



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

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**Committee against Torture**  
**Forty-eighth session**

**Summary record of the first part (public)\* of the 1082nd meeting**

Held at the Palais Wilson, Geneva, on Thursday, 24 May 2012, at 10 a.m.

*Chairperson:* Mr. Grossman

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\* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.1082/Add.1.

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

**Consideration of reports submitted by States parties under article 19 of the Convention** *(continued)*

*Follow-up to concluding observations on States parties' reports*

1. **Ms. Gaer** (Rapporteur for follow-up to concluding observations) drew attention to four documents without symbols that had been distributed to Committee members. The first contained charts showing trends in topics identified by the Committee for follow-up from the thirtieth to the forty-seventh sessions and a list of most frequently addressed follow-up issues by order of frequency. The second dealt with the categorization of follow-up responses by States parties and the two-tier assessment system. The third listed topics that the Committee had identified for follow-up by each State party, and the fourth was a draft version of chapter IV of the Committee's Annual Report.
2. As noted in chapter IV of the Annual Report, the Committee had established a procedure whereby States parties were required to provide information within one year on measures taken to give effect to recommendations that had been identified as serious, protective and deemed capable of being implemented within one year. The procedure had been refined at the previous session and now focused on three or four issues for all States parties plus, additional issues where appropriate. A total of 117 reports had been reviewed from the establishment of the procedure at the thirtieth session until the forty-seventh session in November 2011. That figure would increase to 126 by the end of the current session. The latter figure comprised 99 States parties whose reports had been reviewed once and 27 whose reports had been reviewed twice. It might need to be adjusted to take account of the review of the situation in the Syrian Arab Republic.
3. Turning to the list of most frequently addressed follow-up issues on which States parties were required to submit reports within one year of their dialogue with the Committee, she noted that the top three issues were prompt, impartial and effective investigation (80 per cent of States parties), prosecution and sanctioning of offenders (60 per cent) and guaranteeing fundamental safeguards (55 per cent). She had listed the most frequently addressed issues by region with a view to ensuring that all States parties were being treated equally.
4. Follow-up replies had been received from six States parties since the previous session. Three were initial replies and three were responses to requests for further information. Follow-up replies had been received from 10 States parties since the forty-sixth session. A large proportion of States parties failed to reply within the one-year period and about 75 per cent replied within 13 or 14 months if they were sent a reminder. However, although they generally submitted the requested information, they did not necessarily act on the Committee's recommendations.
5. At the forty-sixth session, she had presented the Committee with the results of a pilot study involving an assessment of the adequacy of a representative sample of States parties' follow-up submissions based on the categorization method used by the Human Rights Committee. The Human Rights Committee held three sessions per year and reviewed four States parties at each session. The Committee's 18 members were divided into task forces for the purpose. The five follow-up categories and rankings were shown in the second document distributed to the Committee. The pilot study had raised concerns regarding the use of such a system by the Committee against Torture because it would result in a grade 3 ranking of many States parties even though the quality of their responses varied considerably. The Human Rights Committee combined its assessment of a State party's performance in providing information with its performance in implementing recommendations.

6. The Committee against Torture had discussed whether a State party that provided information but refused to implement recommendations should receive the same ranking as a State party that implemented the recommendations and it had decided instead to assign two ranks. She had applied that decision in a second pilot project: one State party from each region was ranked from 0 to 3 in terms of the quality and amount of information provided and from 0 to 3 in terms of its implementation of recommendations. She was pleased to report that the dual assessment system reflected States parties' overall performance more accurately than the Human Rights Committee's system. However, it was difficult to assign a single score on a paragraph-by-paragraph basis, because many of the paragraphs of the concluding observations that were designated for follow-up contained multiple recommendations. Simplification of the issues designated for follow-up could help to resolve that problem and could also assist States parties in complying with follow-up requests. The sample categorization listed in the second document distributed to the Committee showed that the States parties from the Latin American and the Caribbean group had performed better than those in the four other regional groups. All in all, she considered that the dual assessment was labour-intensive but worked well.

