

...

I. ORGANIZATIONAL AND OTHER MATTERS

...

F. Pre-sessional working group

10. During the period under review, the pre-sessional working group did not meet. The Committee instead used the time usually allocated to the pre-sessional working group to meet in plenary session in November 2006 with a view to advancing its work regarding reports awaiting consideration and to address the backlog of reports under article 19.

...

H. General comments

12. At its thirty-seventh and thirty-eighth sessions, the Committee undertook two readings of the draft general comment on the implementation of article 2 of the Convention by States parties. The draft general comment addresses the three parts of article 2, each of which identifies distinct interrelated and essential principles that underpin the Convention's absolute prohibition of torture. The Committee has sent the draft general comment to all stakeholders, States parties, treaty bodies, United Nations agencies and non-governmental organizations (NGOs) requesting comments. These will be consolidated and considered when the Committee undertakes its final reading in November 2007. The draft general comment has been placed on the website of the Office of the United Nations High Commissioner for Human Rights (OHCHR).

...

K. Informal meeting of the Committee with the States parties to the Convention

15. On 15 May 2007, the Committee held an informal meeting with representatives of 43 States parties to the Convention. The Committee and the States parties discussed the following issues: methods of work; targeted reports or lists of issues prior to the submission of periodic reports (see paragraphs 21, 22 and 23); follow-up to articles 19 and 22 of the Convention; compliance by States parties with interim measures; the draft general comment on article 2; the relationship between the Committee against Torture and the Subcommittee on Prevention of Torture; and the possible enlargement of the membership of the Committee against Torture, as well as additional meeting time (i.e. a third session per year).

L. Participation of non-governmental organizations and national human rights institutions

16. In 2005, the Committee began to meet with non-governmental organizations (NGOs) in private, with interpretation, on the afternoon immediately before the consideration of each State party's report under article 19 of the Convention. The Committee considers that this new practice, which has replaced the lunchtime briefings that did not have interpretation, is more useful, as all members are able to follow the discussion. The Committee expresses its appreciation to the NGOs, for their participation in these meetings and is particularly appreciative of the attendance of national NGOs, which often provide immediate and direct information.

17. Similarly, the Committee met during 2005 with the national human rights institutions (NHRI) where these existed, of the countries it has considered. Meetings with each NHRI which attends take place, in private, usually on the day before consideration of the State party.

18. The Committee is extremely grateful for the information it receives from these institutions, and looks forward to continuing these national practices, which have enhanced its understanding of the information before the Committee.

...

II. SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

...

22. The Committee with only two sessions per year is only able to deal with 14 reports, consequently, over the last two years and as an exceptional measure, it has decided to consolidate overdue reports. This measure is reviewed on a case-by-case basis after the consideration of a report, in particular when the Committee considers that the information provided by the State party covers the entire overdue reporting period. The Committee indicates the new date and number of report that the State party should submit in the last paragraph of the concluding observations.

23. At its thirty-eighth session in May 2007, the Committee adopted a new procedure on a trial basis which includes the preparation and adoption of a list of issues to be transmitted to States parties prior to the submission of a State party's periodic report. The State party's replies to the list of issues would constitute the State party's report under article 19 of the Convention. The Committee is of the view that this procedure could assist States parties in preparing focused reports. The lists of issues prior to reporting could guide the preparation and content of the report, and the procedure would facilitate reporting by States parties and strengthen their capacity to fulfil their reporting obligations in a timely and effective manner.

24. The Committee has decided to initiate this procedure in relation to periodic reports that are due in 2009 and 2010. It will not be applied to States parties' reporting obligations where initial reports are concerned or to periodic reports for which a previous report has already been

submitted and is awaiting consideration by the Committee. On 15 May 2007, the Committee met with States parties and introduced and discussed the new procedure. The Committee envisages adopting lists of issues for States parties whose reports are due in 2009, at its upcoming session in November 2007. The lists of issues will thereafter be transmitted to the respective States parties in December 2007, with a request that replies be submitted before the end of 2008, should the State party wish to avail itself of this new procedure.

...

