



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

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COMMITTEE AGAINST TORTURE

Thirty-ninth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)*

OF THE 802nd MEETING

Held at the Palais Wilson, Geneva, on
Monday, 19 November 2007 at 3 p.m.

Chairperson: Mr. MAVROMMATIS

SUMMARY

ORGANIZATIONAL AND OTHER MATTERS

Follow-up procedures (*continued*)

Consideration of the comments of Amnesty International concerning the new
optional reporting procedure for states parties

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

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The first part of the meeting (public) was called to order at 3.05 p.m.

ORGANIZATIONAL AND OTHER MATTERS (Agenda item 3)

Follow-up procedures (CAT/C/SR/R.1) (*continued*)

1. The CHAIRPERSON invited Committee members to resume their consideration of the interim report on follow up activities relating to the Committee's decisions on individual complaints, contained in document CAT/C/39/R.1.

2. Mr. MARIÑO MENÉNDEZ (Rapporteur for follow-up) recalled that, in the *Tebourski v. France* case (communication no. 300/2006), the State party had refused to take provisional measures as the Committee had requested, and had expelled the complainant. Consequently, the Committee had found the State party in violation of article 3 of the Convention. As the French authorities were currently attempting to verify the validity of the information supplied by the Tunisian authorities concerning the current situation of the complainant, the Rapporteur proposed that the Committee continue to monitor the case while awaiting a report from the State party on the results of its verifications.

3. In the *Guengueng and others v. Senegal* case (communication 181/2001), the Committee had found the State party in violation of articles 5 and 7 of the Convention for having failed to take the necessary steps to establish its jurisdiction to prosecute the alleged perpetrator of the torture suffered by the complainants, namely the former President of Chad, Hissène Habré, who was present on Senegalese territory, and for not having amended its legislation so that Mr. Habré could be extradited to a state with jurisdiction to try him. Summarizing the arguments of the State party and the complainants (paragraphs 7 to 9 of document CAT/C/39/R.1), the Rapporteur noted that the State party had submitted that the adoption in November 2006 of two new laws had filled the legal void preventing the Senegalese courts from hearing the Habré case, that it intended to honour its obligations under the Convention but that it still had to assess the cost of these proceedings. The complainants argued that fulfilling these obligations should not be conditional upon financial assistance and they were concerned by the fact that no criminal proceedings had been initiated, although 17 months had elapsed since the Committee's decision. Time was of the essence, as one of the complainants had already died as a result of mistreatment suffered under the Habré regime. The Rapporteur also said that, through the Secretariat, he had recently contacted the embassy of Senegal in Geneva to meet with representatives of the State party before the end of the current session and to ask them in person how long it would be before the Hissène Habré proceedings might be held. He indicated moreover that the European Union had promised financial assistance to Senegal so that Mr. Habré could be tried in Senegal rather than extradited to Belgian. In effect, holding these proceedings in Africa was symbolically important, as this would be the first time that an African dictator would be tried by a jurisdiction on the continent. As well, the Senegalese President appeared to be particularly insistent that the proceedings should take place in his country. Given all these elements, the Rapporteur was hopeful that the State party would soon take concrete steps to comply with the Committee's decision. Mr. Mariño Menendez therefore proposed that the Committee thank the State party for the information it had provided, urge it to apply all the elements of its decision as quickly as possible, and ask it to keep the Committee informed as the situation evolved.

4. Concerning the case of *Agiza v. Sweden*, the Rapporteur indicated that, according to information received in May and in October 2007, the State party maintained that the complainant had received 46 visits in total from staff of the Swedish Embassy in Cairo, that his application for a residence permit was still pending before the Migration Board, and that an agreement concerning compensation for him would have to be negotiated with the Ministry of Justice. In July 2007, counsel for the complainant had advised the Committee that these visits took place in the presence of prison guards and were recorded on videotape, and that inadequate medical treatment had been afforded Mr. Agiza, who suffered from nervous disorders. The Rapporteur observed that, even if the residence permit were granted by the Migration Board of the State party, the Egyptian authorities would probably not let him leave the country to serve the remainder of his sentence in Sweden. In light of the foregoing, the Rapporteur proposed that the Committee should advise the State party that it had noted with satisfaction the measures taken to date to monitor the situation of Mr. Agiza in detention and that it should request the State party to pursue these activities, and to ensure in particular that the complainant had access to proper medical care and could contact his family more regularly.

