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Summary record of the 2915th meeting*
Held at the Palais Wilson, Geneva, on Tuesday, 24 July 2012, at 10 a.m.

Chairperson: Ms. Majodina

Contents

* No summary records were issued for the 2913th and 2914th meetings.

The meeting was called to order at 11.10 a.m.

Follow-up to concluding observations on State reports

Report of the Special Rapporteur for follow-up on concluding observations of the Human Rights Committee (105th session, July 2012) (CCPR/C/105/R.1)

1. **The Chairperson** invited the Special Rapporteur for follow-up on concluding observations to present her report.

2. **Ms. Chanet** (Special Rapporteur for follow-up on concluding observations) said that the Human Rights Committee usually presented three reports on follow-up per year but that for material reasons she had decided to present only two full reports per year, at the March and October sessions. Nonetheless, she was presenting an interim progress report on two States parties, Togo and Israel, that she considered required an urgent decision. With regard to Togo, the decision was justified by the situation. For Israel, the team responsible for periodic reports required information because it needed to draw up a list of issues before the end of the current session.

3. A reply had been received from the other States, except from Serbia, the former Yugoslavia, the United Kingdom and Spain, who should either be sent a reminder or be asked to include their response to the follow-up letter in their next periodic report.

4. **Mr. Iwasawa** and **Sir Nigel Rodley** said that they were a priori in favour of the presentation of two reports per year rather than three. Nonetheless, they wished to receive details of the procedure that had been followed, since past reports seemed to have covered a very large number of States in comparison to the report presented at the current meeting.

5. **Ms. Prophette** (Office of the United Nations High Commissioner for Human Rights) said that the secretariat had established and maintained, as a spreadsheet, a file listing all the States parties which had been or were currently subject to the follow-up procedure, or for which the Committee was to recommend that the follow-up procedure should be terminated. The file contained all the replies received from States parties and indicated whether replies were pending. All the Committee's analyses could also be found in the file, as well as draft evaluations that were pending adoption.

6. **Ms. Chanet** (Special Rapporteur for follow-up on concluding observations) said that Togo had stated in response to the recommendations made in paragraph 10 of the Committee's concluding observations (CCPR/C/TGO/CO/4) that the Truth, Justice and Reconciliation Commission had taken 22,415 statements and that the Committee's recommendations would enable it to adopt measures to remedy the harm suffered. Certain NGOs, however, had indicated that no investigation had been undertaken in the cases in the Lomé or Amlamé jurisdictions and that the investigation into the Atakpamé cases had been suspended without any reason being given. The Committee asked for additional information on the measures taken by Togo to follow up on the work of the Truth, Justice and Reconciliation Commission. Since no information had been provided on investigations aimed at shedding light on the human rights violations committed in 2005, the Committee considered that Togo had not acted upon its recommendation. The Committee had also asked for the adoption of criminal legislation defining torture and penalizing acts of torture with penalties commensurate with their gravity. Togo had replied that a draft Criminal Code penalizing torture on the basis of international standards would be approved in April 2012, with a view to its transmittal to the Government for adoption by the Council of Ministers. However, according to certain NGOs, little progress had been made in revising the Criminal Code and no one had been prosecuted on charges of torture or inhuman or degrading treatment. The Committee would therefore request up-to-date information on the progress made in adopting the draft amendments to criminal legislation and the content of

the provisions concerning torture, and call for prompt measures to be taken to ensure that any act of torture or cruel, inhuman or degrading treatment was prosecuted and appropriately penalized.

