



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

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**Committee against Torture**  
**Forty-third session**

**Summary record of the first part (public)\* of the 896th meeting**

Held at the Palais Wilson, Geneva, on Monday, 2 November 2009, at 10.30 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.896/Add.1.

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*The meeting was called to order at 10.40 a.m.*

### **Opening of the session**

1. **The Chairperson** declared open the forty-third session of the Committee against Torture and invited the Chief of the Human Rights Treaties Branch to inform the Committee of developments since its previous session.
2. **Mr. Salama** (Chief, Human Rights Treaties Branch) said that since the Committee's previous session, the Office of the United Nations High Commissioner for Human Rights (OHCHR) had prepared its strategic priorities for the biennium 2010–2011 on the basis of regional consultations with its field offices. The priorities had been based on a review of past experience and took into account the Office's comparative advantages. The six priorities that had been identified were of direct relevance to the issues at the core of all the treaty bodies' work. They were to ensure the realization of human rights in the context of migration; eliminate discrimination; protect human rights in situations of armed conflict, violence and insecurity; combat impunity and strengthen accountability, the rule of law and democratic societies; protect economic, social and cultural rights, particularly in the context of the economic, food and climate crises; and strengthen international human rights mechanisms and the progressive development of international law. The strategic focus on the six themes should enable the Office to make the most of its limited resources at headquarters and in the field in fulfilling its broad mandate.
3. The Human Rights Council had held its twelfth session from 14 September to 2 October 2009. In her opening speech at that session, the High Commissioner had underscored the importance of the treaty bodies through their reporting and individual complaints mechanisms and through the universal periodic review (UPR) process. She had highlighted the progress made in the human rights protection system, marked by the increase in human rights instruments and corresponding monitoring bodies, and greater compliance with reporting obligations by States parties. While welcoming that success, the High Commissioner had emphasized the increased demands it placed on the treaty bodies and the Office. She had therefore invited all stakeholders, including treaty bodies, to reflect on how to streamline and strengthen the treaty body system in order to achieve better coordination between the various mechanisms and in their interaction with special procedures and the UPR. She had noted that developments over the previous year had highlighted the need to promote and protect human rights more effectively, with particular reference to the effects of the economic crisis, the persistence of armed conflicts, and continuing discrimination and violence against women, minorities, migrants and other vulnerable groups.
4. The Committee's active role in enhancing the entire human rights treaty body system was crucial. The tenth Inter-Committee Meeting would begin later in November, focusing on follow-up to concluding observations, views and decisions of treaty bodies. It would aim to identify best practice and consider possible areas of harmonization in respect of follow-up.
5. The fifth session of the Working Group on the UPR had taken place in May, bringing the total number of States reviewed to 70. Two of those States, Slovakia and Yemen, would be considered during the Committee's current session. Several other States for which the Committee would adopt lists of issues had been considered under the UPR.
6. Since no States had ratified the Convention since the Committee's previous session, there were still 146 States parties to the Convention, with 64 having recognized the competence of the Committee to deal with individual complaints. Switzerland had ratified the Optional Protocol to the Convention on 24 September 2009, bringing the number of States parties to 50. The membership of the Subcommittee on Prevention of Torture would

thus increase to 25; the 15 additional members would be elected at the same time as the Subcommittee's forthcoming biennial elections to renew half the current membership in October 2010.

7. Bulgaria, Ecuador, Ethiopia, Ireland, Mongolia, Sri Lanka and Turkey had submitted reports since the Committee's previous session, bringing the number of reports pending consideration to 17, in addition to the seven reports that would be considered during the current session. The reports of Ecuador and Turkey had been submitted in accordance with the Committee's new optional procedure for lists of issues prior to reporting, thus proving the value of the Committee's proactive approach.

8. The twelfth meeting of States parties to the Convention against Torture had taken place in Geneva on 13 October 2009 to elect members to replace the five current members whose terms would expire on 31 December 2009. Of the nine candidates proposed, the five elected for a term of four years starting on 1 January 2010 were Ms. Belmir, Mr. Bruni, Mr. Mariño Menéndez, Ms. Sveaass and Mr. Wang Xuexian.

