



## International Covenant on Civil and Political Rights

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### Human Rights Committee 100th session

#### Summary record of the second part (public)\*\* of the 2765th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 26 October 2010, at 10 a.m.

*Chairperson:* Sir Nigel Rodley (Vice-Chairperson)

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- \* No summary records were issued for the 2761st, 2762nd, 2763rd and 2764th meetings.
  - \*\* No summary record was issued for the first part (closed) of the meeting.

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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 second part (public) of the meeting was called to order at 11.20 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/100/2/CRP.1)*

1. **The Chairperson** invited the Special Rapporteur for follow-up on concluding observations to present his report.
2. **Mr. Amor** (Special Rapporteur for follow-up on concluding observations) said that he had encountered two kinds of difficulty in his work. Firstly, replies received from States, however brief, took up to several months to be translated, by when they had lost relevance. Secondly, owing to a lack of human resources, the Secretariat was not able to devote the time necessary actively to follow up recommendations. For example, the recommendations made by the Committee in July 2010 had only been sent to States between 28 September and 8 October 2010. The Committee could hardly ask States to act with due diligence when it failed to act on time. Whenever such a situation arose, he recommended no further action until the State received a letter from the Committee.
3. Several specific situations required an explanation. With regard to Hong Kong, SAR (China), the Committee had decided to terminate the follow-up procedure, and had asked Hong Kong, China to respond to all concluding observations in its next periodic report. However, a reply had recently been received; although there was no need to resume the follow-up procedure, formal note of the reply should be taken by publishing it on the Committee's website. Although the Russian Federation was not yet subject to follow-up, it had provided a response that would be sent for translation.
4. He had held discussions with the representatives of four States: Algeria, Honduras, the Libyan Arab Jamahiriya and the Central African Republic. It would be beneficial further to promote the process discussion and dialogue which, even if it yielded no immediate results, would enable the Special Rapporteur to raise the awareness of the State party, to hold it accountable and even to correct any misunderstandings. Finally, when considering reports from States parties, priority should be given to follow-up as a matter of course and the Special Rapporteur for follow-up on concluding observations or a member of the team responsible for the preparation of periodic reports should begin by considering, publicly and with the State, the follow-up to the observations.
5. **The Chairperson** said that the difficulties described by Mr. Amor were long-standing. In view of the fact that the Fifth Committee had created a full-time post dedicated to follow-up activities, it was difficult to understand why the post had still not been filled. He invited the Committee once again to draw the attention of the Office of the High Commissioner to the insufficiency of resources. If there were no objections, he would take it that the Committee agreed on that course of action.
6. **Mr. O'Flaherty** said that in several cases, the Special Rapporteur had recommended no further action, even when the State had not provided a satisfactory reply. Admittedly, the Committee would at some point have to stop reminding reluctant States of their obligations but it could perhaps include a list of uncooperative States in its annual report or determine another means of highlighting the attitude of States who failed to meet their obligations.
7. **The Chairperson** recalled that the Committee had decided to terminate the procedure when the next periodic report was due. He suggested adding a column that would not only indicate the delay in submitting the report, but also the State's uncooperativeness with regard to the follow-up to the previous concluding observations.

