

COMMITTEE AGAINST TORTURE

Ineffective accountability mechanisms in Syria, Jordan, and Yemen



REUTERS / Darrin Zammit Lupi

The Committee against Torture (the Committee) held its 44th session in Geneva from 26 April to 14 May 2010. The Committee considered the reports of seven State parties to the *Convention against Torture, and other cruel, inhuman or degrading treatment or punishment* (the Convention): Austria, Cameroon, France, Jordan, Liechtenstein, Switzerland and Syria. The Committee also heard replies from Yemen to the provisional concluding observations adopted by the Committee during the 43rd session following a review in the absence of the State delegation.

Although to different degrees, States generally engaged cooperatively with the Committee. Austria and Liechtenstein were very forthright in their engagement, even in instances where they chose to disagree with the Committee. France and Switzerland gave thorough responses to most questions, but seemed selectively vague on problematic issues. Cameroon was open with the Committee, but lacked factual information to answer questions effectively. A final pattern of engagement was exhibited by the delegation from Jordan, which demonstrated a desire to cooperate, but did not respond directly to Committee members' questions, using much of its time on long and detailed but general statements. Only Syria argued that some of the Committee's questions fell outside the scope of its mandate.

NGO AND NHRI PARTICIPATION: WORRYING ATTEMPTS AT INTIMIDATION

The Committee continued its established practice of meeting with NGOs and national human rights institutions (NHRIs) concerned with each State examined during the session. NGOs made presentations to the Committee on six of the eight States examined: France, Cameroon, Switzerland, Jordan, Syria and Yemen.¹ Thirty-nine NGO reports were submitted to the Committee prior to the session. NGOs were especially active in reporting information on the situation in France (11 reports), Syria (8 reports), Switzerland (6 reports), and Jordan (6 reports), while only one NGO reported information on Liechtenstein and two reported on Yemen.

The Committee is facing serious challenges due to its very heavy workload. This is unfortunately also affecting its engagement with NGOs and NHRIs. It seemed somewhat unfair, even if due to time constraints, that the time given to NGOs varied between more than one hour (on France) and around 15 minutes (on Cameroon). The Committee at this session decided that in the future only the country rapporteurs would meet with NHRIs.

It is of serious concern that NGO representatives from Yemen who attended the 43rd session reported being harassed by the Government in the time since the review. Members of the Government delegation reportedly also attempted to photograph

¹ The Committee was disappointed that no NGOs from Austria and Liechtenstein presented information.

NGO representatives present at the 44th session. The Committee addressed the serious issue of intimidation of human rights defenders in its concluding observations by calling on the Government to ‘ensure that all persons, including those monitoring human rights, are protected from intimidation or violence as a result of their activities’. It also asked the Government to ‘ensure the prompt, impartial and effective investigation of such acts, and to prosecute and punish perpetrators with penalties appropriate to the nature of those acts.’ It remains to be seen how the Committee may follow up on alleged reprisals against persons that cooperate with it.

NGOs were also invited to brief the Committee during the discussion on follow-up to concluding observations and individual complaints, which is a welcome new development. However, the economic barriers to participation faced by non-Geneva based NGOs highlights the challenge for the Committee, secretariat and Geneva based NGOs to ensure that the process is inclusive.

INSTITUTIONAL DEVELOPMENTS

‘The dictatorship of time’²

The fact that the Committee against Torture does not have sufficient time to carry out its mandate was a recurring issue at the 44th session. In the meeting with State parties, Mr Grossman noted that the Committee does not have the capacity to examine reports at the rate they are submitted. The Committee has received 19 reports that are pending consideration, and constitute a backlog requiring three additional sessions to reverse. The Committee also faces a backlog of nearly 100 pending individual complaints. As Mr Marino noted, in many of these cases individuals are waiting in detention for a decision to be made.

Activities that the Committee has not been able to engage in because of resource and time constraints include the development of more General Comments, and (most urgently), investing more time in each country examination.³ In order to resolve the latter concern, the Committee decided to review six instead of seven States per session in the future. In addition, it repeated its request to the General Assembly for additional resources allowing for extended sessions in 2011 and 2012.

