



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

Distr.  
GENERAL

CAT/C/SR.638  
22 December 2004

Original: ENGLISH

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COMMITTEE AGAINST TORTURE

Thirty-third session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)\* OF THE 638th MEETING

Held at the Palais Wilson, Geneva,  
on Friday, 26 November 2004, at 10 a.m.

Chairman: Mr. MARIÑO MENÉNDEZ

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\* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.638/Add.1.

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

ORGANIZATIONAL AND OTHER MATTERS (agenda item 3) (continued)

Follow-up procedures

1. The CHAIRPERSON invited Ms. Gaer to report on the outcome of follow-up procedures that were under way in connection with States parties' reports.
2. Ms. GAER said that, in accordance with the decision taken by the Committee at its thirtieth session to identify in States parties' reports issues of concern requiring immediate follow-up, a total of 18 States parties had been requested to submit information. Thus far, the Committee had received responses from five States parties: Azerbaijan, Latvia, Lithuania, Morocco and Yemen. However, it had not been possible to analyse the material properly, owing to delays in translation. She assured the Committee that she would report on the matter in full at the thirty-fourth session. The only outstanding issue was how to deal with States that failed to respond to requests from the Committee, which could be taken up at a subsequent session. All in all, she was pleased with the results obtained, particularly since some of the States parties concerned had submitted initial reports, which showed that the follow-up procedures were working well.
3. The CHAIRPERSON invited Mr. El Masry, as Chairman of the pre-sessional working group, to report on the outcome of follow-up procedures undertaken in connection with communications submitted under article 22 of the Convention.
4. Mr. EL MASRY said that during the current session he had requested to meet with representatives of the Permanent Missions of Serbia and Montenegro and Tunisia, in the absence of any further written information from those States parties on complaints of concern to the Committee.
5. Concerning the Ristic v. Yugoslavia (Serbia and Montenegro) case, in which the Committee had found violations under articles 12 and 13 of the Convention, he said that on 20 April 2004 Mr. Ristic's corpse had been exhumed for additional forensic examinations to seek new evidence that might justify reopening the investigation. In October 2004, the complainant, the victim's father, had contested the findings of the Institute of Forensic Medicine in Belgrade issued in September 2004 and the related opinion issued by the Public Prosecutor of Sabac. On 8 November 2004, the representative of the Permanent Mission of Serbia and Montenegro had informed him of the Public Prosecutor's decision to conduct a further investigation in response to the complainant's request.
6. No further information had been provided by the representative of the mission with regard to the Hajrizi Dzemajl et al. v. Yugoslavia (Serbia and Montenegro) case, which entailed violations under articles 12, 13 and 16 of the Convention. While the State party had provided compensation, it had failed to conduct a proper investigation into the facts, as requested by the Committee. He proposed to continue making representations to the State party in that connection.

7. When he had requested a meeting with representatives of the Permanent Mission of Tunisia in connection with the three Tunisian cases, he had been informed that the Ambassador wished to speak to him in person. However, that meeting had never taken place because it had coincided with the end of Ramadan. He suggested that the Committee should write to the State party to enquire what action had been taken in response to its decision.
8. Mr. MAVROMMATIS sought clarification as to the cut-off date for applying follow-up procedures to old reports of States parties. Given the quasi-legal nature of complaints, he suggested that all such cases should be reviewed to ensure compliance with the Committee's recommendations. Perhaps a document could be prepared setting out the details of each complaint and the follow-up action that had been taken on it.
9. He questioned the usefulness of conducting an investigation into the Hajrizi Dzemajl et al. v. Yugoslavia (Serbia and Montenegro) case, given that it had occurred so long ago and adequate compensation had already been paid. As for the Ristic v. Yugoslavia (Serbia and Montenegro) case, he observed that when a corpse was exhumed for further forensic examinations at the request of relatives, the relatives were entitled to be present or represented at the event. He wondered whether that had in fact happened in the case concerned; such information could make a difference when the committee considered the additional submission by the complainant.
10. Ms. GAER noted that follow-up procedures had been introduced at the Committee's thirtieth session in May 2003, and it had been decided at that time that they should not be applied to State party reports considered prior to that date.
11. Mr. EL MASRY said it was not clear from the information available on the Ristic v. Yugoslavia (Serbia and Montenegro) case whether the relatives had been present during the forensic examination. He would follow the matter up with the State party.
12. He had asked the secretariat to draw up a list of the more than 700 complaints considered by the Committee thus far, in 53 of which violations of the Convention had been found. Copies of that list would be distributed to the Committee. Ms. Gaer had rightly noted that follow-up procedures were not supposed to be applied to complaints that had been considered prior to the introduction of such procedures; however, the Committee might wish to review that decision.
13. The CHAIRPERSON said that it now seemed unlikely that the State party would hold an investigation into the Dzemajl et al v. Yugoslavia (Serbia and Montenegro) case. He suggested that, with a view to ensuring fair treatment, the secretariat might be requested to review complaints that had been considered prior to the introduction of follow-up procedures in order to ascertain whether any follow-up was actually necessary.
14. Mr. MAVROMMATIS said that the difference between States parties' reports and decisions concerning individual complaints was that States parties always had an opportunity to submit their views to the Committee in the future, whereas the decision taken on a complaint was final. The Human Rights Committee did not have a cut-off date for the consideration of its communications, some of which were discussed 10 years after their submission. It was up to Mr. El Masry, as Chairman of the pre-sessional working group, to decide whether any of the older cases were serious enough to warrant review.

