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Summary record of the second part (public)* of the 2738th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 28 July 2010, at 11.25 a.m.

Chairperson: Mr. Iwasawa

later: Ms. Majodina (Vice-Chairperson)

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* The summary record of the first part (closed) of the meeting appears as document CCPR/C/SR.2738.

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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 public part of the meeting was called to order at 11.25 a.m.

Follow-up to concluding observations on State reports and to Views under the Optional Protocol

Report of the Special Rapporteur for Follow-up on Concluding Observations (CCPR/C/99/2/CRP.1)

1. **The Chairperson** invited the Special Rapporteur for Follow-up on Concluding Observations to introduce his report.
2. **Mr. Amor**, Special Rapporteur for Follow-up on Concluding Observations, said that, while he commended the excellent work of the secretariat, it was regrettable that the relevant staff did not have more time to devote to follow-up on concluding observations. At the Committee's request, he had undertaken to supply details of the contents of the letters sent to States parties concerning follow-up in which the Committee asked for further information, urged the State to implement a recommendation or, alternatively, noted that a reply was satisfactory.
3. Introducing his report (CCPR/C/99/2/CRP.1), he drew attention to the footnote on the first page. In the cases of the Democratic Republic of the Congo, Mali, Namibia, Paraguay, Sri Lanka, Suriname and Yemen, the follow-up procedure had been suspended despite the fact that those States parties had not provided sufficient information. That decision had been taken because there remained one year or less before the States were due to submit their next reports. The current dilemma facing the Committee was that those States' reports were now overdue. He asked whether colleagues agreed that, under those circumstances, the follow-up procedure should remain suspended.
4. **The Chairperson** said that, if there was no objection, he took it that the Committee agreed with that conclusion.
5. *It was so decided.*
6. **Mr. Amor** proposed that, in the case of the Central African Republic, the Committee should send a letter to the State party inviting it to respond to all the Committee's concluding observations in its next report, which was due on 1 August 2010.
7. Similarly, after its previous session, the Committee had sent a letter to the United States of America inviting it to respond to all the Committee's concluding observations in its next report, which was also due on 1 August 2010.
8. He proposed that the Committee should send a letter to the United Nations Interim Administration Mission in Kosovo (UNMIK) noting its good cooperation and the measures it had taken to respond to the Committee's concluding observations, but noting also that none of its recommendations had been fully implemented.
9. Bosnia and Herzegovina had sent additional replies, which were currently being translated. He noted that the time taken to translate documents was having a detrimental effect on the Committee's work.
10. He proposed sending Honduras a further reminder and a request for a meeting with a representative of the State party.
11. A letter had been sent to Ukraine on 26 April 2010 indicating which issues required further information or action; that should now be followed up by a reminder.
12. A reminder should also be sent to Barbados, which had not supplied the information the Committee had requested.

13. **Mr. O'Flaherty** asked whether the Permanent Representative of Barbados had provided any relevant information during his meeting with the Special Rapporteur on 31 March 2009.
14. **Mr. Amor** said that the Ambassador's reply had provided only partial information.
15. Chile had sent additional replies, which were being translated and would be considered at a later session.
16. Madagascar had sent a partial response to the Committee's recommendations. On 25 June 2010, he had requested a meeting with a representative of the State party, but no reply had yet been received. A reminder should therefore be sent.
17. The Czech Republic had sent additional replies, which were currently being translated.
18. Sudan had made reference in the replies it had provided to annexes which the Committee had never received, despite repeated requests. The report should therefore be considered without its annexes at a later session.
19. He had met with representatives of Zambia, and in response to the replies they had given, he had sent a letter requesting more specific information on several issues. A reminder should now be sent.
20. Having analysed the information Georgia had sent in October 2009, he proposed sending a reminder noting the State party's good cooperation, but also requesting more specific details on the following issues: investigations into complaints relating to domestic violence and other acts of violence against women; measures to protect victims of domestic violence, including establishing a sufficient number of appropriate shelters; prompt and impartial investigation of complaints concerning excessive use of force by law enforcement officials; criminal proceedings against alleged perpetrators of those acts; and measures to end prison overcrowding.
21. The Libyan Arab Jamahiriya had sent somewhat general information in response to the Committee's recommendations. If the Committee had not received a reply to its subsequent request for more specific details by its 100th session, he proposed that consultations should be held at that point.
22. Algeria had provided partial replies to the Committee's concluding observations in a memorandum, which it had asked the Committee to publish as an annex to the Committee's annual report. There had been some misunderstandings, but the memorandum had been published as an official document with a symbol number and was available on the Committee's website. On 25 June 2010, he had requested a meeting with a representative of the State party and had received a reply the previous day offering to meet during the current session. Given the lack of time, he proposed sending a letter thanking the representative for the offer and suggesting a lunchtime meeting on 12 October 2010.
23. In response to the information Costa Rica had sent, he proposed that the Committee should reply with a letter taking note of the State party's cooperation, commending its implementation of the recommendations on measures to combat trafficking in women and children and sexual exploitation, and asking for additional information on measures taken to improve prison conditions and to end overcrowding in detention centres.
24. **The Chairperson** said that, if there was no objection, he took it that the Committee wished to adopt the Special Rapporteur's recommendations.
25. *It was so decided.*
26. **Mr. Rivas Posada** said he understood Mr. Amor's reluctance to comment on Tunisia. On 14 December 2006, after a long delay, the State party had submitted its fifth

