



# International Covenant on Civil and Political Rights

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## Human Rights Committee 119th session

### Summary record of the 3360th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 21 March 2017, at 10 a.m.

*Chair:* Mr. Iwasawa

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*The meeting was called to order at 10.05 a.m.*

### **Adoption of the annual report to the General Assembly**

#### *Draft annual report of the Human Rights Committee (CCPR/C/119/R.1)*

1. **The Chair** said that he wished to note, for the record, that the permitted word limit for the annual report of the Human Rights Committee had been reduced.
2. **Mr. de Frouville** said that he deeply regretted the reduction of the word limit for the report, which had led to the removal of the summary of the Committee's jurisprudence. The summary was now issued in a separate document, which was available in English only.
3. **The Chair** said that he wished to express concern, on behalf of the Committee, at the decision to issue the summary in English only.
4. **Ms. Waterval** (Rapporteur) said that she would proceed to review the draft report and highlight any new information that had been included.
5. **Mr. Shany** said that, in paragraph 14, it would be useful to list the States parties that maintained ongoing derogations pursuant to article 4 of the Covenant in addition to those that had deposited derogations during the period under review. In paragraph 16, it would be helpful to specify that under the follow-up procedure, the Committee requested States parties to follow up only on selected recommendations.
6. **Ms. Cleveland** suggested that information on the new grading system adopted by the Committee should be included in either section I (G), on concluding observations and follow-up to concluding observations, or section I (H), on communications and follow-up to Views.
7. **Mr. de Frouville** said that the figures given in paragraphs 24 and 28 were not up to date.
8. **The Chair** said that information on the new grading system would be added. The figures in the report would be updated where necessary at the end of the current session.
9. **Ms. Waterval** (Rapporteur) drew the Committee's attention to paragraph 28, on the need for more capacity within the secretariat to reduce the backlog of communications, paragraph 35, on measures of reparation in Views adopted under the Optional Protocol, and paragraph 36, on decisions concerning working methods for dealing with communications.
10. **Mr. Shany** said that, in his view, reference should be made in section I (H) to the repetitive claims procedure and the number of cases dealt with in that connection. To support the Committee's argument that more resources were required, it would be useful to indicate the number of cases received, rather than simply the number of cases registered. It would be preferable to include the number of cases in connection with which the follow-up procedure had been initiated instead of only the number for which information had been received from the parties during the period under review. If the word limit allowed, the report could also provide details of the number of cases relating to each State party.
11. **The Chair** said that information regarding the follow-up to Views should be included in the report. If the word limit did not allow for the inclusion of a list of all cases under the follow-up procedure, those details could be included in the progress report of the Special Rapporteur for follow-up to Views.
12. **Ms. Pazartzis** said that she supported the inclusion of references to the decisions on the repetitive claims procedure and to the number of cases initiated under the follow-up procedure. She would be interested to hear details of the timeline for the implementation of the decision the Committee had taken regarding the publication of the list of pending cases.
13. **The Chair** said that it was his understanding that the cases would be published gradually due to the amount of work involved.
14. **Ms. Rueda** (Secretariat) said that publication would begin with the cases that had been registered since 1 January 2017. Work had begun to prepare summaries of older cases and those would be uploaded to the website in due course.

