

...

CHAPTER I. ORGANIZATIONAL AND OTHER MATTERS

...

H. Follow-up to conclusions and recommendations adopted under article 19 of the Convention

12. At its thirtieth session the Committee decided to identify in its recommendations to States parties, as appropriate, specific issues on which the State party concerned should provide information within one year. The rapporteurs on follow-up, appointed under rule 61, paragraph 3, of the rules of procedure, will brief the Committee about the information received under this procedure, whereupon the Committee will decide on the action to be taken.

I. General comments

13. At its thirtieth session, the Committee decided to initiate the drafting of a general comment on article 2 of the Convention, and appointed Mr. Mariño as rapporteur on that issue.

J. Activities of the Committee in connection with the Optional Protocol to the Convention

14. At its twenty-ninth session, the Committee decided to set up a working group which would meet prior to the thirtieth session in order to discuss matters relating to the adoption by the General Assembly of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The working group, composed of Mr. Burns, Ms. Gaer, Mr. Mavrommatis and Mr. Rasmussen, met on 24 and 25 April 2003. As a result of its recommendations, the Committee adopted the following statement and guidelines.

“Statement by the Committee on the adoption of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

“The Committee against Torture welcomes General Assembly resolution 57/199 of 18 December 2002, adopting and opening for signature, ratification and accession the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

“Notwithstanding efforts by the international community and the mechanisms already in place, torture and ill-treatment still continue to be practised in many countries and all too often impede the effective functioning of national criminal justice systems. The Optional Protocol has as its objective the establishment of a system of regular visits undertaken by independent international or national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. It therefore provides a valuable complement to the

Convention against Torture and the work performed by the Committee, recalling that efforts to eradicate torture and ill-treatment should first and foremost be concentrated on prevention.

“The Committee urges the States parties to ratify the Optional Protocol to the Convention against Torture at the earliest possible stage and strongly encourages them, in accordance with this instrument, to set up or designate at the domestic level independent visiting mechanisms for the prevention of torture. The Committee also urges States parties to recognize forthwith the power of the Subcommittee on Prevention to conduct visits to any place where persons are deprived of their liberty.”

“Guidelines adopted by the Committee regarding the
Optional Protocol to the Convention”

“The Committee welcomes the adoption by the General Assembly of the Optional Protocol to the Convention, whose aim is to prevent torture and other cruel, inhuman and degrading treatment or punishment through a system of regular visits to places of deprivation of liberty by both independent international and national bodies. It notes that no other optional protocol to a human rights treaty creates an independent monitoring body whose members are distinct from those serving on the supervisory committee for the treaty. The Committee makes the following observations and recommendations in connection with the Protocol and its future supervisory body, the Subcommittee on Prevention.

“A. General issues

“1. The Committee welcomes the adoption of the Optional Protocol, encourages all States parties to the Convention against Torture to ratify it and affirms its expectations of full cooperation between the Committee and the Subcommittee in the common objective of preventing torture, as defined in the Convention.

“2. The Committee will encourage States parties to ratify the Protocol when examining reports under article 19. A paragraph to that effect may be included in the conclusions and recommendations addressed to the States. Furthermore, when adopting lists of issues and in its dialogue with the representatives of States parties, particularly with reference to article 11 of the Convention, the Committee may ask whether the State party in question is considering signing and ratifying the Optional Protocol and, if so, what measures it is taking to that effect, including the establishment or designation of one or more national preventive mechanisms that meet the requirements of the Protocol. The Committee may also recommend the establishment or designation of national bodies as envisaged in the Protocol.

“3. Cooperation and coordination between the Committee and its Subcommittee are both desirable and required under the provisions of the

Optional Protocol. Cooperation is envisaged, in general terms, in article 11 (c), whereas article 10, paragraph 3, provides that the Committee and Subcommittee shall hold their sessions simultaneously at least once a year. Therefore, while acknowledging that the Subcommittee will be an autonomous body, effective mechanisms of cooperation and coordination should be established with a view to enhancing State parties' compliance with the terms of the Convention and its Optional Protocol. These may include: (a) the participation of one or several members of the Committee as observers at the meetings of the Subcommittee devoted to the adoption of its rules of procedure. A joint meeting prior to the adoption of the final draft is also recommended; (b) the establishment of a 'standing committee on cooperation' consisting of members of both the Committee and Subcommittee; (c) holding at least one joint meeting per year.

