

COMMITTEE AGAINST TORTURE

Reviews of Bosnia and Herzegovina, Cambodia, Ecuador, Ethiopia, Mongolia, and Turkey



Photo: Maistora

The Committee against Torture (the Committee) held its 45th session in Geneva from 1 to 19 November 2010. During the session the compliance of six¹ State parties with the *Convention against Torture, and other cruel, inhuman or degrading treatment or punishment* (the Convention) was considered: Bosnia and Herzegovina, Cambodia, Ecuador, Ethiopia, Mongolia, and Turkey. The Committee also adopted lists of issues prior to reporting for 36 State parties,² in accordance with the Committee's new optional reporting procedure, as well as a standard list of issues for the May 2011 session.

Generally, the States examined expressed appreciation for the opportunity to engage in a frank and constructive dialogue with the Committee. However, the delegation of Turkey criticised the Committee's working methods and new reporting procedure.³ The Committee regretted the reports of Cambodia, Ethiopia and Mongolia lacked statistical and practical information on the implementation of the Convention and that they were submitted with significant delay.

While the delegations of Cambodia, Ethiopia and Turkey were composed entirely of men, Ecuador had the highest representation of women (six out of nine) and Bosnia and Herzegovina had the largest delegation (ten members).⁴

NGO AND NHRI PARTICIPATION

The Committee received numerous reports from non-governmental organisations (NGOs). On both Ethiopia and Turkey eight reports were submitted, while Ecuador had the least with four reports.⁵ Only one national human rights institution (NHRI) from Bosnia and Herzegovina submitted a report, and none presented before the Committee.

As is general practice, several civil society briefings were held during the session and the number of NGOs that participated varied from one to three for each State under review. Numerous issues were taken up by the Committee as a result of information provided by NGOs. These included witness protection and reparations; a lack of awareness among judges about the Convention, refugee protection and lack of legal aid; low penalties for torture leading to impunity; lack of access to monitor places of detention; treatment of lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals; and the death penalty.⁶

A new and positive development at this session was that the Committee invited the International Rehabilitation Council for Torture Victims (IRCT), an NGO, to conduct a thematic briefing on the Istanbul Protocol, an internationally recognised tool for legal and health professionals to document torture.

1 The decision to review six instead of seven States per session was made during the Committee's 44th session, to resolve concerns about time constraints.

2 <http://bit.ly/eCgPsY>.

3 Turkey complained it was not informed in advance of the questions the Committee intended to discuss and that the delegation only had a night to prepare responses to the Committee's oral questions.

4 The delegations also varied in their composition. For both Ecuador, and Bosnia and Herzegovina the delegations were high level and included representatives of ministries with specific knowledge of the issues covered. Both Cambodia and Ethiopia sent delegations composed predominately of representatives of the Ministry of Foreign Affairs and the permanent mission in Geneva, who did not have the required knowledge to engage effectively with the Committee.

5 All of the reports are available at <http://bit.ly/aAL6nj>. Interestingly, the majority of these reports came from international NGOs. Only Mongolia had two reports from national NGOs, with the rest of the States reviewed having just one.

6 Bosnia and Herzegovina, Cambodia, Ecuador, Ethiopia, and Mongolia, respectively.

OTHER DEVELOPMENTS

During the 45th session four State reports were examined according to the new reporting procedure – under which the periodic State report is replaced by the State's written replies to an advance list of questions.⁷ The new reporting procedure places a heavy burden on the Committee, which will hopefully be slightly alleviated with the recent approval of an extra week of meetings per session.⁸

Having reviewed a total of 101 State reports at the end of this session it was interesting to hear Ms Gaer, Rapporteur for follow up, outline the top recommendations made by the Committee and state her belief that the follow up procedure had been successful. Her research showed the top three recommendations to States are to ensure prompt effective and impartial investigations, to prosecute or sanction perpetrators of torture or ill-treatment, and finally, to provide legal safeguards for persons in custody. Disappointingly, due to staff changes in the Office of the High Commissioner for Human Rights there had been no follow up to the Committee's views on past individual communications.

