



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

Distr.: General  
24 January 2008  
English  
Original: French

---

## COMMITTEE AGAINST TORTURE

Thirty-ninth session

### SUMMARY RECORD OF THE FIRST PART (PUBLIC)\* OF THE 784th MEETING

Held at the Palais Wilson, Geneva  
on Tuesday 6 November 2007, at 3 p.m.

Chairperson: Mr. MAVROMMATIS

## CONTENTS

### DRAFT GENERAL COMMENT No. 2 ON IMPLEMENTATION OF ARTICLE 2 OF THE CONVENTION (*continued*)

---

\* The summary record of the second part (private) of the meeting appears as document CAT/C/SR.784/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

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 first part (public) of the meeting was called to order at 3.15 p.m.*

DRAFT GENERAL COMMENT No. 2 ON THE IMPLEMENTATION OF  
ARTICLE 2 OF THE CONVENTION (CAT/C/GC/2/CRP.1/Rev.2;  
CAT/C/GC/2/CRP.1/Add.1; CAT/C/GC/2/CRP.1/Add.2) (*continued*)

1. The CHAIRPERSON congratulated Ms. Gaer and Mr. Mariño Menéndez, joint Rapporteurs for the draft general comment on the implementation of article 2 of the Convention, on their remarkable achievement and said that he was confident that the draft, after several years of work and effort, would be adopted in the near future.
2. Ms. GAER (Rapporteur for the draft general comment) recalled that in line with what had been agreed during the preceding session, the draft had been submitted to the States parties, to non-governmental organizations and, via the website of the Office of the High Commissioner for Human Rights, to civil society in the widest sense. In all, 53 States parties, non-governmental organizations and national human rights institutions had made comments, the great majority of which had been favourable. Referring to the doubts that had been expressed by some people as to whether the Committee was entitled to draw up a general comment, the Rapporteur recalled that that right was expressly conferred on the Committee by the Convention. She added that the draft under consideration had been written on the basis of the conclusions, recommendations and other decisions that had proceeded from the work of the Committee, with the goal of increasing the efficiency of the process of presentation of reports by the States parties.
3. Examination of the comments made had thrown up four major themes which the Committee had wished to go over again in order to clarify its position. The first had to do with the question of whether the Committee was authorized to include cruel, inhuman or degrading treatment or punishment in a draft general comment concerning the implementation of article 2, given that the article dealt specifically only with torture. Ms. Gaer wished to make it very clear that the Committee was in no sense blending together torture on the one hand and cruel, inhuman or degrading treatment or punishment on the other. Referring to paragraph 3 of the draft general comment, she recalled the position of the Committee which was based on the idea that the prevention of cruel, inhuman or degrading treatment or punishment was a measure that also prevented torture and that therefore it was a component of the obligation to prevent torture set forth in article 2. There was thus no uncertainty as to the appropriateness of retaining the reference to cruel, inhuman or degrading treatment or punishment in the draft general comment. Doubts had been expressed in some comments as to the applicability to the victims of cruel, inhuman or degrading treatment or punishment of the right to obtain redress stipulated in article 14 for the victims of torture. Ms. Gaer said that the Committee held to the position expressed in paragraph 17 of the draft, as to the substance, but that editing improvements could be made to clarify that position.
4. The second major theme referred to in the comments received by the Committee was that of discrimination. The majority of the authors of the comments had praised the Committee for having included discrimination in its draft general comment, but some others had questioned the competence of the Committee to deal with that issue. Discrimination clearly fell under the mandate of the Committee since it was one of the reasons underlying acts of torture as cited in article 1 of the Convention. In the opinion of the Committee, the position expressed in the draft general comment with regard to discrimination was perfectly in line with the

conclusions that arose from its work on the issue, and consequently did not require any modification.

5. The third subject of concern raised by several States parties and non-governmental organizations related to the territorial applicability of the Convention (paras. 6 and 16 of the draft). In paragraph 16 of the draft, the Committee interpreted the notion of “territory” as extending to all the regions over which a State exercised effective control. The Committee had had a vigorous debate on the question of whether that interpretation was indeed in conformity with the obligation laid on the States parties, in paragraph 1 of article 2, to prevent acts of torture from being committed in any territory under their jurisdiction. The preparatory work for the Convention showed clearly that the intention of the drafters had been to widen the scope of “territory” well beyond the actual territory of the States parties and referred expressly to the territories over which a State exercised effective control. The Committee had noted that the criterion of effective control had been endorsed by other treaty bodies and also by international jurisdictions such as the International Court of Justice and that it was compatible with the object and purpose of the Convention. However, it had not concluded its consideration of that aspect.

