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HUMAN RIGHTS COMMITTEE

Eighty-seventh session

SUMMARY RECORD OF THE 2392nd MEETING

Held at the Palais Wilson, Geneva,  
on Wednesday, 26 July 2006, at 11 a.m.

Chairperson: Ms. CHANET

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The meeting was called to order at 11.05 a.m.

FOLLOW-UP TO CONCLUDING OBSERVATIONS ON STATE REPORTS AND TO  
VIEWS UNDER THE OPTIONAL PROTOCOL (agenda item 7)

Report of the Special Rapporteur for follow-up on Views (CCPR/C/87/R.3)

1. Mr. ANDO, Special Rapporteur for follow-up on Views, introduced the “Progress follow-up report of the Human Rights Committee on individual communications” (CCPR/C/87/R.3). In the Madaffer v. Australia case (communication No. 1011/2001), the State party had granted the author a spouse (migrant) permanent visa on 3 November 2005; the matter at issue had thus been resolved.
2. The same State party had provided a detailed response in respect of Faure v. Australia (communication No. 1036/2001), arguing that the Committee’s conclusion departed from its earlier jurisprudence where it had found violations of article 2 of the Covenant in combination with breaches of a substantive right that required a remedy only. The State party had refused to accept the Committee’s View.
3. Mr. SHEARER, supported by Mr. KÄLIN, said that, given the comprehensive nature of the State party’s response, the Committee’s decision to consider it “unsatisfactory” seemed unwarranted. That term was generally applied when a State party failed to respond in full or at all, misinterpreted the Committee’s decision, or adduced new arguments. While the Committee might disagree with its content, the response was well reasoned and must be acknowledged as such. He therefore proposed amending the entry to read: “Noting the State party’s refusal to accept its Views, the Committee considers the dialogue ongoing.”
4. Sir Nigel RODLEY said that, contrary to the State party’s assertions, in the case in question the Committee had found a violation of article 2 together with article 8. At no point had the Committee departed from its position that the rights articulated in article 2 were accessory in nature. The Committee’s conclusions were consistent with the Views adopted in Kazantzis v. Cyprus (communication No. 972/2001). While he, too, welcomed the State party’s comprehensive response, the allegation that the Committee had departed from its earlier jurisprudence should not remain uncontested.
5. Ms. WEDGWOOD wondered whether it was necessary to refer to an “ongoing” dialogue, given that the State party had provided a conclusive response.
6. Mr. O’FLAHERTY said that, although he agreed in substance with Sir Nigel Rodley, it seemed ill-advised to use the section detailing the Committee’s decision to justify Views adopted previously; the reasons for reaching those conclusions were provided in the relevant jurisprudence. It might be useful, however, to include a reference to the Committee’s dissatisfaction with the State party’s response. The reference to an ongoing dialogue must be retained until the State party had taken remedial action.
7. Mr. WIERUSZEWSKI suggested amending the sentence to read: “While regretting the State party’s views, the Committee considers the dialogue ongoing.”

8. Mr. ANDO informed the Committee that there had been no new developments with regard to Perterer v. Austria (communication No.1015/2001).
9. During the current session, he had met with a representative of the Permanent Mission of Belarus to discuss further action in respect of Svetik v. Belarus (communication No. 927/2000). The outcome of the meeting had been encouraging. The entry in the section entitled “Further action taken or required” would be updated accordingly.
10. Turning to Sankara et al. v. Burkina Faso (communication No. 1159/2003), he said that the State party’s response would be transmitted to the author for comments, with a deadline of two months.
11. Mr. AMOR said that the State party’s exemplary and unprecedented response to the Committee’s Views was commendable and should be formally acknowledged.
12. The CHAIRPERSON cautioned the Committee against such action; by offering generous compensation, the State party might attempt to divert attention from other shortcomings, such as the failure to reveal the circumstances of Mr. Sankara’s death.
13. Sir Nigel RODLEY, endorsing the Chairperson’s comment, said that, before commending the State party formally for its action, the Committee should establish whether all its recommendations had indeed been implemented.
14. Mr. SOLARI YRIGOYEN, supported by Mr. SHEARER, said that he, too, was impressed by the State party’s response. However, it might be judicious to wait for the author’s comments before considering the case closed.
15. Mr. ANDO, turning to Ominayak v. Canada (communication No. 167/1984), said that there had been no new developments. With regard to Waldman v. Canada (communication No. 694/1996), the State party had argued that under Canada’s federal system education matters fell within the exclusive jurisdiction of the provinces.
16. Ms. WEDGWOOD said the State party was well aware that the Covenant applied to all entities of federal States; its response was highly unsatisfactory. The Committee might wish to encourage the Federal Government to issue a public statement acknowledging the existence of a violation of the Covenant, thus exerting pressure on the provincial government concerned to take remedial action.
17. Mr. ANDO suggested including a reference to article 50 of the Covenant in the Committee’s decision.
18. The CHAIRPERSON said that the Special Rapporteur could publicly acknowledge the violation at the forthcoming press conference, and that approach could be incorporated in the Committee’s working methods and used as a precedent for similar situations in the future.
19. Ms. WEDGWOOD said that since the Federal Government of Canada had stated that it had no authority in the present case, she wondered whether the Committee could request a meeting with the authorities of the Province of Ontario.

