



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

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## Committee against Torture

Forty-third session

### Summary record of the first part (public)\* of the 916th meeting

Held at the Palais Wilson, Geneva, on Monday, 16 November 2009, at 10 a.m.

*Chairperson:* Mr. Grossman

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\* The summary record of the second part (closed) of the meeting appears as document  
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*The meeting was called to order at 10.10 a.m.*

**Consideration of reports submitted by States parties under article 19 of the Convention (continued)**

*Follow-up to the Committee's conclusions and recommendations under article 19 of the Convention*

1. Ms. **Gaer**, Rapporteur on follow-up to the Committee's conclusions and recommendations, said that United Nations Member States, in keeping with a culture that tended to emphasize form over function and cooperation over compliance, often called for ratification of human rights instruments and submission of reports, but paid less attention to whether States parties complied with their obligations under the instruments concerned. In the past decade, however, more had been asked of the human rights treaty bodies, which had adopted an array of new procedures aimed at producing a genuine impact at country level. The fact that States parties often failed to act on treaty body recommendations during the period of several years between two reports had led to the introduction of follow-up procedures to monitor the implementation of concluding observations. The procedures were described in the report on the working methods of the human rights treaty bodies relating to the State party reporting process (HRI/MC/2009/4, paras. 75–82). By appointing a follow-up rapporteur, the treaty bodies had encouraged closer scrutiny and, it was to be hoped, improvements in State party compliance. The rapporteur communicated with States parties whose follow-up reports were due and sought information on overdue reports.

2. The Convention was not an aspirational treaty but one that focused on eliminating a specific crime. The Committee therefore reviewed practical action by States parties to fulfil specific law enforcement obligations aimed at preventing and punishing torture and ill-treatment. The follow-up procedure did not concern every component of the often lengthy conclusions but focused on recommendations that dealt with serious issues, that were protective and that were deemed by the Committee as a whole to be achievable within one year. The State party was required to provide information within that period on the measures it had taken to give effect to the recommendations.

3. She was pleased to present a preliminary progress report on the results of the follow-up procedure in response to a request by the Committee. States parties had been asked to carry out between 1 and 10 different activities as follow-up measures. She introduced a document showing in tabular form the States parties concerned, the dates on which follow-up information had been due, whether it had been received and, if so, when, and the action taken by the Rapporteur. As the Committee considered 6 or 7 reports at each session, 14 follow-up reports fell due each year. The procedure had, in her view, been remarkably successful to date in eliciting valuable information from States parties. Of 67 States parties whose follow-up reports had fallen due prior to the Committee's current session, 50, (74 per cent) had submitted a report. An assessment of responding and non-responding States suggested that States which were very late in submitting their periodic reports also tended to be remiss in meeting the Committee's requests for follow-up. Non-respondents included eight African States, four Eastern European States, two Asian States, two Latin American States and one Western European State. The Rapporteur sent reminders when follow-up reports were overdue and posted a record of countries' reporting status on the Committee's webpage.

4. When States parties responded, she checked whether all the matters designated by the Committee for follow-up had been addressed and whether further information was required. She then sent a response, expressing appreciation and, if necessary, requesting further information or clarification.

5. She introduced a document listing the topics identified for follow-up in the first 20 States parties reviewed. She would complete the list in due course.

6. She had been invited to address the Committee on the Elimination of Discrimination against Women (CEDAW) at its forty-fourth session in August 2009 when it had been discussing how to structure its own follow-up procedure. She had shared the Committee's list of recurring concerns, including: the need for more precise information on the means whereby the police guaranteed the right of individuals to obtain prompt access to an independent doctor and lawyer and to a family member; the importance of case examples regarding such access and implementation of other follow-up recommendations; the need for independent and impartial bodies to examine complaints of violations of the Convention; the protective value of prompt and impartial investigations; the need for police training programmes that addressed torture and its sequelae; and the need to address challenges in gathering and analysing statistics.