5. Mr. GROSSMAN, supported by the CHAIRPERSON, proposed that the Committee should also ask the State party to report on the results of the procedure pending before the Migration Board once that body had rendered its decision.

6. Mr. MARIÑO MENÉNDEZ (Rapporteur for follow-up) had no objection to this.

7. The CHAIRPERSON said that, if there were no objections, he would take it that the Committee wished to adopt the proposals of the Rapporteur.

8. *It was so decided.*

The session was suspended at 3:35 p.m.; it resumed at 4:05 p.m.

Consideration of the comments of Amnesty International concerning the new optional reporting procedure for states parties

9. The CHAIRPERSON said that two letters had been addressed to him by Amnesty International on the matter of the new optional reporting procedure for states parties; he asked Mrs. MORALES to present their contents briefly.

10. Mrs. MORALES noted that, in its letter of 30 July 2007, Amnesty International had welcomed the Committee's efforts to promote the preparation of more focussed reports and had said it was convinced that the success of this initiative would depend heavily on the Committee's capacity to gather information from NGOs, which would require that they be contacted in time. It was important, then, that the list of countries from which reports were due in 2009 using the new procedure should be published sufficiently early to allow NGOs and other stakeholders to submit their observations and have them taken into account in the list of issues to be raised. Finally, Amnesty International considered that the new procedure was not suitable for states parties that had never presented a report on time and that had never complied with directives for their preparation.

11. In its second letter, dated to November 2007, Amnesty International regretted that it had not been officially informed of the change to the list of states whose reports would be considered under the new procedure, and hoped that in future it

would receive timely notice of any change. The organization again insisted that the new procedure would only be truly effective for states that had presented at least one report in accordance with Committee directives.

12. Amnesty International considered, moreover, that in determining the fields that called for more in-depth consideration, the Committee should establish a standard list of issues to be addressed for each of the substantive articles of the Convention. Finally, the organization urged the Committee to publish as quickly as possible the complete list of states from which reports were expected under the new procedure in 2009 and 2010. This would allow NGOs and other stakeholders to gather information that the Committee would find useful in drawing up the list of issues to be raised. It was also important that NGOs, whose essential role had hitherto been to supply information before consideration of reports, should now be given sufficiently early notice of the preparation of the list of issues and of the kind of information that would be most useful to the Committee.

13. The CHAIRPERSON said that several observations made by Amnesty International deserved to be taken into consideration and that the Committee should ensure that NGOs were fully involved in the new optional reporting procedure.

14. Mrs. GAER noted, first, that in the view of Amnesty International the new procedure should not be applied to states that were in cumulative arrears in the submission of their periodic reports. Yet it was precisely for the consideration of such states' reports that the new procedure had been instituted. On the other hand, it was indeed very important that NGOs should be informed well in advance of the date for preparing the lists of issues to be taken up by the Committee so that they would have the time to provide information. With respect to drawing up the list of issues, it would be useful for the Committee to have analytical data compiled by the Secretariat. As well, country Rapporteurs would have to be properly informed of any activity concerning monitoring.

15. Mr. GROSSMAN said that the Committee should try to anticipate problems that might arise with its new optional reporting procedure and, to that end, it would be useful to adopt a mechanism to oversee its application. He welcomed the proposal of Amnesty International to establish a standard list of issues to be taken up during consideration of states parties' application of each substantive article of the Convention, and he thought that, from this viewpoint, it would be useful to take into account the role played by regional bodies whose jurisdiction was recognized by the states concerned.

16. Mrs. SVEAASS thought that the states to which the new procedure would be applied should be selected on the basis of the number of reports submitted rather than their cumulative arrears in the submission of reports.

17. The CHAIRPERSON asked the Secretariat to remind the Committee how countries had been selected previously for consideration under the new procedure.

18. Mrs. MORALES recognized, first, that NGOs had not been given sufficient time to inform the Committee of the situation in states parties whose reports were due in 2009 under the new procedure. She hoped to reassure them that they would have more time with the reports due for consideration in 2010. If it was not possible to inform NGOs sufficiently in advance, it was because some of the 13 states to which it had been decided to apply the procedure, namely those that had not yet submitted their initial report and that were due to submit their second periodic

report in 2009, had in the meantime sent their initial report to the Secretariat. As the Committee had adopted a rule of not applying the procedure to countries that were late with respect to their initial report, those countries had been removed from the list.

