



## International Covenant on Civil and Political Rights

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### Human Rights Committee Ninety-seventh session

#### Summary record of the 2680th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 28 October 2009, at 11 a.m.

*Chairperson:* Mr. Iwasawa

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Follow-up to concluding observations on State reports and to Views under the Optional Protocol

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*The meeting was called to order at 11.20 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 concluding observations*  
(CCPR/C/97/2/CRP.1)

1. **The Chairperson** invited the Special Rapporteur for follow-up on concluding observations to introduce his report.
2. **Mr. Amor** (Special Rapporteur for follow-up on concluding observations) said he regretted that it had not been possible to have the report translated into English, which meant that some Committee members would not be fully informed when taking part in the discussion. The resources allocated to the Committee, in particular for the translation of documents, had been continually decreasing over the years, to the extent that the current situation could now be described as critical; urgent action was required. He paid tribute to those who had preceded him as Special Rapporteur for follow-up on concluding observations. Their remarkable work had allowed great progress to be made in terms of follow-up. He would strive to continue that work and wished to make several proposals to the Committee in that regard. Firstly, in most cases, the Committee had only requested information on a maximum of three topics; that practice should be systematically followed, as far as possible. It would also be useful if the Committee ensured that its requests were well focused, so that the procedure was not unnecessarily unwieldy. When selecting the priority subjects to be followed up, the Committee should keep in mind the three essential criteria of feasibility, seriousness and urgency. In the absence of a response from a State party, the Committee could decide, one year before the due date for the submission of the next periodic report, to suspend the follow-up procedure, take note of the State party's lack of cooperation and ask it to include in its next report the information that should have been provided by the initial deadline. Lastly, the current system for evaluating State party replies contained certain gaps that needed to be addressed. He would submit a draft on that subject to the Committee at its next session.
3. **The Chairperson** thanked Mr. Amor and asked the Committee members for their comments.
4. **Sir Nigel Rodley** said that the proposal made by Mr. Amor regarding the suspension of the follow-up procedure was in line with a proposal that he himself had made to the Committee when he had been Special Rapporteur, except that he had suggested suspending the follow-up procedure from the date set for the submission of the next report, while Mr. Amor had proposed suspending it one year before that date. It was a good idea, but it would perhaps be better to adjust it in terms of the deadline given to States parties for the submission of their next report, so that they were not unduly restricted in responding to the Committee's requests for additional information. For example, Mr. Amor's proposal could be applied only in cases where the deadline given for the submission of the new report was more than three years from the time of consideration of the previous report.
5. **Mr. Salvioli** said that, in order to avoid any counterproductive interruptions in the follow-up, the Committee, as part of its dialogue with States parties, could well ask for explanations from those States that had not provided the information requested on the follow-up to the concluding observations on the previous report.
6. **The Chairperson** thanked the members of the Committee for their proposals and invited the Special Rapporteur to evaluate the situation, country by country.
7. **Mr. Amor** (Special Rapporteur for follow-up on concluding observations) said that Brazil had only provided partial replies to the Committee, despite several reminders and the

commitment that it had made to provide the requested information before the ninety-second session of the Committee. He recommended asking the State party to include the missing information in its next report, which was due by 31 October 2009. The Committee had not set a precise date for the submission of the next report of Hong Kong, China; the only date given was 2010. He proposed a deadline of 1 April 2010. A letter would be sent to the State party informing it of that deadline and asking it to include in the report information that had not been supplied, despite several reminders. Consultations had taken place with the Central African Republic and the delegation had committed itself to transmitting the Special Rapporteur's request to the Government, but no response had been received. The next report of the Central African Republic was due on 1 August 2010 and it was understood that the responses should appear in that report and that the procedure would continue. He would report on it at the ninety-eighth session. When there was no response from a State party it was important to note, without being judgemental, that the State had not cooperated in the follow-up procedure. He asked for the opinion of the Committee members on that subject.

