
HUMAN RIGHTS COMMITTEE

Reviews of Mongolia, Slovakia, Serbia, and Togo



Photo: Stefano Corso

The Human Rights Committee (the Committee) held its 101st session in New York City from 14 March to 1 April 2011, during which it reviewed reports from Mongolia, Serbia, Slovakia, and Togo.¹ The Committee reviewed the human rights situation in the Seychelles during closed sessions, even though the State did not provide a report. Key themes of the public reviews included the legal status of the *International Covenant on Civil and Political Rights* (the Covenant), judicial reforms, the rights of women and minorities, and prison conditions and treatment in police custody.

ENGAGEMENT BY STATES UNDER REVIEW

Only the Slovakian delegation was not led by a high-level official from the country's capital; instead it was headed by the UN Ambassador of the New York mission. However, all delegations, ranging from the small (Mongolia and Slovakia) to medium-sized (Togo and Serbia, which had 11 and 10 delegates respectively), included either a high-level minister (Mongolia) and/or a few relatively high-ranking government officials.² In Togo's case, members of the opposition party were also present. The Serbian delegation was praised for its gender-balance.

To the Committee's questions, Mongolia provided frank and precise answers, which seemed to foster the respect of the experts and engender a constructive dialogue. However, the ten-year gap between the current and previous reports was noticed by the Committee, and Mongolia promised to report with greater frequency in the future. Togo and Serbia,³ though not as cooperative as Mongolia, each gave frank assessments of their respective country's human rights problems. At times, however, the Committee expressed displeasure at inadequate answers by Togo to questions on political violence and detention conditions. A recurring theme in the Serbian dialogue involved the large gap between the impressive set of legislative measures taken, and the actual situation on the ground.

The Slovak delegation was the least cooperative and would often not admit that problems existed. Representatives provided few direct answers on some issues despite repeated questioning from Committee members. Slovakia focused on new legislation and action plans for improving the human rights situation, while the Committee's questions stressed the impact of government policy, particularly in regard to the treatment of Roma. Though claiming to value NGO input into its report, Slovakia often answered defensively and dismissively to questions derived from NGO allegations, especially regarding the Roma.

NGO PARTICIPATION IN THE 101ST SESSION

In relation to the countries under review, the pre-session NGO meeting was characterised by limited Committee interaction with a small group of NGOs. A Togolese NGO⁴ provided the most substantive presentation, providing information on official investigations of political violence, the electoral process, the rights of detainees, freedom of assembly, and freedom of expression. On behalf of NGOs from the Seychelles, the Centre for Civil and Political Rights (CCPR Centre) flagged problems

1 All documents can be found at <http://bit.ly/eRqGvl>.

2 The delegations' composition is available at <http://bit.ly/eRqGvl>, under the column title 'delegation list'.

3 Serbia's report did not cover human rights issues in Kosovo, but the delegation said that the Government would fully cooperate if the UN Interim Administration Mission in Kosovo (UNMIK) submitted one, and suggested it do so.

4 Collectif des Associations Contre l'Impunité au Togo (CACIT). The Togolese National Human Rights Commission also made a presentation.

with pre-trial detention and lack of independence of the national human rights institution. Only one NGO interacted with the Committee during the pre-session NGO meeting on Mongolia,⁵ focusing on conscientious objection. No NGOs focusing on Slovakia or Serbia participated in the pre-session meeting. During the first and second week, some Committee members also attended side events or video-conference briefings by NGOs. These included side events on the situation in Mongolia,⁶ in Serbia,⁷ and Slovakia.⁸

The Committee commended Amnesty International for using the pre-session NGO meeting to call attention to thematic issues: Pakistan's reservations regarding the Covenant, including to Article 40 which obliges States to report to the Committee. In a statement issued in the last week of the session, the Committee indicated it might examine Pakistan's actions to promote and protect human rights regardless of this reservation.

The Committee cited NGO reports during the review of Mongolia and Togo, and frequently referred to national and international NGO reports during their discussion with Slovakia, particularly in regard to Roma. With Serbia, the Committee referred to reports of NGOs and the national ombudsman, including on the status of prosecution of war criminals, and trafficking, but did not follow up adequately with hard-hitting comments or more probing questions.