periodic report, which had originally been due on 4 February 1998. Its next report would be due on 31 March 2012. In its concluding observations on the fifth report the Committee had requested further information, to be submitted by 1 April 2009, on paragraphs 11, 14, 20 and 21. The information received in reply, on 16 March 2009, was incomplete and unsatisfactory, and the State party had therefore been asked to clarify and supplement it. In its letter to the State party, the Committee had said that the follow-up on one of the paragraphs in question would be suspended although its recommendations had not been implemented. Some additional information had been received on 10 March 2010 but had not met the Committee's requirements. The recommended action was to send another letter, thanking the State party for its cooperation so far and explaining what further information was requested on paragraphs 11, 20 and 21. Particular importance was attached to paragraphs 11 and 20, which related to torture and the intimidation of human rights defenders. The letter to be sent to the State party should also highlight its compliance with some of the Committee's recommendations, and it should perhaps be a regular practice of the Committee, when communicating with States parties, to focus on positive outcomes of that kind.

27. **The Chairperson** proposed that the Committee should adopt that recommendation.

28. *It was so decided.*

29. **Mr. Amor** reported that no information had been received from Botswana on the points raised by the Committee in connection with paragraphs 12, 13, 14 and 17 of its initial report. He had accordingly requested a meeting with a representative of the State party and hoped soon to report further to the Committee.

30. At its previous session the Committee had considered the second periodic report of the Former Yugoslav Republic of Macedonia. A letter had been sent to the State party, requesting further information on certain matters in the report. A reminder would be sent if that information was not received.

31. None of the information requested from Panama in connection with its third periodic report had been received. The recommended action was to request a meeting with a representative of the State party.

32. Additional information had been requested from France on its fourth periodic report. Some information had been received on 9 July 2010 and would be considered at a subsequent meeting of the Committee.

33. No reply had been received from San Marino to the Committee's request for further information relating to its second periodic report, in spite of two reminders. It was recommended that a further reminder should be sent.

34. On 4 January 2010, a letter had been sent to Ireland requesting further information and clarification on some matters in its third periodic report. No reply had yet been received, and it was recommended that a reminder should be sent.

35. **The Chairperson** invited the Committee to adopt those recommendations.

36. *It was so decided.*

37. **Mr. Amor**, referring to the sixth periodic report of the United Kingdom, submitted on the due date of 1 November 2006, said that on 26 April 2010 a letter had been sent to the State party seeking additional information, but no reply had yet been received. If none was received, a reminder would be sent. He recalled, however, that at its previous session the Committee had omitted to deal further with paragraph 12 of the report on the deportation of individuals, including persons suspected of terrorism, to countries where they might be at risk of torture. The Committee had therefore agreed to make a recommendation on that paragraph, but the State party had not acted on it. It claimed that diplomatic assurances,

combined with a study of the legislation of the country in question and the circumstances of each case, offered a sufficient guarantee against the risk of torture. The Committee's position, however, was that where torture was systematically practised in the country concerned, such assurances were not sufficient. He sought the views of the Committee as to whether he should formally pursue the recommendation.

38. **Mr. Thelin** said that, in his view, the Committee should stand by its recommendation. If the Special Rapporteur considered the State party's response to be inadequate, he should pursue the matter. In most cases, diplomatic assurances would be insufficient to allay the risk of torture.

39. **Mr. Rivas Posada** agreed. The Committee had no option but to insist on its recommendation, although there was little likelihood that the State party would change its stance.

40. **Mr. O'Flaherty** said he wondered why the State party in question was being singled out. All States parties should be treated the same way.

