



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

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Summary record of the first part (public)* of the 898th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 3 November 2009, at 10 a.m.

Chairperson: Mr. Grossman

Contents

Consideration of reports submitted by States parties under article 19 of the Convention

Second periodic report of Yemen

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.898/Add.1.

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The meeting was called to order at 10.10 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention

Second periodic report of Yemen (CAT/C/YEM/2; CAT/C/YEM/Q/2)

1. **The Chairperson** announced that the Committee had taken a unanimous decision not to postpone or suspend its consideration of the second periodic report of Yemen although the State party had not sent representatives to participate in the review. Acting on rule 66, paragraph (2) (b), of its rules of procedure, the Committee would consider the report in the absence of a delegation. The Committee would adopt provisional concluding observations and invite the State party to submit written comments thereon. The final concluding observations would be drawn up at the next session in the light of the written comments.
2. **Mr. Wang Xuexian** said that he had been unable to attend the previous day's meetings on account of flight delays at Beijing airport.
3. While he respected the Committee's decision to consider the report of Yemen in the absence of a delegation, he was unable to join the consensus. The Committee's mandate required it to engage in a dialogue with States parties. It was therefore unacceptable, in his view, to proceed with a review of Yemen's compliance with the Convention in the absence of a delegation.
4. **The Chairperson** noted that rule 66, paragraph 2 (b), had already been applied in the case of the initial report of Cambodia in 2003. The Committee had given Yemen one year's notice of the dialogue on its second periodic report and had only been informed the previous week of its decision not to send a delegation. The State party would be given an opportunity to engage with the Committee on the basis of the provisional concluding observations.
5. **Ms. Sveaass**, First Country Rapporteur, welcomed Yemen's second periodic report (CAT/C/YEM/2), which had been submitted in July 2007. Its initial report (CAT/C/16/Add.10), due in December 1992, had been considered in November 2003, i.e. some 10 years later than scheduled. The State party had submitted comments on the Committee's concluding observations (CAT/C/CR/31/4/Add.1) in September 2005.
6. She regretted the absence of a State party delegation and was also disappointed that no representative of the Permanent Mission of Yemen to the United Nations Office at Geneva was present to allow some form of dialogue to take place.
7. The establishment of the Ministry of Human Rights in 2003 had been an important step in the right direction. Although the report claimed that the Ministry's objectives were in line with those of the Paris Principles, she understood that no national human rights institution had yet been established. Another positive aspect was the fact that Yemen had ratified most international human rights instruments.
8. The report stressed the importance of human rights training and awareness-raising through Internet facilities, databases and round-table discussions. However, the Committee had received numerous reports of lack of transparency and oversight mechanisms, obstruction of monitoring bodies, and reluctance to accept allegations of torture and ill-treatment, to undertake effective and independent investigations and to hold perpetrators accountable for their acts. The Committee had also been informed that government officials frequently used excessive force.
9. New draft legislation, especially concerning counter-terrorism measures, and the role in that connection of the National Security Authority and the Counter-Terrorism

Department at the Ministry of the Interior had been criticized. A very large number of persons had allegedly been detained and demonstrations had been violently suppressed. The Committee invited the State party to respond to those allegations.

10. Article 47 of the Yemeni Constitution prohibited physical and psychological torture and forced confessions. Crimes of torture committed in the course of arrest or detention were not subject to a statute of limitations, and anyone who participated in, ordered or practised torture would be held to account. However, Yemen's criminal legislation contained no comprehensive definition of torture covering all elements of article 1 of the Convention.

11. The Committee had been informed by several sources that no member of the security services had ever been punished for the crime of torture despite the existence of serious allegations. The practice of torture was allegedly widespread in Yemeni prisons, including State security prisons, and the courts apparently disregarded allegations of torture made by prisoners during judicial proceedings. Doctors or forensic physicians were also reportedly unavailable to assess possible evidence of torture.