7. Pursuant to the recommendation that the State party should take steps to investigate all allegations of torture and ill-treatment and all deaths in detention, the Togolese Government had replied that the National Human Rights Commission had been instructed to investigate allegations of torture involving the National Intelligence Agency. The Commission's report had been approved by the Council of Ministers in February 2012 and 15 measures had been adopted to put the recommendations into effect. According to NGOs, the Commission's report, finding that acts of torture had been committed by members of the National Intelligence Agency and recommending that they should be prosecuted, had been made public in February 2012 following an attempt to manipulate its contents in order to exculpate the State. As a result of that scandal, the Chairperson of the National Human Rights Commission — the author of the report — had had to go into exile. Since Togo was due to submit its next periodic report in April 2015, it should be sent a letter setting out the Committee's analysis and a meeting should be organized at the October session between herself and the Permanent Representative of Togo.

8. **Mr. Bouzid** asked who had made the 22,415 statements taken by the Truth, Justice and Reconciliation Commission.

9. **Mr. Ben Achour** asked whether the attempt at manipulation reported by NGOs was indeed a case of falsification and whether the report had been verified or should be treated with caution. He also wished to know whether the State party had provided details of the 15 measures adopted to give effect to the report of the National Human Rights Commission.

10. **Ms. Chanet** (Special Rapporteur for follow-up on concluding observations) replied that the statements concerned were complaints from victims. There had been a genuine attempt to falsify the report of the National Human Rights Commission but it had not succeeded because the affair had been revealed. The report had therefore been published unchanged and the Government had adopted measures in response to it. The Committee should take that into account and it was the issue she wished to discuss with the Permanent Representative.

11. **Ms. Prophette** (Office of the United Nations High Commissioner for Human Rights) said that, in its replies, the State party had given a very brief description of the measures it had adopted. As for the attempted falsification of the Commission's report, the Office of the United Nations High Commissioner for Human Rights had carried out research that confirmed the truth of those allegations.

12. **The Chairperson** invited Mr. O'Flaherty to present the information received under follow-up to the implementation of the Committee's concluding observations by Israel.

13. **Mr. O'Flaherty** noted that the next periodic report of Israel would take the form of replies to the list of issues that the Committee was to adopt at the current session. Concerning the lifting of the military blockade of the Gaza Strip recommended by the Committee, the State party did not refer to any steps taken in that regard; the Committee's recommendation had therefore not been implemented. Regarding the flotilla incident, the State party indicated that the Turkel Commission appointed to examine the conformity with international norms and requirements of the actions taken in connection with the incident had concluded that the naval blockade and the actions in question, aside from the few for which no conclusion was reached, were in conformity with international law. NGOs had objected that the Turkel Commission was neither independent nor impartial, and that the State party had refused to cooperate with the international community to allow an impartial and independent investigation into the incident. According to the Committee's evaluation, while the Turkel Commission was indeed a panel of inquiry, it did not fulfil the

Committee's recommendation that the State party should invite an independent, international fact-finding mission; additional information should therefore be requested.

14. In response to the Committee's recommendation that the State party should incorporate into its legislation the crime of torture as defined in article 1 of the Convention against Torture and ensure that the notion of "necessity" could no longer be invoked as a possible justification for torture, the State party affirmed that all acts of torture constituted criminal offences and that the Penal Law was in accordance with international law. It referred to a Supreme Court ruling establishing that a "state of necessity" could be invoked in the case of imminent attacks but did not constitute a source of authority to utilize physical means. The State party also claimed that the Israeli Security Agency (ISA) conducted its interrogations according to the relevant guidelines and regulations, and that all complaints of ill-treatment were examined by the Inspector for Complaints against ISA Interrogators, who would shortly be placed under the authority of the Ministry of Justice. It said the fact that no complaint examined between 2006 and 2011 had resulted in criminal charges demonstrated that no act of torture or ill-treatment had been committed. NGOs stated that no action had been taken to adopt appropriate legislation establishing a crime of torture or clarifying that the "necessity defence" could not apply in cases of torture; they also indicated that the Inspector for Complaints had not yet been placed under the authority of the Ministry of Justice. The measures taken by the State party were therefore considered unsatisfactory.