7. The Committee's experience to date indicated that the focus on follow-up should be maintained and even invigorated. There should be better ways of assessing the reasons for, and effects of, the Committee's recommendations. Patterns of action and patterns of neglect should be identified, either by continuous monitoring of States parties or continuous pressure.

8. She reported the results of a study of the first 50 per cent of States parties to fall under the follow-up procedure. Of the 39 States parties considered, 9 belonged to the Group of Western Europe and Other States, 9 were in Eastern or Central Europe, 4 were in Africa, 5 were in Asia and the Pacific, 4 were in the Middle East and 8 were in North or South America. Two States parties had been assigned only one follow-up issue, 9 had been assigned two, 9 had been assigned four, 11 had been assigned five and 8 had been assigned more than five.

9. The 10 most frequently addressed follow-up issues in global terms and by order of frequency were: prompt, impartial and effective investigation of torture and ill-treatment; provision of legal safeguards, such as the right to notify a doctor and lawyer; the right to complain of torture and ill-treatment and to have cases examined; the prosecution and punishment of those responsible; improvement of conditions of detention, such as overcrowding; elimination of gender-based violence and protection of women; protection of minorities from torture and ill-treatment based on racial discrimination or xenophobia; monitoring of facilities and visits by an independent body; non-refoulement where there was a risk of torture and the right to appeal against related decisions; and guarantees that interrogation techniques were in line with the Convention, including the abolition of incommunicado detention. She had been surprised to discover that redress and rehabilitation were not among the top 10 recommendations for follow-up.

10. Turning to top issues by region, she said that the top six issues for States parties in the Group of Western Europe and Other States were: non-refoulement; prison conditions, especially overcrowding; legal safeguards; extradition and diplomatic assurances; protection of minorities; and redress and rehabilitation.

11. The top five issues for Eastern European States parties were: prompt, impartial and effective investigation; right to complain of torture and ill-treatment; legal safeguards; the prosecution and punishment of perpetrators; and prison conditions.

12. The top four issues for African States parties were: abolition of unauthorized places of detention and of military and administrative custody; independent monitoring of detention facilities; prompt, impartial and effective investigations; and prosecution and punishment of perpetrators.

13. The top four issues for States parties in the Asia and Pacific region were: abolition of unauthorized places of detention; independent monitoring of facilities; prompt, impartial and effective investigation; and the prosecution and punishment of perpetrators.

14. The top five issues for States parties in North and South America were: prompt, impartial and effective investigation; gender violence and trafficking; establishment of mechanisms for data collection on torture and ill-treatment; police training and awareness-raising; and protection of minorities or other specific population groups.

15. With regard to possible improvements in the Committee's approach to follow-up recommendations, she advocated a more detailed study of the record to date, for instance the pattern of priorities in different regions. Aspects that might be discussed were: whether the Committee changed its questions depending on the number of reports it had received from a State party; whether it should be asking more or fewer questions; whether it should change the focus of the procedure to long-term changes; whether global recommendations should be made instead of focusing on a few specific issues; and whether recommendations should be ranked in terms of importance. It might also be useful to standardize the process of asking States parties about follow-up issues.

16. One member had noted that while the Committee was referring more and more frequently to the work and concluding observations of the Committee on the Rights of the Child and CEDAW and even the outcome of the universal periodic review (UPR) mechanism, it only rarely mentioned its own follow-up letters and responses.

17. Lessons might be learned from the inter-American system, in particular the Inter-American Drug Abuse Control Commission (CICAD) and the follow-up procedures under the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women and the Inter-American Convention against Corruption, all three of which used a standardized questionnaire. The CICAD also undertook on-site visits to the country concerned. The Committee had never discussed that possibility. According to the report on the working methods of the human rights treaty bodies, a CEDAW delegation had visited a State party at its request to discuss that Committee's concluding observations. The Committee against Torture should perhaps consider whether such an initiative would be feasible in terms of resources, whether it would deepen Committee members' understanding of rights protection in the State concerned and whether members might be unduly influenced by such visits. Another question was the interaction between such follow-up visits and those undertaken by NGOs with an interest in the Committee's work.

