



NOTE TO NGOs PARTICIPATION IN THE WORK OF THE COMMITTEE AGAINST TORTURE

The United Nations Committee against Torture (“CAT”) is mandated by article 19 of the *Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment* (the “Convention”), to examine periodic reports¹ presented by the States that are party to the Convention.

The periodic reporting and examination process is the primary means of monitoring implementation by States of the obligations imposed upon them by the Convention. Indeed, the information contained in the reports and the oral dialogue between the government delegation and Committee members provides the factual basis upon which the Committee assesses States’ compliance with and implementation of the Convention. The concluding observations and recommendations adopted by the Committee can provide important political leverage for NGOs in their interaction with national authorities.

Historically, NGOs have participated in the periodic report and examination process mainly by producing alternative written reports, to give CAT members a more complete vision of the situation in the country, so that the Committee’s information is not limited to only that provided by the government’s self-analysis.

The entire periodic reporting and review procedure has changed somewhat in the past two years. NGOs must take these changes into account to continue to participate effectively in the work of the CAT.

1. THE NEW PROCEDURES

The CAT recently adopted two significant changes in relation to the reporting and examination process under article 19 of Convention. The first change concerns the *contents* of the dialogue between the Committee and the State Party. The second change relates to the *methods* of participation by NGOs.

1.1 "Lists of Issues"

Since May 2004 the CAT has used "lists of issues" as a key part of its process for examining States Parties on their periodic reports. “Lists of issues” were already a

¹ In this note we discuss only periodic reports, as distinct from the Initial Report States must file shortly after they first become subject to the Convention. Initial reports will be the subject of a separate note. In any event, for initial reports the existing advisory prepared by APT remains pertinent: <http://www.apr.ch/un/cat/CAT%English.pdf>

part of the procedures of other UN Treaty Bodies, such as the Human Rights Committee. This section describes the CAT “list of issues” procedure.

Just before the full session of the CAT, a smaller working group of CAT members meets for a week and prepares a list of specific questions for each of the States that will be examined during the next following session. Thus, if the full CAT is meeting in May and November of a given year, the lists of issues for States that will be examined in November are determined in a working group meeting immediately before the May meeting.²

The lists of questions are based on information contained in the periodic report that the State has presented to the Committee, and other sources of information. The number of questions depends on the situation in the particular State, but generally the lists of issues consist of twenty to thirty questions. The list of issues is transmitted to the State well in advance of the CAT session; the oral dialogue between the State delegation and CAT members that takes place at the public CAT session is then based for the most part of the questions contained in the list of issues.

The “list of issues” procedure was introduced in part because the periodic reports of States Parties increasingly did not contain information that was relevant to the key concerns of CAT members. In some cases, the problem arose because the information contained in the written report was outdated by the time the Committee actually carried out the oral review of the report with the State delegation. In other cases, States intentionally avoided difficult topics, making it difficult for the CAT to make useful findings in its concluding observations and recommendations.

A second, related, reason for introducing the “list of issues” was to make the oral dialogue between CAT members and the State delegation more effective. Some years ago, to respond to the decreasing usefulness of the information States were including in their periodic reports, the CAT members began posing more precise oral questions, based in part on information provided by NGOs through alternative reports or other informal means of communication, during the oral dialogue with State delegations at CAT meetings in Geneva.

However, States complained, sometimes with justification, that it was not possible to answer these questions in a satisfactory way, as the delegation would only have 24 hours to contact the relevant officials located back in the State itself to gather the information necessary to answer the Committee’s questions. As a result, the dialogue between the delegation and Committee was often not fruitful, adversely affecting the CAT’s ability to issue effective and relevant concluding observations and recommendations at the end of its meeting.

Thus, the introduction of the advance provision of a written “list of questions” should on the one hand allow the CAT to have a more precise and more relevant picture of the state of implementation of Convention in the States concerned, and on the other

² The schedule of full CAT and CAT working group meetings, and the timing of upcoming State Reports, can be found on the website of the UN High Commissioner for Human Rights: <http://www.ohchr.org/english/events/2005.htm>.

hand should ensure that governments have sufficient time to provide the Committee with answers that are as complete as possible.

1.2 Private meeting with NGOs

Traditionally, NGOs have organized informal meetings in parallel with CAT meetings, inviting CAT members to attend in order to receive the NGOs' "alternative reports" on the states to be examined at the formal meetings. Following complaints from NGOs that CAT members did not consistently attend these unofficial "alternative reports" meetings, the CAT has itself instituted a practice of official meetings with NGOs to receive information about the States that will be examined in the next day's open session. Only NGOs that have prepared and already delivered a written alternative report to the Committee are formally invited to the NGO meeting. At the meeting, NGOs can then present information directly to all the members of the Committee in a formal, but private, 45-minute session ("private" in that State representatives are not present).

The official NGO session makes it possible for NGOs to address all of the members of the Committee, and to benefit from the regular UN translation services in order to ensure their oral presentation can be understood by CAT members. However, particularly given the brevity of the official NGO sessions, they should be viewed as a complement to, not a complete substitute for, the more in-depth parallel meetings traditionally organized by NGOs during, for instance, lunch breaks.

2. NEW STRATEGIES FOR NGOs

Given these developments, there are three key points in the CAT process where NGOs can be particularly effective: first, NGOs can provide written information that the working group can use in preparing the "list of issues"; second, NGOs can ensure their written alternative reports address the questions raised in the "list of issues"; third, NGOs can make oral presentations at the official NGO sessions during CAT meetings in Geneva.

