



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

Distr.: General
7 May 2013
English
Original: French

Committee against Torture
Forty-ninth session

Summary record of the first part (public)* of the 1122nd meeting

Held at the Palais Wilson, Geneva, on Friday, 16 November 2012, at 10 a.m.

Chairperson: Mr. Grossman

Contents

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

Report on follow-up to concluding observations

Consideration of communications under article 22 of the Convention (*continued*)

Report on follow-up to communications

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.1122/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the 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 a.m.

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

Report on follow-up to concluding observations

1. **The Chairperson** invited Ms. Gaer, Rapporteur for follow-up to concluding observations, to present her report.
2. **Ms. Gaer** (Rapporteur for follow-up to concluding observations) recalled that, at its thirtieth session, the Committee had instituted a follow-up procedure for concluding observations adopted under article 19 of the Convention. The goal was to obtain information about follow-up to certain recommendations the Committee issued following the consideration of State party reports, which were selected according to the following three criteria: they must concern serious matters; they must have a protective purpose and they must be implemented within one year, given that the time frame for responding to the request for information was 12 months. She drew the attention of Committee members to the briefing paper that had been handed out, which summarized, country by country, all the recommendations selected for follow-up from the thirtieth to the forty-eighth session.
3. At its forty-seventh session, the Committee had noted that an increasing number of recommendations required follow-up and that, as a result, States parties were submitting increasingly long replies or failed to reply altogether. The Committee had therefore decided to better target its requests for information by focusing on the following major themes: fundamental legal guarantees, the prompt launch of unbiased and efficient investigations, and prosecution of and sanctions against persons suspected or guilty of acts of torture and measures of redress.
4. Between the Committee's thirtieth and forty-eighth session, the matters that had most frequently been raised in requests for information about follow-up, in decreasing order of concerned States parties, were as follows: prompt launch of unbiased and efficient investigations (80 per cent); prosecutions and sanctions (69 per cent); fundamental legal guarantees (54 per cent); redress (42 per cent); complaints mechanisms (40 per cent); and training and awareness-raising (40 per cent). The Committee had not yet received responses from States parties whose reports had been considered at the forty-seventh session but, in accordance with established practice, she would be sending them reminders and would report back on their responses at the Committee's fiftieth session. She pointed out that States parties that tended to submit their follow-up report late were usually the same ones that had submitted their initial or periodic reports five or more years late. She also noted that despite the adoption of a targeted approach for selecting recommendations for follow-up, the Committee had retained on average six recommendations in the concluding observations it had adopted at its forty-eighth session, which warranted thought. She further mentioned that non-governmental organizations (NGOs) also transmitted information on the implementation by States parties of recommendations for follow-up and that the relevant documents were posted on the Committee's website.
5. Since the follow-up procedure had been instituted, 100 States parties had taken part in the oral examination of their report, including 25 which had done so twice during the period under consideration. Proportionally, the most represented regions were Western and Eastern Europe. Africa, Asia and Latin America, where failure to submit reports was also most acute, were less represented. In order to assess States parties' responses on follow-up, she intended to use the double-ranking system that she had presented to the Committee at a previous session (see A/67/44, paragraph 81) and that made it possible to distinguish between States parties which provided a lot of information but did not really follow-up on the recommendations and those which largely implemented them.

6. In her 2012 report on strengthening the human rights treaty body system (A/66/860), the United Nations High Commissioner for Human Rights had highlighted the optional procedure for preparing periodic reports that the Committee against Torture had devised, calling it the “simplified reporting procedure”. According to that procedure, a list of issues was submitted to States parties prior to the preparation of their periodic report, the replies to which constituted the actual report. In document A/66/860, the High Commissioner had invited the Committee to consider the possibility of discontinuing the follow-up procedure, claiming that if all States parties submitted a report on time under the optional procedure, their responses regarding follow-up to concluding observations could be included in the following periodic report, thus rendering the follow-up report unnecessary. Speaking as Rapporteur, she pointed out that the system could only work if States parties submitted their reports on time; yet the Committee had already granted additional time to three States parties that had committed to implementing the optional procedure. In order to streamline its follow-up procedure, the Committee might draw on the practice of other treaty bodies using such a procedure, of which one had reduced to six months the period granted for submitting requested information, while another had chosen to limit to two the number of recommendations requiring follow-up.

7. Activities related to the follow-up procedure had so far not given rise to any additional work for the secretariat, given that those tasks were mainly carried out by members of the Committee and herself. However, it would be very useful to free up resources to enable the Committee to conduct follow-up visits to States parties. Lastly, she wished to point out that the special follow-up report that the Committee had requested from the Syrian Arab Republic at its forty-eighth session (CAT/C/SYR/CO/1/Add.2, para. 24), and which had been due by 31 August 2012, had not yet been submitted.

8. **Ms. Belmir** asked why recommendations regarding training activities were never chosen for follow-up in the concluding observations issued to African States parties. She wished to know whether the Committee could systematically ask States parties which had ratified the Optional Protocol to the Convention to inform the Committee within one year whether they had submitted their report to the Subcommittee on the Prevention of Torture. She also asked what additional benefit was gained with the targeted approach adopted by the Committee at its forty-seventh session.