41. **Mr. Amor** agreed, but said he was not being selective; the same issue arose for other States parties. He referred to a recent study by Human Rights Watch of diplomatic assurances on the question of torture. That study covered three States, including the United Kingdom. It was open to the Committee to draw upon information from such other sources. Insisting on its position was one option for the Committee, but it did not offer very positive prospects. Moreover, he was anxious not to avoid dialogue with the State party concerned. He suggested asking the United Kingdom to cite specific cases where diplomatic assurances had proved successful, in spite of a real risk of the deportee being tortured.

42. **Mr. O'Flaherty** said he shared the concerns of the Special Rapporteur but, in his view, it was not the right context in which to pursue a dialogue with a State party beyond the normal follow-up procedure. No such action had been taken on any other issue with a State party.

43. **Mr. Amor** said he was in favour of dialogue with all States parties as a matter of principle. Not pursuing dialogue would do nothing to promote human rights. He emphasized that the Committee's recommendation on paragraph 12 of the United Kingdom report had not been implemented.

44. **The Chairperson** proposed that the Special Rapporteur should pursue his dialogue with the State party, bearing in mind the views expressed in the Committee.

45. *It was so decided.*

46. **Mr. Amor** reported that none of the information requested from Nicaragua on its third periodic report had been received. It was recommended that a further reminder should be sent.

47. Monaco, which had been requested in the light of its second periodic report to adopt legislation on specific kinds of violence, had now provided a follow-up report on its draft legislation on the subject, and on a planned decision to train judges and public officials in the areas concerned. Information on the legislation was pending and no action was required from the Committee at present.

48. A follow-up report had been received from Japan on 21 December 2009 containing some of the information requested by the Committee on paragraphs 17, 18, 19 and 21 of its fifth periodic report. The information requested related, inter alia, to: the need for strict confidentiality of all meetings between convicted prisoners and their lawyers concerning retrial; abolition of the substitute detention system; the right of confidential access to a lawyer; time limits for the interrogation of suspects; and a relaxation of the rule of solitary confinement for death row inmates. A letter had been sent to the State party pointing out

that some of the Committee's recommendations had not been acted on. It was now recommended that a further letter be sent seeking additional information, including on the segregation of prisoners in "accommodation blocks".

49. **The Chairperson** proposed that the Committee should adopt the Special Rapporteur's recommendations.

50. *It was so decided.*

51. **Mr. Amor** said that additional replies received from Spain to the Committee's request for information on its fifth periodic report were currently being translated and would be considered at a later date.

52. A follow-up report had been received from Sweden on 18 March 2010 on the information requested in relation to its sixth periodic report. It was recommended that a letter should be sent to the State party welcoming the degree of cooperation it had shown and requesting additional information on paragraphs 13, 15 and 16 dealing with the risk of torture in deportation cases, the length of pretrial detention and the treatment of asylum-seekers.

53. **The Chairperson** proposed that the Committee should adopt that recommendation.

54. *It was so decided.*

55. **Mr. Amor** said it was recommended that a reminder should be sent to Rwanda about the information requested by the Committee in connection with its third periodic report.

56. **Mr. Thelin** referred to a successful mission to Rwanda which had taken place from 14 to 19 June 2010 under the auspices of the Centre for Civil and Political Rights. The purpose of the mission had been to follow up the Committee's concluding observations on Rwanda and offer assistance to that country. As a member of the Committee had taken part in the mission, it should perhaps be mentioned by the Special Rapporteur.

57. **Ms. Majodina** said she was the Committee member who had taken part in the mission, at the invitation of the Centre for Civil and Political Rights. The mission had met with several members of the Rwandan Government, including the Minister of Justice, with the member of Parliament responsible for the parliamentary human rights committee, and with a representative of the Human Rights Commission. None of them had been aware of the Committee's concluding observations on Rwanda's periodic report.

58. **Ms. Motoc** welcomed the fact that Ms. Majodina had participated in the mission. Such visits, when organized by NGOs and paid for by international organizations, could prove extremely useful by providing information from the field. The Committee should mention the mission in its report.

59. **Mr. O'Flaherty** commended the Centre for Civil and Political Rights for its excellent initiative and thanked Ms. Majodina and former Committee member Mr. Khalil for taking part in the mission. NGOs had been organizing similar missions since the early 1990s. While they deserved strong support, he was unsure whether such initiatives should be mentioned by the Special Rapporteur as though they formed part of the follow-up procedure.

