



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

Distr.
GENERAL

CAT/C/SR.803
13 December 2007

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Thirty-ninth session

SUMMARY RECORD OF THE 803rd MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 20 November 2007, at 10 a.m.

Co-Chairperson: Ms. CASALE (Subcommittee on Prevention of Torture)

Co-Chairperson: Mr. MAVROMMATIS (Committee against Torture)

CONTENTS

OPENING OF THE JOINT MEETING OF THE COMMITTEE AGAINST TORTURE AND
THE SUBCOMMITTEE ON PREVENTION OF TORTURE

ADOPTION OF THE AGENDA

IMPLEMENTATION OF THE OPTIONAL PROTOCOL

COOPERATION BETWEEN THE COMMITTEE AND THE SUBCOMMITTEE

PUBLIC ANNUAL REPORT

COMPLAINTS PROCEDURE OF THE COMMITTEE AGAINST TORTURE

ONGOING CONTACT

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 Editing Unit, 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 meeting was called to order at 10.05 p.m.

OPENING OF THE JOINT MEETING OF THE COMMITTEE AGAINST TORTURE AND THE SUBCOMMITTEE ON PREVENTION OF TORTURE

1. The CO-CHAIRPERSON (Committee against Torture), welcoming members of the Subcommittee on Prevention of Torture to the first joint meeting with the members of the Committee against Torture, said the Committee had consistently promoted ratification of the Optional Protocol, and had also designated some of its own members to monitor the preparatory work for its adoption. He was anxious to learn the views of members of the Subcommittee on how best to combine the efforts of the two bodies in order to bring about increased ratification and broader implementation.
2. The CO-CHAIRPERSON (Subcommittee on Prevention of Torture) said that although the role of the Subcommittee was confined to prevention, the mandates of the two bodies were complementary and should be used to maximum effect. It was important to devise ways of communicating and working together to serve the common aim of eradicating torture and other forms of cruel, inhuman or degrading treatment or punishment.

ADOPTION OF THE AGENDA

3. The CO-CHAIRPERSON (Committee) proposed that the draft agenda should be adopted.
4. It was so decided.

IMPLEMENTATION OF THE OPTIONAL PROTOCOL

Ratifications

5. Ms. GAER (Committee), Rapporteur, said it was the Committee's regular practice to recommend ratification of the Optional Protocol, both in the lists of issues presented to States submitting their periodic reports and in its concluding observations on those reports. States parties were also asked what measures they were taking with a view to ratification. At the current session of the Committee, five of the reporting States parties - Benin, Estonia, Latvia, Norway and Portugal - had already ratified. The number of ratifications now stood at 34; when it reached 50, the Subcommittee would acquire additional members and extra resources. The main question was how best to secure additional ratifications.
6. Mr. SARRE IGUÍNIZ (Subcommittee) said it would be useful to have wider geographical representation on the Subcommittee.
7. The CO-CHAIRPERSON (Subcommittee) agreed. Ideally, the process of gaining further ratifications would proceed smoothly so that the Subcommittee would not be overburdened while it still had only 10 members. As to the Committee, it worked with a wide range of countries, all of which should be encouraged to ratify.
8. Mr. CORIOLANO (Subcommittee) recommended close coordination with the regional bodies and a joint campaign to encourage ratification. It would be useful to look at the situation in the 66 States parties to the Convention which had already acceded or ratified. There would certainly be something to be learned from the reasons which had prompted them to do so.