9. On 20 October 2009, the Chairman of the Committee had presented the Committee's annual report and addressed the General Assembly for the first time since the Committee's establishment. In the light of the Committee's increasing workload and its new procedures, additional meeting time had been requested at the General Assembly, a request which the Office fully endorsed.

10. During its current session, the Committee would examine the periodic reports of Azerbaijan, Colombia, El Salvador, Moldova, Slovakia, Spain and Yemen and would continue its work under articles 20 and 22 of the Convention. It would also adopt lists of issues to be addressed to the six States parties whose periodic reports would be examined in November 2010. It would meet with United Nations agencies, and national human rights institutions and NGOs of some of the countries whose reports it would consider. In addition, it would discuss follow-up to concluding observations and individual complaints.

11. Committee members should be aware that the preparation of all the documents for the session had posed a significant challenge for the secretariat. The relevant sections of the United Nations Office at Geneva no longer had the capacity to edit and translate the increasing number of documents the Committee required in order to fulfil its mandate, particularly since the documents were increasingly long. The Committee and the Office should reflect on ways to address the problem at the inter-committee meetings, since the issue affected all treaty bodies.

12. At its current session, the Committee would also examine several issues relating to its methods of work. Inter alia, it would update its rules of procedure, particularly with regard to the decisions taken by the meetings of chairpersons and inter-committee meetings, to bring them into line with new methods of work and procedures that the Committee was implementing.

13. The Committee on the Elimination of Racial Discrimination, the Committee on the Rights of Migrant Workers, the Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights had adopted revised treaty-specific reporting guidelines. The Human Rights Committee and the Committee on the Rights of the Child had made progress with the revision of their treaty-specific guidelines. He welcomed the fact that the Committee against Torture was set to complete the task of preparing its guidelines at the current session, thus before the recommended deadline of December 2009.

14. **The Chairperson**, speaking in a personal capacity, said that while he understood that limited resources were a widespread problem, the Committee was reaching a crisis point in terms of the amount of documentation it had to handle. Some 100 individual

complaints were currently pending as well as 17 State party reports. While the Committee awaited the response to its request for an additional week of meetings, he wished to know whether the Office would be able to take measures to remedy the crisis. In an unprecedented incident, one State party that would appear before the Committee at the current session had submitted its replies to the list of issues by the deadline but had been informed less than three weeks prior to the beginning of the session that the secretariat would be unable to translate the document in time. That would clearly prevent several Committee members from participating in the examination of the document.

15. **Mr. Mariño Menéndez** requested clarification of the steps the Office planned to take in order to ensure the progressive development of international law.

16. **Ms. Gaer** said that she had been dismayed to learn that the significant increase in secretariat services to the UPR had been at the cost of services provided to the treaty bodies. That was particularly disappointing given that staffing of the human rights programmes had been set to increase. While the number of States parties and procedures the Committee was dealing with had increased, it had less assistance and capacity to do its work. The new list of issues procedure had placed an additional burden on its members. While other treaty bodies had paid the Committee a compliment by considering adopting that method of work, the Committee had yet to see how the procedure would function in practice.

17. She supported the view that it was impossible for the Committee to function if it did not receive translations of its documents in time. She asked how the Committee could help the secretariat in that regard, as the current situation was untenable.

18. **Mr. Gallegos Chiriboga** said that, while it was interesting to learn of the Office's thematic priorities for 2010 and 2011, a more realistic approach to the current situation was required. The crisis faced by the Committee was not unexpected; the number of reports and procedures had been increasing over time. The fundamental problem was that the lack of resources Member States were allocating to the secretariat was preventing the treaty bodies from fulfilling their mandate to defend human rights. Those in charge of resources for treaty bodies must be made aware that real damage was being done to the human rights protection procedures mandated by Member States. The translation problem was symptomatic of the lack of flexibility and efficiency of the entire system. The Committee was aware that recruitment was also an issue. It was appalling that the Office employed staff who were given considerable responsibilities on short-term contracts, obliging them to take a one-month contract break every year. That was surely a violation of labour rights. It was difficult to understand how the Office's long-term strategic vision could be put into effect if the problems the Committee faced were not resolved.

19. **Mr. Salama** (Chief, Human Rights Treaties Branch) assured the Committee that he would convey the tone and substance of the Committee's concerns, which the Office shared, to the High Commissioner. She was already aware that the documentation and translation situation was at crisis point.

