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# HUMAN RIGHTS COMMITTEE

Focus on Cameroon, Colombia, Estonia, and Israel



Photo: Amanda Slater

The Human Rights Committee (the Committee) held its 99<sup>th</sup> session in Geneva from 12 to 30 July 2010, and reviewed reports from Cameroon, Colombia, Estonia, and Israel. Dominant topics of discussion included the legal status of the International Covenant on Civil and Political Rights in domestic law, the principle of non-discrimination, targeted and extrajudicial killings, and detentions and ill-treatment.

## ENGAGEMENT BY STATE PARTIES

A wide range of approaches towards engagement with the Committee were displayed by States. Israel's delegation stood out for its defensiveness and unwillingness to participate in constructive dialogue. The delegation often avoided addressing difficult issues, despite Committee members being quick to follow up on unanswered questions. Nevertheless, the delegation agreed to return for a third session, rather than the usual two, to ensure all questions from the Committee could be addressed. The extended length of the review was partly due to the failure of the Committee members to keep their questions succinct. Almost half of Israel's delegation was from the permanent mission in Geneva, including the head who is the Permanent Representative in Geneva.<sup>1</sup>

The review of Colombia also ran overtime into a third session, but the delay was primarily caused by the lengthy opening statement and answers provided by the delegation. Colombia focused mostly on explaining national level policies, rather than providing concrete examples of the impact of those policies. For example, the delegation noted the country's legalisation of abortion in certain cases. However, it provided no information in response to repeated questions, from Mr Fabian Omar Salvioli, about whether women were effectively able to access the right – especially given the right of health service providers to refuse to perform abortions for reasons of conscience, and the Procurator-General's lack of support for enforcement of the relevant Constitutional Court ruling. Other Committee members made similar efforts to encourage the delegation to provide examples of policy effectiveness, but without success.<sup>2</sup>

Although Committee members clearly felt there was a lack of concrete information provided by Colombia, they nevertheless praised the delegation for the quantity of information presented, which was copious and detailed.<sup>3</sup> The information also demonstrated substantial knowledge on the part of the delegation, largely due to the State's efforts to ensure a broad range of government ministries were represented.<sup>4</sup>

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1 List of delegates for the review of Israel, available at <http://bit.ly/de4v1F>.

2 Mr José Luis Perez Sanchez Cerro asked the delegation to highlight improvements resulting from the prevention measures Colombia had implemented to prevent conflict between armed actors when the civilian population is displaced. Ms Hellen Keller asked how Colombia intends to ensure there is no gap between policies decided in capital and what is implemented at departmental and municipal level. She noted this was a concern also raised by Mr Walter Kälin, the Special Rapporteur on internally displaced persons, in his last report.

3 The detailed amount of information provided by the State was in marked contrast to their appearance before the Committee on Economic, Social and Cultural Rights in May 2010, when the delegation failed to provide pertinent information in response to the Committee's questions, possibly due to a lack of expertise.

4 List of delegates for the review of Colombia, available at <http://bit.ly/cNIGdl>.

There was tense interaction at the review of Cameroon, partly due to the consideration of sensitive issues, such as capital punishment and the criminalisation of homosexuality. The delegation, drawn largely from their permanent representation in Geneva,<sup>5</sup> seemed to lack detailed knowledge about the human rights situation on the ground in Cameroon. Mr Michael O'Flaherty criticised the narrow representation of the delegation, which also included only one woman, as 'unhelpful'. The representation was in marked contrast to the delegation sent by Cameroon for the Universal Periodic Review in February 2009, he said.

The Committee praised the Estonian delegation for directly answering questions in a succinct, constructive and informative manner. The delegation was well informed, as a result of the wide representation from various relevant government ministries, and with a good gender balance.<sup>6</sup> The success of the dialogue was also due to the precise and focused questions asked by Committee members. Members followed-up on unanswered questions and unclear responses. Combined with the willingness of Estonia to respond to questions, this resulted in a highly fruitful review.

The lack of adequate translation of documents continues to hamper the Committee's work. Colombia provided its own translation of its written replies to the list of issues, from Spanish into English. Cameroon was criticised for not providing its documents in both French and English. Mr Ibrahim Salama, Director of the Human Rights Treaty Division of the Office of the High Commissioner for Human Rights (OHCHR), noted the OHCHR is aware of the persisting problem and reiterated a resolution to the issue is imperative.

## NGO PARTICIPATION IN THE 99<sup>TH</sup> SESSION

The Committee held a closed session for formal briefings by NGOs on the first day of the session, followed by informal lunchtime and morning briefings before the reviews of Cameroon, Colombia and Israel. There were also NGO briefings for the country report task forces, in order to draft the list of issues on Ethiopia, Kazakhstan and Togo.

During the formal briefing, NGO participation ranged from high, e.g. Israel had seven NGOs present and received 18 written submissions, to non-existent in the case of Estonia. The briefing was not much of a dialogue, since only one question was asked by a Committee member. During an informal meeting between NGOs and interested Committee members, it was generally agreed the formal briefing at the beginning of the session is not sufficient and the Committee should explore introducing a formal briefing by NGOs before each country examination.