19. As to the selection methods used, Mrs. Morales said that, once approved by the Committee at the current session, the lists of issues to be raised would be sent to the states concerned with a note asking them to specify, prior to the Committee meeting of May 2008, whether they consented to using the new procedure to prepare their next report. The list of those countries should therefore be known by the next session, although it could be amended for the reasons noted earlier. If the final lists of issues were to be prepared and translated in time to be adopted at the Committee's November 2008 session, NGOs would still have until mid-summer 2008, i.e. six months, to communicate their information, which seemed reasonable.

20. The CHAIRPERSON recalled that states parties that declined to follow the procedure would still be expected to respond to a list of issues, in addition to submitting their periodic report. In all likelihood, most of those states would prefer to prepare a single, focused report rather than take on that double workload.

21. Mrs. BELMIR said that the new procedure, while presenting some advantages, did not resolve the problem of the shortage of Committee members in light of the workload.

22. Mr. MARIÑO MENÉNDEZ agreed with the CHAIRPERSON that the majority of states parties would opt for the new procedure. He wondered whether other treaty bodies were planning to adopt a similar procedure. The list of questions pertaining to article 14 proposed by Amnesty International, he thought, did not add anything new to the concerns regularly expressed by the Committee. Establishing a standard list of questions for each article of the Convention might be useful, but the list would inevitably have to be amended depending on the State concerned. Mr. Mariño Menendez also considered that, given the essential role of NGOs in monitoring the Convention's application by states parties, it was logical to involve them in implementing the new procedure and to try to address their expectations in this regard, which he considered perfectly legitimate. As to the lack of predictability in the process, linked to the different stages of presentation of State party reports, there were not so many possible situations that it would be impossible to foresee a solution for each one.

23. The CHAIRPERSON noted that it was not the Committee that had launched the idea of this new procedure: it had already been suggested during a previous inter-Committee meeting, and the Committee had then developed it further. At the last inter-Committee meeting, the other treaty bodies had shown keen interest in this procedure and had asked the Committee against Torture to keep them informed of its implementation and its outcomes. The new procedure had received the same warm welcome upon its presentation to the meeting of treaty body chairpersons, and also at the meeting of states parties.

24. Mr. WANG Xuexian said that the new procedure was still at the experimental stage and the Committee should take its time in deciding what could and should be improved. The desire of NGOs to be associated in implementing the procedure was perfectly legitimate and should not be difficult to satisfy. As to the content of the lists of issues, thought should be given to focusing the questions more closely and

revising them in light of events since consideration of the previous report. It would also be desirable not to stray beyond the framework of the Convention by venturing into issues handled by other treaty bodies.

25. The CHAIRPERSON said that, depending on the results of the procedure, it might be useful to draw up guidelines for preparing reports on the basis of the list of issues, and perhaps for preparing the lists themselves.

26. Mrs. GAER thought that the new procedure would not only be advantageous for states parties but would also simplify the work of the Committee.

27. Mr. GALLEGOS CHIRIBOGA said that the purpose of the new procedure should be not merely to simplify the work of states parties and the Committee but also, and above all, to strengthen their capacities to oversee implementation of the Convention. In this regard, NGO participation was essential, and additional efforts would have to be made to gather more information from those NGOs whose activities were less visible.

28. The CHAIRPERSON concluded from the comments of Committee members that they were agreed to associate NGOs fully in implementing the new procedure. He said that a letter would be addressed to Amnesty International thanking it for its suggestions and communicating to it of the Committee's intention to take the necessary steps to keep NGOs duly informed of progress in implementing the new procedure. He said that Amnesty International had been advised of the Committee's intention to discuss its proposals in a public session and had expressed a wish to be present. Given the Committee's very tight schedule, the date of the meeting had unfortunately been set at too short notice for Amnesty International to be represented.

29. Mrs. MORALES (Secretariat) invited Committee members who had amendments to propose on the draft lists of issues to give them to the Rapporteur concerned, who would transmit them to the Secretariat for incorporation into the drafts so that these could be adopted before the end of the meeting.

30. *It was so decided.*

The first part (public) of the meeting rose at 5:20 p.m.