6. The last major theme arising out of the comments received concerned whether the State was responsible when violations were committed by private sector actors, with its express or tacit consent (para. 19 of the draft). The position expressed in the draft general comment was based on the actual practice of the Committee with regard to the interpretation of the notion of consent and was confirmed in international humanitarian law, the jurisprudence of the United Nations international criminal courts, the International Law Commission and other sources of international law.

7. Mr. MARIÑO MENÉNDEZ (Rapporteur for the draft general comment) appreciated the general consensus reception that the draft general comment had encountered from the members of the Committee and said that he had high hopes that the text could be adopted in the very near future. He was pleased at the interest that the draft general comment had raised among States parties, non-governmental organizations and national human rights institutions, whose comments had significantly contributed to the Committee’s discussions.

8. The draft general comment on the implementation of article 2 was the second draft general comment drawn up by the Committee in its more than twenty years of operation. In the view of Mr. Mariño Menéndez, the difficulty that the Committee encountered in formulating general comments could be largely explained by the way that the interpretation of the Convention was impacted by the evolution of international law, and the complications that could result therefrom. Thus, the emergence, in international criminal law, of the concept of the international responsibility of individuals complicated the legal context of the interpretation of the Convention which, for its part, had to do with the responsibility of States.

9. Mr. Mariño Menéndez recalled that the obligations stated in the Convention were enforceable by any State party against any other State party which did not fulfil them correctly and that a procedure was expressly set forth to that end in article 21 of the Convention. He was sorry that the States parties did not take recourse to that provision because application of it would constitute an effective way of strengthening observation of the Convention.

10. The interpretation of the provisions of the Convention was subject to the rules of interpretation established by the Vienna Convention on the Law of Treaties. The interpretation of article 2 given in the draft general comment currently under consideration was in conformity with those rules, in other words was based on the object and purpose of the Convention, the practice followed by the Committee in the implementation of the article and the relevant rules of international law.

11. Mr. Mariño Menéndez said that the adoption of the draft general comment appeared to him to be on the right track given that the few points that were a matter of dispute, in particular the territorial applicability of the Convention and the imputation to the State of responsibility for acts committed by persons who were not State officials, had been if not totally elucidated at least largely so. Nevertheless, one question remained pending: that of whether the reference to the responsibility of hierarchical superiors in the event of acts of torture committed on their orders or with their express or tacit consent should or should not be retained, since the Convention sought to render States liable and was not intended to establish the international criminal liability of individuals. Mr. Mariño Menéndez was certain that that question could be resolved quickly and that the final version of the draft could be written in a little while, taking due account of the editorial changes proposed by the States parties and the non-governmental organizations.

12. Mr. GROSSMAN said that, in drawing up its draft general comment, the Committee had relied on the jurisprudence and international rules on the interpretation of human rights instruments and that its interpretation of article 2 of the Convention was intended to increase the effectiveness of the measures taken by States parties to combat torture and cruel, inhuman or degrading treatment or punishment. Time and experience would show whether that interpretation had helped the States parties to reach that goal.

13. One important element should be incorporated in the draft, namely the need to strengthen the protection of human rights by procedural safeguards when a state of emergency was proclaimed in a country. As was shown by the history of several countries in the western hemisphere, countries whose experience of violations of human rights was sadly a very rich one, restriction of such safeguards could result in the worst violations. Even if the absolute prohibition against torture was still in force in a country and the inviolability of that principle not open to doubt, the risks of torture could be very high when procedural safeguards were limited and the rights of detainees only incompletely protected.

14. Furthermore, the Committee still needed to give some thought to the question of the surveillance of places of detention by an independent mechanism and the links between that issue and the prohibition against torture. It also needed to examine the question of whether, in the event of a state of emergency, certain inviolable rights might cease to be considered as peremptory norms of international law and, as a result, be subject to restrictions. In that regard, ratification by a State of a further instrument relating to the Convention took on major importance for the Committee because, by voluntarily accepting to be bound by additional obligations, that State was likely to observe even more scrupulously the provisions of the Convention.