IV. FOLLOW-UP ON CONCLUSIONS AND RECOMMENDATIONS ON STATES PARTIES REPORTS

46. In Chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the conclusions and recommendations on States parties reports submitted under article 19 of the Convention. It also presented information on the Committee's experience in receiving information from States parties from the initiation of the procedure in May 2003 through May 2006. This chapter updates the Committee's experience to 18 May 2007, the end of its thirty-eighth session.

47. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow-up to conclusions and recommendations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. As in the past, Ms. Gaer presented a progress report to the Committee in May 2007 on the results of the procedure.

48. The Rapporteur has emphasized that the follow-up procedure aims "to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment", as articulated in the preamble to the Convention. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific actions designed to enhance each State party's ability to implement the measures necessary and appropriate to prevent acts of torture and cruel treatment, and thereby assists States parties in bringing their law and practice into full compliance with the obligations set forth in the Convention.

49. Since its thirtieth session in May 2003, the Committee began the practice of identifying a limited number of these recommendations that warrant a request for additional information following the review and discussion with the State party concerning its periodic report. Such "follow-up" recommendations are identified because they are serious, protective, and are considered able to be accomplished within one year. The States parties are asked to provide within one year information on the measures taken to give effect to its "follow-up recommendations" which are specifically noted in a paragraph near the end of the conclusions and recommendations on the review of the States parties' reports under article 19.

50. Since the procedure was established at the thirtieth session in May 2003, through the end of the thirty-eighth session in May 2007 the Committee has reviewed 53 States for which it has identified follow-up recommendations. Of the 39 States parties that were due to have submitted their follow-up reports to the Committee by 18 May 2007, 25 had completed this requirement

(Albania, Argentina, Austria, Azerbaijan, Bahrain, Canada, Chile, Czech Republic, Colombia, Croatia, Ecuador, Finland, France, Germany, Greece, Latvia, Lithuania, Monaco, Morocco, New Zealand, Qatar, Sri Lanka, Switzerland, United Kingdom and Yemen). As of 18 May, 14 States had not yet supplied follow-up information that had fallen due (Bulgaria, Bosnia and Herzegovina, Cambodia, Cameroon, Democratic Republic of the Congo, Georgia, Guatemala, Republic of Korea, Moldova, Nepal, Peru, Togo, Uganda and United States of America). In March 2007, the Rapporteur sent a reminder requesting the outstanding information to each of the States whose follow-up information was due in November 2006, but had not yet been submitted, and who had not previously been sent a reminder.

51. The Rapporteur noted that 14 follow-up reports had fallen due since the previous annual report (A/61/44). However, only 4 (Austria, Ecuador, Qatar and Sri Lanka) of these 14 States had submitted the follow-up information in a timely manner. Despite this, she expressed the view that the follow-up procedure had been remarkably successful in eliciting valuable additional information from States on protective measures taken during the immediate follow-up to the review of the periodic reports. While comparatively few States had replied precisely on time, 19 of the 25 respondents had submitted the information on time or within a matter of one to four months following the due date. Reminders seemed to help elicit many of these responses. The Rapporteur also expressed appreciation to non-governmental organizations, many of whom had also encouraged States parties to submit follow-up information in a timely way.

52. Through this procedure, the Committee seeks to advance the Convention's requirement that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture ..." (art. 2, para. 1) and the undertaking "to prevent ... other acts of cruel, inhuman and degrading treatment or punishment ..." (art. 16).

53. The Rapporteur has expressed appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow-up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information is needed, she writes to the State party concerned with specific requests for further clarification. With regard to States that have not supplied the follow-up information at all, she writes to solicit the outstanding information.

54. At its thirty-eighth session in May, the Committee decided to make public the Rapporteur's letters to the States parties. These would be assigned a United Nations document symbol number and placed on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies (these symbol numbers are under consideration) to the follow-up and also place them on its website.

55. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow-up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters

seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.

