



International Covenant on Civil and Political Rights

Distr.: General
21 March 2019

Original: English

Human Rights Committee 125th session

Summary record of the 3591st meeting*

Held at the Palais Wilson, Geneva, on Tuesday, 19 March 2019, at 10 a.m.

Chair: Mr. Fathalla

Contents

Follow-up to concluding observations on State party reports

Follow-up to Views under the Optional Protocol to the Covenant

* No summary records were issued for the 3584th to 3590th meetings.

This record is subject to correction. Corrections 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 the present record to the Documents Management Section (DMS-DCM@un.org).

Any corrected records of the public meetings of the Committee at this session will be reissued for technical reasons after the end of the session.

GE.19-04587 (E) 210319 210319



Please recycle The recycling symbol, consisting of three chasing arrows forming a triangle.



The meeting was called to order at 10 a.m.

Follow-up to concluding observations on State party reports

Draft report of the Special Rapporteur for follow-up to concluding observations (CCPR/C/125/R.3; CCPR/C/125/R.3/Add.1, CCPR/C/125/R.3/Add.2, CCPR/C/125/R.3/Add.3, CCPR/C/125/R.3/Add.4 and CCPR/C/125/R.3/Add.5)

1. **The Chair**, noting that document [CCPR/C/125/R.3](#) contained a summary of the Committee's assessment criteria for follow-up to concluding observations, recalled that, at the Committee's previous session, it had decided, in response to a recommendation from the Bureau, that the Special Rapporteur should prepare a separate addendum for each State party. He further recalled that the Committee had moved to one cycle of follow-up, with the understanding that, on an exceptional basis and when appropriate, it could request additional follow-up information from States parties after that cycle had been completed.

Austria (CCPR/C/125/R.3/Add.1)

2. **Ms. Kran** (Special Rapporteur for follow-up to concluding observations) said that she proposed giving a C grade for the State party's follow-up to paragraphs 20 and 30 of the Committee's concluding observations on its fifth periodic report ([CCPR/C/AUT/CO/5](#)), which concerned racial profiling and police misconduct, and the detention of asylum seekers and refugees, respectively. She recommended the award of a B grade for the follow-up to paragraph 22, on the ill-treatment of persons deprived of their liberty.

3. **The Chair** said he took it that the Committee wished to approve the Special Rapporteur's proposals with regard to Austria.

4. *It was so decided.*

South Africa (CCPR/C/125/R.3/Add.2)

5. **Ms. Kran** said that the State party should receive a B grade for its follow-up to the recommendations contained in paragraphs 13 and 31 of the Committee's concluding observations on the country's initial report ([CCPR/C/ZAF/CO/1](#)). The paragraphs dealt respectively with the Truth and Reconciliation Commission and prison conditions. In relation to paragraph 15, on racism and xenophobia, she proposed assigning a B grade to the information provided on efforts to combat hate crime and hate speech, and a C grade to information concerning the Equality Court and measures aimed at preventing, punishing and eradicating all manifestations of racism and xenophobia.

6. **The Chair** said he took it that the Committee wished to approve the Special Rapporteur's proposals with regard to South Africa.

7. *It was so decided.*

Sweden (CCPR/C/125/R.3/Add.3)

8. **Ms. Kran** said that she recommended giving a B grade to the State party for its follow-up to paragraphs 17 and 33 of the Committee's concluding observations on its seventh periodic report ([CCPR/C/SWE/CO/7](#)). The paragraphs dealt respectively with racism and hate speech, and the rights of aliens, including migrants, refugees and asylum seekers.

9. **Mr. Ben Achour**, referring to the Committee's evaluation of the State party's reply to paragraph 17, said that the State party had provided comprehensive information that demonstrated a political will to tackle racism and hate speech. Moreover, as noted in the evaluation, it had taken significant actions to prevent and combat racism, xenophobia and other forms of intolerance, and new measures to strengthen its response to hate crimes. In the circumstances, it would be appropriate to award an A grade.

10. **The Chair**, speaking as a member of the Committee, said that he agreed with the existing proposal to give the State party a B grade. In the assessment criteria, there was no mention of additional information remaining necessary when a State party was assigned an

A grade. In the case of Sweden, however, it was recommended that the Committee should request further information.