15. **Mr. de Frouville** said that it was his understanding that approximately two thirds of the Committee’s jurisprudence was as yet unavailable on the website. He would appreciate information as to when the situation would be rectified.
16. **Ms. Cleveland** said that it was her understanding that those communications that were ready for consideration by the Committee would be published first.
17. **Mr. Shany** said that it was his understanding that the secretariat would first publish those cases registered in 2017 to date and then work backwards.
18. **The Chair** said that further discussion with the secretariat was necessary regarding the implementation of the decision to publish cases.
19. **Mr. Shany** said that in the title of section I (K), the word “publicity” should be replaced with the word “visibility”. If the Committee took the decision to hold some sessions in New York, that information should be inserted in section I (K).
20. **Ms. Cleveland** said that, given that the suggestion regarding holding sessions in New York had been made during the period under review, a reference to the matter should be included in the report irrespective of whether a final decision had been taken. While the title of section I (J) made reference to translation, the text in that section did not contain any mention of the issues the Committee faced regarding the translation of summaries, jurisprudence and individual opinions on communications.
21. **Mr. de Frouville** said that he supported the comments made by Ms. Cleveland. In paragraph 47, the descriptions of the Committee’s media strategy as “robust” and its press conferences as “well-attended” were overstatements.
22. **The Chair** noted that the Committee’s press conferences had been moved from Fridays to Thursdays to attract more press attention. With regard to the possibility of holding sessions in New York, he said that he was unsure whether it was appropriate to include in the report matters on which a final decision had not been taken.
23. **Ms. Kran** said that, in her view, the word “dissemination” would be more appropriate than “visibility”, given that the objective was to put the products of the Committee’s work into the hands of those stakeholders who could make the best use of them, namely civil society and agencies of the United Nations. With regard to the holding of sessions in New York as a way of reaching out to entities without representation in Geneva, she wished to know whether the Committee had any input into the NGO briefings held during its sessions. She supported the deletion of the word “robust” in paragraph 47.
24. **Mr. Shany** said that in paragraph 47, it could be useful to state that while the Committee’s media and social media strategies were being developed, that work was hindered by the limited availability of support staff.
25. **The Chair** said that the Bureau would continue to discuss possible avenues for engagement via social media.
26. **Ms. Waterval** (Rapporteur) said that she wished to draw the Committee’s attention to the content of paragraphs 52, which discussed the use of double chambers, and 53, which listed the texts adopted by the Committee during the period under review. In paragraph 60, on links to other bodies, it could be helpful to include mention of the meeting held with the Inter-American Court of Human Rights.
27. **The Chair** said that it was his understanding that the papers on oral hearings for communications and the publication of information on pending cases, listed in paragraphs 53 (c) and (d) respectively, had been discussed but not formally adopted. Given that the meeting with the Inter-American Court of Human Rights had been an informal one, he was of the opinion that it should not be included in the report.
28. **Ms. Cleveland** said that the paper on repetitive communications should be included in paragraph 53. Given that there were so few opportunities to hold formal meetings with other bodies, it was important to include in the report the meeting with the Inter-American Court of Human Rights.

29. **The Chair** said that it was his understanding that the paper on repetitive communications had been adopted during the previous review period.

30. **Mr. Shany** said that the status of the papers on oral hearings for communications, the publication of information on pending cases and reparations needed to be verified. It was unclear whether the purpose of paragraphs 56, 57 and 58 was to provide information on the implementation given during the period under review to the procedures adopted by the Committee or simply to list the procedures adopted during previous review periods. Mention could be made of the meeting with national human rights institutions (NHRIs) as part of the implementation of the decision on those institutions. In paragraph 54, it would be useful to include the title the Committee used for its simplified reporting procedure, namely the list of issues prior to reporting. He wished to endorse the inclusion of the meeting with the Inter-American Court of Human Rights.

31. **The Chair** said that he took it that the Committee wished to remove paragraphs 56, 57 and 58 of the report.

32. **Mr. Politi** said that he supported the inclusion of the meeting with the Inter-American Court of Human Rights. He wished to suggest the word “outreach” as an alternative to “publicity” in the title of section I (K).

33. **Ms. Waterval** (Rapporteur) said that, in her view, it was necessary to include in the report the meetings with the Inter-American Court of Human Rights, the Working Group on Enforced or Involuntary Disappearances and NHRIs.

34. **Mr. Shany** said that it was necessary to review paragraphs 61 and 74 to remove overlapping information. Furthermore, the relationship between paragraphs 71 and 72 was unclear.

35. **The Chair** said that he took it that the Committee wished to adopt the report, subject to the modifications that had been discussed.