8. **Mr. Lallah** suggested listing the countries that had not provided the information requested on follow-up to observations in the Committee's annual report to the General Assembly.

9. **Sir Nigel Rodley** said that the Committee had already decided that some States parties were not meeting their obligations under article 40. Following an analysis of the situation of States and noting that responses had not been given as part of the follow-up procedure, the Committee had concluded that two States were in breach of their reporting obligation and had sent them a very clear message, which had not been acted upon. It could consider, even if it had not done so before, that information requested under the follow-up procedure formed part of the reporting obligation given that, under the Covenant, the Committee had the right to request States parties to submit to it all reports that it considered necessary. It would be fully appropriate, as Mr. Lallah had suggested, to clearly indicate in the annual report which States had not cooperated in the follow-up procedure.

10. **Ms. Chanet** supported the Special Rapporteur's proposal to discontinue the follow-up procedure one year prior to the deadline for submission of a State party's report. However, she emphasized that a certain amount of flexibility should be maintained because it could be useful, in some cases, for the Special Rapporteur to meet the representative of the State in question. With regard to the Central African Republic in particular, consultations had taken place on 1 April 2008 and the report was due on 1 August 2010. It was possible that the State party had not yet started drafting its report and therefore, even if the follow-up procedure was terminated, it would be a good idea for the Special Rapporteur to meet the representative of that State in New York to undertake a joint analysis of the situation and to specify the problematic issues that should be covered in the next report. That would be a way of maintaining contact and perhaps obtaining a more comprehensive report.

11. **Mr. Lallah** supported Ms. Chanet's proposal; however, the Special Rapporteur had proposed suspending the procedure, not terminating it.

12. **Mr. Amor** (Special Rapporteur for follow-up on concluding observations) said that he was not convinced about suspending as opposed to discontinuing the procedure, but that he was sensitive to the arguments of the Committee members; he would naturally demonstrate the necessary flexibility when dealing with each State and would take into account their individual circumstances. As it had not been possible to consider the replies supplied by the United States of America because they had not been translated in time, he proposed examining them at the ninety-eighth session, as the next report was due on 1 August 2010. The due date for the next report of the United Nations Interim Administration Mission in Kosovo (UNMIK) had not been set, for reasons of which the Committee was

aware. The previous Special Rapporteur had met the Senior Human Rights Adviser to UNMIK and additional information had been requested, with a reminder sent on 27 August 2009. To date, the Committee had not received a reply and therefore, while he was not convinced of the effectiveness of doing so, he proposed sending a further reminder and possibly requesting consultations with an UNMIK adviser, preferably the adviser that the previous Special Rapporteur had met. He asked for the opinions of the Committee members, because he believed that the situation was not going to change.

13. **Mr. O'Flaherty** said that, as he recalled, the Committee had agreed to ask the legal service who exactly it should contact in order to receive the information required. He asked if there had been a reply; if not, he proposed that the Committee should make enquiries as to who would be the appropriate person to speak to.

14. **The Chairperson** said that the secretariat would check whether the Committee had received a reply.

15. **Sir Nigel Rodley** said that it would be useful to know how the Committee's request had been followed up. If there had been no follow-up, the Committee might decide to approve the recommendation of the Special Rapporteur, who would contact the same Senior Human Rights Adviser that the previous Special Rapporteur had met, if no other name was provided.

16. **Mr. Lallah** proposed that the Committee should add the case of UNMIK to the agenda of its next session, under the follow-up procedure, in the light of possible information received in the meantime and any measures taken by the Special Rapporteur as a result.

17. **Mr. Amor** (Special Rapporteur for follow-up on concluding observations) said that the Committee could decide to send a reminder and a request for consultations and then consider the case of UNMIK at its next session, unless the Committee preferred to commence its consideration without sending a prior reminder or holding prior consultations.

18. The replies from Bosnia and Herzegovina had to be approved by the Government; it did not appear that that had been done. He proposed sending a further reminder to the State party, noting that its next report was due on 1 November 2010 and that, at all events, it must reply to all the Committee's observations.