20. Mr. SHEARER said that the Committee could submit a request to the Federal Government to provide information from the Ontario authorities on the problems they had encountered in implementing the Committee's decision. A similar approach had been taken in a previous case regarding Australia, in which information had been requested from the Government of Tasmania.
21. Mr. O'FLAHERTY supported the views expressed by Ms. Wedgwood and Mr. Shearer.
22. Mr. AMOR expressed concern that such an approach would weaken the impact of article 50, which stated that the Covenant applied to "all parts of federal States without any limitations or exceptions".
23. The CHAIRPERSON said that, in her view, the impact of article 50 would not be weakened if the Committee contacted the Federal Government to request information from the Ontario authorities. Pursuant to article 50, the Committee could request information from authorities other than a federal Government, but could not bypass a federal Government when doing so. The most suitable solution to the problem would be that suggested by Mr. Shearer.
24. Mr. WIERUSZEWSKI said that since Brok v. Czech Republic (communication No. 774/1997) was closed, it should be mentioned separately from the other cases relating to the Czech Republic that featured in the report.
25. Mr. ANDO said that he would take Mr. Wieruszewski's comment into account. On the communications relating to the Democratic Republic of the Congo, he said that since the State party was still at the stage of following up the Committee's concluding observations (CCPR/C/COD/CO/3), the Committee should wait for the Government's comments on the communications before it took any further action.
26. There had been no further developments in Byahuranga v. Denmark (communication No. 1222/2003). Since the reply of the State party in Alexandros Kouidis v. Greece (communication No. 1070/2002) had only been received in early July 2006 and then transmitted to the author, the Committee should await the author's response before proceeding.
27. Ms. FOX (Petitions team), referring to El Ghar v. Libyan Arab Jamahiriya (communication No. 1107/2002), said Ms. El Ghar had recently informed the Committee that she had received her passport. She had, however, filed a new claim for compensation for the time that had been wasted while she had been waiting for the passport, which had prevented her from travelling to Switzerland to study.
28. Mr. SOLARI YRIGOYEN said that the "other documents" mentioned in the final paragraph of the author's response had not been mentioned in the original communication. The words should therefore be deleted.
29. The CHAIRPERSON endorsed Mr. Solari Yrigoyen's suggestion.
30. Mr. ANDO said that there had been no further developments in Leirvag v. Norway (communication No. 1155/2003). The Peruvian Government had recently become more cooperative in responding to the Committee. The author's response in Quispe Roque v. Peru

(communication No. 1125/2002) would be amended, since a response had not yet been received. The Committee was still waiting for updated information on Llantoy Huaman v. Peru (communication No. 1153/2003).

31. Mr. SOLARI YRIGOYEN said that in the report on Vargas Mas v. Peru (communication No. 1058/2002), the third paragraph of the section entitled “Further action taken or required” referred to the Llantoy Huaman v. Peru case, and should therefore be moved to the part of the report that addressed the relevant communication (No. 1153/2003).