36. *The Committee’s draft annual report (CCPR/C/119/R.1) was adopted on that understanding.*

*The meeting was suspended at 11.10 a.m. and resumed at 11.25 a.m.*

#### **Organizational and other matters, including the adoption of the report of the working group on individual communications** *(continued)*

##### *Debriefing on the meeting with national human rights institutions*

37. **Mr. Shany** said that in March 2017, Mr. Iwasawa and he had attended a conference in Geneva organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Global Alliance of National Human Rights Institutions (GANHRI). Participants had included representatives of OHCHR, GANHRI, the other treaty bodies and a number of NHRIs. The purpose of the event had been to examine ways of streamlining and strengthening the interaction between the treaty bodies and NHRIs. The participants had discussed a number of issues, including the need for treaty bodies to support the work of NHRIs to ensure they could work effectively and avoid reprisals and the extent to which the relationship between the treaty bodies and NHRIs was formalized. While the Committee had adopted a paper on the issue, other treaty bodies had included the special role of NHRIs in their rules of procedure, and one body had made mention of such institutions in its constitutive treaty. The treaty bodies differed in the degree to which they encouraged the participation of NHRIs, with some holding public or closed meetings with them and some including them in the dialogue with States parties. Another point of discussion at the conference had been the possibility of allowing NHRIs to submit amicus briefs. The Committee might wish to discuss whether to follow the lead of the Committee on Economic, Social and Cultural Rights, which had already begun to allow them. Some representatives of NHRIs had expressed frustration at the difficulties they faced in ascertaining the deadlines for the submission of contributions to the treaty bodies. It was unclear whether the responsibility for streamlining the submission process lay with the treaty bodies, OHCHR, GANHRI or the NHRIs. The institutions were important allies in

the Committee's work at the country level and could prove especially helpful in relation to lists of issues and the follow-up procedure.

38. **The Chair** said that the Committee had been one of the first to adopt a paper on NHRIs and it received many more communications than the other treaty bodies. There was a certain amount of interest among NHRIs in the possibility of submitting amicus briefs.

39. **Ms. Cleveland** said that she supported the idea of receiving amicus briefs in the communications procedure. The issue of deadlines constituted an obstacle to the visibility of the Committee and the dissemination of its work and improvements needed to be made in that area.

40. **Ms. Kran** said that she would be interested to hear whether a process existed or was being developed to improve the sharing of information on deadlines with NGOs. Was there a mechanism through which those NHRIs that successfully raised awareness in their countries regarding the Committee's work could share best practices with fledgling institutions in other States?

41. **Mr. Koita** said that NHRIs furnished the Committee with first-hand information, provided significant assistance in decision-making, and helped to disseminate and implement Committee policies at the ground level. They also assisted States parties in modifying domestic legislation to ensure compliance with the pronouncements of the Committee and the provisions of the Covenant. The Committee should therefore make efforts to improve relations with NHRIs. Institutions considered sufficiently autonomous and impartial should be treated as partners in their own right, rather than having to be part of government delegations.

42. **Mr. Heyns** said that the use of amicus briefs would provide additional information that could assist Committee members in their deliberations. A working group could be responsible for approaching NHRIs and ascertaining whether they wished to submit briefs. In cases in which a national human rights institution had submitted a brief, the Committee could invite the institution to participate in government follow-up activities on the ground after it had taken a decision on the case. Such action could not be consistently guaranteed, but it could strengthen the position of NHRIs in their countries.

43. **Mr. Ben Achour** said that the limited speaking time allotted to NHRIs and NGOs was a source of frustration for Committee members, as well as for the representatives of those organizations. Efforts could be made to increase or redistribute speaking time, or reorganize the programme of work.

44. The selective use of amicus briefs for NHRIs was not logical. It would follow that such briefs could then be used for NGOs or civil society organizations, which often had an equal amount of information to offer to the Committee. Moreover, the degree of autonomy enjoyed by NHRIs depended on the State in which they were located. The use of briefs therefore required further consideration.

45. **Ms. Fox** (Secretary of the Committee) said that the Committee had previously drafted guidelines on its general policy towards NHRIs as well as a policy document on its engagement with NGOs. At each session of the Committee, NHRIs were provided with information on ways in which they could engage with the Committee regarding the list of issues and the States examined. The institutions were given the same deadlines as NGOs for submitting information before each session. Each institution was invited individually, following close cooperation with GANHRI to ensure the right contact information.