18. The Committee might also wish to consider whether States parties should be classified in terms of compliance with the Convention and the Committee's recommendations. No State party that was sensitive to public exposure of wrongful or inadequate action would like to be ranked at the bottom of the list.

19. **Ms. Belmir** commended Ms. Gaer on her excellent overview of the follow-up procedure.

20. When a State party submitted its report on follow-up to recommendations, it was not really subjected to the kind of questioning that followed the submission of its periodic reports. It might be tempted to relax and allow people to be subjected to intolerable treatment during the period when it was no longer under close scrutiny. It was easy enough to answer questions about access to a lawyer or a doctor, but other far more serious problems might not be addressed at all between reports. It was important to ensure that States parties remained accountable during that period.

21. **Ms. Sveaass** said that enhancing the effectiveness of the Committee's follow-up to its conclusions and recommendations essentially meant finding ways to maintain an ongoing dialogue with States parties, including in the interim between the consideration of

States parties' periodic reports. The Committee should decide whether it was fulfilling its own criteria for matters to be included in its follow-up letters, namely, that they should be urgent, conducive to strengthening protection and achievable within one year. In her view, the Committee should ensure that the letters were worded in such a way as to encourage the State party to keep up the dialogue with the Committee.

22. She wondered how the Committee should deal with the fact that some States parties proposed other ways of responding to the Committee's follow-up letters than through correspondence. The question also arose as to how the Committee should treat States parties' comments on the Committee's conclusions, which were distinct from responses to its follow-up letters. Should such comments be taken up in the Committee's follow-up letter? It would be useful for the Committee to develop some procedures in that regard.

23. **Mr. Mariño Menéndez** said that, to a certain extent, the list of issues, the periodic report and the consideration of the report in a public dialogue between the State party and the Committee incorporated follow-up concerns. However, the link between the State party and the Committee was often not maintained during the four-year reporting period. It would be useful if follow-up letters to States parties and the replies received from them were made available to all members, or at least to the respective country rapporteurs, during that four-year period. The Committee might also wish to consider cooperating with the special procedures mechanisms of the Human Rights Council by informing them of the follow-up issues which it had identified as urgent.

24. It was less clear how to deal with the issue of punishment. Every four years there was a new periodic report to be considered, as well as new recommendations that were added to previous concerns. The proposal to publish lists of States parties that had not replied or had not replied fully to letters from the Committee following up on its conclusions and recommendations was unsatisfactory in that it tended to give the Rapporteur on follow-up a quasi-judicial oversight function. The question of punishment and other questions to which it gave rise deserved further study by the Committee.

25. Although he was both Country Rapporteur and Rapporteur on follow-up for the United States of America, he did not think that the same Committee member should perform both roles, as that was not consistent with the follow-up procedure that had been established by the Committee.

26. It might be worthwhile, when drawing up the list of issues for a particular State party, to reiterate the follow-up points that had been transmitted to that State party at a previous session. That had happened recently with the list of issues for Japan, which had included questions that were based on the points raised by the Rapporteur on follow-up, while introducing certain new ideas as well.

27. **Mr. Gallegos Chiriboga** agreed that it would be useful to study the question of follow-up in greater detail. The central issue of such an exercise was to determine the level of effectiveness of the Committee's monitoring and follow-up efforts. That could be assessed by determining whether its monitoring had influenced the conduct of States parties and whether persons subjected to torture or ill-treatment had seen a real improvement in their situation. It might be useful for the Committee to reflect on the role of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and how it could best complement the Committee's efforts. It would also be helpful to know whether there were any aspects of the decisions taken in cases submitted under the Committee's individual complaints mechanism that had been identified as characteristic of the Committee's jurisprudence. The Committee should not produce a standardized list of issues because differences between States parties were too great. A review of the concerns that had been given greater priority in certain regions of the world was a good indicator of the Committee's effectiveness in that region.

