

# HUMAN RIGHTS COMMITTEE

Reviews of Belgium, El Salvador, Hungary, Jordan, and Poland



The Committee addressed El Salvador's ineffective recognition of its indigenous peoples

The Human Rights Committee (the Committee) held its 100<sup>th</sup> session in Geneva from 11 to 29 October 2010, during which it reviewed reports from five countries: Belgium, El Salvador, Hungary, Jordan, and Poland<sup>1</sup>. Key themes of the session included the legal status of the *International Covenant on Civil and Political Rights* (the Covenant), discrimination against minority groups, and detention and ill treatment by law enforcement officials.

## ENGAGEMENT BY STATES UNDER REVIEW

State delegations demonstrated a general willingness to cooperate with the Committee. El Salvador's delegation<sup>2</sup> was frank and forthcoming in the dialogue with the Committee but, when more difficult issues were raised, sometimes pointed to the previous administration, in power during the period covered by the report<sup>3</sup>, as an excuse for lack of progress. The Committee expressed regret that El Salvador had not provided its written replies to the list of issues in time for translation.

Jordan was praised for providing its responses early enough for Committee members to examine them. However, Committee members were critical during the examination of Jordan, asking detailed questions and referring to recommendations made by other UN human rights mechanisms.<sup>4</sup> All Committee members followed up on their questions, seeming dissatisfied with the quality of responses provided by Jordan's delegation and pressing for more straightforward answers.<sup>5</sup> The examination suffered due to poor time management by the Committee's chairperson and long-winded responses by the delegation. Jordan's delegation was primarily composed of representatives from the permanent mission in Geneva. Consequently, the examination of implementation of the second half of the articles of the Covenant was skimmed over. Only three of the 11 members of Jordan's delegation were women, which was particularly regrettable as women's issues dominated much of the review.

The Polish and Belgian delegations stood out for being organised, well prepared, and highly competent. The Polish delegation provided a presentation with thorough and direct replies to questions. The Committee praised Poland's detailed written replies and the large and diverse delegation's ability to provide additional information during its dialogue with the Committee.

The Belgian delegation was also large, with 16 representatives from diverse areas of the Government. The representatives' engagement with the Committee was cooperative and constructive. However, the delegation lacked time to respond to all questions during the second round, due to the Committee's focus in the first part on issues such as detention and racism.

The Hungarian delegation of ten individuals demonstrated a willingness to cooperate effectively with the Committee. However, Hungary was criticised for its incomplete written responses to the list of issues, which the Committee called 'unusual

1 All relevant documents for the session are available at <http://bit.ly/dkHHTB>.

2 El Salvador's delegation consisted of six members including the Ambassador to the UN in Geneva, representatives from the Ministry of Foreign Affairs and the General Inspectorate of the National Civil Police, and the Deputy Director of the penitentiary system.

3 El Salvador's 6<sup>th</sup> periodic report covered the period from 2002 to 2007.

4 The Committee referred to recommendations from the UPR process, the Committee on the Elimination of Discrimination against Women, Committee against Torture, Committee on the Elimination of Racial Discrimination, and the Committee on the Rights of the Child. These references included statements by the mechanisms in which Jordan was criticised for its human rights conditions.

5 The dialogue was also marked by a confrontational discussion on Islam and Sharia law, as it pertains to polygamy and women's rights, between Mr Amor and the delegation.

and unfortunate.<sup>6</sup> Although the delegation's oral responses were considered 'helpful' and 'straightforward' by the Committee, they were also long-winded, resulting in no time for the delegation to respond to the Committee's second set of questions on issues such as human trafficking, hate crimes and asylum laws.

## NGO PARTICIPATION IN THE 100<sup>TH</sup> SESSION

NGO engagement at the session started off slowly, with only two NGO reports presented to the Committee during the closed formal briefing.<sup>7</sup> There was no meaningful interaction with the Committee as members did not ask any questions. However, the informal lunchtime NGO briefings, held just before the consideration of each State, were fruitful and the Centre for Civil and Political Rights was instrumental in ensuring this. All meetings were attended by several Committee members, with as many as seven members attending the briefing on Jordan. At the briefings, Committee members listened to short presentations by NGOs, followed up with questions, and engaged in valuable dialogue with NGO representatives. The briefings provided a relaxed and informal atmosphere for NGOs to speak freely and for members to receive additional information a short time before addressing the State delegation.<sup>8</sup>

The results of these meetings were extremely positive for NGOs. Committee members were enthusiastic about the information they received, directly incorporating it into their questions for State delegations.<sup>9</sup> During the review of State reports, such as that of Jordan, Committee members often referred to NGO reports and materials, using statistics and specific examples to support questions and criticism.