19. Honduras had first sent replies to non-priority questions, which had then been followed by some partial and incomplete replies. To date, the State party had not replied to the request for consultations that had been sent in September 2008. He proposed that consultations should be organized for the next session and that a reminder should be sent to the State party, whose report was due on 31 October 2010. The Committee had received some information from the Republic of Korea and he had met a representative of the State party. The Republic of Korea had informed the Committee that it wished to provide additional information in its fourth report. He therefore proposed sending a letter to the State party asking it to include that information in its next report, to be submitted by 2 November 2010, and to terminate the procedure for issues on which responses had been provided. The translation of the replies from Ukraine had been delayed and the Committee would consider them at its next session. If the Committee did not receive a response from Barbados, it could examine the situation at its next session. He recommended sending a further reminder to both Chile and Madagascar. Consultations had been requested with the Czech Republic and could take place at the next session. On 12 October 2009, the Sudan had submitted rather general replies to all the questions. The replies had referred to annexes that had not been attached and the documents received had not yet been translated. He would therefore make proposals on the Sudan at the next session of the Committee, bearing in mind that the State party's next report was due on 26 July 2010. Consultations with

Zambia had been requested and the date for them had just been agreed. He believed that a reminder should be sent to Georgia. The Committee had received replies from the Libyan Arab Jamahiriya; some were very general and others raised legal issues. He suggested asking the State party to include the information requested in its next report, which was due by 30 October 2010. He recommended that the procedure on Austria should be discontinued, as the State party had provided very comprehensive and satisfactory replies.

20. Algeria was a special case. One week after receiving the Committee's concluding observations, Algeria had sent a memorandum explaining its point of view on those concluding observations and giving some responses. The State party had asked for that memorandum to be attached as an annex to the Committee's annual report to the General Assembly. It had been explained to the State party that that would not be in line with the Committee's general practice, and the memorandum had been published separately under an official symbol. Since then, he had requested additional information because the replies in the memorandum were partial and incomplete. Algeria had addressed two letters to him, one in May and the other in October 2009, repeating its request for its memorandum to be attached as an annex to the Committee's report to the General Assembly and recalling the Human Rights Council resolution on transparency. He believed it was very unlikely that the Committee would obtain additional information. He thought it was important to send a reminder to the State party to ask it for further information on the priority issues and to request a meeting with the Algerian representative in person, in order to avoid any misunderstandings. The Committee showed the same openness to all States, sought cooperation with them and took account of the Human Rights Council resolution on transparency; however, if it published the memorandum of one State party as an annex to its annual report, it would have to do so for all States parties, which was impossible. Nevertheless, although the Committee was unable to offer special treatment to a State party, it could understand Algeria's point of view. Algeria, like all other States parties, would be able to observe that the Committee worked in a transparent way if a summary, similar to that prepared for the follow-up to Views, was drawn up by the Committee, with an indication of the question asked, a synopsis of the State party's reply, the Committee's evaluation and the follow-up given. If the Committee members did not object and notwithstanding the extra work that might entail for the secretariat, whose resources were increasingly limited, he considered that the drafting of such a summary was crucial. The State party could still contest the synopsis of replies but, even if the summary was produced by the secretariat, he as Special Rapporteur would take full responsibility for it and would deal with any criticism. Aside from the fact that such a summary would improve cooperation with the States parties, the Committee had nothing to hide and, although it did not have the resources necessary to ensure absolute transparency, it could, in the current circumstances, produce a very brief synopsis for each question asked. In conclusion, he proposed sending a reminder for the rest of the replies and, most importantly, requesting oral consultations so that clear explanations could be obtained.

21. **Sir Nigel Rodley** supported the idea of producing summaries, but recalled that State party reports, the Committee's questions to the States parties, the replies to those questions and the concluding observations were already published on the Committee's website. He said that the summaries would greatly assist the Committee members in their work and asked whether the secretariat would be able to produce them.