60. **Ms. Motoc** proposed that Ms. Majodina, as focal point for NGOs, should regularly report to the Committee on missions to States parties.

61. **Mr. Thelin** suggested that the report on follow-up should simply take note of the mission, especially since some members of the Rwandan Government seemed to be unaware of the concluding observations. The State party might even be surprised to find no reference in the report to a mission in which a Committee member had participated.

62. **The Chairperson** agreed with Mr. O'Flaherty. He pointed out, however, that the findings of the mission could be taken into account by the Special Rapporteur.

63. **Mr. O'Flaherty** said that he would not oppose the inclusion of a brief reference to the mission if other members of the Committee supported Mr. Thelin's suggestion. He suggested that the matter should be discussed in the context of the Committee's working methods. There should perhaps be a formal procedure whereby Committee members would report to their colleagues on any mission to a State party.

64. **Mr. Amor** said that the question of follow-up visits to States parties had been discussed on a number of occasions, and at an Inter-Committee Meeting. Such visits were clearly helpful in addressing particularly complex situations. He also proposed that when Committee members participated in any comparable activity in a private capacity, they should inform the Committee of their findings.

65. He commended Ms. Majodina and the organizing NGO for the mission to Rwanda and would comply with the Committee's instructions in that regard. The Special Rapporteur's current mandate was to maintain a dialogue with the State party, to take NGO contributions into account and to draw appropriate conclusions. He was awaiting information from Rwanda and recommended that a reminder should be sent to the State party. The note concerning the mission could be taken into account when he received its reply.

66. **The Chairperson** suggested that the matter should be discussed in the context of working methods.

67. *It was so decided.*

68. **The Chairperson** further suggested that the Committee should take note with deep appreciation of the follow-up mission organized by the Centre for Civil and Political Rights but should refrain from mentioning it in the progress report.

69. *It was so decided.*

70. **Mr. Amor** said that follow-up information had been due from Australia on 1 April 2010. As no information had been received to date, he recommended that a reminder should be sent to the State party.

71. *It was so decided.*

72. *The report of the Special Rapporteur for Follow-up on Concluding Observations as a whole, as amended, was approved.*

73. *Ms. Majodina (Vice-Chairperson) took the Chair.*

Follow-up progress report on individual communications (CCPR/C/99/R.3)

74. **Mr. Iwasawa** introduced the progress report on individual communications on behalf of Ms. Wedgwood, Special Rapporteur for Follow-up on Views, who was absent.

75. The first case, No. 1,353/2005, concerning Cameroon raised issues of physical and mental torture, arbitrary detention, freedom of expression, security of the person and the right to a remedy. According to the State party's response to the Committee's Views, received in December 2009, arrangements had been made to compensate the author but the State party had been unable to contact him. The author had informed the Committee in February 2010 that he had received no redress. Fearing for his safety, he had gone into exile. The Ministry of Foreign Affairs had informed him by e-mail that an inter-ministerial committee meeting had recommended that the committee should arrange a meeting with him. The meeting had never come about because he was in exile.

76. In April 2010, the author had provided further information, stating that he had received a letter from the Minister for Foreign Affairs informing him of a meeting of the Ministries of Justice, Territorial Administration and Decentralization, Finance and Foreign Affairs and the General Delegation for National Security, which had agreed to propose compensation of approximately 56,000 United States dollars. The author had requested compensation of 930,000 dollars, coverage of the cost of his medical treatment abroad, prosecution of the perpetrators and action by the State party to ensure his security. The State party had shown no inclination to initiate criminal proceedings. The author's submission had been sent to the State party. The Special Rapporteur proposed that the Committee should consider that the dialogue was ongoing.

77. *It was so decided.*

78. **Mr. Iwasawa** drew attention to case No. 1,101/2002 concerning Spain. The issue raised was the right to review.

79. The author had informed the Committee in April 2010 that the State party had not reviewed his 10-year sentence. His submission had been sent to the State party with a reminder of the Committee's request for comments on its Views. The Special Rapporteur proposed that the Committee should consider that the dialogue was ongoing.

80. *It was so decided.*

81. **Mr. Iwasawa** said that case No. 1,493/2006 also concerned Spain and raised the issue of discrimination on the basis of racial profiling.

82. The State party had informed the Committee in its response of January 2010 that the Minister for Foreign Affairs and other senior Ministry officials had met the author in November 2009 and apologized for the acts of which she had been the victim. In December 2009, the Deputy Minister of Justice had written to her representatives explaining the Ministry's policy regarding human rights training of police officers. In January 2010, the Deputy Minister for Security Affairs had met the author and offered her oral and written apologies on behalf of the Minister.

