

# COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Reports of Dominican Republic, the Netherlands, Uruguay, Sri Lanka, and Switzerland reviewed



Photo: Dennis Hurd

Tea plantation workers in Sri Lanka

The Committee on Economic, Social and Cultural Rights (the Committee) held its 45<sup>th</sup> session in Geneva from 1 to 19 November 2010. The Committee reviewed reports from the Dominican Republic, the Netherlands, Uruguay, Sri Lanka, and Switzerland.<sup>1</sup>

Significant themes of the session included the legal status of the *International Covenant on Economic, Social and Cultural Rights* (the Covenant), the principle of non-discrimination, the right to work, and the right to a decent standard of living.

## ENGAGEMENT BY STATE PARTIES

Each State report was examined by the Committee over three meetings of three hours. The Committee members, most of whom were active throughout the dialogues, raised questions regarding the implementation of the Covenant and followed up on unanswered questions. There appeared to be an allocation of themes, whereby each member focused on a section of the Covenant, i.e. health, social security, education, and culture.

The review of Uruguay was frank and constructive, thanks to the openness of the delegation<sup>2</sup> in providing answers and acknowledging existing problems. The Committee was appreciative of the State's written replies to the list of issues as well as the information provided prior to the dialogue. Regarding the Dominican Republic, Mr Jaime Marchan Romero regretted the 11-year delay in the submission of the report, and the late submission of the written replies to the list of issues, which was not translated from Spanish in time for the review. The members' active participation in the discussion, along with the multi-faceted and updated information provided by the delegation,<sup>3</sup> resulted in a dynamic exchange.

The Committee praised the comprehensive information contained in the report of Switzerland<sup>4</sup> as well as the detailed written replies to its list of issues. It also commended the delegation<sup>5</sup> for having provided direct oral responses. Nevertheless, the Committee was concerned about the extent to which its previous concluding observations (from 1998) had been implemented. The Committee also stressed that the federal Government is the State party and not the cantons. Many questions were raised by the experts, who said this was mainly due to 'higher expectations from Switzerland as the home-base of the UN human rights system'. The active participation of the Committee members, coupled with the delegation's diverse areas of expertise, resulted in an open and interesting dialogue.

The review of Sri Lanka was tense, due to the defensive stance taken by the high-level and male-dominated delegation,<sup>6</sup> the limited information available in the State report (submitted with a 15-year delay) and the selective responses to the list of issues.<sup>7</sup>

1 All documents related to the session are available at <http://bit.ly/9EDIG0>.

2 The Uruguay delegation was small and male-dominated (one woman, four men).

3 List of delegates for the Dominican Republic, available at: <http://bit.ly/i3bCNR>.

4 Several Committee members said Switzerland's report is 'among the best reports submitted so far'.

5 List of delegates for Switzerland, available at: <http://bit.ly/g3z1AY>.

6 List of delegates for Sri Lanka, available at: <http://bit.ly/fWLUXM>.

7 Only half of the list of issues was answered. Mr Eibe Riedel, the Rapporteur on Sri Lanka, expressed disappointment regarding the incomprehensive State report, and requested a treaty-specific report in the future. Mr Jaime Marchan Romero called upon the State to consult with civil society organisations for the next periodic report.

Many questions were raised, with several issues including sexual and reproductive health being followed up repeatedly due to the inadequate responses provided by the delegation. On the final day, the delegation proposed it could submit its next periodic report within a shorter period than the normal four years.

The Netherlands had the largest delegation (30 members), consisting of four heads of delegation, and representatives from constituent countries: the Netherlands, and the newly independent Aruba, Curaçao, and Saint Marten. The Committee appreciated the succinct oral responses provided during the review, but regretted the report's inadequacy in coverage and the late submission of Aruba's report. The well-organised participation of a delegation with diverse expertise in the dialogue, and the experts' direct questions, led to a dynamic, substantive and interactive dialogue.