9. **Ms. Sveaass** invited Ms. Gaer to make recommendations on measures to streamline the follow-up procedure and to say whether she thought it was worth reducing the period for submitting responses and/or the number of recommendations chosen for follow-up. She also wished to know how information from NGOs was used and whether it would be possible for the Country Rapporteurs to travel to States parties at the invitation of national or international NGOs, in order to take part in seminars and conduct follow-up activities.

10. **Mr. Bruni** asked whether the targeted approach allowed the Committee any leeway regarding the selection of recommendations for follow-up, in order to take account of priorities and issues specific to each country. He drew the members’ attention to statistics on page 55 of the aforementioned report by the High Commissioner, which showed that an average of US\$ 13,300 could be saved on each report if the States parties agreed to implement the optional procedure developed by the Committee instead of the usual procedure. In addition, the High Commissioner had encouraged those treaty bodies that had not yet adopted the optional procedure to do so and, in that connection, to use a template list of issues containing not more than 25 questions (or 2,500 words). He wished to hear Ms. Gaer’s opinion on the matter.

11. **Mr. Wang Xuexian** said that the Committee should discuss the appropriateness of preserving or discarding the follow-up procedure at a later meeting, when it considered the High Commissioner’s report. It was regrettable that the Committee had chosen an average of six recommendations for follow-up at its forty-eighth session when it had settled on a

maximum of four at the preceding session. He suggested that the Rapporteur for follow-up to concluding observations should report to the Committee on her follow-up procedure activities only every other session and draft a report every four years, which would give the Committee a better overview of the situation.

12. **The Chairperson** pointed out that the legitimacy of treaty bodies depended on the follow-up given to their recommendations and that, without a follow-up procedure, consideration of reports would be a futile exercise. He said that he did not think it was materially possible to ask States parties to report on follow-up to certain recommendations within less than one year, as had been suggested. In addition, it would imply a heavy workload for the Committee because it would have less time to formulate its observations on follow-up reports. Given the unlikelihood of freeing up funds to finance follow-up visits, the Committee should instead strengthen its collaboration with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Subcommittee on the Prevention of Torture, which could collect information on the Committee's behalf during their visits to States parties. Lastly, endorsing Mr. Wang Xuexian's comments, he thought that the Committee should examine the High Commissioner's report at a later meeting and state its opinion about the recommendations contained in it in an official decision.

13. **Mr. Kjaerum** (International Rehabilitation Council for Torture Victims) said that he did not think it was possible to do away with the procedure for follow-up on concluding observations, especially in view of the average periodicity of report submissions. The Committee might consider the possibility of using the procedure to better protect partner NGOs from reprisals. It might also fortify its ties with the universal periodic review as a means of improving the follow-up on its recommendations to States parties.

14. **Ms. Gaer** agreed that training issues were important for some countries, especially African ones, and said that, in cases of urgency, there was nothing to prevent the Committee from choosing training-related recommendations for follow-up. Generally speaking, the follow-up procedure was flexible enough for new questions to be asked in the light of developments. The Committee could consider systematically asking States parties to the Optional Protocol to report on what steps they had taken to set up a national preventive mechanism. However, the follow-up procedure for concluding observations might not be the one best suited for that purpose; a model recommendation might be more appropriate.

15. When the Committee assessed States parties' observance of their follow-up obligations, it based itself on information provided by NGOs, which was given the same treatment as information provided prior to consideration of periodic reports. While NGOs were a valuable source of information, they were not the only one. Proposals that members of the Committee should conduct follow-up visits were worth supporting. In that connection, the Committee could run pilot visits in order to gauge State party interest in that form of follow-up.

16. As proposed, it would be useful for the Committee to devote a meeting to considering the High Commissioner's report on treaty body strengthening and to consider the cost-cutting measures proposed and the possibility of reducing to six months the period allotted to States parties for submission of follow-up information. It was also important to ensure that the follow-up procedure focused on a limited number of issues. Lastly, the matter of reprisals warranted special attention and should be addressed by the Committee, whether through recommendations or the follow-up procedure. The Committee might also consider naming a rapporteur on the matter.

Consideration of communications under article 22 of the Convention (*continued*)*Report on follow-up to communications*

17. **Mr. Mariño Menéndez** (Rapporteur for follow-up to communications) said that he wished to make a few general comments prior to giving his oral report on follow-up to communications. He recalled that, to date, nearly 70 States parties had made the declaration under article 22 of the Convention. Thanks to the secretariat's support, the backlog of communications awaiting consideration for four or more years had been partly cleared, although the Committee continued to face a variety of difficulties when it came to processing communications. The fact that some communications were not drafted in any of its working languages did not make the task any easier. The Committee's general comment No. 1 on the implementation of article 3 in the context of article 22 was a useful document, but it needed updating. The adoption at the current session of a general comment on the implementation of article 14 of the Convention, which would enable the Committee to expand its jurisprudence with regard to redress, was to be welcomed. In that area, the Committee might also draw on the case law of regional courts and tribunals. Follow-up visits had proven useful and the Committee should consider conducting more. It should not hesitate to involve national human rights institutions in ensuring that States parties abided by the Committee's decisions.