Working methods

At the meeting with State Parties on 27 April, the Committee explained its new optional reporting procedure, adopted in May 2007.⁴ Liechtenstein and the US were supportive of the

2 Mr Grossman often referred to the ‘dictatorship of time’ as being the only dictatorship affecting the work of the Committee.

3 Currently, the Committee spends five hours to examine one State report. This time did generally not allow for sufficient dialogue and for adequate responses to be provided by the State. Meetings also often ran over into time scheduled for other activities, such as meetings with NGOs or NHRIs. The Chairperson invited delegations to submit additional information in writing within 24 hours after concluding their replies.

4 According to the new procedure, the Committee will submit a list of

new procedure. The procedure was developed to assist States in the production of timely and focused reports, though Mr Grossman raised concerns that it will require more preparation time from the Committee. The Committee is the only treaty body to apply such a procedure, but the Human Rights Committee is in the process of developing a similar method. The 11th Inter-Committee Meeting (ICM) in June this year discussed this new procedure at length.⁵

During the 44th session, it was problematic that States’ responses to the list of issues were not translated from the original language, except for Jordan’s response, which is available in English and Arabic. This is an issue hampering the work of the treaty bodies in general.

Cooperation with other bodies such as the special procedures of the Human Rights Council, the European Committee for the Prevention of Torture and the UN Voluntary Fund for the Victims of Torture continued to be a major theme of discussion in the Committee. This manifested itself through both discussions of institutional developments and cross-referencing these bodies’ findings and recommendations during the examination of State reports.

Membership: latest member is no stranger to the Committee

The 44th session of the Committee saw the induction of one new member, Mr Alessio Bruni, who has previously served as Secretary of the Committee for thirteen years. Mr Bruni participated actively in the session, drawing on his previous experience with the Committee’s work.

Mr Claudio Grossman was re-elected as Chairperson for another four-year period. Mr Grossman plays an active leadership role within the Committee, and his re-election marks a vote of confidence.

Follow-up

The 44th session included discussion of follow-up to the Committee’s previous work, both on past concluding observations and to individual complaints.⁶ Ms Gaer, the Rapporteur on follow-up to conclusions and recommendations, presented analysis on State participation, follow-up procedures and the impact of recommendations.⁷ According to her findings, of the 66 States due to respond to the follow-up procedure, 50 have provided information on time. There is a correlation between States that are late in submitting their periodic reports and those that do not respond to this procedure. Ms Gaer also conducted

issues to each State party one year prior to the expected submission of its periodic report. The State party’s response to these questions will replace its periodic report.

5 See the article on the ICM in this edition of the *Human Rights Monitor Quarterly*.

6 Articles 19 and 22.

7 The report will be available in the annual report of the Committee. See also <http://bit.ly/c3BN6z>.

research on the types of recommendations made by the Committee. This revealed both the most frequently addressed issues and those that are specific to a particular region, such as compliance with Article 3 (*non-refoulement*)⁸ in Europe, or the investigation of disappearances in Latin America. Broadly, Ms Gaer's report concludes that CAT is making more recommendations and asking for more follow-up than in the past. She was also concerned with the quality of States' engagement with the Committee. According to Ms Gaer, no State replied fully to every question posed by the Committee.

Mr Fernando Marino Menendez, the Rapporteur on follow up to individual communications, presented an update on developments since the previous session.⁹ He emphasised that Canada, Serbia and Montenegro, and Tunisia have not responded to requests for follow-up information on pending cases. Mr Marino focused most of his presentation on the case of Mr Ahmed Hussein Mustafa Kamil Agiza, an Egyptian national extradited from Sweden to Egypt in violation of Article 3 of the Convention. Positive developments in the case include Sweden's new domestic legislation, the Aliens Act, which recognises the decisions of international tribunals, including the CAT. Yet Sweden has not granted Mr Agiza a residence permit and his release has not been secured, thus the Committee decided to keep the case open.