12. The Committee had noted major discrepancies between the information on the rights of detainees contained in the report and data received from other sources, especially with respect to access to legal counsel and an independent doctor and notification of the detainee's family. The practice of incommunicado detention seemed to be upheld by article 34 of the Prisons Regulation Act No. 48 of 1991. The Committee was also alarmed by reports of detention without charge or trial, sometimes for long periods, and by the lack of any avenue of appeal against such treatment, which could also involve psychological and physical torture.

13. A number of United Nations bodies had criticized the practice whereby relatives of "wanted" individuals were taken hostage for years at a time, until the suspects turned themselves in. Such practices were expressly prohibited by the International Convention against the taking of hostages.

14. According to the United Nations Working Group on Arbitrary Detention, many persons were detained, especially in Political Security Department detention centres, for months or even years. Such measures were allegedly taken in pursuance of counter-terrorism policy. She asked whether Yemen would consider inviting the Working Group to visit the country.

15. There had also been reports of kidnappings and extrajudicial killings, even of minors. The possibility of inviting the Special Rapporteur on extrajudicial, summary or arbitrary executions to visit Yemen had been discussed in 2006 but no invitation had been issued.

16. Both Yemeni citizens and foreigners had been arbitrarily detained and held in secret places of detention for long periods. For instance, according to NGO reports, four Cameroonians had been abducted from Sanaá Plaza Hotel in March 1995 by Political Security personnel and held in a solitary underground cell for several years without being charged. Their existence had been acknowledged in 2005 by the Minister of the Interior, who had announced that they would be brought before a judge. But apparently no such action had been taken to date.

17. There were also reports of persons disappearing without trace until their families were notified by Political Security Department personnel several months later. They were allegedly abducted and held under harsh conditions, including solitary confinement, and were frequently subjected to psychological and physical torture and ill-treatment. The Committee wished to know what happened if and when such cases came to court, in particular whether there would be a full investigation and whether those responsible would

be held accountable. She also asked whether Yemen planned to invite the Special Rapporteur on torture to visit the country.

18. Yemen had accepted the recommendation by the Committee and the universal periodic review mechanism to ensure that detainees, including those held by the Political Security Department, had immediate access to legal representation. She asked what specific action was being taken in that regard and to ensure that the security services respected the maximum period of pretrial detention, to prevent persons from being held without charge and to ensure that charges were laid in a timely manner.

19. According to information received by the Committee, women could be imprisoned for acts such as prostitution, alcoholism and indecent behaviour in public or in private, and also for *khilwa*, private meetings between males and females who were not close relatives. The Committee would appreciate receiving an account of the kinds of offences for which women were arrested and detained and any available statistics on women detainees. The risk of rape by prison officers was another important issue.

20. According to the Committee on the Elimination of Discrimination against Women, women were often forced to stay in places of detention because their families or guardians refused to take them in or because they could not afford to post bail. Most detention centres were also reportedly unfit for women because there were few female guards and inadequate health facilities. The State party should indicate whether any measures were being taken to remedy the situation.

21. The killing of women by their husbands or relatives seemed to be treated differently from the killing of men. She asked whether there were any statistics on the number of women killed by their husbands, what proportion were termed honour killings and what action was taken to deal with such brutal crimes. It had also been alleged that the proposed amendment to article 26 of the Criminal Code might aggravate the situation.

22. The Committee's Rapporteur for follow-up had asked for a report on the oversight function of the Department of Public Prosecutions, which included ensuring that no one was detained illegally. In the light of recent reports of the lack of monitoring and oversight mechanisms and of independent visiting bodies, she asked whether the possibility of giving civil society organizations access to places where persons were detained, or even kidnapped, had been considered. The media allegedly faced problems when they addressed such issues, and bodies such as the International Committee of the Red Cross had been denied access to places of detention. There seemed to be no standard rules governing prisons. For instance, the armed forces exercised full control over military prisons and there was little oversight.

23. The International Federation for Human Rights and its partner organizations in Yemen, the Sisters' Arab Forum for Human Rights and the National Organization for Defending Rights and Freedoms, had jointly mandated a fact-finding mission to Yemen in August 2009 to assess respect for human rights in the context of the fight against terrorism. They had recommended that the draft legislation to counter terrorism, money laundering and the funding of terrorism should be amended to guarantee protection of human rights (e.g. the provisions defining torture and the procedures for the detention of suspects). The Committee wished to know how the State party proposed to ensure that counter-terrorism measures were fully consistent with human rights.