32. Mr. ANDO said that the report would be amended in accordance with Mr. Solari Yrigoyen’s suggestion. On the issue of the death penalty cases in the Philippines, he said that information had recently been received from the Government of the Philippines stating that capital punishment had been abolished. The Committee should request further information on how that legislative change would affect the communications in practice.

33. Ms. WEDGWOOD suggested that the Committee should remind the Government of the Philippines of the provisions of article 15 of the Covenant concerning a convicted person’s right to benefit from a lighter penalty in the event of a change in the law on punishment.

34. The CHAIRPERSON agreed with Ms. Wedgwood.

35. Mr. ANDO, turning to Platonov v. Russian Federation, (communication No. 1218/2003), said that under its domestic law the State party did not recognize any irregularities in the case, and refused to acknowledge the grounds of the allegation.

36. The CHAIRPERSON said that a further meeting between the Committee and the State party should be convened in order that the Committee could explain the importance of the effective implementation of the Covenant.

37. Mr. WIERUSZEWSKI asked whether the information from the State party had been transmitted to the author. What had become of the other pending communication concerning the Russian Federation?

38. Mr. ANDO said that there had been no further developments in that case. The Russian Federation had announced that under its legal system it could not release the author.

39. Ms. FOX (Petitions team) said that the report currently before the Committee contained all information on follow-up that had been received since the previous session.

40. Mr. ANDO, turning to Gómez Vásquez v. Spain (communication No. 701/1996), said that although Spain had changed its law, the Government refused to apply the new law retroactively.

41. Mr. SOLARI YRIGOYEN expressed his concern about the lack of progress in that case. The author could have been released in 2000, but was still being held six years later. The Committee should be more vigorous in informing the State party that measures needed to be taken to address the situation.

42. Mr. ANDO said he would take account of Mr. Solari Yrigoyen's concerns. There had been no further developments in the cases concerning Sri Lanka, Suriname and Zambia.

Report of the Special Rapporteur for follow-up on concluding observations  
(CCPR/C/87/CRP.1/Add.7)

43. Mr. RIVAS POSADA, speaking as Special Rapporteur for follow-up on concluding observations, said that the working group on strengthening the follow-up activities of the Committee had drawn up recommendations for improvements that would be submitted to the Committee at its next session. He fully agreed with the recommendations regarding the format and content of the report on follow-up to concluding observations.

44. Introducing the current report (CCPR/C/87/CRP.1/Add.7), which was based on the old format, he said that Venezuela had been requested, at the Committee's seventy-first session in March 2001, to provide information on a number of paragraphs of its concluding observations. Some partial replies had been received in the meantime but the State party had not yet responded to the Committee's request in October 2004 for supplementary information on paragraphs 12 to 14. He had discussed the matter during the current session with the Permanent Representative, who had assured him that a reply was being prepared, but none had yet been received. It might well be necessary to send an additional reminder and to schedule a further meeting at the next session.

45. The Republic of Moldova had been requested, at the Committee's seventy-fifth session in July 2002, to submit information on four paragraphs of the concluding observations. No reply had been received to date despite several reminders and meetings with representatives of the State party. However, in a note verbale sent in March 2006, the Republic of Moldova had requested the Committee's consent for a merger of the follow-up replies with its second periodic report, which it undertook to submit by the end of 2006. He had informed the State party of the option of requesting technical assistance from the secretariat but had received no response to that suggestion.

46. Togo had been requested, at the Committee's seventy-sixth session in October 2002, to provide information on a number of paragraphs of the Committee's concluding observations. Partial replies had been received in 2003 but the Committee was still awaiting a full response. The most recent reminder had been sent on 6 July 2006.

47. No response had been received to the Committee's request to Mali at its seventy-seventh session in March 2003 for information on three paragraphs of its concluding observations. On 6 July 2006 he had sent a further reminder to the Permanent Representative and requested a meeting but had received no reply. He would continue to send reminders and to seek a meeting with a representative of the State party.

48. Israel had also failed to respond to the Committee's request at its seventy-eighth session in August 2003 for information on five paragraphs of its concluding observations. He had met in October 2005 with representatives of the State party, who had assured him that replies would be submitted but had not committed themselves to a specific date. He had sent a reminder on 6 July 2006 and requested a meeting with the Special Representative but had received no reply, which was not surprising in view of the current armed conflict.