8. **Mr. Amor** (Special Rapporteur for follow-up on concluding observations) said that the suggestion should be given consideration.
9. **Mr. Fathalla** asked whether the Committee ever conducted follow-up missions in States, which could effectively complement the discussions in Geneva and other means of communication such as e-mail and facsimile.
10. **Mr. Amor** (Special Rapporteur for follow-up on concluding observations) said that the question of visiting States had been raised on several occasions by the Committee and that financing had been the major deterrent.
11. **Ms. Morales** (Office of the High Commissioner for Human Rights) explained that on several occasions the Committee had attempted to incorporate the question of follow-up into its budget, but that the possibility had been rejected on the grounds that follow-up was not included in the Covenant. A similar approach had been taken in the case of other instruments but had met with continued opposition from the financial authorities. The groundwork had been laid by the Convention on the Rights of Persons with Disabilities, which provided for follow-up; if a means of financing follow-up activities could be found for that instrument the same solution might be possible for earlier instruments.
12. **Mr. Lallah** said that the Committee could devote a section of its annual report to the question of follow-up and the budgetary and extrabudgetary resources for that activity.
13. **The Chairperson** said that the concern about the full-time post, which the Committee had highlighted in its annual report, could be developed so as to take up a full section and cover all the issues raised. If there were no objections, he would take it that the Committee accepted the suggestion. He invited the Special Rapporteur to comment on those situations on which additional information was required.
14. **Mr. Amor** (Special Rapporteur for follow-up on concluding observations) recalled that the Central African Republic had been invited to respond to the concluding observations of the Committee in its next periodic report. Nevertheless, he had agreed to meet with the representative of the Central African Republic, who had clearly not been informed of the situation. The meeting had proven useful and he recommended no further action.
15. **Mr. O'Flaherty** noted, in respect of the report submitted by the United Nations Interim Administration Mission in Kosovo (UNMIK), that although the Committee was still awaiting a response to its letter of 28 September 2010, the conclusion was "no further action recommended" while for other States, the wording was more precise: "no recommendation pending receipt of replies to reminder".
16. **Mr. Amor** (Special Rapporteur for follow-up on concluding observations) replied that the wording "no further action recommended" was applicable both when the follow-up procedure had been concluded and when the situation was ongoing. However, if the Committee so wished, the longer phrase supplemented by "pending a reply" could be used.
17. In respect of Honduras, he had met representatives of the State party and a letter dated 22 October had been received by the Secretariat. As the replies appeared to be incomplete, Honduras should be invited to respond to all the concluding observations in its next periodic report.
18. **Mr. O'Flaherty** pointed out that, in respect of Barbados, which had provided only a partial and largely inadequate reply, the State party had been notified of the conclusion of the follow-up procedure for certain issues on which the recommendations made had not been implemented. He believed such action to be premature and that, on the contrary, the procedure should remain open in respect of the recommendations not implemented.

19. **The Chairperson** explained that practice dictated that the Committee should conclude the follow-up procedure for a particular issue when it considered that it was no longer worthwhile or desirable to pursue a dialogue with the State party, the latter having made clear its intention to disregard the recommendations.

20. **Mr. O'Flaherty** said that although he shared that view, it was not reflected in the text as drafted. The underlying reasons should be explicitly set out.

21. **The Chairperson** asked the Secretariat to draft the relevant section in more precise terms.

22. **Mr. Amor** (Special Rapporteur for follow-up on concluding observations) said that he had met representatives from the Libyan Arab Jamahiriya, who seemed willing to cooperate. Unless additional information was received in the interim, the State party would be invited to reply to all the concluding observations in its next periodic report.

23. In respect of Algeria, Mr. Amor explained that between the date the report had been sent for translation and that of its presentation, new facts had emerged that did not feature in the English version. On 11 October 2010, consultations had been held with the Algerian representative, who had undertaken to provide additional information. Accordingly it was recommended that, in the absence of a reply, the State party should be invited to address all the concluding observations in its next periodic report, due on 1 November 2011.

24. In respect of the Netherlands, Mr. Amor had received an e-mail from the representative in which the latter apologized for having failed to provide the reply due to the Committee on 28 July 2010 because of difficulties arising from the formation of his country's Government. That demonstrated that the State party was fully intent on replying.

25. **Mr. Amor** wished to return to the suggestion he had put forward at the beginning of the meeting in which he had first of all proposed that the question of follow-up to the Committee's previous concluding observations should be placed at the top of the list of issues sent to States parties and, secondly, that when considering State party reports, the Special Rapporteur for follow-up on concluding observations or a member of the team responsible for the report should question the delegation about the implementation of all recommendations and observations. Those two measures would serve to strengthen the follow-up procedure and guarantee the continuity of the Committee's work.