20. The Office had informed the Committee that the secretariat could not translate the replies to the list of issues of one State party appearing at the current session as soon as the Office itself had learned of that fact. He fully understood the Committee's frustration. Indeed, members' expertise was of no use if they did not have time to read documents prior to meetings.

21. Responding to Ms. Gaer's question about how the Committee could assist, he said that swifter harmonization between the treaty bodies, accurate forecasting of the documents required and a limit on the length of the documents would all ease the current crisis.

22. **The Chairperson** said that the Committee kept its working methods under continuous review. It tried to keep its lists of issues as brief as possible, but States parties were entitled to exercise their sovereign authority when answering the questions. The Committee could not set a limit in terms of words or pages. OHCHR should therefore advise it on how to alert States parties to the fact that translation services were occasionally unavailable. Moreover, as the Committee was small, it sometimes appointed alternate country rapporteurs who were not familiar with the language of the State party and depended on a written translation of the replies to the list of issues in order to engage in a legitimate dialogue.

23. On behalf of the Committee he warmly thanked the Chief of the Human Rights Treaties Branch for his supportive response to the Committee's expressions of concern and looked forward to further high-level discussions with OHCHR staff.

#### **Adoption of the agenda**

24. The agenda was adopted.

#### **Organizational and other matters**

25. **The Chairperson** said that the Committee's review of the fifth periodic report of Spain had been postponed until the end of the second week of the session. Spain had submitted its replies to the Committee's list of issues one month previously and the Committee had been informed 18 days ago that the document could not be translated in time for the session. The State party had then undertaken to provide a translation in English and a summary translation in French. The Committee's review had accordingly been postponed.

26. The delegation of Yemen had requested a postponement of the review of its second periodic report, which was scheduled to begin the following morning, and would not appear before the Committee. The Committee would discuss its response the next day.

27. **Ms. Gaer** said that she was greatly distressed to hear of the requested postponement, since Committee members, NGOs and other stakeholders had gone to considerable trouble and expense to prepare for the dialogue with the delegation of Yemen.

28. **The Chairperson** reported on his address to the United Nations General Assembly at its sixty-fourth session. Among the challenges facing the Committee, he had drawn attention to the refusal of States parties to adopt a clear definition of torture, to criminalize torture and to establish adequate penalties; their failure to investigate alleged cases of torture; impunity for perpetrators of acts of torture; expulsion, return and extradition of persons to States where there were substantial grounds for believing that they were in danger of being subjected to torture; "rendition" of suspects so that they could be subjected to acts of torture; deplorable conditions of detention; enforced disappearances; and lack of provision for rehabilitation or compensation of victims or their families. Forty-six States Members of the United Nations had not yet ratified the Convention.

29. He had also informed the General Assembly about the Committee's follow-up procedures on concluding observations and individual complaints. To assist States parties in fulfilling their reporting obligations, the Committee had introduced the new optional procedure involving the transmission of a list of issues to States parties as the basis for their periodic report. However, that innovative measure had placed an additional burden on the Committee, which was the smallest human rights treaty body and required additional time to fulfil its obligations.

30. He had also welcomed a number of positive developments, such as the fact that the normative vacuum surrounding the prohibition of torture had been eliminated and that the dialogue with States parties had proved highly productive in some cases.

31. Questions had been raised and comments made by the representatives of Chile, China, Egypt (Sweden, speaking on behalf of the European Union) and Ethiopia. Chile had commented on its initial report to the Subcommittee on Prevention of Torture and had stated its intention to establish a preventive mechanism. China, emphasizing that it had been one of the first States to sign the Convention, claimed to have improved its preventive and supervisory mechanism, compensated victims of torture and reaffirmed its commitment to combat torture in a national human rights action plan. It therefore regretted the fact that the attitude of some members of the Committee had led to a misrepresentation of the situation in China in the concluding observations on its most recent periodic report. Egypt had requested additional information on torture in armed conflict and on cases of torture of children. It had also enquired about the Committee's relationship with the Committee on the Rights of the Child. Sweden had raised questions about the composition of delegations; the Committee's working methods; its cooperation with the Human Rights Council, including the UPR mechanism, and other United Nations mechanisms dealing with torture; and the usefulness of the resolutions on torture adopted by the General Assembly. Ethiopia had asked whether assistance was provided to States parties that wished to familiarize themselves with the Committee's reporting guidelines.