Although Israel received the most attention from NGOs, their informal briefings were poorly organised and could have been greatly improved by better coordination between NGOs beforehand. As an example of good practice, the Centre for Civil and Political Rights was key in organising and presenting information on behalf of up to 20 local NGOs (in the case of Togo). The NGO also organised conference calls with national NGOs to facilitate the Committee's country report task force in drafting the lists of issues.

Committee members cited information received from NGOs several times during the reviews of States. Estonia and Colombia were generally receptive to issues concerning civil society. Estonia agreed with the Committee's concern regarding the low turn-out of NGOs for the country's review, and expressed hope for greater civil society participation in future. However, Cameroon claimed NGOs were politicised. The small number of NGOs in Cameroon (only 16 registered, none of which are human rights focussed) is due to strict laws on the registration of NGOs.

## MAIN THEMES

### Legal status of the Covenant

In its concluding observations the Committee called on all four States examined to fully implement provisions of the *International Covenant on Civil and Political Rights* (the Covenant) in domestic laws. Israel disagreed with the Committee on the application of the Covenant in the Occupied Palestinian Territories (OPT), arguing the Government lacks the required control of the area. However, all the UN treaty bodies have concluded Israel does in fact have control of the OPT and therefore has human rights obligations in the area. Members repeatedly expressed disappointment in the State's failure to provide advance answers to questions in the list of issues relating to the OPT. Members also expressed exasperation at the delegation's failure to make reference to the ruling of the International Court of Justice (ICJ),<sup>7</sup> which states the Covenant is applicable when a State acts to exercise its jurisdiction outside its own territory. In his concluding remarks the Chairperson, Mr Yuki Iwasawa, reiterated the Committee's position that Israel has obligations under the Covenant in the OPT and regretted Israel's refusal to respond to many questions in the list of issues. However, to Israel's credit, the State did provide oral responses to the questions.

Under Cameroon's legal system, the ICCPR enters into domestic force as soon as it is ratified. However, in its written replies only one example was given by the State of the Covenant being used by a court.<sup>8</sup> The Committee criticised the response

5 List of delegates for the review of Cameroon, available at <http://bit.ly/bFOX0h>.

6 List of delegates for the review of Estonia, available at <http://bit.ly/9Y6TMA>.

7 'Legal Consequences on the Construction of a Wall in the Occupied Palestinian Territory', Advisory Opinion, I.C.J. Reports 2004, p. 136, available at <http://bit.ly/c38hMK>. See also the press release, available at <http://bit.ly/a2Nnfq>.

8 When a person detained for two years and five months was found to have had his right to be tried within a reasonable timeframe violated,

as unacceptable, a criticism also made of the State's written replies in general, but the delegation failed to provide further examples.

Estonia was similarly questioned regarding the lack of application of the ICCPR by the courts. The delegation noted there is greater knowledge and awareness of the European Convention on Human Rights but that efforts are being made to introduce the ICCPR to judges. Mr Krister Thelin said several countries, including Estonia, seem to place greater importance on the implementation of EU requirements than the UN human rights treaties. This issue also arose when human trafficking was discussed. It was noted that Estonia has signed onto the Council of Europe Convention on Action Against Trafficking. The delegation said the State is now in the process of ensuring domestic legislation is in conformity with the Convention, before taking the step of ratification. While the Committee congratulated Estonia for this progress, Mr O'Flaherty expressed concern the State has not perceived international obligations as having the same compelling force.

### Principle of non-discrimination

The Committee repeatedly questioned the States about application of the non-discrimination principle, contained in Article 26 of the ICCPR.<sup>9</sup> The criminalisation of homosexuality in Cameroon was raised numerous times, with the Committee stating this to be a clear violation of the Covenant. Cameroon's response was that 'tradition' supports the criminalisation of homosexuality, and the culture cannot be changed.

During the review of Israel, questions were raised about whether Arab detainees are made to sign papers in Hebrew,<sup>10</sup> a language which a detainee would not be likely to understand. Mr O'Flaherty drew attention to a report by the NGO Adalah (the Legal Center for Arab Minority Rights in Israel), which found that many Arabs are unable to access information or to submit important official forms in Arabic.

Israel often made claims without providing corresponding data. The Committee refused to take statements at face value and pressed the delegation to provide corroborating statistics. For example, evidence was requested by Ms Christine Chanet to support the claim Palestinians were not disproportionately affected by a policy to demolish illegally built houses in the West Bank, and that residence permits are awarded in a non-discriminatory manner. The proof was not forthcoming.

Ms Hellen Keller brought to the Colombian delegation's attention statistics from an NGO showing 85 percent of all cases of violence against women in the country are against minors. The head of the Colombian delegation responded that, while the State did not believe the real figure was as high

as 85 percent, it did agree the situation is unacceptable. The Committee recommended all cases of sexual violence should be properly documented and investigated, and that women and girls should have access to justice to ensure there is no secondary victimisation.