11. **Mr. Ben Achour** said that the information to be requested was complementary, in that it related to the impact of the measures adopted by the State party, rather than the measures themselves. The Committee's requesting of such information did not detract from the fact that the State party had taken significant action towards the implementation of the recommendations made in paragraph 17, which rendered its response largely satisfactory.

12. **Mr. Santos Pais** and **Mr. Zimmermann** endorsed the idea of granting the State party an A grade.

13. **Mr. Shany** said that he was also in favour of awarding an A grade. In the past, when there had been multiple cycles of follow-up, the Committee had requested a first follow-up report from States parties within one year. Under the new system involving only one cycle, the Committee had decided to allow States parties two years to reply on the grounds that, for many States, one year was not a long period, especially when addressing structural issues such as racism. In accordance with the Committee's assessment criteria, an A grade required "significant action" from the State party, but not necessarily full implementation of the Committee's recommendations. Although it was unusual for the Committee to request further information when awarding an A grade, it seemed justified in relation to the fight against racism and hate speech, which was an ongoing struggle.

14. **Ms. Kran** said that she understood the rationale for assigning an A grade, bearing in mind the Committee's assessment criteria.

15. **The Chair** said he took it that the Committee wished to change the grade awarded to the State party for its follow-up to paragraph 17 from a B to an A.

16. *It was so decided.*

17. **Mr. Shany** said that he wondered whether a C grade might be a more accurate reflection of the lack of action taken by the State party in response to subparagraph 33 (b), on the detention of migrants and asylum seekers. Much of the State party's reply to those recommendations seemed to consist of information that it had already given orally during its dialogue with the Committee in 2016. It was also of concern that, from 2015 to 2016, there had actually been an increase in the average length of stay of migrants and asylum seekers in the special detention facility operated by the Swedish Migration Agency.

18. **Ms. Kran** said that she agreed that there were gaps in the State party's response to the Committee's recommendations on the subject of detention in the context of migration. She therefore proposed that a B grade should be retained for subparagraph 33 (a) but that the State party's response to subparagraph 33 (b) should be given a C grade.

19. **The Chair** said he took it that the Committee wished to approve Ms. Kran's proposal to assign B and C grades to the State party's follow-up to subparagraphs 33 (a) and 33 (b), respectively.

20. *It was so decided.*

Denmark (CCPR/C/125/R.3/Add.4)

21. **Ms. Kran**, drawing attention to the proposed evaluation of the follow-up to the Committee's concluding observations on the sixth periodic report of Denmark (CCPR/C/DNK/CO/6), said that she proposed giving a B grade for the State party's response to paragraph 20 on domestic violence and a C grade for its response to paragraph 24 on solitary confinement. With regard to the Committee's recommendations concerning the rights of aliens, she recommended assigning a B grade for the replies to subparagraphs 32 (a) and 32 (b) and a C grade for those to subparagraphs 32 (d) and 32 (e). She suggested splitting the evaluation of subparagraph 32 (c) into two parts: although the measures taken to improve the detention conditions of migrants and asylum seekers awaiting deportation merited a B grade, the minimal action that had been taken to reduce the length of their stays in detention was only worthy of a C grade.

22. **Mr. Ben Achour**, supported by **Mr. Santos Pais**, said that the State party had provided such an exhaustive response to the recommendations made by the Committee in paragraph 20 that it only remained to be seen what impact its measures would have. Assigning an A grade for the reply to that paragraph would accordingly be a more accurate reflection of the progress made by the State party on the subject of domestic violence.

23. **Mr. Koita** said that he supported retaining a B grade for the State party's reply to paragraph 20. It remained troubling that psychological violence was not recognized as a crime by the judiciary, since it had been shown that there was a link between psychological violence and domestic violence.

24. **Mr. Santos Pais** said that the information received suggested that psychological violence had in fact been criminalized in Denmark but that there were question marks over how the judiciary was applying the relevant legislation. To his mind, the Committee could not hold the State party responsible for the judiciary's inaction.

25. **Mr. Heyns** said that, although in an ideal world psychological violence would be treated as a separate crime under Danish legislation, the Committee had not asked the State party to take such a measure in its concluding observations. Encouraging progress had been made on the subject of domestic violence, and he therefore supported the suggestion that the State party's follow-up to paragraph 20 merited an A grade.

26. **Mr. Koita** said that he could support the consensus that the Committee should give an A grade for the paragraph. However, he wished to remind the Committee that the purpose of any law was that it should be implemented by the judiciary, which did not appear to be the case regarding the legislation on psychological violence in the State party.