15. Aside from the establishment in 2009 of a Juvenile Military Court in the West Bank under a temporary order, no information was provided on other measures to ensure that minors were not tried as adults; additional information should therefore be requested. According to NGOs, the existence of that court did not guarantee that minors were tried separately from adults. It was therefore proposed to ask the State party what measures had been taken to ensure that children were not tried like adults in the Juvenile Military Court and how the existence of a separate court for juveniles would be ensured when the temporary order expired on 29 September 2012. While NGOs indicated that each year approximately 700 Palestinian children were prosecuted in Israeli military courts and that over 80 per cent of them received custodial sentences, the State party had provided no information regarding safeguards to ensure that minors were placed in detention only as a last resort and for the shortest possible time. Nothing was said, either, on the audiovisual recording of proceedings involving children, or on the measures taken to ensure that cases were heard in accordance with fair trial standards. Information had been given on the existing legal provisions regarding the notification of parents of minors placed in detention, but they were subject to widely applicable exceptions and nothing had been said about their implementation. It was therefore proposed that the State party should be asked whether it intended to review its legislation to ensure that parents or close relatives of the minor were in all cases promptly informed of the arrest and that the child was provided with prompt access to free and independent legal assistance of his or her choice. The State party maintained that all complaints of torture or cruel, inhuman or degrading treatment made by detainees, whether adults or minors, were promptly investigated, but no information was given on measures aimed at ensuring a prompt investigation by an independent body into all reported cases of torture or ill-treatment of detained children. The Committee's recommendation on the matter had therefore not been implemented.

16. The State party indicated that it had adopted a plan on the status of Bedouin communities and a plan for the economic development of the Bedouin in the Negev. Concerning the ongoing problems of access to water in unrecognized Bedouin villages, the State party noted that it was practically impossible to guarantee water supply to those villages but that measures had been taken to guarantee access to electricity and health-care services for the Bedouin. NGOs reported that 30,000 Bedouin would be required to leave their ancestral land under a Government plan from May 2011, that the number of home

demolitions had risen considerably and that numerous villages still lacked essential infrastructure, notably schools and health centres. According to the Committee's evaluation, the measures taken did not guarantee the Bedouin population's access to health structures, education, water or electricity. The Committee's recommendation had therefore not been implemented.

17. The Special Rapporteur proposed that a letter should be sent to the State party reflecting the Committee's analysis and asking for the information requested to be provided as an addendum to the next periodic report, and that it should also be referred to in the list of issues prior to reporting.

18. **Mr. Flinterman** said that he supported the proposal to send a letter to the State party reflecting the Committee's analysis but that, in his opinion, the information requested should appear in the body of the next periodic report, rather than in an addendum. Requests for additional information decided during the follow-up procedure should therefore be included in the lists of issues.

19. **Mr. O'Flaherty** supported Mr. Flinterman's proposal.

20. **Mr. Neuman** proposed clarifying the meaning of the first sentence of the Committee's evaluation, the current wording of which gave the impression that, apart from the inclusion of Bedouin members in the Goldberg Committee, the information provided did not reflect any measures taking account of the Bedouin population, which did not appear to faithfully reflect the Committee's conclusions.

21. **Mr. O'Flaherty** proposed that the last part of the sentence should be replaced by "or to otherwise take into account their interests".

22. **The Chairperson** said that the progress report would be amended accordingly. She invited the Special Rapporteur for follow-up on Views to present his report, which had been distributed to Committee members in English only.

Draft follow-up progress report on individual communications adopted by the Human Rights Committee at its 105th session

23. **Mr. Thelin** (Special Rapporteur for follow-up on Views) said that in the case of *Nystrom et al. v. Australia* (communication No. 1557/2007), the State party had indicated that further consideration of the matter would be neither fruitful nor constructive. The State party's latest observations had been sent to the authors in July 2012 for comments. He proposed that the Committee should await receipt of further information before deciding on the matter. He also proposed that the Committee should consider the dialogue ongoing, while noting that, to date, its recommendation had not been satisfactorily implemented.