56. In the correspondence with States parties, the Rapporteur has noted recurring concerns which are not fully addressed in the follow-up replies. The following list of items is illustrative, not comprehensive:

(a) The need for greater precision on the means by which police and other personnel instruct on and guarantee detainees their right to obtain prompt access to an independent doctor, lawyer and family member;

(b) The importance of specific case examples regarding such access, and implementation of other follow-up recommendations;

(c) The need for separate, independent and impartial bodies to examine complaints of abuses of the Convention, because the Committee has repeatedly noted that victims of torture and ill-treatment are unlikely to turn to the very authorities of the system allegedly responsible for such acts; and the importance of the protection of persons employed in such bodies;

(d) The value of providing precise information such as lists of prisoners which are good examples of transparency, but which often reveal a need for more rigorous fact-finding and monitoring of the treatment of persons facing possible infringement of the Convention;

(e) Numerous ongoing challenges in gathering, aggregating, and analysing police and administration of justice statistics in ways that ensure adequate information as to personnel, agencies, or specific facilities responsible for alleged abuses;

(f) The protective value of prompt and impartial investigations into allegations of abuse, and in particular information about effective parliamentary or national human rights commissions or ombudspersons as investigators, especially for instances of unannounced inspections; the utility of permitting non-governmental organizations to conduct prison visits; and the utility of precautionary measures to protect investigators and official visitors from harassment or violence impeding their work;

(g) The need for information about specific professional police training programmes, with clear-cut instructions as to the prohibition against torture and practice in identifying the sequellae of torture; and for information about the conduct of medical examinations, including autopsies, by trained medical staff, especially whether they are informed of the need to document signs of torture including sexual violence and to ensure the preservation of evidence of torture;

(h) The need for evaluations and continuing assessments of whether a risk of torture or other ill-treatment results from official counter-terrorism measures;

(i) The lacunae in statistics and other information regarding offences, charges and convictions, including any specific disciplinary sanctions against officers and other relevant personnel, particularly on newly examined issues under the Convention, such as the intersection of race and/or ethnicity with ill-treatment and torture, the use of "diplomatic assurances" for persons being returned to another country to face criminal charges, incidents of sexual violence, complaints about abuses within the military, etc.

...

VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

A. Introduction

64. Under article 22 of the Convention, individuals who claim to be victims of a violation by a State party of the provisions of the Convention may submit a complaint to the Committee against Torture for consideration, subject to the conditions laid down in that article. Sixty-two out of 144 States that have acceded to or ratified the Convention have declared that they recognize the competence of the Committee to receive and consider complaints under article 22 of the Convention. The list of those States is contained in annex III. No complaint may be considered by the Committee if it concerns a State party to the Convention that has not recognized the Committee's competence under article 22.

65. Consideration of complaints under article 22 of the Convention takes place in closed meetings (art. 22, para. 6). All documents pertaining to the work of the Committee under article 22, i.e. submissions from the parties and other working documents of the Committee, are confidential. Rules 107 and 109 of the Committee's rules of procedure set out the complaints procedure in detail.

66. The Committee decides on a complaint in the light of all information made available to it by the complainant and the State party. The findings of the Committee are communicated to the parties (article 22, paragraph 7, of the Convention and rule 112 of the rules of procedure) and are made available to the general public. The text of the Committee's decisions declaring complaints inadmissible under article 22 of the Convention is also made public, without disclosing the identity of the complainant, but identifying the State party concerned.

67. Pursuant to rule 115, paragraph 1, of its rules of procedure, the Committee may decide to include in its annual report a summary of the communications examined. The Committee shall also include in its annual report the text of its decisions under article 22, paragraph 7, of the Convention.

B. Interim measures of protection

68. Complainants frequently request preventive protection, particularly in cases concerning imminent expulsion or extradition, and invoke in this connection article 3 of the Convention. Pursuant to rule 108, paragraph 1, at any time after the receipt of a complaint, the Committee, through its Rapporteur for new complaints and interim measures may transmit to the State party concerned a request that it take such interim measures as the Committee considers necessary to avoid irreparable damage to the victim or victims of the alleged violations. The State party shall be informed that such a request does not imply a determination of the admissibility or the merits of the complaint. The Rapporteur for new complaints and interim measures regularly monitors compliance with the Committee's requests for interim measures.