27. **The Chair** said he took it that the Committee wished to approve the proposal to assign an A grade to the State party's response to paragraph 20.

28. *It was so decided.*

29. **Mr. Muhumuza** said that the proposed C grade for the response to paragraph 24 of the concluding observations was inappropriate, given the State party's troubling tendency to place minors in solitary confinement. The assessment of the reply to that paragraph should therefore be downgraded to an E grade.

30. **Ms. Kran** said that the State party's response to the recommendations on solitary confinement had indeed been unsatisfactory, which was why she had recommended a C grade for that paragraph. However, she did not believe that the reply as a whole constituted a rejection of the Committee's recommendations, so an E grade would not be applicable. On the contrary, measures had been taken to improve the conditions of those held in solitary confinement and to limit the amount of time for which accused persons could be held under those conditions during pretrial detention.

31. **Mr. Santos Pais**, supporting the Special Rapporteur's original assessment, said that the State party had put safeguards in place in order to monitor the situation regarding solitary confinement and to keep it under strict control.

32. **Mr. Muhumuza** said that there were any number of acceptable disciplinary measures available to the State party to punish the infractions of minors in detention. However, the use of solitary confinement was not one of them. Spending time in solitary confinement had serious health implications that the State party could not negate by simply giving detainees access to books and television sets. The award of a D grade would not be appropriate because the State party had complied with the Committee in providing information on its follow-up to the concluding observations. However, to his mind, the State party's use of solitary confinement to discipline minors was extremely unfortunate and its response to paragraph 24 thereby merited an E grade.

33. **Mr. Zyberi** said that he was concerned that, according to the information provided by the national human rights institution, the decisions that had been made to place minors in solitary confinement had often either lacked legal basis or been inconsistent with the Administration of Justice Act. He supported assigning a C grade for the response to paragraph 24, to acknowledge the State party's failure to implement the Committee's recommendations.

34. **Mr. Shany** said that the Committee only gave an E grade in cases where a State party had rejected a recommendation or had adopted a position contrary to it. Since the State party had demonstrated that it was moving in the right direction with regard to solitary confinement, albeit slowly, a C grade would indeed be a suitable evaluation for the response to that paragraph.

35. **The Chair** said he took it that the Committee wished to approve the Special Rapporteur's original proposal to give a C grade for the State party's response to paragraph 24.

36. *It was so decided.*

37. After a discussion in which **the Chair, Ms. Sancin** and **Ms. Kran** took part, **the Chair** said he took it that the Committee wished to assign a B grade for the State party's responses to subparagraphs 32 (a) and 32 (b).

38. *It was so decided.*

39. **Mr. Shany** said that he would be interested to know why two grades – a C and a B – had been proposed for subparagraph 32 (c).

40. **Ms. Kran** said that subparagraph 32 (c) required the State party to take action on two separate issues: first, to reduce the length of detention of migrants and asylum seekers awaiting deportation, and secondly, to improve the conditions of detention of those persons, in general, and in one specific facility, in particular.

41. **Mr. Shany** said that the Committee had already taken the step of assigning grades to responses to individual subparagraphs, rather than to paragraphs as a whole. Now, by assigning two grades for a single subparagraph, it risked adding complexity and rendering the report too difficult to use. One grade should be given for the subparagraph, as had been done for others that contained several issues.

42. Following a discussion in which **Mr. Zyberi, Mr. Shany, Ms. Sancin** and **the Chair** took part, **Ms. Kran** said that she was minded to agree with Mr. Shany and, in an effort to avoid causing confusion, proposed assigning a B grade overall to the State party's response to subparagraph 32 (c), making it clear that it related specifically to the improved conditions of detention. When drafting future concluding observations, the Committee should try to avoid covering separate issues within the same paragraph.

43. **The Chair** said he took it that the Committee wished to assign a B grade overall for subparagraph (c).

44. *It was so decided.*

45. **Mr. Shany**, referring to subparagraph 32 (e), for which the Special Rapporteur had proposed a C grade, said that the State party clearly had no intention of implementing the recommendation to amend the law related to the confiscation of asylum seekers' assets. Such a serious situation merited the, albeit rare, application of an E grade, since it represented an outright rejection of the Committee's position.

46. **The Chair** said he took it that the Committee wished to change the grade for subparagraph 32 (e) from a C to an E.