18. Regarding *Kalinichenko v. Morocco* (communication No. 428/2010), in which the claimant had been sent back to the Russian Federation, in violation of article 3 of the Convention, he said that no information had yet been received. A renewed request for information concerning measures taken to monitor the claimant's situation in his place of detention in the Russian Federation would be sent to the Moroccan authorities. Concerning follow-up to *Guengueng et al. v. Senegal* (communication No. 181/2001), consideration of which had been completed, an information request would be sent to the State party as part of follow-up to the concluding observations regarding the third periodic report of Senegal. As to *Gerasimov v. Kazakhstan* (communication No. 433/2010), the authorities had until 8 February 2013 to submit their written comments on measures taken to implement the Committee's decision; no information had been received to date. Regarding *Abdusamatov et al. v. Kazakhstan* (communication No. 444/2010), the State party had reported that it had met with 18 of the 28 persons who had been extradited to Uzbekistan, in violation of article 3 of the Convention, and they had all denied suffering any acts of torture or ill-treatment. The State party had added that the persons concerned had undergone medical checks and that no sign of torture or violence had been found. It should be noted, however, that no copies of the medical certificates had been produced and it was not clear by whom the medical checks had been conducted.

19. Regarding *Sodupe v. Spain* (communication No. 453/2011), in which the Committee had found a violation of article 12 of the Convention, he said that an investigation had been launched and that the State party had provided information, currently under consideration. In *Slyusar v. Ukraine* (communication No. 353/2008), the claimant had informed the Committee on 4 October 2012 that the State party had not taken any measures to implement the Committee's decision; a further official request for information would therefore be sent to Ukraine. Regarding *M.A.M.A. v. Sweden* (communication No. 391/2009), the State party had reported that on 12 and 13 July 2012, the Swedish Migration Board had issued a residency permit to all the claimants, so that they were no longer in danger of being sent back to Egypt. Lastly, concerning *Hanafi v. Algeria* (communication No. 341/2008), the claimant's counsel had informed the Committee that no measures had been taken to implement its decision and that no redress had been awarded to the claimant for the death of her husband. Given that Algeria had also failed to act on the findings of the Human Rights Committee in several other cases, joint action might be considered. In any case, a reminder would be sent to the State party and the secretariat would invite its representatives

for a meeting with the Rapporteur for follow-up to communications during the May 2013 session.

20. **Mr. Bruni** said that he supported Mr. Mariño Menéndez's proposal to update general comment No. 1 on the implementation of article 3 in the context of article 22. He took it that joint action by the Committee against Torture and the Human Rights Committee was being considered and requested further information in that regard.

21. **Mr. Gaye** asked to what degree extending sessions by one week had enabled the Committee to clear the backlog of cases. He also wished to know whether it was within the Committee's purview to request redress for victims of acts of torture and, if so, on the basis of which provision.

22. **Ms. Varesano** (TRIAL), referring to *Hanafi v. Algeria*, said that it had been 14 years since Mr. Hanafi had died as a result of torture suffered at the hands of the Algerian authorities and that no measures had been taken to investigate his death. She asked what the Committee could do about States like Algeria that simply ignored its decisions. In the case at hand, TRIAL, the NGO that represented the victim's family, strongly urged the Committee to carry out a joint mission to Algeria with the Human Rights Committee, which had itself found violations in 15 cases involving that country, in order to ensure that their respective findings were effectively implemented.

23. **Mr. Mariño Menéndez** said that measures of redress recommended by the Committee depended on the type of violation. In cases of violations of article 3 there were two options: either expulsion measures had not yet been implemented, in which case the Committee recommended that the order should be stayed; or the claimant had already been expelled, in which case redress consisted in setting up a follow-up mechanism in the country of return to make sure that the person concerned had not fallen victim to torture or ill-treatment. In cases where the obligation to investigate had been violated, the most obvious redress consisted in launching an investigation, but other measures, including compensation, could be considered in the light of the Committee's newly adopted general comment No. 3. It would be worth discussing the matter. Regarding *Hanafi v. Algeria*, he was altogether in favour of the Committee carrying out a joint mission to Algeria with the Human Rights Committee and of sending the requisite request to the Algerian authorities. Other, more immediate, measures should also be considered, such as the two committees issuing a joint statement or requesting a meeting with the diplomatic representatives of the State party.

24. **Mr. Nataf** (Secretary of the Committee) said that the Committee had been able to consider on average five communications more per session since it had been allotted an additional week of meetings. However, it should be noted that the additional week was not exclusively devoted to considering communications and that the number of pending communications, which currently stood at 115, had continued to increase.

25. **The Chairperson** said that the Committee fulfilled its commitment to consider all the communications submitted to it at each session. It could not consider more communications than those submitted by the secretariat and was therefore not responsible for the number of pending communications, which mainly resulted from a lack of resources at the Office of the United Nations High Commissioner for Human Rights.

The first part (public) of the meeting rose at 12.05 p.m.