“B. Composition and meetings of the Subcommittee

“The Committee agreed that it would be very positive if one or more experts would belong to the Committee and the Subcommittee at the same time, as that would facilitate cooperation and coordination. Such a possibility should therefore be envisaged. However, there could be some practical difficulties in that regard, such as those linked to the election process.

“The provision contained in article 10, paragraph 3, could also be an obstacle, as it would not be possible for the same expert(s) to attend simultaneous sessions of the Committee and the Subcommittee without neglecting his or her attendance at the other body. The Committee considered, however, that the word 'sessions' rather than 'meetings' meant that the two bodies were expected to convene at the same time. The Committee discussed whether overlapping meeting dates by just one or a few days could still be considered in conformity with paragraph 3 and might offer the advantage of allowing overlapping membership. If such an interpretation of the words 'sessions' and 'simultaneously' was not accepted, other mechanisms would have to be designed to achieve the same goals, for instance having regular joint meetings.

“C. Reporting

“The Committee considers that joint meetings should be held on the occasion of the presentation of the report of the Subcommittee to the Committee. Any requests to the Committee under articles 16, paragraph 4, or 24, paragraph 2, of the Optional Protocol may also be presented at that time.

“D. Areas of coordination between the Committee and the Subcommittee

“The Committee identified the following areas where information sharing and other coordination should be envisaged.

“1. In connection with the activities of the Committee under article 19

“The Committee and the Subcommittee could agree on the following: if the Subcommittee has scheduled a preventive visit to a State party during the six months before or six months after the time when the Committee has scheduled a review of a periodic report of that State party, the Subcommittee should postpone its visit until it has consulted with the Committee.

“2. In connection with the activities of the Committee under article 20

“It would be desirable for visits planned by the Committee to examine information submitted under article 20 of the Convention alleging that systematic torture is practised in a State party to have priority over visits of the Subcommittee. Consultations between the two bodies should take place in that regard. If the Subcommittee agrees, the following procedure could be followed. Upon notification that the Committee has adopted the decision to undertake a confidential inquiry, the Subcommittee should modify its schedule of visits so that none takes place:

“(a) During the time when the Committee is conducting a confidential inquiry, until such time as the report of the inquiry is published or the Committee informs the Subcommittee that the inquiry is completed;

“(b) For one year after the Committee has conducted a confidential inquiry, except where the Committee requests the Subcommittee to undertake a visit.

“The Committee should formally address a request to other United Nations treaty bodies and mechanisms dealing with torture or related matters, including the Subcommittee once it is established, to bring immediately to the Committee’s attention any information that might reveal the existence of systematic use of torture in a State party to the Convention bound by article 20.

“3. In general

“(a) The Subcommittee should provide to the Committee annually a list of the visits that it has scheduled for the coming year;

“(b) Confidential information transmitted to or emanating from the Committee under articles 19, 20 or 22 could be shared with the Subcommittee, upon its request, with the consent, as appropriate, of the author and/or the State party concerned;

“(c) If a State party has ratified the Optional Protocol, the Committee may recommend in its conclusions and recommendations, or decisions under articles 19, 20 or 22 of the Convention, that: (i) the Subcommittee make, and the relevant State party receive a preventive visit; (ii) the Subcommittee take specific action in relation to the relevant State party’s national mechanisms;

“(d) The Committee may provide the Subcommittee with lists of issues and goals that merit special attention during its preventive visits and in the analysis of findings. There could be two sets of lists: a general one that could apply to any country, and a specific one referring to the particular country to be visited;

“(e) The Subcommittee should consider sharing with the Committee, upon its request, confidential information transmitted to or emanating from it, with the consent, as appropriate, of the author and/or the State party/States parties concerned.”