## THEMES

### Legal status of the Covenant

In its concluding observations, the Committee called on all five States to fully comply with the provisions of the Covenant. In the review of Jordan and El Salvador, the Committee cited cultural factors as impediments to the full implementation of the Covenant and urged the States to revise their legislation in this regard, including Sharia law in Jordan. At Belgium's review, the State referred to the Covenant as a 'pillar' of human rights protection in the country but was not willing

to withdraw its reservations to the Covenant,<sup>10</sup> arguing reservations were in accordance with its federal constitution. Hungary announced it was in the process of redrafting its constitution and said it would incorporate relevant international human rights provisions, including from the Covenant. However, the Committee pointed to a number of other areas where Hungary falls short of complying with the Covenant, such as the absence of legislation to regulate hate speech and its anti-terrorism legislation. Although Poland said the Covenant has primacy over domestic laws and is used in courts, Committee members pointed to a number of areas where the State has failed to implement the Covenant in practice, notably equal treatment regardless of sexual orientation.

### Abortion and violence against women

The Committee was alarmed by the practice in Jordan of placing women at risk of violence, in involuntary 'protective' custody.<sup>11</sup> However, it welcomed the fact that 'heat of passion' is no longer a mitigating circumstance in cases of 'honour killings'.<sup>12</sup> Poland said reducing domestic violence was a Government priority, and the Committee welcomed the adoption of new laws and programmes on domestic violence.<sup>13</sup> However, the Committee remained concerned about high rates of discontinued criminal proceedings.<sup>14</sup>

With Poland having one of the most restrictive anti-abortion laws in Europe, it came under intense scrutiny by the Committee, which noted the practice of illegal abortion is thriving in the country.<sup>15</sup> El Salvador's equally rigid position on abortion invited particular criticism from Committee members, not least due to the heavy prison sentences the crime carries. Mr Fabián Omar Salvioli, in particular, reproached the State for violating international human rights standards with its policies on abortion. The Committee urged the State to reform its legislation, to allow for exceptions in cases of therapeutic abortion and pregnancy due to rape or incest.

### Discrimination against minority groups

The Committee addressed El Salvador's ineffective recognition of its indigenous peoples. The delegation admitted previous

<sup>6</sup> These comments were made by Mr O'Flaherty.

<sup>7</sup> A representative of Citizen Working Group on the Decriminalization of Therapeutic, Eugenic and Ethical Abortion, Madre, IPAS, and Women's Link Worldwide discussed criminalisation of abortion and the devastating effect it has on women in El Salvador. Additionally, the Centre on Housing Rights and Evictions presented a report on Roma people in Bulgaria.

<sup>8</sup> Discussions were held in Spanish for El Salvador and Arabic for Jordan, facilitating the informal and comfortable atmosphere. NGO members also provided unofficial translations for Committee members not fluent in those languages.

<sup>9</sup> For example, Mr Salvioli, Mr Amor and Mr El-Haiba used information from the NGO briefing on El Salvador during the dialogue with the State.

<sup>10</sup> Belgium's reservations to the Covenant include Article 10, paragraphs 2 (a) and 3 with respect to prison conditions; Article 14 paragraphs 1 and 5 with respect to judicial processes; Article 19 with respect to freedom of expression; Article 21 with respect to freedom of assembly; and Article 22 with respect to freedom of association.

<sup>11</sup> Under the provisions of the Law on Crime Prevention.

<sup>12</sup> An amendment of the Criminal Code in 2010 ensures perpetrators of honour killings can no longer benefit from mitigating circumstances.

<sup>13</sup> New laws on domestic violence were promulgated in 2005 and the Government introduced a national programme to prevent domestic violence in 2006.

<sup>14</sup> There is a growing tendency among State prosecutors to either refuse to instigate, or to discontinue criminal proceedings, as the Code of Criminal Proceedings allows for this in cases where the 'act does not possess the qualities of a prohibited act (...) or when it causes minimal social harm'.

