided to propose to the plenary that it discuss the scope of the mandate of the Special Rapporteur on New Communications and Interim Measures. He requested the Chairperson to make available the time required to hold such a discussion during the current session.

22. The Working Group had also held a preliminary discussion on the recommendations concerning the procedure governing communications contained in the High Commissioner's report on the strengthening of the treaty body system. He looked forward to continuing the discussion in plenary.

23. *The report of the Working Group on Communications was adopted.*

Tribute to Mr. Lallah

24. **The Chairperson** said that Rajsoomer Lallah had been a member of the Committee since 1976 and had served as Chairperson from 1989 to 1991. He had been a founding member of the Committee and a repository of its institutional memory. His experience as a judge and as Chief Justice of Mauritius had been particularly valuable, and he had played a pre-eminent role in developing the Committee's jurisprudence in the procedure for the consideration of individual communications.

25. Mr. Lallah's activities in support of human rights were not confined to the Committee, since he had performed many important functions in other fields, as noted by Ms. Rishmawi. He had always been a source of inspiration to Committee members. His

name would remain synonymous with honesty, integrity and professionalism, and his remarkable intellectual and human qualities would remain engraved in their memories. He represented the very best of the Committee's traditions.

26. **Ms. Chanet** said that it was particularly difficult for her to evoke the memory of Mr. Lallah, with whom she had developed a special bond since joining the Committee more than 25 years previously. As attested by his prestigious national and international career, Mr. Lallah had the soul and spirit of a judge. As former Special Rapporteur on the situation of human rights in Myanmar and Special Rapporteur on the situation of human rights in Chile, he had contributed to the liberation of Chile and to the favourable development of the situation in Myanmar. Indeed he had had the satisfaction, prior to his death, of witnessing the release of Ms. Aung San Suu Kyi. With the loss of this founding member, the Committee had lost part of its living memory. Notwithstanding his status as a Committee member, Mr. Lallah had never adopted a conservative attitude but had always sought to move forward. She recalled that he had drafted and served as the Committee's Rapporteur on general comment No. 23 concerning article 27 (Rights of minorities), an issue — just like all matters pertaining to human dignity — about which he felt particularly strongly. Although he came across as a particularly gentle individual, he could also defend his values with intense vigour or even anger.

27. Mr. Lallah had had a lively, brilliant and precise mind. He had known how to place his many talents at the service of his convictions, which were as firm and strong as his courage. He could always be relied upon in difficult situations.

28. **Sir Nigel Rodley** said that he had known Mr. Lallah for more than 35 years. He had met him in the civil society sector when he himself was acting as legal advisor to Amnesty International and the Committee was beginning its work. Mr. Lallah had been a member of the International Commission of Jurists from 1988 to 1998. He had also been a member of the Advisory Council of Inter-rights, a human rights defence body based in London, from 1988 to 1994, a period during which he himself had also been a member. Mr. Lallah had been aware of the importance of civil society as a driving force for the defence of human rights. The representative of Amnesty International at the United Nations when the Committee was established had discussed her memories of Mr. Lallah with him, noting that he had played a prominent role in the Committee's development. She remembered him as a brilliant jurist and a universally respected intellectual, who had succeeded in protecting the Committee from the politicization of the East-West divide. He had been one of the first Committee members to express a willingness to receive information from non-governmental organizations at a time when that question was still controversial.

29. In the context of the United Nations system, he had known Mr. Lallah during the period when he was serving as Special Rapporteur on the situation of human rights in Myanmar and had met him at the annual meetings of special procedure mandate holders. He had always been a source of inspiration and of exemplary wisdom. It was within the Committee that Mr. Lallah's influence had been strongest. He had placed his legal multilingualism and his profound knowledge of all legal systems, including those based on religious precepts, at the service of the Committee and its members. His gentleness, his modesty, his desire to help and his future-oriented mind would be greatly missed by the members of the Committee.

30. **Mr. Rivas Posada** described the many facets of the personality of Rajssoomer Lallah, an eminent jurist who had been particularly dedicated to the Committee's mandate. Mr. Lallah had enriched many of the Committee's decisions with his wide-ranging experience and his solid perceptions of justice, equity, balance and moderation. His outstanding imaginative skills had enabled him to find points of convergence in highly diverse opinions and concepts and to facilitate the settlement of the most intense disputes. By dint of his vigilance, his imagination and his spirit of compromise, Mr. Lallah had

helped the Committee to find a solution conducive to unified decisions and had often managed to steer it out of deadlock.

31. **Mr. Iwasawa** highlighted Mr. Lallah's great wisdom, on which he had frequently relied during his term as Chairperson when complex problems arose. An outstanding jurist and an ardent defender of human rights, Mr. Lallah had often expressed himself in forceful terms during the consideration of State party reports. He had not hesitated to criticize the human rights situation in the States concerned, regardless of their identity. Mr. Lallah had represented the Committee's living memory, and he himself had learned a great deal from listening to his accounts of his experience.

32. **Mr. O'Flaherty** said that it was difficult to imagine the Committee without Rajsoomer Lallah, who had been so inextricably linked to its work. When conducting research during the drafting of general comment No. 34, he had consulted jurisprudence dating back to the early days of the Committee and had encountered many instances in which Mr. Lallah had displayed his moral and intellectual authority on very thorny issues. Mr. Lallah had been passionately dedicated to the cause of human rights, which he had served with the integrity and rigour inherent in his personality.

33. **Mr. Salvioli** commended the modesty of the brilliant jurist Rajsoomer Lallah. Although he had been the most senior member of the Committee, Mr. Lallah had never been conservative; he had invariably moved forward and had never hesitated to revise his initial opinion if it could be improved. He would remain a model for the Committee.

34. **Mr. Thelin** emphasized the extent to which Mr. Lallah's unwavering resolve to seek a compromise had proved beneficial to the Committee. He had invariably succeeded, given his background in the common-law tradition, in reconciling the separate characteristics of Roman law and common law. When faced with complex problems, he would analyse the situation from a new angle. That talent, which was always exercised with a measure of good humour, would be irreplaceable.

35. **Ms. Waterval** read out the poem Farewell by Rabindranath Tagore, a heartfelt ode to friendship, which clearly symbolized the Committee's links with Mr. Lallah.

36. **Mr. Bouzid** said that Mr. Lallah's death was a great loss to his family, his country and the world as a whole, as well as to the cause of human rights and the Committee. In accordance with Muslim tradition, he said that Mr. Lallah's spirit was floating over the Committee; Mr. Lallah would enjoy God's grace, since he who was loved by all was also loved by God.

37. *At the invitation of the Chairperson, the meeting observed a minute of silence in tribute to the memory of Rajsoomer Lallah.*

The first part (public) of the meeting rose at 11.25 a.m.