An exceptional case: follow-up to review in absence of State delegation

At the 43rd session Yemen did not send a delegation for the Committee's examination of its report. Apparently it did not see the need for to attend the CAT examination after its review under the universal periodic review (UPR) in May 2009.¹⁰ The decision to review Yemen in the absence of the delegation had enjoyed the support of all Committee members except Mr Wang, who refused to participate in the review.¹¹ At the previous session, the Committee adopted provisional concluding observations and invited the State to submit written comments. It adopted the final concluding observations at the 44th session after hearing oral replies from the State delegation, which decided to turn up for this unusual process.¹² During its one-hour reply, the delegation of Yemen merely read prepared statements that lacked concrete information. The atmosphere of the review was stiff and the Committee did not respond or engage in dialogue with the delegation.

8 *Non-refoulement* refers to the principle that no individual can be expelled to a country where he or she is at risk of torture.

9 The report will be available in the annual report of the Committee. See also <http://bit.ly/c3BN6z>.

10 See ISHR's *Human Rights Monitor 2009* at p.54. Available at www.ishr.ch/hrm.

11 The review took place in accordance with rule 66 of paragraph (2) (b) of its rules of procedure.

12 The Committee had only reviewed one other State in the absence of a delegation before (Cambodia during the 30th session in 2003).

Subcommittee on Prevention of Torture

The Subcommittee on Prevention of Torture (SPT), presented its third annual report to the Committee. The SPT is an expert body with a mandate to visit any place of detention in States that have ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Its work is carried out in strict confidentiality. A major development in the SPT is its upcoming expansion from 10 to 25 members due to increased ratification of OPCAT. The SPT is interested in seeing a more diverse representation of professional expertise among its members, including doctors, psychologists, police, lawyers and experts in detention centres. It will be up to State parties when electing the new members to ensure that this is considered. The SPT also expressed its hope for continued increased ratification of OPCAT, particularly by States in Asia and Africa.

The SPT conducted visits to Paraguay, Honduras and Cambodia during the period covered by its third report. Of the seven visit reports issued, three have been made public in accordance with OPCAT Article 16. The SPT's programme of work for 2010 includes visits to Lebanon, Liberia and Bolivia.

Other topics discussed were the working relationship of the Committee and the SPT. Both bodies are considering how better coordination of the timing of visits and preparatory processes could enhance their respective work. Committee members inquired as to how the SPT could share information with it from its country visits. The SPT was reserved in its response, arguing that confidentiality should not be seen as destructive and is essential for building the relationships that are critical to the SPT's preventative work. The SPT sees its added value in the fight against torture as identifying causes and high-risk environments in order to strengthen prevention.

THEMES

Legal status of torture

The Committee posed questions on the legal status of the Convention and other torture related domestic law to all States examined during the session. Of particular interest to the Committee was whether a definition of torture exists in domestic law and whether torture is criminalised specifically. The lack of a specific criminal provision proved to be one of the main concerns of the Committee in States where torture is not systematic such as France, Liechtenstein and Switzerland.¹³ In response to arguments from France and Liechtenstein that their legislation is sufficient, the Committee emphasised that a legal distinction between torture and other crimes is important. It can ensure that torture is not subject to a statute of limitations and that perpetrators receive appropriate sentences. It can also contribute to raising public awareness and recognition of the crime of torture.

13 Austria was the only State at the 44th session incorporating a definition of torture into its criminal code.

The Committee was also generally interested in the practical application of existing domestic legislation, asked for citations of specific cases in which laws were applied, and raised questions on exceptions in law and practice.

Combating impunity - prevention, safeguards and accountability

The Committee stressed the importance of three overlapping strategies in combating the scourge of torture; accountability, prevention and safeguards.¹⁴ It expressed concern about the effectiveness of accountability mechanisms during the examination of States where torture and related crimes, such as arbitrary detention, extrajudicial executions, and enforced disappearances, seemed to occur with impunity.¹⁵ For instance, the Committee questioned the independence and effectiveness of investigative and judicial process in Jordan, given the delegation's claims that 'no single incident' of torture had occurred in the past three years. Committee members called on States to establish effective investigative processes, criminal sanctions, and complaint and redress procedures for victims. In a particularly memorable moment, Mr Grossman asked the Syrian delegation how the penalty for torture in Syria compared to the penalty for stealing a chicken. Concrete examples of the application of sanctions were of great interest to the Committee.