46. The Committee members showed respect for the status of NHRIs by meeting with each institution separately, and allotting them preferential seating in the meeting room and longer speaking time than NGOs. However, while the amount of speaking time for both NGOs and NHRIs was limited, Committee members would have to reduce the time dedicated to other parts of their work if they wanted to increase it.

47. It was common for NHRI representatives to attend the informal meetings that the Committee held with NGOs, although some NGO representatives did not support the practice. However, although NHRI representatives were encouraged to provide information as part of the follow-up to the Committee's concluding observations, they were not

specifically invited to do so, as it was not always clear when follow-up reports would be submitted.

48. **Ms. Cleveland** said that the non-respect of submission deadlines by States parties continued to be a problem throughout the reporting process. The Committee received very little information from NHRIs and civil society on follow-up reports, partially due to a lack of clarity about when to submit such information. Consequently, after receiving a follow-up report from a State party, the Committee could invite NHRIs and civil society to submit information.

49. **Mr. Ben Achour** said that the Committee could do more to cooperate with the Centre for Civil and Political Rights. Although it did not have official contact with the Committee, the Centre played a key role in engaging with NGOs and provided highly useful information by organizing independent follow-up missions to States. The Committee should therefore investigate ways of formalizing its relationship with the Centre, such as hearing reports from colleagues who accompanied employees of the Centre on their missions.

50. **Ms. Fox** (Secretary of the Committee) said that, although the Committee could request information from NHRIs after it had received a follow-up report, that could delay analysis of the report and increase bureaucracy. Contact with NGOs was made through the Centre for Civil and Political Rights, whose representatives maintained the contact details of NGOs and were aware of which reports the Committee had received. However, NGO and NHRI representatives were generally more involved in the initial examination of a State party than the follow-up report. With regard to the missions conducted by the Centre for Civil and Political Rights, the Committee members had previously decided that those missions should not be included in the Committee's annual report as they were not organized by the Committee.

51. **The Chair** said that when the Special Rapporteur on follow-up to concluding observations had been appointed, he or she should discuss the matter of follow-up reports with the secretariat.

*Consideration of draft Conclusion 13 [12] of Chapter VI of the Report of the International Law Commission (A/71/10)*

52. **The Chair**, introducing draft Conclusion 13 [12] of Chapter VI of the Report of the International Law Commission at its sixty-eighth session, said that there was a tradition of close cooperation between United Nations treaty bodies and the International Law Commission. The Committee had sent letters to the Commission to express the views of its members, which had influenced the preparation of the draft conclusions. In the context of the Committee, the use of the word "pronouncement" referred to views, general comments and concluding observations, while the word "treaty" indicated the Covenant.

53. **Ms. Seibert-Fohr** said that paragraph 4 of the draft conclusion seemed to unnecessarily restrict the application of the Committee's pronouncements. While, in general, the pronouncement of a treaty body entitled to interpret a human rights treaty did not constitute good practice in itself, the commentary did not adequately indicate the relevance of those pronouncements. Moreover, the approach taken in the draft did not take into account that many factors could contribute to the interpretation of a treaty; the role of the Committee in determining the practices of States, for example, was not referenced in any way.

54. Furthermore, the use of "refer to" in the first sentence of paragraph 3 did not have any legal relevance, and should be replaced by the terms "indicate" or "trace". Similarly, the subsequent commentary on page 232 of A/71/10 undermined the actions of the Committee by stating that pronouncements usually contained indications that they were not legally binding. Such a statement could imply that it was instead the role of the International Law Commission to evaluate State practice. In addition, the citation used in footnote 1008 on page 233 could be counterproductive and give the impression that State practice and the reactions of States parties to pronouncements were more important than the Committee's interpretation of the Covenant. Other passages in the commentary also seemed to reinforce that concept.

55. **The Chair** said that paragraph 3 addressed the question of whether pronouncements constituted subsequent practice, while paragraph 4 referred to the possibility that the pronouncement had an impact on the interpretation of the treaty, irrespective of whether it constituted subsequent practice. Regarding the use of “give rise to” and “refer to” in paragraph 3, there was a distinction in the language as “give rise to” indicated that subsequent practice was produced and “refer to” indicated that subsequent practice already existed.