2.1 Preparation of the list of questions

Given that the list of issues will now provide the framework for the oral dialogue between the CAT and the governmental delegation, NGOs can help direct the CAT's attention to important issues by seeking to influence or inform the development of the list of issues.

To this end, APT recommends several months prior to the meeting of the CAT working group, NGOs prepare a "traditional" alternative report on the implementation of the Convention in the State Party concerned, and deliver this to the Secretary of the CAT.³ The NGO could, in this report, propose its ideal list of questions highlighting the problems the NGO would like the Committee to examine during its subsequent oral examination of the State Party. Adopting such a strategy should

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allow NGOs to ensure that some or all of their concerns will be taken into account during the CAT process, and can force the government to respond to the questions and needs of NGOs in the setting of the CAT session. The information contained in the alternative report should be completely up-to-date. NGOs need not refrain from providing information concerning events or issues arising or continuing after the period covered by the State's report.

The Office of the High Commissioner on Human Rights will generally set a deadline before which NGOs must submit information if they wish to be certain it will be taken into account during the formulation of the list of issues. Information submitted after the deadline is not likely to be included in the list of issues, though it will be passed along to the Committee and they may use it as they find appropriate. The deadline is approximately 9 or 10 weeks before the relevant Working Group meeting. For instance, if a State will be examined in November and the CAT Working Group meeting is during the last week of April, NGO information for the list of issues for the State should be received by the OHCHR secretariat by mid-February. NGOs should contact the Secretary as early as possible to ascertain the specific deadlines.

Where possible, NGOs may also wish to send a representative to Geneva during the week that the working group meets, and/or during the main session of the Committee, in order to lobby Committee members more directly and effectively.

2.2 NGO answers to the list of issues

Since the government's answers to the questions contained in the list of issues will now form the basis of the oral dialogue between the Committee and the government delegation, NGOs can help make the dialogue comprehensive by providing their own answers to the questions put by the Committee. To this end, once the Office of the High Commissioner for Human Rights publishes the CAT list of questions, the NGO can prepare and send a second report (or addendum to any initial NGO "alternative report") that responds specifically to the questions in the list of issues.⁴ Then, at the time of the oral examination of the State Party, CAT members will be able to compare the answers of the government to those provided by the NGO. This may give the Committee members a foundation to pose additional questions to the government delegation, or at the very least to consider these differences in preparing their concluding observations and recommendations to the State Party. Again, NGOs should ensure that the information they provide at this stage is completely up-to-date. There is no need to exclude information or concerns that have arisen after the period covered by the State's report, or any earlier NGO alternative report.

2.3- Preparation of official hearing

Only those NGOs that have submitted written information prior to the session can request to participate in the official oral briefing of the CAT. The Secretariat will set a deadline 3 or 4 weeks prior to the CAT session, inviting NGOs to inform the Secretariat if they wish to orally brief the Committee.

⁴ At present, the Lists of Issues are only published to the Web site of Office of the High Commissioner very late in the process: <http://www.ohchr.org/english/bodies/cat/index.htm>. NGOs may wish to join in urging the Office of the High Commissioner to ensure the Lists of Issues are made available to NGOs in a more timely fashion in the future.

Once again, new information can always be presented orally at the official meeting. However, the CAT is usually concerned to ensure that the State representatives have an opportunity to see all NGO allegations and information in advance in order to have an opportunity to respond in a comprehensive and accurate manner. Consequently, late-arising information or allegations should be provided in writing also to the State at the earliest possible opportunity before the CAT session.

The official NGO hearings were only introduced at the most recent meeting of the CAT. However, certain lessons can be drawn from this initial experience.

For each State, the NGOs as a group have only 45 minutes to present their information and highlight their concerns. Committee members will therefore be more receptive to concise and well-prepared presentations. Co-ordination between NGOs is essential to avoid unnecessary overlap or repetition during the official NGO meeting, so as a group to make the best use of the limited time.

Further, NGO representatives should take into account that their presentations will be subject to simultaneous translation. In this respect, if possible, providing the interpreters in advance with a written copy of any oral comments can help ensure that the translation is as accurate as possible.

Finally, the official hearing should not be considered by NGOs to be the only opportunity to meet the members of the CAT. NGOs should continue to organize additional informal joint meetings with CAT members, generally during the lunch-breaks in the CAT's meeting schedule, in order to inform Committee members more fully about NGO knowledge and concerns.

Summary Timeline

Suggested timeline for NGO preparation and participation in CAT examination of a State on its Periodic Report under the Convention against Torture

One year prior to CAT meeting	NGO assembles information and prepares an alternative country report. Contact Secretariat of CAT to determine deadlines.
9 months prior to CAT meeting	NGO submits alternative country report, including proposed questions for the List of Issues
6 months prior to CAT meeting	NGO lobbies members of the CAT Working Group during its meeting in Geneva, with a view to influencing the List of Issues
3 months prior to CAT meeting, after publication of the list of questions	NGO submits supplemental alternative country report, responding specifically to the questions in the List of Issues
1 month prior to CAT meeting	NGO contacts Secretariat of CAT to indicate whether the NGO wishes to participate in the private NGO meeting.
Oral examination of Government Delegation in Geneva	NGO participates in official private NGO meeting with CAT. NGO prepares additional informal joint briefing sessions for CAT members. NGO observes oral examination of State Party by CAT members.
End of CAT session in Geneva	The CAT issues its concluding observations and recommendations. These are subsequently published to the website of the UN High Commissioner for Human Rights and can be used by NGOs for leverage in their subsequent dealings with the government, for monitoring government implementation of recommendations, and for other follow-up activities.

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