26. **Mr. Fathalla** supported Mr. Amor's suggestion.

27. **Mr. Rivas Posada** and **Mr. O'Flaherty** felt that the information already provided in the State party's report should be taken into account, since the information due from States was set out in detail in the guidelines on the form and content of reports. It was sufficient to highlight non-implemented recommendations.

28. **The Chairperson** said that the aim was to ensure that the guidelines were followed while showing a degree of flexibility so as to monitor the domestic situation in each State. The Secretariat would exercise oversight when it had prepared the list of issues. Finally, Mr. Amor suggested publishing the reply sent by Hong Kong, China on the Committee's website, possibly with a reminder that all future replies should be included in the next periodic report.

29. *The draft report of the Special Rapporteur for follow-up on concluding observations (CCPR/C/100/2/CRP.1) was adopted.*

*Interim report of the Human Rights Committee on follow-up to individual communications (CCPR/C/100/R.3)*

30. **The Chairperson** said that in the absence of Ms. Wedgwood, the Special Rapporteur for follow-up on Views, the interim report on follow-up to individual communications would be presented by Mr. Iwasawa.

31. **Mr. Iwasawa** said that in respect of Communication No. 992/2001, relating to an enforced disappearance, the State party, Algeria, had not replied to the Committee's request for information and that the author had informed the Committee that the State party had taken no action to follow up the Committee's decision, either in that case or in any other, on the ground that it could not do so under the Charter for Peace and National Reconciliation. The Rapporteur considered the dialogue to be ongoing.

32. In case No. 118/2003 regarding police custody, Belarus contested the Views of the Committee. To the author's knowledge, none of the Views had been followed up. The Committee had decided that it was necessary to arrange a meeting with representatives of the State party. The Rapporteur considered the dialogue to be ongoing.

33. In respect of Communication No. 1397/2005, Cameroon had not answered the Committee's request for information and the author had stated that no action had been taken to follow up the decision. As the State party had provided no information on the follow-up to four out of the six cases in which the Committee had found violations, the Rapporteur asked the Committee whether a meeting with the State party could be arranged. She considered the dialogue to be ongoing.

34. **Mr. O'Flaherty** said that the Rapporteur should not require the express approval of the Committee to arrange such a meeting.

35. **The Chairperson** replied that practice had always dictated that the Rapporteur obtain the approval of the Committee in order to establish direct contact with the State party. However, Mr. O'Flaherty's objection was valid and merited further consideration. The Secretariat could bring that idea to the attention of the next Rapporteur for follow-up on Views.

36. **Mr. Iwasawa** said that in respect of Communication No. 1510/2006, the State party had provided the author with the appropriate remedy but that the author was not satisfied and wished for more. The Rapporteur suggested that the Committee should take the view that the efforts made by the State party in that connection had been sufficient and terminate consideration of the case under its follow-up procedure.

37. In respect of Communication No. 1469/2006, Nepal had stated that the sum of NR 200,000 paid to the author as an immediate and interim remedy was double the amount of compensation officially provided for the families of those who had perished or disappeared during the conflict. The case would be referred to the Independent Disappearance Commission to be established by the Government, under a bill already submitted to Parliament. The author disputed that the two measures were "adequate" remedies as defined by the Committee. In October 2009, the Rapporteur had met the Permanent Representative of Nepal to the United Nations Office at Geneva, who had argued that the case was one of many similar cases and that all of them, in the interest of equality, should be given equal consideration, namely by the Independent Disappearance Commission and the Truth and Reconciliation Commission. The most recent observations of the State party had been communicated to the author. The dialogue was considered to be ongoing.

38. In respect of Communication No. 1457/2006, Peru had sent general guidance on the functioning of wells sunk from the surface in the affected community. It had mentioned the adoption of a law on water resources, under which the State was obliged to respect the traditions of indigenous communities and their right to exploit the water resources of their own territory. The State party was committed to respecting those provisions and stated that situations like those which had given rise to the Communication would no longer occur.