### Targeted and extrajudicial killings

Colombia came under scrutiny regarding the extensive number of extrajudicial executions of civilians reported as 'killed in combat'. Particular concern was expressed over a policy of providing financial incentives to police, which has allegedly resulted in civilians being killed and their bodies dressed as guerrillas in order to claim the reward. However, the delegation said rewards were only provided to members of the general public who supply information to police that produces an outcome.

Israel was questioned about targeted killings of suspected terrorists, described by some Committee members as extrajudicial killings. The delegation responded that Israel did not use targeted killings as a means of deterrence or of punishment, but only as an extraordinary measure when there is no other feasible way to apprehend a terrorist. Although terrorists cannot be considered combatants under the law of armed conflict, the delegation pointed to an Israeli Supreme Court ruling that considers terrorists as directly engaged in the conflict and therefore legitimate targets.<sup>11</sup>

### Detention and ill-treatment

The Committee asked many questions of the Estonian delegation on the issue of the detention of more than 800 individuals during the Bronze Night disturbances of 2007. The delegation agreed there were serious concerns about whether the detention was legal as, at the time, the law did not allow for administrative detention for the purpose of checking identification. However, it also said no one had been held for more than 24 hours and there were therefore no plans to pay compensation to those detained.

Cameroon was questioned regarding the number of individuals awaiting trial in its prisons. The Committee referred to NGO figures for one prison, showing that of 3,049 inmates, 85 percent have yet to be convicted. Ms Zonke Zanele Majodina referred to 'alarming' reports from NGOs concerning conditions in prisons, and Mr Mahjoub El Haiba spoke of concerns voiced by NGOs about torture in detention centres, the use of force and violence. The Cameroon delegation was generally sceptical of the findings of the NGOs, describing them as 'politicised' and dismissing the findings of one organisation as 'amplified'.

Ms Keller asked Israel what its specific guidelines on the use of torture were. The Israeli delegation said it has guidelines, but regarded them as 'classified'. The delegation was criticised by Mr Salvioli for its lack of cooperation on the matter.

under Article 9 (3) of the ICCPR.

<sup>9</sup> ICCPR, Article 26.

<sup>10</sup> Language is included in Article 26 of the ICCPR as one of the grounds on which discrimination is prohibited.

<sup>11</sup> HCJ 769/02, December 11 2005, <http://bit.ly/9VRFJj>.

## Other issues

Other issues addressed during the examinations included questions about a pending law in Israel to regulate the financing of NGOs, which would require ‘political’ organisations to register. ‘Political’ has been defined in the legislation as ‘attempting to influence public opinion’, under which description, Mr O’Flaherty pointed out, human rights NGOs would fall. The delegation responded there are concerns about foreign entities financing groups within Israel who seek to influence Israeli policies. They noted other countries have similar rules.

The issue of national human rights institutions (NHRIs) was raised (Cameroon, Estonia and Colombia). Estonia was encouraged to seek accreditation for its office of Chancellor of Justice as an independent NHRI, in order to gain access to International Coordinating Committee meetings of NHRIs and benefit from shared best practice. The delegation said it had considered doing so, but the Chancellor of Justice did not fulfil all the functions set out in the Paris Principles to achieve an A-rating, and there was concern a B or C rating would suggest the institution had some problems.

As with previous sessions, the current draft of the document was not made public, and was available only to those observing the Committee’s work. The reason given for this decision was that wider dissemination could cause confusion as to which draft was the most recent. However, it was emphasised stakeholders would have the opportunity to review and comment on the draft once the first reading is completed.

The Committee also considered and adopted its revised guidelines for State reports, and discussed the points of agreement from the 11<sup>th</sup> Inter-Committee Meeting and the 22<sup>nd</sup> Chairpersons Meeting. Concern was expressed that, while recognition was given in the points of agreement to the significant role NHRIs play in the work of the Committee, similar language was not used with respect to the role of NGOs. Mr O’Flaherty stressed that those who represent the Committee at the meetings need to do more to ensure the specific working methods of the Committee are reflected in the final document. ■

## OTHER DEVELOPMENTS

The Committee continued its first reading of the draft general comment on the right to freedom of expression.<sup>12</sup> Discussion focused on delineating the permissible restrictions that can be placed on freedom of expression, and was continued at the October 2010 session of the Committee. An update can be found on ISHR’s website.

<sup>12</sup> For more information on the Draft General Comment, please see ISHR’s website, <http://bit.ly/ddlshC>.

Facts about the Committee	
Number of members:	18
Sessions:	Three sessions a year (usually in March/April in New York, and July and October in Geneva)
Ratifications:	166 State parties to ICCPR, 113 State parties to the first optional protocol (communications procedure) and 72 State parties to the second optional protocol (aiming at the abolition of the death penalty)
General Comments:	33 (see <a href="http://bit.ly/ammoPT">http://bit.ly/ammoPT</a> )
NGO participation:	NGOs can brief the Committee on the first day of its session on the human rights situation in States that will be examined during that session