9. Ms. SVEAASS (Committee) wondered what prevented the 30 or so States that had acceded to but not ratified the Optional Protocol from proceeding to ratification, and what could be done to encourage them to ratify.
10. The CO-CHAIRPERSON (Subcommittee) said that a common element among those States parties was the lack of a model preventive mechanism. Hesitation in ratifying was not necessarily a negative sign. Rather, it indicated that they were taking their obligations seriously because the new mechanism must be effective in preventing all forms of ill-treatment; establishing it was a considerable undertaking.
11. Mr. RODRÍGUEZ RESCIA (Subcommittee) said that, in the light of the Paris Principles, the process of setting up a preventive mechanism also called for the participation of civil society. Once such a mechanism was established, the State party had to allow visits by its representatives to places of detention. It must therefore enjoy proper legitimacy and impartiality. The mandate of the Committee against Torture was sufficiently broad to enable it to promote ratification of the Optional Protocol through advocacy and expert advice. Joint activities such as seminars could be envisaged, and promotional work carried out through universities and academic bodies.
12. Mr. GALLEGOS CHIRIBOGA (Committee) recalled that he had done some promotional work for the Optional Protocol while acting as Chairperson of the Group of Latin American and Caribbean Countries, and had voted for its approval in the General Assembly. The number of signatories must be increased, as well as the number of ratifications. All States Members of the United Nations should be urged to accede to all the international human rights instruments if they had not yet done so. He suggested an awareness-raising campaign geared to them, to be conducted through the OHCHR. Some States might have difficulty envisaging a national monitoring mechanism.
13. Mr. GROSSMAN (Committee) suggested setting up a small working party, composed of members of both bodies, to tackle the work of promotion. One possible partner would be the Inter-American Institute of Human Rights in San José, Costa Rica. Ms. Sonia Picado, its Chairperson, had a strong interest in the prohibition of torture. She could be invited, together with the secretariat of the Organization of American States, to convene a conference for the Americas on the prevention of torture. Some members of the two bodies had contacts with Governments, which could be encouraged to conduct promotional activities at the subregional level. The universities also had a role to play. There should be a proper plan of action determining who would do what and how activities would be evaluated.
14. Mr. MARIÑO MENÉNDEZ (Committee) said that the task of the Subcommittee, as he saw it, should be to promote ratification of the Optional Protocol while obtaining and sharing information about the various preventive mechanisms established under it. The timing of ratification was a matter for the States parties. Some, like France, had decided to introduce their preventive mechanism before ratifying; others such as Spain, which had ratified in April 2006, were setting up their preventive mechanism afterwards. As for model mechanisms, some already existed, for example those advocated by the European Committee for the Prevention of Torture and the Latin American human rights institutions. Their standards were similar to those of the Committee against Torture. He agreed with the idea that universities, and the academic world in general, could play a valuable role in promoting accession to the Optional Protocol.

15. Mr. PETERSEN (Subcommittee) said regional meetings would be a valuable means of establishing and maintaining contact with local preventive mechanisms. He was anxious to know what funding might be available for activities of that nature.

16. Mr. LASOCH (Subcommittee) said that the Special Fund constituted an important tool for the effective implementation of the Committee's and Subcommittee's recommendations. Some countries were reluctant to ratify the Optional Protocol because they were apprehensive about establishing national preventive mechanisms. He expected the number of ratifications to increase, however, as more visits were carried out. In that regard, he hoped that the Committee could help promote the Subcommittee's preventive role. Many countries were hoping for some form of model legislation on national preventive mechanisms, and guidelines for their establishment and operation. That should also help to increase the number of ratifications.

17. Mr. TAYLER SOUTO (Subcommittee) endorsed Mr. Grossman's suggestion regarding joint discussions and seminars. It would be very useful if the Committee could share with the Subcommittee - perhaps in an initial seminar - its experience in the area of strategies to promote ratification, and information on the role played by civil society in the 1980s and 1990s in promoting ratification of the Convention.

18. The CO-CHAIRPERSON (Committee) suggested that two Committee members and two Subcommittee members should be nominated for membership of a coordinating group, in line with Mr. Grossman's suggestion.

19. The CO-CHAIRPERSON (Subcommittee) said that she fully endorsed the proposed activities of coordination and communication between the two bodies, but was not sure to what extent they could be funded within the existing budget.