## NGO PARTICIPATION

The Committee held an open meeting with NGOs on the first day of the session. Two NGOs from the Netherlands, and four NGOs from Switzerland were present. The Netherlands' NGO representatives and the Committee members engaged in an active dialogue. The meeting was well organised, but the absence of NGOs from Uruguay and the Dominican Republic was noted as unfortunate. Committee members were also active during the NGO lunchtime briefing on Sri Lanka, asking many questions.

NGOs also submitted reports concerning specific countries: three NGO reports for the Netherlands, five for Switzerland, two for Uruguay, two for the Dominican Republic, and three for Sri Lanka.<sup>8</sup> NGOs organised an informal lunchtime briefing with Committee members to discuss their reports, and ten of the 18 members attended.

## MAIN THEMES

### Legal status of the Covenant

In its concluding observations, the Committee urged all five States examined to fully incorporate the Covenant into their domestic legal systems to ensure the equal enjoyment of economic, social, and cultural rights by all individuals and groups. The Committee expressed frustration at Switzerland's somewhat ambivalent commitment to the Covenant, which was seen to be 'second-class' compared to the *International Covenant on Civil and Political Rights*, and as merely setting out 'social aims' rather than justiciable obligations.

Other relevant issues raised by the experts included lack of clarity regarding the status of the Covenant in the domestic legal system (Uruguay); and limited knowledge of the Covenant's provisions in the State, some of which are justiciable before the courts but rarely invoked (Dominican Republic and Sri Lanka). The Committee repeatedly mentioned the overall lack of detailed disaggregated data, inter alia, by age, sex, urban/rural

population, and socio-economic background in the reports, which hampered its ability to evaluate implementation.

### Principle of non-discrimination

Throughout State reviews, the Committee highlighted issues relating to vulnerable groups, namely children, people with disabilities, minorities, migrant workers, refugees, asylum seekers, and internally displaced persons (IDPs). During the review of Uruguay, the socio-economic marginalisation of people of African descent, discrimination based on sexual orientation, and de facto discrimination against children born out of wedlock were raised. The Committee also noted the lack of access to employment for people with disabilities.

Other areas of concern included de facto discrimination<sup>9</sup> against Haitians and Dominicans of Haitian descent, particularly those living and working in bateyes<sup>10</sup> in the Dominican Republic; discrimination against migrants, undocumented persons, and people with disabilities; health, education, and employment; and rising xenophobia in Switzerland and the Netherlands. The upcoming 'popular vote' in Switzerland<sup>11</sup> on the expulsion of foreign criminals was questioned. The length of detention for asylum-seekers and unaccompanied minors in the Netherlands, and the lack of access of undocumented migrants to shelter, healthcare and education were also raised. Widespread attacks against human rights defenders in Sri Lanka, along with the socio-economic marginalisation of Vedda<sup>12</sup> and tea plantation workers, and stigmatisation of people with disabilities were questioned by the Committee.

Issues relating to women's rights, namely domestic violence, sexual harassment at work, and enduring discrimination in different areas were highlighted in each State review. The Committee expressed serious concern regarding: persistence of patriarchal tradition, Sharia law allowing early marriage for girls as young as 12, and tolerance of harmful cultural practice such as marital rape under the pretext of 'cultural sensitivity' in Sri Lanka; stringent Swiss laws that make it difficult for migrant women to leave abusive marriages and the continued practice of forced marriage; forced pregnancy tests in free trade zones as a pre-condition for employment in the Dominican Republic; the prohibition of re-marriage within 300 days of the dissolution of marriage and 'public decency' laws in Uruguay; and 'honour crimes' and an alarming rate of domestic violence in the Netherlands.<sup>13</sup> Finally, the Committee criticised intersectional discrimination against women, particularly in the case of migrant workers (Switzerland and the

<sup>8</sup> List of NGOs who submitted reports available at: <http://bit.ly/euer5v>.

<sup>9</sup> The delegation repeatedly denied the existence of any discriminatory policy.

<sup>10</sup> The delegation responded that the experts' image of the conditions in bateyes (sugar industry) is out of date.

<sup>11</sup> On 28 November 2010, 53 percent of Swiss voters supported this initiative.

<sup>12</sup> Indigenous people of Sri Lanka.