28. **Mr. Wang Xuejian** suggested that more time should be allotted for a detailed discussion of the follow-up to the Committee's recommendations at its next session. The follow-up procedure had been at least partly successful, and the main question currently facing the Committee was how to make it more effective. Currently, after the Rapporteur on follow-up had received a reply from the State party to her initial follow-up letter, she often sent a second follow-up letter with additional questions on areas requiring action. Perhaps in that second letter, instead of seeking only greater clarification, it might be worthwhile to include additional recommendations. In order to do so, however, it was necessary to ensure that the Rapporteur had been mandated to make recommendations, since that had traditionally been the task of the Committee as a whole.

29. When responses were received from States parties to follow-up correspondence, they should be made available to all members, so that at the next session the Committee could take them up. Whenever the Committee considered the report of a State party, it should also take into account the State party's compliance with the Rapporteur's requests.

30. **Ms. Kleopas** said that the work of the Committee would be strengthened by a discussion of the proposals of the Rapporteur on follow-up concerning the way in which the Committee could best use the follow-up procedure as an effective tool in preventing and eliminating torture and ill-treatment. She proposed that the Rapporteur should submit a written report to the Committee, which would serve as the basis for a thorough discussion. It would be useful for such a discussion to be held as soon as possible so that the follow-up procedure could be used to benefit the persons most in need of protection under the Convention.

31. **Mr. Gaye** said that the Rapporteur's analysis had revealed many issues that could serve as a basis for further reflection by the Committee and would no doubt enhance the quality of the Committee's work. There was much room for improvement in the way the Committee carried out its follow-up procedure in terms of increasing effectiveness and enhancing the quality of its jurisprudence.

32. **The Chairperson** welcomed the possibility of having a procedural and substantive discussion concerning follow-up, which was one of the most important aspects of the Committee's work. Follow-up was crucial not only to the success of the Committee but also to the achievement of the goals set out in the Convention. It was important to adhere to the principles underlying the Committee's follow-up procedure: first, its basis in the Convention; second, its efficiency, which required the identification of priorities; and third, its consistency, in order to ensure that all countries were treated equally. Consistency was the determining factor for the Committee's legitimacy and required that a standard framework should be used for analysing facts and following-up conclusions and recommendations. Certain exceptions to the consistency rule might be permitted but must be justified.

33. Another important principle for ensuring consistency and legitimacy was jurisprudential transparency, which could be achieved through publicity in the media, including the Internet. The starting point was to make the Committee's follow-up letters and States parties' replies available to the public. The UPR process, for example, was publicized by means of live webcasts on the Internet site of the Human Rights Council. It was also important for the Committee to analyse States parties' responses to its follow-up if it wished to be thorough and effective and to keep open its dialogue with States parties.

34. Another important area in which the Committee had a role to play was prevention, and particularly training in relation to the Istanbul Protocol. The Committee should consider how it could further encourage States parties to provide lawyers, public officials and medical professionals with gender-sensitive training in recognizing and dealing with victims of torture and ill-treatment.

35. Impunity was the other substantive area on which the Committee should focus. It was inextricably linked to prevention, since there was no more effective measure for preventing torture and ill-treatment than punishing the perpetrators of such acts.

36. In his opinion, the Committee had not been consistent in its implementation of article 14 of the Convention concerning redress, which included monetary compensation, acts of contrition, reform of statutes and, in particular, the rehabilitation of victims.

37. **Ms. Gaer** urged colleagues to use the Committee's website in order to consult follow-up information submitted by States parties. Efforts should be made to ensure that all information received was posted promptly on the relevant page. The secretariat was currently examining the possibility of establishing a separate web page for follow-up, in line with the practice of other treaty bodies.