7. Turning again to the issue of the complexity of the Committee's recommendations, she drew attention to the concluding observations on Ecuador adopted at the forty-fifth session (CAT/C/ECU/CO/4-6). Five paragraphs had been identified for follow-up within one year and each paragraph had consisted of between two and seven subparagraphs. A total of 23 topics had been identified. Since its forty-sixth session, the Committee had been trying to limit the number of paragraphs and topics. At the forty-seventh session, between 9 and 11 topics had been identified for Belarus, Madagascar, Sri Lanka and Paraguay. That was still quite a challenge since the follow-up recommendations were supposed to be implemented within one year.

8. **The Chairperson** commended the Rapporteur on her report. He drew attention to the Committee's web page on the follow-up procedure, which contained an overview of the situation since the thirtieth session. He lamented the fact that the Committee had only just received the report and that it had not yet been translated into French and Spanish. A more in-depth discussion should be held later in the session. He was unsure whether certain issues had been addressed, such as the relationship between the follow-up procedure and the lists of issues prior to reporting. The rules of procedure should perhaps be revised to reflect all aspects of the follow-up procedure. It might also be useful to analyse the follow-up experience of regional organizations such as the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

9. He asked whether reminders were sent to States parties before or after the one-year deadline had passed. Noting that the Rapporteur on follow-up discussed reminders with the country rapporteurs, he asked whether that practice was effective or whether they should be discussed by the Committee as a whole. It was regrettable that while States parties that reported on time were subject to follow-up, those that failed to report were not.

10. **Ms. Sveaass**, referring to the large number of topics identified for follow-up within one year despite the Committee's decision to keep them to a minimum, suggested that the topics addressed in subparagraphs that were invariably linked to issues such as impunity should be dealt with instead in explanatory footnotes. The Rapporteur had commented at a previous session regarding the incorporation of follow-up issues in the lists of issues prior to reporting. It was important to strengthen the links between the two procedures. She noted with interest the difference in the issues raised with States parties in different regions. Non-refoulement was a frequently raised issue with States parties belonging to the Western European and Others Group. She would be interested to know whether they had responded to follow-up requests relating to that issue.

11. **Mr. Wang Xuexian** agreed that more time was needed to discuss the complex issues raised by the Chairperson. Noting that the tables in draft chapter IV of the Annual Report dated back to the thirtieth session and were virtually the same in each Annual Report, he proposed that their length should be reduced. He was shocked to hear that 23 follow-up issues had been raised in the case of Ecuador. The Committee should ensure that it was fair and impartial in dealing with States parties and take firm action to ensure that the number of issues to be addressed within one year was kept to a minimum.

12. **Ms. Belmir** said that she would like to know whether, in the case of States parties that had failed to respond to requests from the Committee for follow-up information, it had emerged that the Committee tended to request information from them on similar matters from one periodic report to another. She also wondered whether the Committee should make specific reference to article 2 more often in its concluding observations, given that many of the issues of concern to the Committee, such as non-refoulement, compensation and conditions in places of detention, usually required the implementation of effective legislative, administrative, judicial or other measures. She asked whether challenges by States parties to the competence of the Committee to deal with certain subjects hindered their acceptance of the Committee's concluding observations.

13. **Mr. Bruni** recalled that, while some States parties were called upon to provide replies to follow-up questions, others had yet to submit their initial report. Action had to be taken on recalcitrant States parties. He asked what impact the follow-up procedure had. What action could be taken, for instance, if a State party provided unsatisfactory replies to follow-up questions?

14. **Mr. Mariño Menéndez** welcomed the Chairperson's suggestion that the Committee should hold a discussion on its follow-up mechanisms and said that it would be useful to deepen coordination between treaty bodies in that respect. The Committee should look at the involvement of NGOs and national human rights institutions in the follow-up process. Special reports such as that requested from the Syrian Arab Republic could be discussed in the context of follow-up.