47. *It was so decided.*

Kuwait (CCPR/C/125/R.3/Add.5)

48. **Ms. Kran** said that, in its concluding observations on the third periodic report of Kuwait (CCPR/C/KWT/CO/3), the Committee had identified paragraphs 11, 43 and 45 for follow-up by the State party.

49. Paragraph 11 related to discrimination against Bidoon people. In the light of the fact that the State party continued to deny the existence of stateless Bidoon individuals and thus rejected the relevance of the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, she proposed assigning a C grade for its responses to subparagraphs 11 (a) to (d) and an E grade for subparagraphs 11 (e) and (f). Regarding paragraph 43, on freedom of peaceful assembly and excessive use of force,

she recommended awarding a C grade for subparagraphs (a) and (b) and a B grade for subparagraph (c). For paragraph 45, on freedom of association, she proposed a C grade for subparagraphs (a) and (b), since no measures seemed to have been taken to implement the Committee's recommendations, and a B grade for subparagraph (c), as a new bill on public welfare associations had been drafted but more information on its content was needed.

50. **Mr. Zimmermann**, referring to paragraph 11, said that the first four subparagraphs contained detailed recommendations that warranted separate ratings. He proposed that subparagraph (a) should be assigned an E grade, since the State party continued to deny the existence of stateless Bidoon persons. Subparagraphs (b), (c) and (d) should be assigned grades of C, B and C, respectively.

51. **Mr. Ben Achour** said he wished to make a general observation regarding the use of the term "Bidoon". The proper legal term was "*Bidoon jinsiya*", which, in Arabic, meant "without nationality". Used alone, "Bidoon" simply meant "without". In the Committee's future dealings with Kuwait, the proper legal term, followed by "without nationality" in parentheses, should be used.

52. **The Chair**, noting Mr. Ben Achour's comments, said he took it that the Committee wished to accept the proposals made by Mr Zimmermann with regard to subparagraphs 11 (a) to 11 (d), together with the remaining assessments for Kuwait as proposed by the Special Rapporteur.

53. *It was so decided.*

54. *The draft report of the Special Rapporteur for follow-up to concluding observations as a whole, as amended, was adopted.*

The meeting was suspended at 12 p.m. and resumed at 12.10 p.m.

Follow-up to Views under the Optional Protocol to the Covenant

Progress report by the Special Rapporteur for follow-up to Views (CCPR/C/125/R.4)

55. **Ms. Pazartzis** (former Special Rapporteur for follow-up to Views), introducing the draft follow-up progress report on individual communications (CCPR/C/125/R.4), said that the report had initially been prepared for adoption at the Committee's previous session, when she had been Special Rapporteur. However, since it had only been available in one of the Committee's three working languages, the Committee had decided to defer its adoption until the current session. The report contained follow-up information that had been received and processed up to September 2018 in relation to 12 States parties and 17 communications. It had been prepared in accordance with rule 106 (3) of the Committee's revised rules of procedure (CCPR/C/3/Rev.11).

56. With regard to case No. 2128/2012 (*Kerrouche v. Algeria*), she proposed assigning a D grade in all categories, since no reply from the State party had been forthcoming. The Committee should therefore continue the follow-up dialogue, with a view to obtaining the outstanding information.

57. **The Chair** said he took it that the Committee wished to adopt the proposed assessment and decision.

58. *It was so decided.*

59. **Ms. Pazartzis**, referring to case No. 2172/2012 (*G. v. Australia*), said that she proposed assigning an A grade with regard to guarantees of non-repetition, since the State party had revised its legislation. No information had been received on the provision of a new birth certificate and thus no grade had been assigned. The follow-up dialogue should be kept open pending the receipt of the author's final comments.

60. *It was so decided.*

61. **Ms. Pazartzis** said that, in case No. 2094/2011 (*F.K.A.G. et al. v. Australia*), she proposed assigning the State party a B grade for release, rehabilitation and compensation in respect of two of the authors, and an E grade for non-repetition, on which the State party had provided no information. The follow-up dialogue should be suspended, with a note of

unsatisfactory implementation of the Committee's recommendation, as two of the authors were still in detention.

62. *It was so decided.*

63. **Ms. Pazartzis**, referring to case No. 2279/2013 (*Z. v. Australia*), said that the State party had requested that its submission should be kept confidential, in accordance with applicable restrictions under its domestic law, as the case involved a minor. She proposed that the State party should receive an E grade in respect of the provision of effective remedy, as it had provided no specific information on the measures taken. The dialogue should be kept ongoing pending a reply from the State party, given the quantity of submissions received from the author. In her view, a meeting should be sought with the State party, but she would appreciate the Committee's guidance as to whether such a meeting should be left until after the State party had replied.