38. In every instance the Rapporteur was constrained by the choices the Committee as a whole made when designating the issues on which to request follow-up. She therefore appealed to Committee members to give special attention to the choice of issues, despite the fact that it was often made under considerable time pressure.

39. Turning to the question of working with special rapporteurs, she noted that, unlike the Human Rights Council, the treaty bodies were mandated to treat all States parties equally from the procedural standpoint. The follow-up procedure was a mechanism that aimed to ensure such equal treatment.

*The meeting was suspended at 11.40 a.m. and resumed at 11.55 a.m.*

#### **Consideration of communications under article 22 of the Convention**

40. **Mr. Mariño Menéndez**, Rapporteur on follow-up to communications, noted that the meetings of chairpersons and the inter-committee meetings had not examined in depth the issue of follow-up to individual communications. Some treaty bodies did not receive individual communications and others had little jurisprudence to date. There had, however, been clear indications that further attention would be paid to the issue in future and that, as more treaty bodies began examining individual communications, there would be a greater need for harmonization.

41. The Committee's decisions, while not emanating from a court, were binding on States parties and should be implemented in good faith. He suggested that the Committee should consider gathering data on its article 22 decisions that had been implemented by States parties, those that had not been implemented and the redress granted to victims in each case.

*Communication No. 297/2006: Bachan Singh Sogi v. Canada*

42. After briefly outlining the case of *Bachan Singh Sogi v. Canada*, he drew attention to the proposed decision of the Committee, namely, to remind the State party of the Committee's earlier request that it fulfil its obligations under article 3 of the Convention, express regret at the State party's refusal to adopt the Committee's recommendations in that regard, and inform other United Nations mechanisms dealing with torture issues of the State party's response. The Committee would, however, state that it considered that no useful purpose would be served in pursuing the follow-up dialogue with the State party. The Human Rights Committee had used that formula in similar cases when a complainant had been returned and the State party in question had repeatedly refused to heed the Committee's decision.

43. **Ms. Belmir** asked whether the proposed decision constituted closure of the case on the part of the Committee and whether the Committee had taken such a decision in the past. If so, that would surely set a dangerous precedent, particularly given Canada's record for respecting human rights in general.

44. **Mr. Mariño Menéndez** said that, to his knowledge, the Committee had not taken such a decision in the past. The State party had refused to implement the Committee's decisions or to communicate with the receiving State. While the Committee could keep the case open, he questioned the usefulness of such action. He had proposed informing other United Nations mechanisms dealing with torture issues of the State party's response as the Committee's only remaining means of exerting pressure on the State party.

45. **The Chairperson** agreed that closing the case would set a dangerous precedent. It was also possible that a future Government might take a different approach to the complaint. He noted that Canada had made a mistake in asserting that India was a State party to the Convention. One solution might be to inform the complainant that the case remained open, obtain information on the injuries he had suffered and consider what redress would be appropriate in his case. The Committee should send the State party another reminder of its obligations under the Convention.

46. **Mr. Mariño Menéndez** said that, since India had signed but not ratified the Convention, under international law it was obliged to avoid taking action against the object and purpose of the Convention. That point could be mentioned in an attempt to encourage communication between Canada and India.

47. **Mr. Wang Xuexian** agreed that the Committee should express regret at the State party's refusal to comply with its recommendations. He questioned the wisdom of implicitly requesting assistance from other mechanisms to enforce the Committee's decision. While the case should remain open, the Committee should not spend time on it at every session.

48. **Ms. Gaer** said the case should be kept open since some questions remained unanswered. The State party had asserted that the complainant's allegations of torture constituted new information. It was unclear what had taken place during and on the complainant's return to India and whether any diplomatic assurances had been given.

49. **Mr. Mariño Menéndez** said that some confusion had been caused because the complainant's counsel had initially recommended that Canada should not communicate with India for fear of reprisals, which had deterred the Committee from recommending that course of action. Counsel had then suggested that Canada should request information about the complainant, but should make no reference to allegations of torture in India. That had not facilitated the Committee's work.