15. **Ms. Sveaass** said that the Committee should adopt a consistent approach to the drafting of recommendations in its concluding observations. Its practice had varied considerably to date. While a series of recommendations on related issues might be contained in one paragraph in some instances, similar issues were treated in separate paragraphs in others.

16. **Mr. Domah** said that the report was an especially useful summary of Committee practice to date on follow-up procedures.

17. **Ms. Gaer** said that her report covered, in condensed form, follow-up issues raised in all the Committee's sessions since it had adopted the follow-up procedure at its thirtieth session in May 2003. Her pilot study was designed to evaluate whether a grading system for the responses of States parties to concluding observations might prove useful. Under the pilot study, the provision by the State party of follow-up information and its implementation of the Committee's recommendations were graded separately, which could deepen the impact of the follow-up procedure on States parties. The Committee might wish to introduce a standard questionnaire that would ensure consistency of approach to all States parties and, if resources were available, consider conducting follow-up visits to States parties. She would like the Committee to discuss those options.

18. Around 75 per cent of States parties had replied to requests for follow-up material to date, but some had never responded. The latter also tended to submit their periodic reports late. Simplifying the issues selected for follow-up would facilitate the implementation of a grading system on compliance with the Committee's recommendations. The Committee needed to give further and careful consideration to the topics selected for follow-up and

provide country rapporteurs and the secretariat with guidance in order to ensure that all States parties were treated fairly in that regard.

19. The Committee was striving for a standardized approach to the incorporation in lists of issues prior to reporting (LOIPR) of questions regarding the replies of States parties to previous follow-up questions. It would be interesting to consider increasing the coordination between the Committee's follow-up procedures and those of the universal periodic review. She welcomed the fact that NGOs and national human rights institutions were contributing an increasing amount of follow-up documentation to the Committee, which was posted on its website. States parties that had never submitted a report constituted a separate issue that should be discussed in the context of the Committee's working methods, as should the matter of when to make specific mention of article 2 in concluding observations.

20. **The Chairperson** suggested that the Committee should discuss whether to coordinate requests for follow-up information with lists of issues prior to reporting, or whether they should be separate mechanisms. The follow-up procedure needed to be fully institutionalized in order to improve its efficacy and it had to be seen as being applied in equal fashion to all States parties. Observing that some regional bodies conducted country visits, he suggested that the Committee should consider working more closely with them in order to ensure that matters of concern to it were addressed during such visits. In a similar vein, the Committee could also work more closely with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. It might be useful to invite the chairperson of the Inter-American Commission on Human Rights to address a meeting of the Committee in order to learn more about the Commission's follow-up procedures.

#### **Consideration of communications under article 22 of the Convention (continued)**

##### *Follow-up to decisions on complaints submitted under article 22 (CAT/C/47/3)*

21. **Mr. Mariño Menéndez** (Rapporteur for follow-up to decisions on complaints submitted under article 22) said that around one third of States parties to the Convention had recognized the Committee's competence to receive individual complaints. Approximately 100 complaints were currently pending before the Committee, 1 of which had been submitted in 2003 and the remainder from 2007 onwards. Interim measures, however, had been requested immediately in all relevant cases. The majority of the pending cases concerned Switzerland (37), Canada (13), Sweden (9), Denmark (8), Australia (7) and Kazakhstan (6). It would be worth considering whether the Committee should request the details of interim measures taken by States parties and, in those cases where none had been taken, why. He would present a report on the matter at the following session of the Committee.