56. **Mr. Politi** said that the draft Conclusion should contain less technical language as it had a very restrictive approach to the relevance of pronouncements made by the Committee. The function of the Committee was to monitor the application of the Covenant, which it could not do without interpreting the Covenant. The International Law Commission therefore had no mandate to restrict the influence of Committee pronouncements.

57. Regarding the interpretation of treaties, the commentary contained reference to the ruling of the International Court of Justice in the Ahmadou Sadio Diallo case, in which the Court had indicated the importance of Human Rights Committee pronouncements for the interpretation of the Covenant. That reference therefore contradicted the restrictive attitude taken by the International Law Commission in the draft Conclusion. The Committee members should make their opinions on the matter known to the International Law Commission through a letter.

58. **The Chair** agreed that the reference to the Ahmadou Sadio Diallo case contradicted the stance taken by the International Law Commission.

59. **Mr. de Frouville** said that it would be useful to send a letter to the International Law Commission, sharing the views of Committee members on the draft Conclusion, and referring to general comment 33, paragraph 11 (CCPR/C/GC/33) on the work of the Committee and its pronouncements. Moreover, it was regrettable that the Committee no longer had consultations with the working group to engage with treaty bodies on the matters that concerned them directly. Workshops could be held with the International Law Commission on the pronouncements of the Committee, as sometimes already took place without the involvement of the Committee.

60. **Mr. Shany** agreed that a letter should be sent to the International Law Commission, or that a meeting should be held with the Commission and the Special Rapporteur of the International Law Commission on subsequent agreements and subsequent practice in relation to interpretation of treaties, although previous attempts to organize a meeting had not yielded results. The restrictive approach taken in the draft conclusion did not reflect the fact that the Committee had a role in identifying and declaring State practices and State agreement. The statement about silence not being presumed to constitute consent was not only highly technical and formalistic, but also contextual as silence sometimes did constitute consent. The text should be amended accordingly.

61. Moreover, the position of the International Law Commission seemed to differ between draft conclusions 12 and 13. The text did not reflect the fact that the Committee was the international organization responsible for the application of the Covenant and remained the authoritative interpreter of the Covenant. State practice had confirmed that position by referring not only to specific pronouncements made by the Committee, but also to the Committee’s constitutional role.

62. **Ms. Cleveland** said that the reference to silence not being presumed to constitute consent was too categorical, and it was also contradicted in the commentary on draft conclusion 10, paragraph 2. Silence was ambiguous, and could constitute consent in some circumstances. The sentence should be deleted as it implied that the Committee’s pronouncements never required responses from States parties. Committee members should engage with the International Law Commission on the issue.

63. **Mr. Fathalla** asked whether the Committee members should coordinate with other treaty bodies before sending a letter, and before trying to organize a meeting with the Special Rapporteur of the International Law Commission on subsequent agreements and subsequent practice in relation to interpretation of treaties.

64. **Mr. Ben Achour** said that the reasoning expressed in the draft conclusions undermined the positions of certain States, and it would be necessary to underline which Committee pronouncements had been made with regard to individual communications relating to States parties to the Optional Protocols to the Covenant. The draft conclusion, as applied to the work of the Committee, did not take into account the different functions attributed to the Committee under the Covenant and the Optional Protocols, or the different kinds of pronouncement produced by the Committee. It also did not acknowledge the fact, for example, that representatives of States parties were consulted before the publication of final versions of general comments.

65. **The Chair**, with regard to interpretation of treaties, said that, under the Vienna Convention on the Law of Treaties, subsequent practice established the agreement of the parties and should be taken into account in the interpretation of a treaty, although in the practice of the International Law Commission it was not required for all States to engage in a subsequent practice after accepting it. In the interpretation of a treaty during individual communications procedure or a particular case, the pronouncements of the Committee were frequently used by States to support their arguments. However, in the consideration of a periodic report, States parties rarely challenged the Committee's interpretation of the Covenant and instead focused on addressing alleged facts.

66. He agreed that the stance taken in the draft conclusion on the non-presumption of silence was too categorical. In the relevant commentary, it was suggested that references to Committee pronouncements in the resolutions of international organizations might be the most appropriate way of identifying the consent of the parties. However, such a view was unduly restrictive for expert treaty bodies.