50. He did not agree that the Committee should not inform other United Nations mechanisms dealing with torture issues of the State party's response. However, if there was consensus on keeping the case open, he would not oppose it. Canada was indeed exemplary in many aspects of human rights, but had clearly stated in its responses concerning that complaint that it did not consider the Committee's decisions to be legally binding. He therefore agreed that the Committee should reply to the State party, thereby reinforcing its authority and recalling that it would return to the case at forthcoming sessions.

51. **The Chairperson** said that the Committee had already taken a decision: Canada was expected to "make reparation" for the breach of article 3. The Committee was currently discussing follow-up; it had concluded that the Convention had been breached and that reparation should be made, but reparation could take very different forms. However, there was agreement in the Committee. He therefore proposed that the discussion should be brought to a close and that the Rapporteur should take the various comments into account and continue his work.

52. **Mr. Mariño Menéndez** said he gathered that most members would like to keep the case open.

53. *It was so decided.*

*Communication No. 133/1999: Falcón Ríos v. Canada*

54. **Mr. Mariño Menéndez**, reviewing the background of the case, said that it did not present any problems since, according to the information which the Committee had received, Mr. Falcón Ríos had returned voluntarily to Mexico. As he saw it, the case had thus been resolved.

55. *It was so decided.*

*Communication No. 59/1996: Blanco Abad v. Spain*

56. **Mr. Mariño Menéndez** reviewed the background of the case. Since the State party's submission had been sent to the complainant on 7 October 2009 with two months for comments, the Committee could wait for a response before considering the case further. The follow-up dialogue was ongoing.

57. *It was so decided.*

*Communication No. 212/2002: Kepa Urra Guridi v. Spain*

58. **Mr. Mariño Menéndez** reviewed the background of the case. The follow-up was ongoing, and the Committee was still waiting for the State party's comment, which had been due in August or September 2009, on the complainant's submission of 22 June 2009. In his view, the Committee should postpone a decision until the next session.

59. *It was so decided.*

*Communication No. 60/1996: M'Barek v. Tunisia*

60. **Mr. Mariño Menéndez** reviewed the background of the case. The Committee might wish to thank the State party for the information provided on follow-up and its willingness to order an exhumation of the deceased's remains. It might also wish to request clarification from the State party on whether such an exhumation had already been ordered and if so, on the modalities to be followed. It might also wish to indicate to the State party that its obligations under articles 12 and 13 of the Convention to proceed with an impartial investigation included ensuring that any exhumation would be conducted in an impartial manner in the presence of independent international experts.

61. In a recent development, he noted that the secretariat had received information from the complainant alleging that his lawyer had been harassed, assaulted and prevented from leaving the country. The Committee had other information substantiating the allegation. The Committee needed to take action, and he proposed sending a note verbale to the State party with a copy of the most recent allegation received from the complainant and asking for clarification.

62. **Mr. Wang Xuexian**, noting that it was the Committee's usual practice to ask for "an impartial and independent investigation", wondered why the suggestion in the current case was to conduct an investigation "in the presence of independent international experts".

63. **Mr. Mariño Menéndez** said that the presence of independent international experts would be an additional guarantee, but he had no objection to deleting the word "international". The State party needed to conduct the exhumation in an impartial manner in the presence of independent experts.

64. *It was so decided.*

*Communication No. 291/2006: Saadia Ali v. Tunisia*

65. **Mr. Mariño Menéndez** reviewed the background of the case. Discussions were ongoing with the State party, and Tunisia's attitude was more conciliatory. He therefore proposed that the Committee should send a note verbale to the State party indicating that

there was no procedure in the Convention or in its rules of procedure for review of a case on the merits and reminding the State party of its obligation under the Convention to pay the complainant compensation in line with the Committee's decision. Thus, the dialogue on follow-up was ongoing.

66. *It was so decided.*

*The public part of the meeting rose at 12.45 p.m.*