15. Finally, even if the general comment was devoted solely to article 2, the Committee could not completely disregard the other articles of the Convention, which were implicitly or explicitly linked to article 2. Here, the recognition by the

Committee of a relationship of cause and effect between cruel, inhuman or degrading treatment or punishment on the one hand and torture on the other constituted a major step forward.

16. Ms. SVEAASS, welcoming the many pertinent comments that had been made by States parties, United Nations bodies and non-governmental organizations, said that the Committee was doing all that it could to take them into account. In particular, pursuant to some of the suggestions, it was making reference to some extremely harmful practices such as female genital mutilation, considering that they fell under the category of cruel, inhuman or degrading treatment or punishment, and had included children and persons with disabilities or perceived as such in the particularly vulnerable groups which it had listed so as to help States better target their preventive measures. Currently, the Committee was checking in order to make certain that it had not forgotten to include any other important groups in that list.

17. Mr. WANG Xuexian recalled that the States parties and the Committee were pursuing the same objective, namely the prevention of torture, and that, while that objective was unalterable, the means to reach it might, by contrast, evolve. That was the reason that the Committee had considered it necessary to draw up a general comment stating clearly the measures that States parties should take in order to fulfil the obligations arising out of article 2 of the Convention.

18. The Committee had reached a broad consensus on the wording of the draft and, in the coming days, would be working on taking account of the comments made by States parties, non-governmental organizations and the other stakeholders. However, it would not be able to incorporate all of those comments into the draft, since some were in contradiction with others or did not bring any significant improvement to the wording.

19. Mr. CAMARA, observing that the Rapporteurs who had prepared the draft had placed the emphasis essentially on paragraph 3 of article 2 of the Convention, which had to do with excluding the possibility that a perpetrator of acts of torture might hide behind the orders of a superior, suggested to them that some considerations might be added to the draft on the content of paragraph 2, which had to do with the ban on invoking exceptional circumstances, in particular a situation of armed conflict, as a justification of torture.

20. The CHAIRPERSON recalled that originally, general comments had been an indirect way of giving advice to a State party without naming it, at a time when the Committee was able neither to reveal its sources, nor give the name of the non-governmental organizations that were providing it with information. While that time was now in the past, the objective remained the same: to help the States parties to meet their obligations in accordance with the Committee's interpretation of the Convention. A general comment must meet several criteria: it must not be excessively long, its content must not give rise to disputes and it must be based on the jurisprudence and practice of the Committee.

21. Owing to a whole range of constraints and difficulties, the Committee had so far adopted only one single general comment. In order to make up that lost ground, it should follow the example of the Human Rights Committee, which retained the option of returning subsequently to the wording of a concluding observation and modifying it in the light of its practice and the new realities of the contemporary world.

22. Finally, the CHAIRPERSON invited the representatives of the non-governmental organizations present in the room to join in the debate.

23. Ms. COPELOU (International Human Rights Clinic) said that the non-governmental organization that she represented had been dealing for some fifteen years with violence against women and its relationship with torture and that it was one of the NGOs that had submitted comments on the Committee's draft.

24. The Committee's preparation of a new general comment on measures to prevent torture came at an auspicious moment because there was at present a resurgence of attempts to outflank the absolute prohibition on torture. At the same time, there was international recognition of the idea that the prohibition against torture and ill-treatment should include a prohibition on violence against women and the obligation to prevent it. The International Human Rights Clinic therefore noted with satisfaction that the latter aspect had been covered in the draft, as had that of the responsibility of the State for acts committed by private individuals or non-State agents such as paramilitary forces. Those inclusions closed some major gaps. In that regard, the concept of tacit consent was crucial, because it made it possible to assign to the State the responsibility for preventing violence committed in the private sphere, in particular violence against women, which represented a scourge of a worldwide scale.

25. The CHAIRPERSON thanked the representative of the International Human Rights Clinic for her remarks and asked the members of the Committee who had suggested amendments to provide the Rapporteurs with a written proposal. He also asked the Rapporteurs to modify the draft in the light of the spoken and written proposals from the members of the Committee and the comments of States parties, United Nations bodies and non-governmental organizations and to present their new version of the draft to the Committee at a subsequent meeting.

*The first part (public) of the meeting rose at 4.20 p.m.*