24. Citing paragraph 176 of the report concerning *hadd* penalties, which were apparently imposed for theft and adultery, she asked how the offences were defined, whether convictions were frequent and subject to oversight, what kinds of penalties were imposed and whether judgements could be appealed.

25. She emphasized that cultural and religious views should not be allowed to jeopardize the rights enshrined in the Convention.

26. The Committee noted with concern that corporal punishment in homes was still legal in Yemen.

27. Lastly, she expressed concern about the current situation of internally displaced persons and about the rights of asylum-seekers, especially since Yemen was one of the few countries in the region that had ratified the Convention.

28. **Ms. Belmir**, Second Country Rapporteur, noted that the State party was contending with a variety of problems such as the conflict in the northern part of the country, the imposition of structural adjustment plans by international institutions that were opposed by the population, and the fight against terrorism. It was also a complex society in which tribalism and its associated informal institutions played a major role. The State party's reform efforts were commendable under such circumstances, in particular the introduction of human rights training courses for law enforcement officials and its action in support of refugees, including ratification of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and its close collaboration with UNHCR. It had also taken action to improve conditions for young offenders, setting up nine special juvenile courts, and had adopted a national strategy for the modernization and development of the judiciary (2005–2015).

29. The overview of its current legislation on torture provided by the State party revealed that, in a number of different ways, Yemen did not adhere to the same definition of torture as that contained in article 1 of the Convention. As to the structure of the justice system and the new developments described in the second periodic report, it appeared that the judiciary was hampered in its work by interference from the executive. In that connection, she would appreciate receiving more detailed information regarding the appointment of judges in Yemen and the judicial mobility process referred to in paragraph 62 of the report. In addition, she wished to know whether the committee that had been established for the purpose of proposing judicial reforms had successfully completed its work.

30. With regard to the criminal justice system, there appeared to be a host of institutions — including the security forces — that were empowered to arrest and detain suspects or hold them incommunicado. It was unclear what type of connection existed between places of detention, the central Government and the courts. Because of that ambiguity it was difficult to know whether the 24-hour maximum period for pretrial detention, the obligation to obtain an arrest warrant or other procedural guarantees established under Yemen's domestic law were being respected. She noted that no information had been provided by the State party concerning restrictions on the rights of detainees under its anti-terrorist legislation. The fact that certain private individuals were empowered to carry out arrests and detentions in unofficial places of detention meant that the State was not totally in control of the detention process. Therefore, it might rightly be said that the judicial system in Yemen was not fulfilling its role as the guarantor of rights and the rule of law.

31. Regarding the question of the appointment and removal of judges, it was clear from certain cases that had been referred to the Committee by the Human Rights Observatory in Yemen, that a number of judges had been punished for various acts, either by being suspended or by being dismissed from their duties. Yet public opinion in Yemen seemed to be silent on that matter, despite the fact that Yemen wished to be known as a country governed by the rule of law.

32. As to the problem of the detention of minors, it appeared from a number of cases that the normal logic of juvenile justice and the criteria set out in international instruments in that field did not apply. The age of majority did not appear to be respected, and children

as young as 7 or 8 were imprisoned in the same sections as adults and were often abused. Moreover, children could also be sentenced to death and executed. Although there were perhaps only a few such cases, even a single case was cause for serious concern.

33. According to reports she had received, the relatives of persons being sought by the police were used to compel fugitives to turn themselves in. That problem was exacerbated by the fact that individuals abducted or arrested on those grounds could themselves be held in detention without trial for periods of up to two years. In general, suspects were frequently not brought before a judge within the prescribed time limit, or if they were prosecuted and found guilty, they remained in prison longer than their sentence. That was especially true for persons who had to pay a fine and who could be held for up to two years longer than their sentence. In that regard, the situation was one of total lawlessness.