15. Mr. El MASRY proposed that, with the Committee's agreement, he should review the older complaints and decide if any of them required follow-up, particularly with respect to the issue of compensation.

16. It was so decided.

#### Programme of work for 2005

17. The CHAIRPERSON drew attention to the list of proposed country rapporteur assignments for 2005 and invited Committee members to comment on it, bearing in mind that an additional week of meeting time might be available during the thirty-fifth session, scheduled for November 2005, and taking into account the departure of Mr. Yu Mengjia.

18. Mr. RASMUSSEN said that since the Committee had decided to accord priority to initial reports and the additional week in November 2005 had yet to be confirmed, it might be advisable to deal with the initial report of the Democratic Republic of the Congo, which was scheduled for the additional week, before considering some of the periodic reports of other States parties.

19. Ms. MORALES (Secretary of the Committee) said that the initial report of the Democratic Republic of the Congo had been submitted only recently, and it was unlikely that it would be translated and ready for consideration in the first week of the thirty-fifth session. The same applied to the initial report of Bosnia and Herzegovina. It was important to bear in mind that the additional week's meeting time was contingent on the availability of an additional five reports for consideration. The schedule before the Committee was for information purposes only and subject to change.

20. Mr. RASMUSSEN observed that there was one non-reporting State party - Guyana - whose report had been due since 1989. Surely that country should be given priority.

21. Mr. MAVROMMATIS endorsed Mr. Rasmussen's suggestion. Moreover, if the Committee agreed to discuss the situation in Guyana without a report he would volunteer to serve as country rapporteur, given that he was the only member of the Committee who was an expert on common law, and he also knew Guyana quite well.

22. Ms. MORALES (Secretary of the Committee) suggested that for the time being the Committee should work on the assumption that it would be able to meet for an additional week in November 2005. The secretariat would do its best to prepare all the relevant documentation, and the programme of work could be reviewed in May 2005 and amended, if necessary.

23. The CHAIRPERSON said he took it that the procedure outlined by the Secretary was acceptable to the Committee.

24. It was so decided.

25. Ms. GAER observed that Mr. Yakovlev had been designated country rapporteur for three States parties, while she had been assigned only one. With a view to distributing the workload more equitably, she volunteered to serve as rapporteur for Canada's fourth and fifth periodic reports, as she had been rapporteur for its previous report.

26. Mr. YU Mengjia suggested that the Committee might wish to consider his successor as an alternate country rapporteur, or even a country rapporteur during the thirty-fifth session.

27. Mr. PRADO VALLEJO urged the secretariat to ensure that the Spanish translations of the documents he required were made available in good time.

#### Consideration of a draft general comment on article 2 of the Convention

28. The CHAIRPERSON recalled that, at the outset of the session, the representative of the Secretary-General had highlighted the importance of adopting a draft general comment on article 2 of the Convention and had recommended that the Committee should consult States parties during the drafting process. Unfortunately, the Committee had not had time during the current session to consider those important issues. In any case, it was clear that the Committee needed more detailed information on international practice with regard to the implementation of article 2 and on matters relating to the prevention, repression and reparation of acts of torture. It had been suggested that the Committee might obtain some of the information it needed by examining its own jurisprudence, the jurisprudence of other human rights treaty bodies and the decisions of international courts such as the International Criminal Court and the Inter-American Court of Human Rights.

29. Bearing that suggestion in mind and in view of the fact that he had already prepared a preliminary draft general comment on article 2 (CAT/C/XXXI/MISC.2), which he had submitted to the Committee at its thirty-first session, he proposed to prepare a document on the basis of new available information, for consideration by the Committee at its next session. He would ensure that the members of the Committee had ample time to examine the document prior to the session. It was to be hoped that by then the Committee would be in a better position to hold an in-depth discussion on the content of the draft general comment and the approach it should take in third-party consultations, especially with States parties.

30. Mr. RASMUSSEN, supported by Mr. PRADO VALLEJO, welcomed the preliminary draft comment prepared by the Chairperson, but expressed disappointment that the document had already been circulated to non-governmental organizations (NGOs) and was perhaps going to be circulated to States parties for comments before having been discussed by the Committee. The Committee should be able to consider all such documents before they were made available to outside parties.

31. The CHAIRPERSON said that the document had been sent to NGOs for the sole purpose of gathering information that might help the Committee when it did decide to discuss the issue. Sending the document to outside parties in no way precluded the Committee's consideration of the matter at any time. As to the involvement of States parties, he had made no suggestion as to at what stage in the procedure States parties should be consulted. He had simply proposed that the matter should be discussed at the next session, when the Committee would have access to additional information.