69. The Rapporteur for new complaints and interim measures has developed working methods regarding the withdrawal of requests for interim measures. Where the circumstances

suggest that a request for interim measures may be reviewed before the consideration of the merits, a standard sentence is added to the request, stating that the request is made on the basis of the information contained in the complainant's submission and may be reviewed, at the initiative of the State party, in the light of information and comments received from the State party and any further comments, if any, from the complainant. Some States parties have adopted the practice of systematically requesting the Rapporteur to withdraw his request for interim measures of protection. The Rapporteur has taken the position that such requests need only be addressed if based on new and pertinent information which was not available to him when he took his initial decision on interim measures.

70. The Committee has conceptualized the formal and substantive criteria applied by the Rapporteur for new complaints and interim measures in granting or rejecting requests for interim measures of protection. Apart from timely submission of a complainant's request for interim measures of protection under rule 108, paragraph 1, of the Committee's rules of procedure, the basic admissibility criteria set out in article 22, paragraphs 1 to 5, of the Convention, must be met by the complainant for the Rapporteur to act on his or her request. The requirement of exhaustion of domestic remedies can be dispensed with if the only remedies available to the complainant are without suspensive effect, i.e. remedies that do not automatically stay the execution of an expulsion order, or if there is a risk of immediate deportation of the complainant after the final rejection of his or her asylum application. In such cases, the Rapporteur may request the State party to refrain from deporting a complainant, while his or her complaint is under consideration by the Committee, even before domestic remedies have been exhausted. As for substantive criteria to be applied by the Rapporteur, a complaint must have a substantial likelihood of success on its merits for it to be concluded that the alleged victim would suffer irreparable harm in the event of his or her deportation.

71. The Committee is aware that a number of States parties have expressed concern that interim measures of protection have been requested in too large a number of cases, especially where the complainant's deportation is alleged to be imminent, and that there are insufficient factual elements to warrant a request for interim measures. The Committee takes such expressions of concern seriously and is prepared to discuss them with the States parties concerned. In this regard it wishes to point out that in many cases, requests for interim measures are lifted by the Special Rapporteur, on the basis of pertinent State party information received that obviates the need for interim measures.

...

VII. FUTURE MEETINGS OF THE COMMITTEE

88. In accordance with rule 2 of its rules of procedure, the Committee holds two regular sessions each year. In consultation with the Secretary-General, the Committee took decisions on the dates of its regular session for the biennium 2008-2009. Those dates are:

Fortieth	26 April-16 May 2008
Forty-first	3-21 November 2008
Forty-second	4-22 May 2009
Forty-third	9-27 November 2009

89. Since 1995 the Committee has received 203 reports, an average of 16 reports per year. In this same period the Committee has considered an average of 13 reports per year, a total of 163 reports. This means that at 18 May 2007, the last day of the thirty-eighth session, there were 26 reports awaiting consideration. In 1995, 88 countries were party to the Convention against Torture. In 2007 there are 144 States parties thus constituting a 64 per cent increase. During this time there has been no increase in the plenary meeting time allocated to the Committee.

90. There are two interlinked issues that need to be considered. One is the importance of providing the Committee with sufficient meeting time for it to undertake its work in an efficient manner, and the second is to facilitate the consideration of the backlog of over 25 reports awaiting review.

91. Insofar as the first issue is concerned, dealing with the incoming workload can be addressed by the Committee meeting for two three-week sessions per year, thereby enabling the Committee to deal with 16 reports per year or approximately the number received each year.

92. The second issue raises the important requirement of addressing the current backlog of 30 reports pending before the Committee. This represents a backlog of two years, meaning that a report submitted to the Committee in June 2007 would not be considered before November 2009. The Committee considers that it could deal with the backlog were it authorized to meet on an exceptional basis for three sessions per year during the biennium 2008-2009. The third (exceptional) session in each of the years 2008 and 2009 would be dedicated exclusively to the consideration of States parties' reports. The Committee would be able to consider 10 reports per exceptional session.

...