24. In the case of *Avadanov v. Azerbaijan* (communication No. 1633/2007), the State party had been invited to communicate its response by 20 March 2012 at the latest. On 13 February 2012, the author had reaffirmed that the State party had still not implemented the Committee's Views. It was proposed that the Committee should await further information before making its final decision. It was also proposed that the Committee should consider the dialogue ongoing, while noting that, to date, its recommendation had not been satisfactorily implemented.

25. Regarding *Pillai et al v. Canada* (communication No. 1763/2008), he proposed that the Committee should decide to close consideration of the case and to conclude that the recommendation had been satisfactorily implemented.

26. The Committee had two cases before it involving Cameroon: *Afuson* (communication No. 1353/2005) and *Akwanga* (communication No. 1813/2008). In both cases he proposed that the Committee should await receipt of further information before

making a final decision. He also proposed that the Committee should consider the dialogue ongoing while noting that, to date, its recommendation had not been satisfactorily implemented.

27. In the case of *Bonilla Lerma v. Colombia* (communication No. 1611/2007), he proposed that the Committee should await receipt of further information before making a final decision. He also proposed that the Committee should consider the dialogue ongoing, while noting that, to date, its recommendation had not been satisfactorily implemented.

28. The Committee had three cases before it concerning France: *J.O.* (communication No. 1620/2007), *Cochet* (communication No. 1760/2008) and *Ranjit Singh* (communication No. 1876/2009). All three cases had been discussed in July 2012 at a meeting between himself and a member of the Permanent Mission of France to the United Nations Office at Geneva, who had expressed the State party's willingness to continue the dialogue on the first two cases in order to find a satisfactory solution. He therefore proposed that in all three cases the Committee should await further information before making a final decision and should consider the dialogue ongoing, while noting that, to date, its recommendation had not been satisfactorily implemented.

29. Regarding Kyrgyzstan, the Committee was considering the cases of *Kaldarov* (communication No. 1338/2005), *Kulov* (communication No. 1369/2005), *Torobekov* (communication No. 1547/2007) and *Moidunov and Zhumabaeva* (communication No. 1756/2008). He had discussed the four cases during a meeting with a member of the Permanent Mission of Kyrgyzstan to the United Nations Office at Geneva on 19 July 2012. He had noted that, although certain measures had been taken, no compensation had been awarded to victims and he had invited the State party to re-examine the matter. In the four cases, he proposed that the Committee should await receipt of further information before making a final decision. He also proposed that the Committee should consider the dialogue ongoing, while noting that, to date, its recommendation had not been fully satisfactorily implemented.

30. In the case of *Raihmans v. Latvia* (communication No. 1621/2007), the State party had repeated its arguments and affirmed that the legislative amendments requested by the Committee to avoid the recurrence of similar violations were not necessary since, according to the State party, its legislation was in conformity with its commitments. The author's counsel, dissatisfied with that reply, had also reiterated his arguments and reported that he had referred the matter to the Constitutional Court to obtain reparation. It was proposed that the Committee should await a response from the State party before making a decision and should consider the dialogue ongoing, while noting that, to date, its recommendation had not been satisfactorily implemented.

31. In the case of *X.H.L. v. the Netherlands* (communication No. 1564/2007), the State party's reply reiterated the same arguments; it also noted that the author was now an adult. Counsel also maintained his position. It was proposed that the Committee should await a response from the State party, to which counsel's comments had been forwarded, before making a decision, while noting that, to date, its recommendation had not been satisfactorily implemented.

32. In the case of *Sobhraj v. Nepal* (communication No. 1870/2009), the State party had submitted further comments in March 2012, defending its legislation and the implementation of that legislation. The matter had been discussed with representatives of the State party during a meeting in November 2011. The author had given details of the type of compensation he expected. It was proposed that the Committee should await a response from the State party before making a decision and should consider the dialogue ongoing, while noting that, to date, its recommendation had not been satisfactorily implemented.