64. **Mr. Santos Pais** said that he concurred with the Special Rapporteur's proposals. A meeting would be in line with the Committee's previous position with regard to the State party.

65. **The Chair** said he took it that the Committee wished to adopt the Special Rapporteur's proposals on the case and to ask the secretariat to arrange a meeting with the State party.

66. *It was so decided.*

67. **Ms. Pazartzis** said that, in case No. 2764/2016 (*Zogo v. Cameroon*), follow-up information had been received from the author's counsel and the author's son in September 2018, and the State party had said it would reply by the Committee's deadline of 3 December 2018. No reply had been received; she proposed that the Committee should keep the follow-up dialogue ongoing.

68. **Mr. Santos Pais** asked why no rating had been given.

69. **Ms. Pazartzis** said that the report had originally been scheduled for presentation at the Committee's 124th session; the proposal reflected the information available at that time. If the Committee wished to give a rating, she would suggest a D grade.

70. **The Chair** said he took it the Committee wished to assign a D grade and keep the follow-up dialogue ongoing.

71. *It was so decided.*

72. **Ms. Pazartzis** said that, in case No. 2627/2015 (*15 authors v. Chile*), she proposed an A grade for each of the three points, namely location and return of the missing banners, public acknowledgement and non-repetition. The follow-up dialogue should be closed with a note of satisfactory implementation of the Committee's recommendation.

73. **Mr. Muhumuza**, noting that not all the artwork had in fact been returned, said that a B grade might be more appropriate.

74. **Mr. Santos Pais** said that some of the banners had been destroyed as soon as they had been seized and so it had not been possible to return them.

75. **Ms. Pazartzis** said that the remedy requested by the Committee had been to locate the missing banners and return them "where possible", which the State party had done. The proposed rating reflected the State party's compliance with that request.

76. **The Chair** said he took it that the Committee wished to adopt the Special Rapporteur's proposal.

77. *It was so decided.*

78. **Ms. Pazartzis** said that, in case No. 1759/2008 (*Traoré v. Côte d'Ivoire*), although 7 years had elapsed since the Committee's decision and 16 years since the initial event, the State party had still not provided any information or paid any compensation to the author. She proposed a D grade on each of the three counts of investigation, information and reparation. The follow-up dialogue should remain ongoing pending the receipt of comments from the State party.

79. *It was so decided.*

80. **Ms. Pazartzis** said that, in case No. 757/1997 (*Pezoldova v. Czechia*), she proposed an E grade on each point, namely the provision of an effective remedy and a review of the State party's legislation and administrative practices to ensure that all persons enjoyed both equality before the law and the equal protection of the law. The follow-up dialogue should be suspended, with a note of unsatisfactory implementation of the Committee's recommendation.

81. *It was so decided.*

82. **Ms. Pazartzis** said that, in case No. 2001/2010 (*Q. v. Denmark*), the State party had reported that the author's application for naturalization had been reopened on the basis of new medical details and was still under consideration. She recommended giving a B grade for reconsideration of the author's request for exemption from the language skills requirement. The follow-up dialogue should remain ongoing. No information had been received from either the author or the State party concerning compensation and she would welcome some guidance as to an appropriate assessment in that regard.

83. **Mr. Santos Pais** said that, if the State party was still considering the author's application, it was too early for any decision on compensation. No assessment was therefore possible as yet.

84. **Ms. Pazartzis** said that she wondered whether the secretariat had any information on the new procedure or whether the Committee should give an assessment in the absence of any information. Its recommendation had, after all, concerned compensation for harm already suffered.

85. **Mr. Shany** said that the key question was whether a reminder had been sent to the State party. The report was the first follow-up report on the case and if no reminder had been sent, then in respect of compensation a note of "no information" would be the appropriate assessment.

86. **Ms. Pazartzis** said that, to her knowledge, no reminder had been sent. She suggested that the secretariat should be requested to seek further information from the State party.

87. **The Chair** said he took it that the Committee wished to adopt the Special Rapporteur's proposals and request the secretariat to seek further information from the State party.

88. *It was so decided.*

The meeting rose at 1 p.m.