22. **Ms. Prouvez** (Secretary of the Committee) said that the secretariat was studying Mr. Amor's very interesting proposal. However, producing summaries would have to be done at the expense of another area of the secretariat's work, because its resources would not be increased.

23. **Mr. Rivas Posada** said that producing summaries would mean extra work for the secretariat and that the States parties might object to the synopses as being incomplete or biased.

24. **Sir Nigel Rodley** asked whether the Special Rapporteur was satisfied with the way in which Austria had presented its replies or whether he was satisfied by the way in which the State party had applied the recommendations made to it by the Committee.

25. **Mr. Amor** (Special Rapporteur for follow-up on concluding observations) replied that Austria had been very cooperative and that, on the whole, its replies had been satisfactory. With regard to the synopses, he was aware of the difficulties that the secretariat faced, but he still thought that it would be useful to have summaries, as they would facilitate cooperation with the States parties and would be an excellent way of demonstrating the transparent nature of the Committee's work. The next report of Costa Rica was due on 1 November 2012 and the situation should be examined at the ninety-eighth session.

26. **Sir Nigel Rodley** said that additional information had been requested from Tunisia on 30 July 2009 and that the State party had asked for more time in order to provide that information. The situation should be examined at the ninety-eighth session if no report had been received by then.

27. **Mr. Amor** (Special Rapporteur for follow-up on concluding observations) recommended that further reminders should be sent to Botswana, Panama and San Marino. Additional replies should be requested from the former Yugoslav Republic of Macedonia. A letter should be sent to France requesting additional information, stating that the follow-up procedure with respect to certain issues was considered completed and asking the State party to provide information on those issues in its next periodic report. Lastly, the additional replies of Ireland and of the United Kingdom could be examined at the ninety-eighth session.

28. **The Chairperson** said that the list of countries that had not responded to requests for information was included in the annual report to the General Assembly.

29. *The report of the Special Rapporteur for follow-up on concluding observations (CCPR/C/97/2/CRP.1) was adopted.*

*Follow-up progress report on individual communications (CCPR/C/97/3)*

30. **The Chairperson** invited the Special Rapporteur for follow-up on Views to introduce her report.

31. **Ms. Wedgwood** (Special Rapporteur for follow-up on Views) said that she would present the report in the English alphabetical order of the countries concerned. Algeria had not responded to the Committee's requests for information. For one case, the Algerian Mission had said that it was awaiting instructions from the Government. She would follow that up. As to *Adrien Mundy Bisyo et al. v. Democratic Republic of the Congo* (communication No. 933/2000), an old case relating to the dismissal of 68 judges, the dialogue was ongoing. In the case *Kalamiotis v. Greece* (communication No. 1486/2006), regarding torture, the State party had undertaken to publish the Views of the Committee, but did not appear to have done so. The reparation requested had not been granted by the State party, which had asserted that, in order to receive compensation, the author had to bring the case before a national court. Other States parties had already put forward that argument but the Committee expected that, when it had been established that a State had been responsible for a violation of the Covenant, the State in question would pay compensation directly to the victim or, at the very least, would guarantee an expeditious and simple procedure for paying compensation to victims. She would follow up the issue during a forthcoming meeting with the Greek representatives.

32. In the cases of several Uzbek citizens extradited to their country of origin (communications Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006), Kyrgyzstan had recently stated that none of the extradited individuals had been sentenced to death, that it considered that the situation of those individuals was now the responsibility of Uzbekistan, and that the Committee should therefore address any further enquiries to the Uzbek authorities. That position was not compatible with the principle of non-refoulement and she would remind Kyrgyzstan of its obligations in that respect.

33. She was due to meet representatives of Nepal later that day to discuss the case of a Maoist who had disappeared following his arrest (*Sharma v. Nepal*, communication No. 1469/2006). The authorities had reportedly offered compensation to the wife of the victim and referred her to the Independent Disappearance Commission that was to be formed but, as that Commission did not yet exist, it could not be considered as an effective remedy in accordance with the Committee's normal practice. She would be sure to convey that point to the representatives of Nepal.