THEMES

Legal framework

The lack of a definition of torture, or a definition inconsistent with the Convention was discussed with each State. All concluding observations, with the exception of those on Turkey, recommended the State harmonise its definition with Article 1 of the Convention. Another issue addressed with many States was the use of very lenient sentences for torture. In relation to Mongolia, the Committee said a few months or up to two years imprisonment was not commensurate with the crime's gravity. Of concern regarding Turkey, was the statute of limitation of 15 years for the crime of torture, which the Committee did not accept.

Broader legal issues were also discussed, including problems related to anti-terror laws in Ethiopia and Turkey. Ethiopia was criticised for introducing a law that restricts the amount of foreign donations NGOs may receive to just ten percent of their annual budget. This restriction considerably hampers the ability of NGOs to work effectively and independently.

Detention

Detention conditions was a recurring issue with every State. Overcrowding in places of detention was noted by the Committee as presenting a threat to the safety, physical and psychological integrity, and health of detainees. In order to reduce prison overcrowding it was recommended that Cambodia, Turkey, Ethiopia, and Ecuador use alternative

non-custodial forms of punishment. In the examinations of Turkey, Mongolia, and Bosnia and Herzegovina the use of solitary confinement for prisoners was a concern. Mr Xuexian Wang⁹ said solitary confinement can only be used as a measure of last resort, for as short a time as possible and under strict supervision.

Access to legal safeguards and monitoring of places of detention

Failure to afford all detainees with all fundamental legal safeguards from the outset of their detention was a common issue across most States reviewed.¹⁰ States were called on to provide detainees with the possibility of lodging complaints, through an independent and effective law enforcement complaint mechanism empowered to receive and investigate allegations of torture and ill-treatment by police and other law enforcement officials.¹¹ Cambodia has ratified the Optional Protocol to the Convention (OPCAT). Accordingly, the State has established a National Preventive Mechanism (NPM), which the Committee recommended be brought in line with OPCAT. Turkey has signed but not ratified OPCAT. The Committee's recommendation that Turkey formally allow access to places of detention for civil society actors could have been more specific. Although Ethiopia has not signed OPCAT, the Committee recommended the State establish an equivalent monitoring mechanism.

Asylum seekers and refugees

Issues regarding status of asylum seekers and refugees,¹² extradition and deportation¹³, and human trafficking¹⁴ were discussed throughout the session. Of particular interest was whether asylum seekers and refugees who had been denied refoulement protection could appeal the decision¹⁵ and whether States took into account a history of torture in the State to which an individual was being returned.¹⁶ The deportation of 20 Uighurs from Cambodia to China just two days after Cambodian authorities, not UNHCR which is usual practice, signed a sub-decree terminating their refugee status, received particular attention. The Committee also enquired

7 Bosnia and Herzegovina, Cambodia, Turkey and Ecuador. For an explanation of the new reporting procedure see <http://bit.ly/i3Ww60>.

8 Extra meeting time has been approved for 2011 and 2012, when sessions will be increased from three to four weeks.

9 Although Mr Wang appeared strong on this issue he was silent more often than not during the session and typically left the hard questions up to his fellow Committee members. There are two members on the Committee who are current representatives of their governments, Mr Gallegos Chiriboga and Mr Wang, which on a Committee of only ten people is a concerning trend.

10 Cambodia, Ethiopia, Ecuador, Mongolia, and Turkey. Such safeguards comprise: a) the rights of detainees to be informed of the reasons for their arrest, including of any charges against them; b) to have prompt access to a lawyer and, when needed, to legal aid and to an independent medical examination; c) to notify a relative; d) to be brought promptly before a judge; and e) to have the lawfulness of their detention reviewed by a court, in accordance with international standards.

11 Bosnia and Herzegovina, Cambodia, and Mongolia.

12 Turkey and Ecuador.

13 Ecuador, Mongolia and Ethiopia.

14 Cambodia, and Bosnia and Herzegovina.

15 Mongolia, Turkey, Bosnia and Herzegovina, and Ecuador.

16 Cambodia, Bosnia and Herzegovina, and Ethiopia.

into Cambodia's post extradition monitoring and what protections are in place for asylum seekers and refugees.