34. With regard to women's rights, she wished to mention a specific case that she considered to be a matter of grave concern. It had to do with a woman who had been arrested for moving from one town to another without an escort, an escort being required by law. She had been imprisoned for six months and had allegedly been tortured. There were also cases of women who were not only abused but also raped at the time of their arrest, and cases of women without any form of family support who remained in places of detention beyond the prescribed term.

35. She also wished to draw attention to the problem of children who were sent to other countries where they were ill-treated or subjected to human trafficking, in particular, children between the ages of 8 and 11 who were sent to Saudi Arabia. Such incidents seemed to recur regularly, and it was incumbent upon the State party to take action to stop them.

36. **The Chairperson** invited the other members of the Committee to put questions to the State party. Those questions would be transmitted to it in writing.

37. **Mr. Mariño Menéndez** said that he understood the current exercise to be a form of dialogue with the State party, despite its absence. As set out in the Committee's rules of procedure, the Committee would make provisional observations, which would be sent to the State party for its comments. The dialogue would then continue at the Committee's next session. In that connection, he would appreciate clarification regarding the appointment of the Higher Judicial Council, which was the body whose executive powers enabled it to decide the fate of judges. He expressed concern at a provision contained in article 26 of the Code of Criminal Procedure of 1994 which stated that criminal proceedings could not be brought against a public servant for any offence which occurred during the discharge of his or her duties unless authorized by the Department of Public Prosecutions. That had the effect of concentrating the power to prosecute public officials in the hands of only a few persons, which was ill-advised. He asked whether that provision was still in force and whether any steps had been taken to repeal it.

38. With regard to the treatment of women under the law, he wished to know whether the Safe Motherhood Act had been adopted and, if so, with what results. In that connection, he enquired whether forced marriage was still practised and whether any efforts were being made to eliminate it.

39. He asked whether or not the offence of torture was subject to a statute of limitations as the State party's legislation appeared to contain conflicting provisions in that regard. He urged the State party to establish a national human rights protection mechanism that was in keeping with the Paris Principles and, similarly, to ratify the Optional Protocol to the Convention. Such a mechanism would help to strengthen the assistance provided by Yemen's national human rights institution, *inter alia* in preventing torture.

40. **Ms. Gaer** said that she regretted the absence of the delegation but would proceed with questions she would have asked had the delegation been present. Before doing so, she wished to comment briefly on the purpose of the Committee's actions under article 19 of the Convention, which required States parties to submit reports to the Committee. It also required that each report should be considered by the Committee and that the Committee should make such general comments on the report as it considered appropriate, subsequently forwarding them to the State party concerned. There was no mention in article 19 of a dialogue; however, it had been the practice of the Committee and all other treaty bodies to conduct the reviews whenever possible in the presence of representatives of the States parties. That practice had been initiated at the request of States parties. The Committee reviewed a case in the absence of a State party only in the most unusual circumstances, and dialogue was vital to that process; however, dialogue was a means to an end, not an end in itself. The end was compliance with, and implementation of, the provisions of the Convention. In that regard, rule 66 of the Committee's rules of procedure amply addressed the desirability of having the State party present, and if the State party failed to send a representative, proceeding to examine the report at the session originally specified.

41. It was her understanding from the previous review of the State party that the Government had said that it carried out inspections of prisons. However, the Committee had sought in vain to obtain information about the results of those inspections. She wished to know, for example, whether there had been any cases of persons in prison who had not been entered in the prison register, cases of incommunicado detention or cases of persons who had disappeared. She would also like to know whether any officials had been prosecuted under Decree 91 of 1995 or any other decree for failing to register prisoners or for subjecting them to ill-treatment or torture. Similarly, she wished to know whether any public bodies had been established to address and/or oversee those issues.

42. The Committee had received reports from the International Federation of Human Rights Leagues to the effect that Yemeni courts did not take seriously allegations of torture that were presented to them: they did not order investigations into such allegations or request forensic physicians to validate them. She would appreciate it if the Government would comment on the specific cases cited by that NGO. She enquired whether the State party had any means of monitoring sexual violence in prisons, and if so, what specific results had been obtained.