33. The Committee was examining three cases involving Peru. In the *Muñoz Hermosa* case (communication No. 203/1986), the State party had replied in June 2011 that it had requested information from the Ministry of Internal Affairs and the national police, and a reminder had been sent to the State party to submit the updated information by July 2012 at the latest.

34. In the case of *Celis Laureano* (communication No. 540/1993), the Committee had sent a reminder to the State party in July 2012 requesting additional information. In the case of *Gutiérrez Vivanco* (communication No. 678/1996), it was the author who had not responded to the State party's comments and a reminder had been sent to him in July 2012. In all three cases, it was proposed that the Committee should await receipt of the information requested and should consider the dialogue ongoing, while noting that, to date, its recommendation had not been satisfactorily implemented. The Committee had two cases before it involving the Philippines. In the *Rouse* case (communication No. 1089/2002), the State party had indicated in May 2012 that it had examined the request for pardon but that the request had been denied for lack of merit. Those comments had been forwarded to the author. In the *Larrañaga* case (communication No. 1421/2005), the State party had submitted additional observations in May 2012, in which it had reiterated the same arguments. The matter was currently complicated by the fact that the provisions of the bilateral agreement between Spain and the Philippines on the transfer of persons were now applicable to the author, who was currently in Spain. The State party observed that the bilateral agreement limited its ability to act. The latest comments from the author's counsel had been sent to the State party in June 2012. In both cases, it was proposed that the Committee should await a response from the State party and should consider the dialogue ongoing, while noting that, to date, its recommendation had not been satisfactorily implemented.

35. In the case of *Correia de Matos v. Portugal* (communication No. 1123/2002), in April 2012 the State party had reaffirmed that it did not intend to implement the Views, basing itself on a decision of the European Court of Human Rights. In May 2012, the author had also reaffirmed his position on the matter. It was proposed that the dialogue should be considered ongoing for the time being, but that if the situation was not resolved, the Committee should envisage discontinuing consideration of the case at its next session, probably concluding that the recommendation had been unsatisfactorily implemented.

36. In the case of *Zheikov v. Russian Federation* (communication No. 889/1999), the Committee had received a reply from the author, who claimed that high-level officials were responsible for the violations committed, and had forwarded it to the State party in March 2012. Since no response had yet been received, the Committee should send a reminder and make a decision at a later date.

37. The Committee had four cases before it involving Spain that would be the focus of a forthcoming meeting between himself and representatives of the State party. In the *Michael and Brian Hill* case (communication No. 526/1993), the author's silence prevented the Committee from making progress, but it was proposed that the Committee should consider the dialogue ongoing. He made the same proposal for the *Alba Cabriada* case (communication No. 1101/2002), in which a reminder had been sent to the author in July 2012 to request his response to the latest comments by the State party. In the *Gayoso Martínez* case (communication No. 1363/2005), the author had stated in April 2012 that he wished to submit a new communication to the Committee because he had not been satisfied with the Committee's first decision. It was proposed that the Committee should remind the author that article 2 of the Covenant was not of a self-standing nature. In the *Carpintero Uclés* case (communication No. 1364/2005), in October 2011 the State party had indicated that it had taken measures through its judicial authorities and the Office of the Prosecutor to try to come to a new decision, and that legislative measures had also been taken to draft

bills that would be in conformity with article 14, paragraph 5, of the Covenant. He looked forward to hearing what progress had been made and proposed that the Committee should consider the dialogue ongoing.

38. In the case of *Butovenko v. Ukraine* (communication No. 1412/2005), the State party had not submitted any reply. He proposed that a meeting with a representative of the State party should be arranged at the current session, and that in the meantime the Committee should decide that the dialogue was ongoing, while noting that, to date, its recommendation had not been satisfactorily implemented.