49. Sir Lanka had submitted an incomplete reply in October 2005 to the Committee's request at its seventy-ninth session in October 2003 for additional information on four paragraphs of its concluding observations. A full response had been requested but none had been received to date and a reminder had been sent on 6 July 2006.

50. Suriname had not responded to the Committee's request at its eightieth session in March 2004 for additional information to be submitted by 1 April 2005. A representative of the State party had informed him during the Committee's previous session in New York that replies would probably be submitted by June 2006 but none had yet been received. A reminder had been sent on 6 July 2006.

51. Uganda had also been requested, at the Committee's eightieth session, to submit additional information by 1 April 2005 and had sent an incomplete reply. The secretariat had received a response from the State party the previous day in reply to a reminder sent on 6 July 2006 but it had not yet been processed.

52. Namibia had not responded to three reminders of the Committee's request at its eighty-first session in July 2004 for additional information. He would seek contact with a representative of the State party at the Committee's next session.

53. Albania had sent a partial reply on 2 November 2005 to the Committee's request (made in October 2004) for additional information. A full reply had been requested and a reminder sent on 6 July 2006.

54. At its eighty-third session in March 2005, the Committee had requested additional information by 31 March 2006 from five States parties. Reminders had been sent to Greece and Iceland on 6 July 2006. Kenya had submitted what seemed to be a complete reply on 12 June 2006, noting, however, that it had not had time to implement some of the Committee's recommendations. Mauritius had also submitted a complete response with comprehensive statistical annexes. No further action was recommended with regard to either of those two States parties. Although Uzbekistan had not provided the information requested, it had informed the Committee through the Chairperson that the death penalty would be abolished on 1 January 2008 and that a number of committees had been mandated to undertake a corresponding review of the country's legislation.

55. The deadlines set at the Committee's eighty-fourth session in July 2005 for the submission of additional information had just passed or fell that week. Tajikistan's response had been received and was currently being translated. Reminders would be sent to Slovenia, the Syrian Arabic Republic, Thailand and Yemen.

56. The deadline set at the eighty-fifth session had not yet been reached. The States parties concerned were Brazil, Canada, Italy and Paraguay.

57. Mr. SOLARI YRIGOYEN asked what the procedure was where the situation in a State party was examined in the absence of a report and a delegation. Had there been any follow-up, for example, to the concluding observations sent to Equatorial Guinea?

58. Mr. RIVAS POSADA pointed out that the concluding observations in such cases were provisional and confidential. However, a decision should certainly be taken regarding a possible follow-up procedure.

59. Mr. SOLARI YRIGOYEN said he understood that the provisional observations became definitive after 12 months.

60. The CHAIRPERSON said that Mr. Solari Yrigoyen had correctly drawn attention to an oversight on the part of the Committee, which had decided one year previously to make the concluding observations on Equatorial Guinea definitive and to publish them in the annual report that the Committee was about to discuss.

61. Mr. SHEARER noted that the Special Rapporteur had mentioned in the case of Mali and Israel that no reply had been received to a communication dated 6 July 2006. It was somewhat unfair, in his view, to expect a State party to send the Committee its response on such an important matter within 20 days. He suggested that a reference should simply be made to the dispatch of a reminder.

62. Mr. RIVAS POSADA agreed to amend the report accordingly.

63. Mr. O'FLAHERTY enquired about the basis on which a recommendation for no further action was made. In the case of Kenya, for example, the Committee had drawn attention to some very serious issues in its concluding observations. Was the Committee now satisfied that Kenya had taken the necessary corrective action or was it merely satisfied that the requested information had been provided?

64. Mr. RIVAS POSADA agreed that there should be a qualitative assessment of compliance with the Committee's requests. The working group on the strengthening of the follow-up activities of the Committee had made some recommendations in that regard which would be discussed at the next session. Clearly, however, a qualitative review would take a great deal more time.

65. The CHAIRPERSON said that any pending issues could be raised when the subsequent periodic report was considered.

66. Mr. ANDO said that he had attended the meeting of the working group and agreed that some kind of qualitative assessment of follow-up replies to concluding observations was necessary.

The meeting rose at 1 p.m.