32. In his response to China, he had welcomed the State party's commitment to continued cooperation with the Committee and stressed that the Committee adopted its concluding observations by consensus. In response to Egypt, he had drawn attention to the Committee's general comment No. 2, according to which derogations from obligations under the Convention were not permitted during states of emergency. In response to Sweden, he had stated that delegations were often multifaceted, including representatives of the police and civil society. It was essential to be open to information from all sources. As independent experts, Committee members were capable of undertaking the requisite analysis of the information received. The UPR mechanism was another valuable source of information. However, it was important to ensure a balanced distribution of resources between the mechanism and the human rights treaty bodies. The annual General Assembly resolution on torture enriched the Committee's discussions but the Convention set its fundamental standards and obligations. Lastly, he had assured Ethiopia that States parties could seek United Nations assistance in alleviating their reporting burden.

33. He had then participated in a round-table meeting, organized by the Ambassador of Denmark, with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Chairperson of the Subcommittee on Prevention of Torture and representatives of 50 United Nations Member States. He had also been interviewed on United Nations Radio.

34. In his view, the Committee could not hope for a positive response to its request for additional resources because of the current financial difficulties and the tendency to focus on the UPR mechanism. The Subcommittee on Prevention of Torture also required additional funding to finance an increase in membership and visits to States parties. During the round-table meeting, many delegations had welcomed the fact that the Committee, the Subcommittee and the Special Rapporteur were working together.

35. Turning to the workload at the current session, he warned the Committee that no fewer than 21 lists of issues prior to reporting would have to be adopted. Other topics to be discussed included the updated rules of procedure, the revised treaty-specific reporting guidelines, 2 draft general comments and 12 communications.

36. **Ms. Gaer** thanked the Chairperson for the detailed report on his visit to the General Assembly. She was particularly pleased that he had re-emphasized the fact that the Committee spoke with one voice and adopted documents by consensus. The statement of the Committee on the adoption of its concluding observations had been included in the annual report (A/64/44) as annex IX. She suggested that a separate copy of the statement should be circulated to each State party.

37. She was disheartened to hear that there was little prospect of obtaining additional resources, especially in the light of the additional workload associated with the preparation of lists of issues prior to reporting. She proposed that the Committee should take up the matter when it discussed its working methods.

38. She asked the Chairperson to clarify the status of several documents in the file concerning draft general comments.

39. The Chairperson said that the document entitled "Evaluation of facts and evidence by the Committee against Torture" (CAT/C/41/CRP.2), which had been translated into all official languages, had been discussed in a preliminary fashion by the Committee at its May 2009 session. That document was intended to serve as a basis for discussion on a proposed draft general comment No. 3 on the subject of the evaluation of facts and evidence by the Committee. The two drafts to which Ms. Gaer had referred were working papers he had prepared that essentially summarized document CAT/C/41/CRP.2. They had been submitted to Committee members as contributions to the Committee's discussion on a draft general comment No. 3. The difference between the two drafts was that one contained footnote references to various sources of jurisprudence whereas the other did not. He welcomed the fact that members had been generally positive towards the idea of a general comment No. 3 on the subject he had mentioned.

40. He had also drafted two proposals on the subject of article 14 of the Convention that were intended to serve as the basis for a discussion on a possible general comment No. 4.

41. **Ms. Belmir** said she acknowledged that the Chairperson's drafts existed in English only, but in order to contribute more fully to the discussion she would prefer to have a French translation of the drafts.

42. **Mr. Mariño Menéndez** asked whether the document entitled "Secretariat's comments on the evaluation of facts and evidence by the Committee against Torture" (CAT/C/43/R.3), which was dated 19 October 2009, had been prepared at the Chairperson's request.

43. **The Chairperson** explained that, when the Committee had begun discussing the background document on the evaluation of facts and evidence by the Committee, it had decided to request the secretariat to present its comments on that document. His papers summarizing that background document represented his own comments, which he intended to present orally when the Committee was ready to take up the matter during the current session.