<sup>15</sup> According to the Federation for Women and Family Planning, an estimated 150,000 women have clandestine abortions every year in Poland.

census methodologies had resulted in 'statistical genocide', and shared plans to expand indigenous rights through the creation of the First National Congress of Indigenous Peoples.<sup>16</sup> During its review of Jordan, the Committee expressed concern regarding the requirement that individuals indicate their religion on State identification cards, and that persons belonging to the Baha'i community could not identify as such and were forced to identify as Muslims. The delegation claimed the practice of identifying one's religion was a point of pride for all religious and ethnic minorities.

The Committee called on Hungary and Poland to tackle the longstanding and widespread discrimination against the Roma minority, as well as rising anti-Semitism. The Committee welcomed Hungary's adoption of the 'Decade of Roma Inclusion' initiative, promoting social integration of the Roma people. However, it pointed to the lack of monitoring systems and reliable statistics<sup>17</sup> recording racially motivated crimes, as well as ineffective legislative prohibitions<sup>18</sup> to combat racial discrimination. The increased incidence of anti-Semitic, Islamophobic and racist acts was similarly alarming in Belgium. The Committee acknowledged that, while the relevant legislation is in place, it has been insufficient in addressing the situation, which appears to be worse than in other European countries.

### Detention and ill-treatment by law enforcement officials

Belgium came under intense scrutiny regarding excessive use of force by police officers and the misuse of the administrative

16 The Congress will serve as a mechanism for indigenous people to present and propose a unified agenda to the State regarding issues such as their culture and independence, and encouraging further dialogue between indigenous peoples and the State.

17 One of the experts was unsatisfied with the State's explanation that data on racist violence wasn't aggregated for reasons of privacy protection, saying 'the balance has swayed too much towards privacy at the expense of human rights'.

18 The Committee noted with concern that the Commissioner on Human Rights did not deal with breaches of Roma rights, as they came under civil and political rights. It also noted the lack of references to Roma rights in the constitution.

detention law, which was the dominant source of complaints by NGOs. Preventative arrests and the use of tasers as a preemptive measure prompted much discussion. The increasingly widespread practice of detaining asylum seekers and undocumented migrants was one of the principal areas of criticism put to Hungary and Poland. The Committee also cited reports of overcrowding and poor conditions in detention facilities in Belgium, Hungary and Poland. All States concerned assured the Committee plans were underway to increase prison capacities.

Regarding Jordan, the Committee discussed the absence of independent complaint mechanisms for cases of torture and the low number of prosecutions of such cases. The delegation attempted to address the Committee's concerns, with figures on the prosecution of officials suspected of ill treatment, and said prison visits are undertaken regularly by the Public Prosecutor. In its review of El Salvador, the Committee referred to unimplemented recommendations made by other treaty bodies, mainly the Committee against Torture, the Committee on the Rights of the Child, and through the universal periodic review. The delegation provided information on policies intended to strengthen training programmes and tighten oversight of the activities of police and armed forces, aimed at preventing violations of the Covenant.

### OTHER DEVELOPMENTS

The Committee completed its first reading of the draft General Comment No. 34 on Article 19 of the Covenant, which protects the right to freedom of opinion and expression.<sup>19</sup> The Committee will consider comments on the draft at its second reading, scheduled to take place during the Committee's next session, from 7 to 25 March 2011 in New York.<sup>20</sup> NGOs and other interested parties may submit comments on the draft to the Committee by 30 January 2011 at [ccpr@ohchr.org](mailto:ccpr@ohchr.org).

19 For more information, see <http://bit.ly/fwsxjU>.

20 The draft General Comment is available at <http://bit.ly/cJiard>.

### Facts about the Committee

Number of members:	18
Sessions:	Three times a year for sessions of three weeks' duration (normally in March in New York and in July and November in Geneva). The Working Group on Communications meets one week prior to the Plenary.
Treaties it covers:	International Covenant on Civil and Political Rights (Signatories: 72. Parties: 167); Optional Protocol to the International Covenant on Civil and Political Rights (Signatories: 35. Parties: 113); Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Signatories: 35. Parties: 73).
General Comments:	33. General Comment 34 on freedom of expression is currently being drafted (see <a href="http://bit.ly/iaqJeL">http://bit.ly/iaqJeL</a> ).
NGO participation:	NGOs can be involved through consultations regarding preparation of State reports, and through submission of NGO reports in relation to 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. For more information, refer to <a href="http://bit.ly/dB7B73">http://bit.ly/dB7B73</a> and <a href="http://bit.ly/gEMdPs">http://bit.ly/gEMdPs</a> . ■