National preventive mechanisms

20. Ms. GAER (Committee) said that Committee members had been surprised at the slow pace of ratification of the Optional Protocol. If she had understood correctly, the establishment of national preventive mechanisms, as required under the Optional Protocol, was an obstacle to ratification. She asked whether, in the Subcommittee's view, the mechanisms that did exist met the standards required under the Optional Protocol. What did the Subcommittee believe constituted an acceptable national preventive mechanism? In the previous dialogue between the two bodies, Mr. Rodríguez Rescia had referred to the criteria of independence, legitimacy and participation of civil society. In the Committee's work relating to article 11 of the Convention it had considered that visiting bodies should: have a legal basis (legislative, constitutional or otherwise); be independent; and have the capacity to visit all places of detention and confinement (including hospitals and psychiatric institutions) and conduct private interviews with all persons deprived of liberty. She would be interested to hear the views of the Subcommittee on those three criteria.

21. She would also like to know whether the Subcommittee considered that the preventive capacity of a visiting body required any additional criteria, and how a preventive capacity differed from a reactive capacity. She would be grateful for information concerning the areas of expertise - beyond legal expertise - of visiting bodies, for example medical expertise or specialist knowledge of gender-related issues.

22. The Committee often made formal recommendations to States parties that they should authorize civil-society actors such as NGOs to make unannounced visits to places of detention. She would like to know whether national preventive mechanisms were required to involve civil-society actors in their work.

23. It was her understanding that under the Optional Protocol a given State party could establish several national preventive mechanisms. She would be interested to hear the views of the Subcommittee on (a) the possible coordination - both national and international - of the work of those mechanisms; and (b) the problem of national preventive mechanisms being denied access to security facilities.

24. In the event that States parties did not meet the standards required under the Optional Protocol, what action was planned by the Subcommittee? For example, would it envisage requesting the Committee to make a public statement, as provided for under article 16 (4) of the Optional Protocol? She would welcome the Subcommittee's views on the possibility of coordination between the two bodies in that regard.

25. Mr. RODRÍGUEZ RESCIA (Subcommittee) said it was hoped that a model for national preventive mechanisms could be drawn up, on the basis of the objectives set out in the Optional Protocol. The Subcommittee was working on the drafting of guidelines on the establishment of such mechanisms which incorporated the experience of international NGOs. In accordance with those guidelines, the mechanisms must be independent and be based on the Paris Principles. Verification of compliance with the Paris Principles was made difficult, however, by some countries in Latin America having merged the role of a national preventive mechanism with that of an existing human rights ombudsman, often for budgetary reasons. While that was not always a bad thing, the office of human rights ombudsman did not always conform to the Paris Principles.

26. It was therefore difficult to find a system for qualifying the different preventive mechanisms. However, it could be said that the objective requirements for a preventive mechanism were that it should be established by law, and thus sustainable and institutionalized, and that it should be independent. Lack of independence had been, and would continue to be, a major obstacle, as some Latin American countries understood "independence" not to have the conventional meaning of being independent of the Executive, but rather the meaning of "inter-institutional" in the sense that the mechanisms should involve different ministries or departments.

27. The Subcommittee had addressed those issues as best it could, but had no agenda or funding for that purpose: it was in debt. It was therefore not in a position to give advice to countries on the establishment of national preventive mechanisms.

28. With regard to visits to places of detention, the Subcommittee had already visited one country - on which a report would be provided - and was drawing up guidelines on how such visits should be conducted. Those guidelines would include information on the obligation of the State party to, inter alia, provide information and grant access to medical experts. The Subcommittee would welcome any contribution the Committee might be able to make to the preparation of the guidelines.

29. The Subcommittee had not yet decided what it would do in the event that a State party did not meet the standards required under the Optional Protocol for the establishment of national preventive mechanisms.

The meeting was suspended at 11.10 a.m. and resumed at 11.40 a.m.