22. The Follow-up Progress Report of the Committee against Torture on Individual Communications (CAT/C/47/3), which in its final version would be included in the Committee's annual report to the General Assembly, was a compilation of information received from States parties and complainants since the forty-seventh session of the Committee in November 2011. It contained information on implementation by nine States parties of the Committee's decisions concerning 23 cases and the follow-up measures taken by the Committee. Ten of those complaints had been submitted on the basis of article 3 of the Convention, but a growing number of complaints were based on other articles, including articles 1, 2, 5, 7, 12, 13, 14, 15 and 16, demonstrating that the Committee was dealing increasingly with complaints unrelated to the issue of non-refoulement. As more States parties recognized the competence of the Committee to receive individual complaints, it was becoming clear that a more detailed annual report on follow-up would be required. He agreed with the Chairperson that it would be useful to learn more about

follow-up procedures used by regional bodies such as the Inter-American Commission on Human Rights.

23. Summarizing the details of the cases contained in the progress report, he said that the decision by the State party not to extradite the complainant in the case of *Ktiti v. Morocco* (CAT/C/46/D/419/2010) had represented a success for the Committee. In the case of *Alexey Kalinichenko v. Morocco* (CAT/C/47/D/428/2010), the State party had informed the Committee that the Russian Federation was willing to invite the Committee to visit the complainant in his place of detention. It was really for the State party, not the Russian Federation, to provide the Committee with information on the complainant's situation and, if opportune, to organize such a visit, and he would like to know the views of other Committee members on the matter.

24. The case of *Suleymane Guengueng et al. v. Senegal* (CAT/C/36/D/181/2001) had been complicated by the fact that Belgium had filed a complaint before the International Court of Justice against the State party for violation of the Convention because it had failed either to try or to extradite Mr. Habré. A decision in that case might be handed down in the ensuing months. It appeared that the State party was prepared to consider extraditing Mr. Habré to Belgium but that it was awaiting the Court's decision. The Committee should reiterate to the State party that it was in violation of the Convention so long as it refused either to try or to extradite Mr. Habré. The Committee had received a letter from counsel for the complainant in the case of *Barakat v. Tunisia* (CAT/C/23/D/60/1996) in May 2012 regarding the complainant's request for compensation. The Committee should forward the letter to the State party and request a reply on the matter.

25. **The Chairperson** said that most complaints heard by the Committee to date had been based on alleged violations of article 3 of the Convention. Recently, however, most Latin American and some African States parties had recognized the Committee's competence to receive individual complaints. It was therefore likely that a broader range of complaints of violations would be brought before the Committee in the future. That raised questions about the time the Committee took to reach its decisions. In the case of article 3 violations, generally the Committee requested the immediate implementation of interim measures and States parties complied. Delays in decision-making by the Committee in such cases thus worked in favour of the complainants. Violations of other articles, however, required a greater sense of urgency.

26. The Committee needed to take a closer look at how it monitored the provision by States parties of reparation and rehabilitation to victims in the context of violations of article 1. It should also weigh up whether it bore any responsibility in cases where it found in favour of the State party and a complainant was subsequently tortured in the country to which he or she had been returned, especially when the country concerned was not a State party to the Convention.

27. The Committee should also discuss the normative value of its decisions on individual complaints, given that some States parties had challenged the legal value of its decisions under article 22. The jurisprudence of the Committee over the previous eight years had confirmed the validity of its demand for compliance by States parties with requests for interim measures, even though such measures were not explicitly mentioned in the Convention. The validity of other measures taken or requested by the Committee therefore did not necessarily depend on them being explicitly set forth in the Convention. Contrary views, of course, should be given due consideration by the Committee, but if it did not concur with such views, it must stand firm on its principles, for the legitimacy of its work was at stake.

28. **Ms. Sveaass** suggested that the Committee should discuss the notion of conducting a visit in the Kalinichenko case in a closed session. It would be interesting to ascertain

whether the States parties concerned in cases involving violations of article 14 had implemented the Committee's recommendation to provide redress to the victims of ill-treatment and torture, and what amounts had been paid in each case.