Secondly, the Committee was concerned with the status of legal safeguards against torture in the examination of all States, and particularly whether detainees are guaranteed full access to a doctor and lawyer throughout their detention. Finally, the Committee encouraged preventative measures such as training for law enforcement officers, monitoring, and human rights education. Of the States reviewed all were asked to provide information about visits to prisons by independent monitoring mechanisms, including international ones.

In States where torture occurs on an exceptional basis, the Committee was concerned about legalised exceptions to the implementation of safeguards and accountability mechanisms. For instance, the Committee raised questions about exceptional circumstances when access to a lawyer is denied (Austria, France, Liechtenstein). The Committee was also concerned with Liechtenstein's revision of the law regarding the right to access a doctor. The new law defines access to a doctor as a procedural requirement but no longer a legal right.

Non-refoulement and asylum procedures

The principle of *non-refoulement* continued to be a major issue of discussion and particularly during the examinations of Austria, France, Liechtenstein and Switzerland. Particular attention was given to how States determine the risk of torture in a destination country. The Committee objected to the increasingly common State practice of developing a 'safe list' of countries

to which a detainee may be extradited without individual consideration of the case.

Mr Marino and other Committee members emphasised the importance of ensuring that asylum seekers can appeal asylum decisions, particularly in cases related to national security (France) or highly criminal persons (Switzerland), where States sometime restrict the right to appeal. The Committee was also concerned about detention of asylum seekers, in violation of international obligations (Switzerland, Liechtenstein, France). Finally, the Committee was interested to learn about investigations of cases of mistreatment and emphasised the importance of monitoring during expulsion procedures to prevent the disproportionate use of force. The death of Nigerian asylum seeker Joseph Ndukaku's Chiakwa during his deportation from Zurich airport raised many questions about Switzerland's record in this regard. Regrettably, this issue was only scarcely addressed by the delegation.

Detention

The issue of detention conditions was discussed within the framework of prevention mechanisms (such as independent monitoring of detention centres) and safeguards (such as video cameras in cells). States' negative detention practices fell largely into two camps. In some States poor detention conditions and violations of detainee's rights are widespread and systematic.¹⁶ In the examination of Cameroon the Committee noted severe prison overcrowding, prolonged detention, and lack of respect for basic rights.¹⁷ In other States, infrequent cases of detainee mistreatment illustrate discrimination against particular groups or the justification of violations in exceptional circumstances.¹⁸ In France's examination, the Committee requested more information about both the circumstances surrounding deaths and ill treatment of detainees, and proceeding investigations. The Committee was also concerned about over-crowded detention centres in France's territories overseas.

Vulnerable groups

The Committee continued to pay particular attention to torture and cruel, inhuman and degrading treatment committed against vulnerable groups, by both State and non-State actors. Thus violence against women and children, including rape, female genital mutilation, honour crimes, domestic violence, trafficking, corporal punishment and low legal marriage age were addressed repeatedly. These issues were central to the Committee's examination of Jordan, Syria and Yemen. While Jordan denied most claims about these practices, Syria argued that women's issues do not fall within the Committee's mandate. Abuse of other powerless groups such as persons with disabilities, persons in psychiatric institutions, migrant workers, and domestic workers was also included in the discussion. ■

14 For instance, safeguards such as the right to access a doctor may serve to prevent torture and function as an accountability mechanism where torture has occurred.

15 Yemen, Jordan, Syria.

16 Cameroon, Jordan, Syria and Yemen.

17 Prisoners are often chained and pre-trial detention is known to exceed a detainee's longest possible sentence.

18 Austria, France, Liechtenstein and Switzerland.