67. With regard to paragraph 4 of the draft conclusion, it should be noted that even when a pronouncement did not constitute subsequent practice, it could nonetheless have an effect on the interpretation of a treaty. The phrase "without prejudice" should be replaced with stronger language to recognize previous indications in the case law of the International Law Commission that the pronouncements of the Committee should be held in high regard.

68. **Mr. Politi** requested further information on the intent behind a letter from the Committee members to the International Law Commission.

69. **The Chair** said that a letter should express the concerns of Committee members and propose a meeting with the Special Rapporteur of the International Law Commission on subsequent agreements and subsequent practice in relation to the interpretation of treaties.

70. **Mr. de Frouville** said that any discussion with the Special Rapporteur should take place in a formal meeting on the Committee's working methods in order to, inter alia, have access to interpretation services.

*Procedures for revision of general comments*

71. **Mr. de Frouville** said that, in May 2016, he had attended an expert workshop organized by the Office of the United Nations High Commissioner for Human Rights on the right to participate in public affairs. He had been invited to represent the Committee at the event, which had taken place within the framework of Human Rights Council resolution 33/22 on equal participation in political and public affairs.

72. He had given a presentation on general comment 25, which the principal sponsors of resolution 33/22 and other stakeholders had believed should be updated, although it was not feasible to do so at present. Particular attention was paid to paragraph 4 of general comment 25, which stated that mental incapacity could be a ground for denying a person the right to vote or hold office. Such a provision was problematic, and measures should be adopted to ensure that individuals affected by mental disabilities were never deprived of the right to participate in public life. In addition, representatives of NGOs had noted the regrettable absence of general comments on articles 21 and 22 of the Covenant.

73. He wondered whether it would be possible to use a mechanism other than a general comment to engage on an issue, and acknowledge the changes that might have occurred in relevant jurisprudence. Ad hoc statements, for example, could be issued on specific issues, such as the participation of persons with disabilities in public life. Both the Economic and



Social Council and the Committee on the Elimination of Discrimination against Women issued specific statements, when it was considered necessary.

74. While it would not be possible for the Committee to fully update its pronouncements at short notice, it had been proposed that the Office of the High Commissioner for Human Rights could oversee a drafting process for creating new guidelines on participation in public affairs. If no action was taken, the important role of the Committee in interpreting the Covenant could be reduced, as the Committee was not in a position to take immediate action and state its position on topical issues.

75. **The Chair** recalled that the Committee on the Rights of Persons with Disabilities had previously requested that the Committee revise general comment 25. However, as it had not been possible to do so, Committee members had issued a new formulation in its concluding observations on Hong Kong, China, in 2013, which had stipulated that persons with mental, intellectual or psychosocial disabilities must not be denied the right to vote on bases that were disproportionate or had no reasonable or objective relation to their ability to vote.

76. **Mr. Shany** said that more information would be helpful on the previous concerns of Committee members with regard to revising general comments, which were important in providing the public with information about the Committee's positions. Rather than issuing statements on individual issues, problematic elements of general comments could be addressed by finding a way to revise specific paragraphs of general comments. Nevertheless, it had to be borne in mind that it would not be possible for the Committee to acknowledge all current events, or to monopolize the interpretation of the Covenant. It was desirable for as many actors as possible to be able to use the Covenant.

77. **Ms. Seibert-Fohr** said that it was important for the Committee to continually update its interpretation of the Covenant in order to maintain its authority. Unfortunately, the same time restrictions that prevented Committee members updating general comments also applied to issuing statements. However, in the past the Committee had managed to engage extensively with specific issues by means of concluding observations, which allowed it to issue recommendations on various matters in a more specific manner than in general comments. Nevertheless, if Committee members believed that a statement in a general comment was incorrect, they had the capacity to modify it through concluding observations. It would be useful for the Committee to have the ability to test and develop its own jurisprudence in view of the multiplicity of political systems with which it was required to engage.

78. **Mr. Ben Achour** said that Committee members were entitled to update general comments that had already been adopted. It was possible to insert an additional paragraph or modify the language without re-examining the entire text.

*The meeting rose at 1 p.m.*