43. According to information she had received concerning the arrest and detention of members of the Baha'i international community in Sana'a by National Security Authority personnel, two Yemeni members of that community had been released immediately but five foreign members had been released later on condition of leaving the country within a few months. She asked whether there had been any supervision of the treatment of those persons in prison and how the courts had reached the decision to expel them from the country.

44. The Committee had also received information about the establishment of a new authority for protecting virtue and fighting vice, whose purpose was to enforce religious norms and alert the police to infringements of religious law. There had been reports that the sole authority over that religious police force lay with the Yemeni Clerics Association, which was a private group. Many civil society organizations had complained to the parliament about the actions of the new authority, which had allegedly included insulting women. She asked for clarification of the precise jurisdiction of that religious police force and asked whether it was regulated by law and was subject to review by ordinary judicial authority. She enquired what training its members received, what actions they took and what was their relationship with the ordinary police forces.

45. In the Committee's previous discussions with the State party, it had been informed that persons accused or convicted of terrorist acts were dealt with through a measure known as "ideological dialogue". She enquired as to the content of such dialogue and whether it was monitored to ensure that no ill-treatment or actions in violation of the Convention were perpetrated in association with it. She requested information from the Government about whether any forms of coercion or deprivation were used in the course of the dialogues.

46. With regard to women's issues, she understood that the practice of early marriages had been criticized by the Committee on the Elimination of Discrimination against Women as a form of violence against women. She would appreciate it if the State party could indicate what measures it had taken to prevent that practice and to protect girls from the violence associated with it.

47. **Mr. Gallegos Chiriboga** said that the Committee had a mandate, but also a desire, to cooperate with the State party, and he sincerely regretted its absence at the current meeting. He endorsed the need for clarification of its judicial system by the State party. The fact that there appeared to be frequent and ongoing violations of human rights standards in Yemen and that such violations were not punished appropriately as required by the Convention fostered a climate of impunity, which in turn gave rise to repetition of those acts. It was of the utmost importance for the State party to respond by developing the framework, authority and political will required to punish those who violated domestic and international law in the area of human rights.

48. **Mr. Gaye** said that it was difficult to form a clear picture of the human rights situation in Yemen, where there was a glaring contradiction between legislation and practice, especially when the State party had not sent a delegation to provide relevant information. The human rights situation prompted grave concern, particularly in view of the commitments undertaken by Yemen on ratifying the Convention. Essentially, there appeared to be a serious lack of checks and balances among the various branches of government. That gave rise to questions about whether the media in Yemen enjoyed freedom of expression and whether lawyers enjoyed the freedoms accorded their profession in a State governed by the rule of law. If so, they could operate as a positive force for re-establishing equilibrium and for helping to promote respect for human rights.

49. **The Chairperson**, speaking in a personal capacity, added his voice to those of colleagues who had expressed regret that the State party was not present at the examination of the report, and had not transmitted to the Committee any replies to the list of issues that had been sent to it some six months previously. The Committee would undoubtedly have benefited from receiving replies and from the presence of a delegation, which would have provided further details for the Committee and been able to publicize the Committee's concerns and recommendations in the State party. The provisional concluding observations would nonetheless give the State party the opportunity to respond to the Committee's views. The Committee looked forward to re-establishing a dialogue with the State party.

50. Article 48 of the Constitution included elements of the definition of torture contained in the Convention, but limited the provisions on torture and ill-treatment to circumstances involving arrest, detention and imprisonment. It did not include abuse in other situations, as required by article 1 of the Convention. It would be useful to learn whether the State party planned to amend its legislation in order to bring it into line with article 1. Furthermore, he would appreciate information on whether the provisions in article 166 of the Code of Offences and Penalties had been applied, and if so, what prison sentences the courts had handed down in each case. Given that the article appeared to be limited to cases in which an official was trying to obtain a confession, the Committee would also welcome information on any plans to amend that legislation to bring it into line with article 1 of the Convention.

51. He wished to know whether there were any legal provisions that clearly stipulated that the order of a superior officer or public authority could never be invoked to justify torture. He also requested additional information on procedures for filing complaints regarding arrest, how many times those procedures had been invoked and what the results had been.