83. Commenting in April 2010, the author had described the State party's actions as inadequate. The State party should, in her view, issue a public apology and take various steps to prevent a repetition of the acts. Her request for the payment of 30,000 euros in damages and 30,000 euros in respect of legal costs had been rejected by the State party since she had lost her case before the courts. The author was now urging the State party to consider alternative means of redress, such as a discretionary payment of compensation.

84. The author's comments had been sent to the State party in April 2010. As the Committee might wish to await comments from the State party, the Special Rapporteur proposed that it should consider that the dialogue was ongoing.

85. **Mr. O'Flaherty**, supported by **Mr. Thelin**, **Mr. Bhagwati** and **Mr. Iwasawa**, proposed that the case should be closed. The State party seemed to have acted on the Committee's recommendation to offer a public apology and to provide an effective remedy. Several apologies had been presented and a new police training policy had been introduced. It was unreasonable to ask the State party to take further action.

86. **Mr. Salvioli** also supported the proposal. There had been considerable media coverage of the case and, in particular, of the apology by the Ministry of Foreign Affairs.

87. **Mr. Rivas Posada** pointed out that the Committee had not recommended that the State party should pay compensation. He agreed that the case should be closed.

88. *It was so decided.*

89. **Mr. Iwasawa** introduced case No. 1,407/2005 concerning Paraguay. The issue raised was protection of the family, including minor children.

90. In its response to the Committee's Views submitted in October 2009, the State party had rejected the finding of a violation of the Covenant. It submitted that it was logical for the author's daughters to remain in Paraguay with their mother. With regard to the author's access to his daughters, the State party submitted that he had not filed a complaint under Paraguayan law.

91. The author, in comments submitted in November 2009, claimed that it was untrue that his former wife had been denied a visa to enter Spain.

92. In May 2010, the State party had reiterated its contention that there was nothing to prevent the author from exhausting the legal remedies available in Paraguay. It had proposed the establishment of a regime whereby the author would have access to his daughters. It had also listed a number of suggestions, inter alia, that the State party would act as mediator between the parties. With regard to the legal proceedings against the author's former wife in Spain on the ground of removal of minors, the State party noted that an extradition request had been filed by Spain against her. The Supreme Court of Paraguay had ruled in April 2010 that the request should be dismissed on the ground that the requirement of dual criminal liability had not been met. The State party refused to comply with the author's demand for compensation since the Committee had made no mention of financial redress in its Views.

93. The State party's most recent submission had been sent to the author. As the Committee might wish to await comments from the State party, the Special Rapporteur proposed that it should consider that the dialogue was ongoing.

94. *It was so decided.*

95. **Mr. Iwasawa** introduced case No. 781/1997 concerning Ukraine. The issues raised were an unfair trial and denial of the right to legal representation. In its response to the Committee's Views submitted in August 2004, the State party had claimed that there was no basis for any amendment of the findings of the relevant judicial bodies. In his comments submitted in April 2010, the author confirmed that the State party had taken no action on the Committee's Views and that he remained in prison. As the Committee might wish to request the Special Rapporteur to arrange a meeting with the State party, the proposed decision was to consider that the dialogue was ongoing.

96. **Mr. O'Flaherty**, supported by **Mr. Bhagwati** and **Mr. Iwasawa**, said that he found the remedy recommended by the Committee to be very weak, namely that "consideration should be given" to the author's early release. It was easy for the State party to claim that it had considered and rejected his early release. The Committee had little choice but to conclude that the State party's response to the Committee's Views must be accepted.

97. **Mr. Salvioli** said that there had clearly been a violation of article 14 of the Covenant which had led to a conviction and life imprisonment. Although he shared Mr. O'Flaherty's view that the recommendation was feeble, he was in favour of arranging a meeting with the State party and maintaining a dialogue on behalf of the victim and in keeping with the Covenant.

98. **Mr. O'Flaherty** said that he was not opposed to Mr. Salvioli's proposal. However, he wondered what action the State party would have to take in order to satisfy the Committee.

99. **Mr. Rivas Posada** said that the Committee must in future do its utmost to avoid recommending to a State party that it should consider taking particular measures.

100. **The Chairperson** suggested that the Special Rapporteur should be asked to proceed with the dialogue.

101. *It was so decided.*

102. *The follow-up progress report on individual communications as a whole, as amended, was approved.*

The meeting rose at 1 p.m.