<sup>13</sup> Referring to the Dutch NGO coalition's statistics, which show a third of women in the country suffer from domestic violence. The delegation said the figure reflects the fact that verbal abuse is considered domestic violence.

Netherlands) and ethnic minorities (Uruguay, Dominican Republic and Sri Lanka).

### Right to work

The influx of migrant workers, their rights, and the working conditions of undocumented migrants, were raised with the Dominican Republic, the Netherlands and Switzerland. The Netherlands said it does not have a specific policy towards migrant workers as they are treated as citizens, but admitted this did not apply to undocumented migrants. Forced labour by children and Haitian workers in the Dominican Republic was also discussed. The State delegation rejected the existence of forced labour by Haitian workers. In the case of labour forced on children, the delegation provided a cultural justification, claiming what is perceived as 'child labour' by some, is part of parents' endeavor to educate their children.

The issue of informal workers, including women providing childcare and cleaning services, was raised by Committee members, who said informal workers do not have the same rights as other workers in the Dominican Republic and the Netherlands. Additional concern was expressed for the extremely high unemployment amongst women and youth in the Dominican Republic, Uruguay and Sri Lanka.

### Right to a decent standard of living

The issues raised concerning the implementation of the right to a decent standard of living varied hugely between States examined. For Uruguay and the Dominican Republic, the problem of extreme poverty resulting in high rates of homelessness, and a lack of basic facilities and sanitation, was raised. The experts also commented on the post-conflict situation in Sri Lanka and unfavorable conditions in the IDP resettlements (in terms of sanitation and basic housing). In response the delegation attempted to highlight the improvements made so far.

Switzerland was criticised for the different minimum wages across cantons, with eight percent of families in the country

with three or more children living below the national poverty line. In addition to highlighting inequitable income distribution in the Dominican Republic, the Committee said the minimum wage was inadequate. The delegation responded by acknowledging the problems within the complicated minimum wage calculation system. The Committee also requested additional statistics on homeless children in Uruguay.

The poor conditions in which asylum seekers are held in Switzerland, while their asylum applications are considered, was raised. Mr Zdzislaw Kedzia requested more disaggregated data on asylum seekers in the Netherlands, as none were provided in the State's report or presentation.

## OTHER DEVELOPMENTS

The Committee held a 'Day of General Discussion' on the right to sexual and reproductive health in preparation for the formulation of a general comment on the topic.<sup>14</sup> Diverse viewpoints were expressed by the experts, State representatives, NGOs, and other participants during the panel debates, particularly concerning the sensitive topic of legalisation of abortion and the Covenant's application to this issue.

Moreover, coinciding with World Toilet Day (19 November), the Committee issued a statement on the right to sanitation,<sup>15</sup> referring to sanitation as a 'largely neglected topic'. The statement was strongly supported by Ms Catharina de Albuquerque, the UN's Independent Expert on water and sanitation.<sup>16</sup> During its pre-session working group, the Committee adopted the lists of issues for Cameroon, Estonia, Germany, Israel, and Turkmenistan. ■

14 Ms Rocío Barahona-Riera, one of the Committee members, is the Rapporteur for the formulation of the new general comment. For more information see <http://bit.ly/fwGXU9>.

15 The 'Statement on the Right to Sanitation', available at <http://bit.ly/fk19GO>.

16 For more information about the Independent Expert, see <http://bit.ly/ahPOpj>.

### Facts about the Committee

Number of members:	18
Sessions:	Two sessions per year (usually held during May and November in Geneva)
Treaties it covers:	International Covenant on Economic, Social and Cultural Rights (Signatories: 69. Parties: 160); Optional Protocol to the Covenant (Signatories: 35. Parties: three).
General Comments:	21 (see <a href="http://bit.ly/gPjHzj">http://bit.ly/gPjHzj</a> )
NGO participation:	NGOs are involved in an open meeting on the first day of the session, and can submit their own reports in relation to the adoption of the List of Issues and the actual examination. Involvement is also permitted during the general days of discussion, and in the follow up procedure. NGOs may also participate in an open meeting held during the 'Pre-session Working Group', which adopts the list of issues for States considered at the following session.