29. **Mr. Wang Xuexian** proposed that the Rapporteur should take stock not only of the achievements but also of the challenges concerning follow-up to article 22. He recalled the comment made earlier that week by the head of the Canadian delegation, who had said that the Canadian authorities did not give legal value to the Committee's Views on legal cases. That view was shared by some other States parties, and certainly constituted a challenge. While he agreed that it was not necessary to provide more information on all interim measures, a brief explanation for the grounds on which interim measures were rejected would be useful. In case No. 428/2010, he questioned the wisdom of sending Committee members to the Russian Federation to speak to Mr. Kalinichenko, as that seemed to fall outside the scope of the Convention. It was up to Morocco to follow up the case, given that it was the State party that had extradited the complainant to the Russian Federation.

30. **Mr. Bruni** agreed that the follow-up procedure did not fall strictly within the scope of the Convention. Nonetheless, Morocco and the Russian Federation appeared to be willing to invite the Committee to undertake a one-off follow-up visit to Mr. Kalinichenko. That would surely constitute a good starting point to establish dialogue on the ground with the two States parties involved. Thereafter, he agreed that it was up to them to ensure regular monitoring of the complainant's situation, quite possibly with the Committee's advice. He said that it was important to clarify when the Committee was discussing interim measures, which were a part of the Committee's rules of procedure, and when the cases being considered were part of follow-up to individual communications, which fell within the Convention.

31. **Ms. Gaer** said that a one-off visit to Mr. Kalinichenko by the Committee raised several issues, including who financed the trip and the terms of the visit. It would be useful if Mr. Grossman and Mr. Mariño Menéndez could provide the Committee with a substantive evaluation of the usefulness of their visit to Dakar in August 2009 to follow up on the case of *Guengueng et al. v. Senegal* (case No. 181/2001). She asked whether the terms of the proposed visit in the Kalinichenko case, namely that the Committee would visit him in his place of detention and meet with him confidentially, in isolated premises and in the absence of third persons, were the same as those used by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment and punishment. It might be wise to consult with experts such as the International Committee of the Red Cross on the terms they used for such visits. Advice would also be welcome on how to determine that the individual was really the person he claimed to be and how to ensure that the Committee could have a free and full discussion and examine any physical signs of ill-treatment or torture. A significant budget might be needed, as a physical examination would have to be conducted by an independent doctor. The case was an unusual one, and follow-up by the Committee might also necessitate a visit to Morocco. Both visits would need to be carefully structured. She agreed in principle with the idea of a visit from the Committee, on the understanding that the right conditions could be established, the Committee's independence maintained, and a subsequent follow-up mechanism established.

32. **Mr. Gaye** said that, since joining the Committee, he had never heard any suggestion of Committee members making follow-up visits to States parties that had extradited the authors of individual communications against the advice of the Committee. On the contrary, the Committee had always indicated that the State party that had extradited the individual should make every effort to monitor the case and ensure the individual's well-

being. He asked whether it was wise to propose that the Committee should take over from the State party in that way.

33. **Mr. Tugushi** said that, while country visits were not part of the Committee's core mandate and financial and other implications should be taken into account, it would be useful for Committee members to engage with individual petitioners and others in the field. The Convention certainly did not prohibit such visits.

34. **Mr. Mariño Menéndez** agreed with Ms. Sveaass that the Committee should endeavour to ascertain details of compensation provided to the growing number of persons who were bringing individual complaints before the Committee concerning article 14 of the Convention. The Committee appeared to be divided on the Kalinichenko case. The Russian Federation could not be asked to finance a Committee visit, and he was not aware of any specific budget lines within the Office of the United Nations High Commissioner for Human Rights for that purpose. The Committee should certainly not replace Morocco in providing follow-up in that case. Morocco had a duty to inform the Committee of how it was implementing the Committee's recommendations. If a Committee member visited Mr. Kalinichenko, the visit should be preceded by a report from Morocco on its efforts to follow-up the case, and then carefully coordinated with those efforts. He suggested writing to Morocco to recall its duty to undertake such efforts and inform the Committee about what measures it had taken.

35. **The Chairperson** supported the suggestion to discuss the visit in a closed session.

*The public part of the meeting rose at 12.35 p.m.*