30. Ms. SVEAASS (Committee) asked whether the Subcommittee was including in its guidelines for national preventive mechanisms information on how those mechanisms should publicize their findings, taking into account the language requirements of different population groups.

31. Mr. SARRE IGUÍNIZ (Subcommittee) said that the Committee and the Subcommittee should work in tandem to strengthen the public reporting and review process and to promote judicial oversight in States parties.

32. Mr. HÁJEK (Subcommittee) said that States parties had only just begun to establish national preventive mechanisms. Once they were fully operational, it would be a challenging task both to offer them advice and to monitor their activities. He looked forward to discussing with the Committee ways and means of using their potential to the full.

33. Mr. LASOČIK (Subcommittee) said that the Optional Protocol permitted the establishment of more than one national preventive mechanism, especially in federal States. It was important to ensure that such mechanisms were coordinated at the national level because the Subcommittee lacked the resources that would be needed to cooperate with several different bodies.

34. The CO-CHAIRPERSON (Committee) said that the Committee held meetings with national human rights institutions that complied with the Paris Principles, some of which would no doubt operate as national preventive mechanisms. The Committee would have to decide whether it also wished to meet with mechanisms that did not comply with the Paris Principles.

COOPERATION BETWEEN THE COMMITTEE AND THE SUBCOMMITTEE

Visits to countries; sharing of information

35. Ms. GAER (Committee) said that the Committee engaged with States parties in different ways under articles 19, 20 and 22 of the Convention, which dealt, respectively, with the public review of State party reports, confidential inquiries and individual complaints. The Subcommittee was required, under article 11 (c) of the Optional Protocol, to cooperate with relevant United Nations organs and mechanisms in strengthening protection against torture and ill-treatment. In that context, the Committee would greatly appreciate receiving an annual list of the countries the Subcommittee was planning to visit. It was also interested in cultivating confidential exchanges of information, for instance in the form of private briefings prior to the Committee's consideration of State party reports. Similarly, information of relevance to the Subcommittee's work could be forwarded by the Committee, bearing in mind confidentiality considerations.

36. Coordination was particularly important when a preventive visit to a State party by the Subcommittee was scheduled within the same period as a periodic review of the State party's

report. A gap of a few months between the two events would be likely to maximize their impact in terms of promoting compliance with the Convention. A visit by the Committee as part of a confidential article 20 inquiry should not coincide with a preventive visit by the Subcommittee.

37. The Committee and the Subcommittee should also cooperate if the need arose to make a public statement about a non-cooperating State party.

38. The CO-CHAIRPERSON (Subcommittee) said that the Subcommittee would certainly coordinate its schedule to ensure that preventive visits did not coincide or overlap with article 20 visits by the Committee.

39. Mr. GROSSMAN (Committee) said that access to a shared pool of information would enhance the quality of the decision-making process in both the Committee and the Subcommittee. Given the status and integrity of each body, most of the information gleaned would not, in his view, be subject to confidentiality considerations except, of course, in the case of individual complaints. Informal contacts between individual members should also be promoted.

40. Mr. CORIOLANO (Subcommittee) stressed the need for coordinated research on key issues and for the development of relations between the Committee and the Subcommittee based on mutual confidence.

41. It was vitally important for the Subcommittee to remain in direct contact with national preventive mechanisms. Moreover, article 11 (c) of the Optional Protocol provided for the establishment of an extensive cooperative network with United Nations bodies and with other international, regional and national institutions or organizations. Contacts had already been established with relevant European and inter-American human rights bodies.

42. The CO-CHAIRPERSON (Committee) suggested that the Committee and the Subcommittee should formally decide to cooperate on a permanent basis and to create a standing coordinating body for that purpose composed of two members of each body to be appointed in closed session. The members would report regularly to their respective body on the outcome of their consultations and make recommendations. The parent bodies would then seek consensus on the recommendations and take joint decisions.