52. The Committee would welcome the State party's reaction to reports that the National Security Authority and the Ministry of the Interior had been linked with allegations of torture. Mr. Salah Ahmed Yahya al-Shagladi, chief editor of Aden Gulf Network News, had reportedly been arrested on 18 June 2009 by National Security officers and was being held incommunicado. The Committee would appreciate information on what methods of detention were used by those two bodies, whether the public was aware of them, and whether there had been any cases of complaints. It would be interesting to learn what position the National Security Authority occupied within the government structure and which body monitored its activity.

53. In the light of NGO reports that suspected spies and alleged supporters of several groups had been unfairly tried before the Specialized Criminal Court, it would be useful if the State party could clarify what procedures were in place in the Court and whether there had been any investigations into those allegations. He also wished to know what institutional guarantees had been adopted. Additional details of the functioning of that Court would be useful in order to enable the Committee to confirm that it was independent and impartial.

54. While applauding the State party's intention to improve conditions in prisons and to comply with established international standards on prison construction, he wished to know whether all private prisons in the State party were registered and whether they were included in that laudable programme.

55. Given the high number of internally displaced persons in the State party, the Committee would welcome information on whether measures had been taken to ensure that humanitarian organizations had proper access to them. It would be useful to know what training on the Convention was given to military personnel, particularly since article 2 of the Convention provided that it applied even in times of conflict.

56. The Committee took the issue of the involuntary return of asylum-seekers very seriously, as non-refoulement was an obligation under article 3 of the Convention. He therefore asked what measures were taken to ensure that all asylum applications were thoroughly reviewed. It would be interesting to learn what procedures were used to evaluate refugee status. He also requested statistics on the number of asylum applications and reviews and their outcomes.

57. Additional details should be provided on any awareness-raising programmes for staff of the Political Security Department, the National Security Authority and the Ministry of the Interior.

58. It was important that the State party should provide information on the numerous cases of alleged torture and ill-treatment reported by NGOs, including those of Mohamed Abd Al Rahman Abdallah, Sha'ef Ali Al Heimy and Nasser Saleh Mohamed Gabran. It would be useful to learn whether the cases had been investigated, whether the perpetrators had been punished, and whether the victims and family members had received reparation and rehabilitation, as required under article 14 of the Convention. The State party should provide the same information on the reported cases of mass arrest and incommunicado detention without access to due process. While there had been reports that reparation had been paid in some cases, the Committee had also learned of victims of torture who had received compensation and subsequently been re-arrested, which raised serious issues of credibility. He would welcome more details of such cases, and information on the measures

taken to protect those who denounced human rights violations. He also asked whether there had been any criminal proceedings against officials for acts of hostage-taking.

59. Article 26 of the Code of Criminal Procedure appeared to indicate that an individual required official authorization in order to file a criminal complaint against an official. He requested clarification on that matter, as it would be a direct violation of the Convention if that were the case. It would be useful to learn whether there had been cases in which such authorization had been granted. Article 38 of the Code contained a 10-year statute of limitation on offences involving torture or ill-treatment. Under the Convention, there was no statute of limitation on serious human rights violations. He therefore wished to know whether the State party planned to amend that article.

60. NGOs had reported that torture and ill-treatment were used in connection with legal proceedings against defendants or third persons. Given that the Convention prohibited the use of confessions extracted by torture or ill-treatment, he wished to know the State party's reaction to those reports. It would be useful to have statistics on defendants who had claimed that their confessions had been made under duress and to know whether those statements had been admitted as evidence.

61. The Committee would appreciate information on whether the State party had introduced legislative measures to raise the minimum age of criminal responsibility, and whether it had forbidden the courts from imposing the death penalty on children under the age of 18. In particular, he requested updated information on the case of Walid Haykal, who had been sentenced to death for a murder committed when he had been 16.

62. Turning to the issue of domestic violence, he asked whether the State party provided shelters where women could seek protection from abusive husbands and family members.

63. He requested confirmation of reports that rival groups were sometimes placed together in prisons, leading to attacks and deaths of prisoners.

The public part of the meeting rose at 11.50 a.m.