32. Ms. GAER said that she shared the concerns of other Committee members about the fact that a document as important as the preliminary draft general comment - which should essentially reflect the views of the Committee - had been circulated to NGOs as well as to the Special Rapporteur of the Commission on Human Rights on the question of torture before

having been discussed by the Committee. The Committee should always be able to discuss such documents, albeit in a preliminary manner, prior to their circulation to other parties, and it should also be consulted whenever any revisions were made. However, once a document had been circulated for consideration outside the Committee, that circulation should be widespread. Perhaps the Committee could adopt the practice followed by some of the other treaty bodies and publish its preliminary draft general comments on the Internet. She proposed that a working group should be established to review the matter in consultation with the secretariat prior to the thirty-fourth session of the Committee to ensure that all relevant materials were taken into consideration. She had a great deal of information on the matter that she would be eager to share.

33. The CHAIRPERSON said that when preparing documents such as draft general comments, it was usual practice for the Committee to appoint a rapporteur who would be responsible for preparing the draft. He would not object to the establishment of a small working group, provided that its role was to assist the rapporteur with the preparation of materials or to review the draft text once it had been prepared by the rapporteur. However, he was not in favour of creating a working group to help with the drafting as too many complications would arise if the document was drafted by a limited number of the members of what was already a very small Committee.

34. Ms. GAER, said that the working group could be given the task of determining how article 2 should be examined and how elements of the Committee's jurisprudence could be incorporated in the text. It could also review draft texts before they were brought before the Committee. Given that the Committee had already established working groups to review matters such as lists of issues, she failed to understand why it should not establish one to address an issue as important as the general comment.

35. The CHAIRPERSON said that working groups were usually established to carry out preparatory work and to provide methodological assistance prior to the drafting of a document. Given that the Committee had already determined the methodological approach it wished to take and already had a draft to work on, he was concerned that the establishment of a working group might delay the adoption of the general comment, especially if it started to discuss legal questions. The Committee should also consider the financial implications of establishing such a group.

36. Ms. GAER, While taking note of the Chairperson's comments, proposed that a working group composed of Mr. Grossman, the Chairperson and herself should be established with the specific mandate of advising the Committee on the preparation of a draft general comment. Given the composition of the group, its meetings should be relatively easy to organize. Input from other members of the Committee would be most welcome.

37. The CHAIRPERSON said that he could agree to the establishment of such a working group, because the mandate identified by Ms. Gaer was so clear-cut. He suggested that Mr. Camara should also be invited to participate. He himself would be willing to head the group, which should avoid entering into any methodological discussions, and he would encourage as many Committee members as possible to be involved in the drafting of a final text.

38. Mr. EL MASRY endorsed the proposal to establish a working group consisting of four members and asked whether it would meet during the Committee's next session.
39. Mr. PRADO VALLEJO suggested that the working group could begin its work before the next session by holding telephone conferences, a practice currently used by many international bodies.
40. Mr. MAVROMMATIS said that he objected to the way in which the members of the working group had been selected and had some doubts as to the group's terms of reference. He did not wish to take part in the discussion.
41. Ms. GAER said that the purpose of her suggestion had been to facilitate the professional review of material, in the light of the time and financial constraints on the Committee. Although she held Mr. Camara in the greatest esteem, his participation in the working group would make a telephone conference and certain other pre-sessional procedures impossible, for reasons of language and practicality.
42. The CHAIRPERSON said that he would nevertheless welcome Mr. Camara's input. He suggested that the working group should hold a formal meeting during the thirty-fourth session of the Committee but should try to meet earlier, if possible.
43. Mr. YU Mengjia, noting the absence from the meeting of Mr. Camara and Mr. Grossman, suggested that the Committee should postpone its decision on the establishment of a working group until all members were present.
44. The CHAIRPERSON said that in view of the fact that it was the last meeting of the session, he was reluctant to postpone the decision, as valuable time would be wasted. Although it was not absolutely necessary to specify at the current meeting the composition of the working group, Mr. Grossman had already accepted, and he could easily contact Mr. Camara to ask him whether or not he wished to participate.
45. Mr. RASMUSSEN said that for reasons of language it would be inadvisable to include Mr. Camara in the working group. Nevertheless, Mr. Camara's input would be greatly appreciated when the Committee discussed the document in plenary meeting. He was surprised that the Chairperson had been so reluctant to accept help in the form of a working group whose activities would clearly reduce the time spent discussing the general comment in plenary meetings.
46. The CHAIRPERSON said that he would welcome all the help he could get; he remained convinced that Mr. Camara had a valuable role to play in the working group. All other members of the Committee would be encouraged to contribute and would be kept informed of any developments. He took it therefore that the Committee wished to establish the working group, as discussed.
47. It was so decided.

The public part of the meeting rose at 11.30 a.m.