43. It was so decided.

44. Mr. HÁYEK (Subcommittee) said that the standing body should be set up and closed meetings held as soon as possible. The Committee, as the more experienced body, would certainly be able to offer sound advice on the order and planning of visits to States parties. The Subcommittee would in turn play a proactive role on behalf of the Committee during its visits and perhaps encourage it, whenever necessary, to make public statements. It would also be helpful if the Committee were to urge States parties to publish the Subcommittee's reports.

45. The CO-CHAIRPERSONS (Committee and Subcommittee) suggested that a public statement should be issued regarding the meeting between the two bodies and its conclusions.

46. Mr. GALLEGOS CHIRIBOGA (Committee) expressed strong support for the idea of issuing a press release to mark a historic occasion in the fight against torture and ill-treatment.

47. It was so decided.

PUBLIC ANNUAL REPORT

48. Ms. GAER (Committee) noted that the Subcommittee was required, under article 16 of the Optional Protocol, to present an annual report to the Committee. It was unclear when the first report would fall due and whether it would be discussed at a public or closed meeting.

49. The CO-CHAIRPERSON (Subcommittee) said that the presentation of the first annual report would provide an opportunity to put across important messages on key elements of the Subcommittee's work and to set guidelines concerning national preventive mechanisms. It was also important to describe the Subcommittee's visits to States parties, presenting the basic provisions of the Optional Protocol in a user-friendly form that would be accessible to a wide audience.

50. The time frame was currently being discussed. A draft version of the report should be available for consideration by the Subcommittee at its February 2008 session and it was hoped that a representative of the Subcommittee would present the final version to the Committee at the latter's May 2008 session.

51. The CO-CHAIRPERSON (Committee) noted that the Subcommittee's annual report would be submitted to the General Assembly, perhaps as an annex to the Committee's report. Any issues that needed to be clarified prior to the Committee's next session could be referred to the coordinating body.

COMPLAINTS PROCEDURE OF THE COMMITTEE AGAINST TORTURE

ONGOING CONTACT

52. Ms. GAER (Committee) stressed that the procedure under article 22 of the Convention was confidential. However, once the Committee had expressed its Views, the relevant cases were raised in a public review of States parties' reports under article 19. The Committee also had a special rapporteur on follow-up whose actions were public and recorded in the Committee's annual report. Since one of the Subcommittee's forthcoming visits was to Sweden, a State party that had frequently been examined under the complaints procedure, she asked how the information published by the Committee could be of use to the Subcommittee.

53. Mr. MARINÑO MENÉNDEZ (Committee), speaking as the Special Rapporteur on follow-up to decisions reached under article 22 of the Convention, said that many of the individual complaints brought before the Committee concerned alleged violations of article 3 by States parties. Paradoxically, the States against which the majority of such cases were brought had generous asylum and refugee policies. While many immigrants in Sweden, for example, were granted refugee or asylum status, that State had been accused of violating article 3 because it had, in some instances, sent refugees back to their own countries. Some of the Committee's decisions had been widely reported by the media, inter alia the decision that had resulted in the trial in Senegal of a former African dictator who had applied for asylum there, and decisions in

cases involving extraordinary rendition. It could be useful for the Subcommittee to be aware of such situations and to consider the Committee's decisions under the complaints procedure when planning its country visits. There was a significant degree of cross-fertilization of information between the Committee against Torture, the Human Rights Committee and relevant regional bodies.

54. The CO-CHAIRPERSON (Committee) asked the members of the Subcommittee whether they thought it advisable to organize a visit to Sweden in the near future, given that the Committee would consider that State party's periodic report under article 19 of the Convention at its forthcoming session in May 2008.

55. Mr. GROSSMAN (Committee) said that it could be useful for the Subcommittee to receive compilations of information on the Committee's decisions on complaints, State party reports and the Committee's concluding observations concerning States it planned to visit.