34. In the case *Lumanog and Santos v. Philippines* (communication No. 1466/2006), the Government had not yet compensated the victims. She would remind the State party of that fact. In the case *Pimentel et al. v. Philippines* (communication No. 1320/2004), which had already been pending before the courts for 11 years, the State party had still not paid any compensation to the individuals who had brought a group action against the estate of former President Ferdinand Marcos. The authors indicated that the State party had done nothing to advance the case and asked the Committee to quantify the amount of compensation to which the Committee held that they were entitled. It was not the first time that a party to a case had asked the Committee to determine the amount of compensation, and the Committee might wish to reflect on that matter. She would urge the Philippines to pay, at the very least, an initial advance pending payment of the final compensation to the victims.

35. In the case *Amirov v. Russian Federation* (communication No. 1447/2006), the Government had instructed the Prosecutor of the Chechen Republic to reopen the investigation in order to determine the exact circumstances of the death of the author's wife. She had held a meeting and had had an interesting discussion with a member of the Permanent Mission of the Russian Federation to the United Nations, during which it had emerged that the number of staff in a mission could affect the follow-up given to the Committee's Views. Some countries, in particular the Russian Federation, referred the decisions or views of bodies such as the European Court of Human Rights or the Human Rights Committee back to the domestic courts whose judgements had been contested. Such a practice could be problematic, because judges from national courts were not always aware of international standards for compensation or of the responsibilities of States under the Covenant. On the basis of her constructive dialogue with the Russian representative, she would try to find a better way of ensuring implementation of the Committee's Views.

36. No progress had been made in the case *Sanjeevan v. Sri Lanka* (communication No. 1436/2005) on torture and death in custody, but it was important to remember that the country was emerging from a civil war. If the issue was raised with senior officials as well as with the Mission, there might be a greater likelihood of resolving it.

37. The case *Chongwe v. Zambia* (communication No. 821/1998) concerned an individual who had left Zambia following an attempt on his life. The State party had indicated that it had invited the author to return to the country and that it saw no merit in the Government launching a prosecution. The author had returned to Zambia but had not attempted to institute legal proceedings out of fear for his safety. The compensation of US\$ 60,000 offered by the State had been refused by the author as being insufficient, following which the Attorney General had sent a letter to a friend of the author to try and reach a compromise on the amount of compensation to be paid. In any event, it was not acceptable

for the State party to make the author responsible for instituting proceedings when they could endanger his safety. She would make that point to the State party.

38. In several cases, it seemed that the issue of compensation and determining the amount to be paid was being raised more and more; the Committee would need to adopt a position on that issue.

39. **The Chairperson** invited the Committee members to comment on that subject.

40. **Mr. Pérez Sánchez-Cerro** said that, rather than setting the amount of compensation to be paid to victims, as was done by the Inter-American Court of Human Rights for example, the Committee could recommend that the amount should be determined by the courts in the State party, which would prevent the State party using the lack of a figure in the decision of the Committee as a reason for not compensating the victim.

41. **Mr. Salvioli** said that the Committee's final decisions on compensation should be as precise and concrete as possible, in order to strictly limit the scope for interpretation of those decisions by States parties. While it was difficult for the Committee to determine the appropriate amount for compensation, it could clearly identify all other measures of redress.

42. He noted that the report did not mention any new information on Peru. He asked whether that was because the State party had not sent any new information, or because some cases had temporarily been left pending as the Committee had so many to consider.

43. **Mr. Bhagwati** said that a meeting should be organized between the Special Rapporteur and Sri Lanka to discuss the situation and find a solution to it.

44. **Ms. Prouvez** (Secretary of the Committee), confirmed that the report did not contain any information on Peru because the State party had not submitted any. If necessary, a reminder would be sent to Peru in due course.

45. *The follow-up progress report on individual communications (CCPR/C/97/3) was adopted.*

*The meeting rose at 1 p.m.*