The authors had informed the Committee that the State party had taken no action to follow up the Committee's Views and, to the contrary, had approved a budget of S/. 17 million to drill 17 new wells in order to pump the groundwater in the Aryo region. The observations of the authors had been forwarded to the State party for comments. The dialogue was considered to be ongoing.

39. **Mr. O'Flaherty** said that it was important to distinguish between remedying violations that had been referred to the Committee and subsequent violations. It seemed to him that the drilling projects described by the authors constituted a risk of further violations rather than initial violations that had not been remedied. The authors did not seem to contest the fact that the State party had instituted a significant consultation process. The next Rapporteur should give the matter further consideration.

40. **Mr. Rivas Posada** felt that, in such a case, a meeting with a State party representative should be arranged; firstly as the Committee's recommendation on the remedies due to victims had not been acted upon and, secondly, because further violations of the rights of the authors or indigenous communities concerned were possible.

41. **The Chairperson** thought it premature to request a meeting with a representative as the State party had already been asked to forward its replies by the end of November. The next Rapporteur could be asked to bear in mind that the question of the appropriate follow-up to the case had been raised by the Committee.

42. **Mr. Iwasawa** said that in respect of Communication No. 1466/2006, the State party, the Philippines, had detailed all actions that had been referred to domestic courts and all the decisions taken, in particular the decision of the Supreme Court to group the author's case with other cases. As far as damages were concerned, a decision, open to appeal, would be taken by the Court of Appeal. The most recent observations of the State party had been forwarded to the authors for comments. The Rapporteur considered the dialogue to be ongoing.

43. In respect of the Russian Federation, two cases had been referred to the Committee. In respect of Communication No. 1447/2006, in September 2009 the State party had reported that following the decision of the Committee, the case had been reopened and the court had found that the decision to close the investigation had been unlawful. However, the author had highlighted what he believed to be several irregularities that had denied him access to an effective remedy. With regard to the search for those responsible for the death of the author's wife, the State party argued that, given the time that had elapsed since the crime, it had not yet been possible to identify the perpetrators. The State party's reply had been forwarded to the author for comments. The dialogue was considered to be ongoing.

44. In Communication No. 1310/2004, the State party had indicated that the Supreme Court had communicated the Committee's Views to the Supreme Courts of the Republics in order to prevent such violations from recurring. In March 2009, the author had indicated that his request for a review by a higher court had been refused on 3 March 2009, which he took as evidence that the Supreme Court had no knowledge of the Committee's Views. The author's observations had been communicated to the State party for comments. The Rapporteur considered the dialogue to be ongoing.

45. In respect of Spain, two cases had also been referred to the Committee. No reply had been sent to Communication No. 1363/2005. Counsel had stated that, based on the Views of the Committee, it had requested that the Supreme Court review its verdict but that the Court had refused the request in January 2010. The author's observations had been sent to the State party for comments. The dialogue was considered to be ongoing.

46. The State party had also failed to reply to the second Communication (No. 1473/2006). Counsel had stated that based on the Views of the Committee, it had submitted

an administrative request for compensation on the author's behalf, which had been refused by the Council of State. That decision could be appealed before the *Audiencia Nacional* but the Council had not indicated whether an appeal had been lodged. The author's observations had been sent to the State party for comments. The dialogue was considered to be ongoing.

47. In respect of Tajikistan, two cases had been referred to the Committee. In Communication No. 1401/2005, the State party contested the Committee's decision regarding admissibility and merits, stating that it had never received the notes verbales mentioned in the Committee's Views. The State party's observations had been sent to the author for comments. The Rapporteur considered the dialogue to be ongoing.

48. In Communication No. 1519/2006, the State party contested the Committee's Views and its observations had been sent to the author for comments. The dialogue was considered ongoing.

49. *The interim report on follow-up to individual communications (CCPR/C/100/R.2) was adopted.*

*The meeting rose at 1 p.m.*