Impunity

Ending impunity is essential in combating torture and ill-treatment. The Committee focused on the quality of investigations but also more specifically on lack of witness protection, restrictions on legal aid and, in the case of Cambodia, a new NGO law.¹⁷ On a related issue, the Committee strongly criticised the use of counter charges such as 'defaming the police' or 'insulting Turkishness' to dissuade victims from pursuing torture cases in Turkey. The Committee suggested to Ecuador that the country review its methodology for collecting the number of torture cases, as the discrepancies between State and NGO information were significant. Turkey was urged to apply the appropriate provision in the penal code when sentencing perpetrators of torture to address a continuing culture of impunity.¹⁸

Reparation

The lack of effective and adequate means for victims of torture and ill-treatment to obtain justice in Mongolia was a concern, and the Committee recommended the State enact comprehensive legislation that includes torture as a basis for compensation.

The reviews of Ecuador, Ethiopia and Turkey highlighted the lack of information and statistical data on reparations and social rehabilitation services provided to victims, as required by Article 14 of the Convention. In light of this, the Committee requested information on redress and compensation measures ordered by the courts and provided to victims of torture or their families.¹⁹ Of concern in Cambodia was the inconsistency of the Internal Rules of the Extraordinary Chambers in the Courts²⁰ with Article 14 of the Convention, which only provide for moral and collective reparation, precluding individual financial compensation.

In Bosnia and Herzegovina the Committee was concerned at the slow process of adopting the draft law on the rights of victims of torture and the absence of an adequate definition in law of the rights of civilian war victims.

17 This new law appears to threaten the protection of human rights defenders from reprisals.

18 Allegations of torture are often tried under Article 256 or 86 regarding excessive use of force or intentional injury, instead of under Articles 94 or 95 which specifically reference torture. As a result the sentences for perpetrators are not commensurate to the gravity of the crime.

19 Ethiopia. This information should include the number of requests made and of those granted and the amounts ordered and actually provided in each case.

20 The Extraordinary Chambers in the Courts of Cambodia, commonly known as "Khmer Rouge Tribunal", is a national court established following an agreement between the Royal Government of Cambodia and the United Nations to try senior members of the Khmer Rouge for serious violations of Cambodia penal law, international humanitarian law and custom, and violations of international conventions recognised by Cambodia, committed between 17 April 1975 and 6 January 1979.

Vulnerable groups

Throughout the session particular attention was given to the rights of persons with disabilities and the problem of violence against women and children, including domestic violence. Concern was expressed that Mongolia and Ethiopia had not yet criminalised marital rape and sexual harassment, and that women who were victims of sexual violence did not have access to redress and immediate protection.

Of particular concern was the growing numbers of reported rapes of women and girls,²¹ and the high number of children reported as being in detention due to the lack of alternatives to imprisonment.²² In particular, Turkey was questioned regarding the treatment of juveniles arrested under anti-terror legislation in reference to a report by Human Rights Watch.²³

CONCLUSION

While the Committee covered a broad range of important issues during the session, it is worth highlighting some of these due to their emerging importance in the work of the Committee. The Committee's attention to the situation of vulnerable groups creates overlaps with other treaty bodies, causing States to challenge the mandate of the Committee to address the issues. Another increasingly important issue was the use of various 'legal' means of reprisals and harassment of NGOs and persons bringing accusations of torture. The use of counter charges to dissuade persons from reporting torture and the adoption of laws preventing the independent functioning of NGOs are particularly worrying trends. In November 2010 several NGOs proposed, as part of a comprehensive response to the Dublin Statement, that harmonisation of the work of overlapping treaty bodies could be improved by adopting joint general comments.²⁴ Furthermore, protection of victims and persons working with torture cases seems to be high on the agenda of the Committee, as evidenced by recent concluding observations on Yemen and Ecuador.²⁵ ■

21 Cambodia and Ethiopia.

22 Turkey and Cambodia: other issues raised by the Committee were detention facilities available for persons with disabilities (Ethiopia), the rights enjoyed by disabled persons and indigenous peoples (Cambodia, and Bosnia and Herzegovina), and violence against vulnerable groups, such as lesbian, gay, bisexual, and transgender, and intersex (LGBTI) persons, those with HIV/AIDS and/or mental disabilities (Mongolia).

23 Report available at <http://bit.ly/fgGtml>.

24 See <http://bit.ly/FFt87>

25 CAT/C/YEM/CO/2/Rev.1 §32 and CAT/C/ECU/CO/4-6 §12.