44. **Mr. Nataf** (Secretary of the Committee) reminded members that at its May 2009 session the Committee had decided to establish a working group on the preparation of a draft general comment No. 3. The working group was to be composed of Ms. Belmir, Ms. Gaer and Mr. Gallegos Chiriboga. At that time, the Petitions Team had been requested to present its comments on document CAT/C/41/CRP.2. As to the other drafts that had been prepared by the Chairperson, none had been assigned a document symbol or translated. It would therefore be useful for the Committee to decide which versions of each of the working papers relating to potential draft general comments it wished to have translated. It might be advisable to request the translation of only one version of each.

45. **Ms. Sveaass** proposed that the Committee should decide which documents were to be assigned priority for discussion and therefore for translation, given the fact that a number of other documents that had been submitted for translation by the Committee had not yet been translated.
46. **Ms. Gaer** asked when the working group on the preparation of a draft general comment No. 3 would meet and whether it would do so prior to the Committee's discussion of the Chairperson's drafts on the subject.
47. **The Chairperson** said that the two drafts he had prepared were not radically different from document CAT/C/41/CRP.2 but represented an attempt to render the ideas it presented in language appropriate for a general comment. Over the course of its history, the Committee had produced very few general comments. Therefore, the real question was whether or not there was enough political will within the Committee to produce a general comment on the subject of the evaluation of facts and evidence. He suggested that his drafts on that subject should either be submitted for translation or that a discussion should be held without translations. The working group might meet informally in order to discuss how best to proceed. Alternatively, only the shorter of the two papers could be translated or else simply read out in the working group.
48. **Ms. Gaer** said that the working group had postponed its discussion precisely in order to benefit from the translation and interpretation services that would be provided during the session. It was important to set aside time for its work during allotted meeting time.
49. **The Chairperson** said that he would arrange for the working group to meet during scheduled meeting time. He proposed, during the meeting of the working group, to read aloud the shorter of the draft proposals, enabling those members who wished to do so to benefit from the interpretation provided. It would be useful for Mr. Schmidt, Chief of the Petitions Team, to be present during that meeting, as he had prepared the secretariat's comments on the evaluation of facts and evidence by the Committee.
50. His proposal for a possible general comment No. 4 on reparations had been submitted in English only in both long and short versions. He suggested that one version should be submitted for translation so that members could have the necessary background information to decide whether or not to pursue the drafting of that general comment.
51. **Ms. Gaer** said that, since the Committee had not yet held a substantive discussion on a possible general comment No. 4, the Committee might wish to do so before requesting translations of the related working papers.
52. **Mr. Gallegos Chiriboga** agreed that it was important for the Committee to hold a discussion regarding the possibility of drafting a general comment No. 4.
53. He welcomed the Chairperson's participation in the General Assembly since that would help to increase the visibility of the Committee among the State party delegations in New York, and also contribute to increasing awareness of the treaty bodies' resource limitations, in particular those of the Committee against Torture.
54. **Mr. Mariño Menéndez** asked when the Committee might expect to be informed whether it would be allocated the additional financial resources needed to extend its May 2010 session by one week. Since all members of the Committee had had the opportunity to review the background document on the evaluation of facts and evidence by the Committee and since the Chairperson's papers did not diverge substantively from it, he wondered whether it might not make sense to expand the working group to include the Committee as a whole.



55. **Ms. Sveaass** said that she would be in favour of giving priority, in terms of meeting time and translation resources, to the Chairperson's proposal for a general comment No. 3. She was also interested in the subject matter proposed for a general comment No. 4 and, if time permitted, would welcome a general discussion on that topic during the current session.

56. **The Chairperson** said it appeared that there was a consensus on giving priority to draft general comment No. 3. The Committee would therefore use meeting time set aside for the discussion of its working methods to consider draft general comment No. 3. It would meet in closed session in plenary and therefore have the benefit of interpretation services.

57. There had been a debate at the previous session about the importance of rehabilitation, compensation and reparation for victims of torture or cruel, inhuman or degrading treatment. Although the Committee had established a complaints mechanism and a follow-up procedure, reparation for victims was often very limited, which represented a serious shortcoming in the Committee's activity. Since the process of drafting a general comment was a long one, it might be wise for the Committee to at least begin considering a possible draft comment No. 4 on reparations.

*The public part of the meeting rose at 12.20 p.m.*