56. Mr. CORIOLANO (Subcommittee) said that such information would be useful in planning country visits and for the general implementation of the Optional Protocol. In particular, the Committee's decisions on individual cases could encourage States parties to the Optional Protocol to set up their national preventive mechanisms. If complaints were brought before the Committee against States parties to the Optional Protocol that had not established such a mechanism within the one-year deadline, that information would be valuable to the Subcommittee.

57. The CO-CHAIRPERSON (Committee) added that the Committee should include general background information in its compilation of documents to be provided to the Subcommittee.

58. Mr. HÁJEK (Subcommittee) said that since the Subcommittee was a preventive body, studying the Committee's decisions on individual complaints was a priority in preparation for its country visits.

59. The CO-CHAIRPERSON (Committee) observed that the Committee had not found that Sweden had violated the Convention.

60. Ms. GAER (Committee) referred back to the question whether the Subcommittee should schedule a visit to a State party within six months of the Committee's consideration of that State party's periodic report. In 2003, when considering that point as a hypothetical notion, the Committee had concluded that it might request the Subcommittee to postpone such a visit until after the review of the periodic report in order to render the Subcommittee's visit more effective and to avoid confusion in the State party. However, she had suggested that such visits could take place prior to the Committee's consideration of the periodic report, as that might facilitate the review process. The question was whether the two events were independent of one another or whether each could enhance the other. She would welcome comments on that issue as a matter of principle, rather than specifically in relation to Sweden.

61. Mr. CORIOLANO (Subcommittee) said that coordination with the Committee would be a priority agenda item for the Subcommittee's working group.

62. Mr. TAYLER SOUTO (Subcommittee) said that the Subcommittee should always bear in mind the Committee's schedule for consideration of periodic reports when planning its country visits. While the timing of the Subcommittee's visits depended to a great extent on each situation, they should not necessarily take place six months before or after the Committee's consideration of periodic reports. It was possible to imagine a situation in which, in the light of the Committee's consideration of a State party's periodic report, the Subcommittee should visit the country and conduct a detailed examination of preventive measures or the situation on the ground. The two bodies could thus reinforce each other's work. The Committee's concluding observations could also inform the Subcommittee's agenda for its visit.

63. The CO-CHAIRPERSON (Subcommittee) recalled that the Subcommittee had been constrained by a provision of the Optional Protocol obliging it to establish its initial programme of visits by drawing lots. The States parties drawn had been Maldives, Mauritius and Sweden. The Subcommittee's selection criteria for future visits had yet to be finalized. They would, however, include the need to derive maximum benefit from the work of the Committee and avoid putting States parties under a dual burden by scheduling visits shortly before or after the Committee's consideration of periodic reports.

64. The CO-CHAIRPERSON (Committee) agreed that coordination would be beneficial in avoiding such situations and permitting closer scrutiny of a country situation.

65. Ms. GAER (Committee) said that the planned coordinating body and future meetings should be used to discuss many issues in order to avoid creating an excessive number of communication channels between the two bodies.

66. The CO-CHAIRPERSON (Subcommittee) read out the following draft press release: "In accordance with article 10, paragraph 3 of the Optional Protocol to the Convention against Torture, the historic first meeting of the members of the Committee against Torture and the Subcommittee on Prevention of Torture took place today at the Palais Wilson. The meeting was cordial and productive, with unanimous agreement that members would work together on the two complementary mandates, including by developing specific working methods for communication and cooperation among members between formal meetings, in order to pursue the common goal of eliminating torture and other cruel, inhuman or degrading treatment or punishment."

67. Mr. PETERSEN (Subcommittee) asked whether the Committee's concluding observations had ever dealt with the issue of sharia law. That information would be useful in preparation for the Subcommittee's forthcoming visit to Maldives.

68. The CO-CHAIRPERSON (Committee) said that the Committee's concluding observations on Bahrain, Kuwait, the Libyan Arab Jamahiriya, Qatar and Saudi Arabia could prove useful in that regard.

The meeting rose at 12.50 p.m.