39. Lastly, in the case of *Peirano Basso v. Uruguay* (communication No. 1887/2009), a reminder had been sent in July 2012 to the author, who had not commented on the latest reply from the State party describing the measures it had adopted. He proposed that the Committee should await the author's response and decide what action to take at the next session.

40. **Mr. Flinterman** said he understood that the Committee could not discontinue examination before it had received additional information, but was surprised that in the *Nystrom* case (Australia) the Rapporteur considered the dialogue ongoing when the State party deemed it neither fruitful nor constructive to pursue the matter. He proposed the deletion of the word "satisfactorily" in the final line, since the State party had not implemented the Committee's recommendation in any respect.

41. **Mr. Thelin** (Special Rapporteur for follow-up on Views) said that he understood Mr. Flinterman's point but that the wording corresponded to established practice and should be kept unchanged.

42. **Mr. O'Flaherty** observed that Australia was in the habit of responding that further consideration of a case would be neither fruitful nor constructive. Ways of urging the State party to abandon that position and of pursuing a dialogue with Australia on the subject of communications from individuals should be studied together with the Rapporteur.

43. **Mr. Flinterman** noted that, in the third case involving France, the Rapporteur had not noted the willingness of the State party to pursue the dialogue in order to seek a satisfactory solution, although he had indicated that for the other two cases; he asked whether that was an omission or a reflection of the situation.

44. **Mr. Thelin** (Special Rapporteur for follow-up on Views) said the difference in the cases was that, when he had met the representative of France, they had both been unaware of the contents of the written reply from the State party, which had been received only on 23 July. Given the State party's surprise at the Committee's conclusion, he had thought that the position of France was likely to be firmer in that case, which remained to be seen.

45. **Mr. Iwasawa** said that, for each of the four cases involving Kyrgyzstan, it had been stated that the Special Rapporteur had taken note of the measures adopted so far by the State party to give effect to the Committee's recommendations, without providing details of those measures, which it would be useful to have.

46. **Mr. Thelin** (Special Rapporteur for follow-up on Views) replied that it could be added that Kyrgyzstan had amended its Constitution with the aim of fully implementing the Committee's recommendations and that it was currently developing an internal governmental mechanism for that purpose. In the *Moidunov and Zhumabaeva* case (communication No. 1756/2008), however, in the responses provided so far the State party had limited itself to recalling its legislative provisions.

47. **Mr. Petrov** (Petitions Unit) said that, in the case of *X. v. Sweden* (communication No. 1833/2008), it should be noted that the author had been deported the day after the communication had been submitted to the Committee. In the absence of a request for

interim measures, the Committee had decided not to call for them from the State party. In May 2012, the State party had claimed that, under the Aliens Act, if an international treaty body concluded that the expulsion of a person to a particular country would put him or her at risk, a residence permit was granted, except in special cases. The author could therefore avail himself of the Committee's Views to seek a review of his request for a residence permit. Unfortunately, the Migration Board did not know the author's location in Afghanistan. In those circumstances, he suggested that the Committee should decide to discontinue consideration of the case and to conclude that the recommendation had been satisfactorily implemented, given the measures taken to date by the State party.

48. **Mr. Neuman** asked whether, in the case concerned, it was certain that every effort had been made to find the author and inform him of the significance of the decision taken. A decision to close the case risked discouraging the State party from searching for the author and allowing him to benefit from its decision. Perhaps it would be better to keep the file open for a while longer in the hope of finding the author.

49. **Mr. Petrov** (Petitions Unit) said it could be imagined that in such a case it would be very difficult, if not impossible, for the Swedish authorities to contact the Afghan authorities to try and locate the author. Furthermore, the Committee had no way of verifying the efforts made by the State party to trace the author and was obliged to accept the statements provided to it by the State.

50. **The Chairperson** announced that the Committee had completed its work on follow-up.

The meeting rose at 1 p.m.