THEMES

Legal status of the Covenant

In all countries under review, the Committee expressed concern that the national courts were not invoking the Covenant in their decisions. Though the Slovak delegation sidestepped most questions related to this issue, the Committee suggested the Government consider a constitutional amendment to give the Constitutional Court jurisdiction to evaluate the compatibility of national laws with international treaties. The Committee noted that Togolese laws do not always conform to the principles of the Covenant, and questioned whether lawmakers and judges have adequate knowledge of international law. The Committee had received no individual communications from Mongolian citizens, which pointed to a lack

of awareness of Covenant procedures. This comment prompted Mongolia to acknowledge the need for additional training for court and administrative staff, and Togo to indicate that the Government holds special seminars to instruct judges and court officials on human rights conventions and treaties to which Togo is a State Party.

Legislative and judicial reform

The Committee was particularly concerned about the speed of legislative reform in Togo, given the long list of draft laws awaiting passage by the National Assembly, and suggested the delays were indicative of a lack of government commitment to reform. While acknowledging some steps taken, such as the abolishment of the death penalty, the Committee preferred faster progress.

The theme of judicial corruption dominated throughout the Committee's reflections on Mongolia.⁹ The Government acknowledged a strong public perception of judicial corruption and a weak oversight of the judiciary.¹⁰ To address this issue, the delegation announced a legal forum would take place in April 2011, with the intention of bringing academics, judges and other practitioners together to discuss a possible anti-corruption strategy.

The Committee requested more information on a report by the Serbian national ombudsman that showed problems in the Serbian judicial system: citizens have complained about the length of proceedings, the absence of judges, untimely decision-making, and an absence of legally-based decision-making. Serbia was also put under pressure about the ongoing pursuit of war criminals in Serbia and the former Yugoslavia, and Sir Nigel expressed particular concern about witness intimidation, which occurs despite the Government's commitment to providing protection.

Rights of women and minorities

Discrimination against the Roma community was a major topic during the review of Serbia and Slovakia. Despite the enactment by the Serbian Government of an official strategy for the advancement of Roma, the Committee was very concerned about how to realise the rights of the so-called 'legally invisible' in Serbia, which includes the Roma. Discussions about the rights of the Roma dominated the Slovak review, and the question of whether some Roma women were forced to undergo sterilisation without their consent was the most contentious issue of the session. Some of the Committee experts, including Ms Christine Chanet, suggested

5 Conscience and Peace Tax International (CPTI) highlighted the confusing nature of conscientious objection in Mongolia. Sir Nigel Rodley emphasised the need for clarity on this issue during several rounds of questions, asking who is able to object, how long their service is, whether they need to provide payment, and how many people have objected.

6 The Center for Human Rights and Development, and Globe International.

7 The Belgrade Center for Human Rights and the Humanitarian Law Center. The briefing focused on the overcrowding of prisons, the deprivation of the rights of disabled people in the national courts, the inadequate compensation for victims of abuse, and the lack of prosecutions of middle and high-ranking officers for war crimes in Serbia.

8 The International Disability Alliance, CPTI, Center for Civil and Human Rights (Pordona) and the Mental Disability Advocacy Center.

9 The Committee experts noted examples that highlight the problems facing the judiciary, including the case of a human rights defender who was jailed for criticising the conviction of his client. The delegation said the criminal code was being redrafted to address such cases in the future.

10 The Government noted only one formal case of judicial corruption, but insisted it was aware that the lack of formal cases might itself indicate corruption.

the practice was tantamount to genocide. The Government dismissed these allegations, touting a law that requires all women undergoing sterilisation to wait 30 days after signing a consent form to have the surgery. They explained that initial monitoring efforts have revealed no cases of forced sterilisation, and expressed scepticism about NGO allegations to the contrary. The delegation also voiced frustration that this issue was previously covered by other treaty body reviews.¹¹

The protection of the rights of sexual minorities was also raised with several delegations. In response to Committee concerns about hate crimes targeting individuals based on sexual preferences, Mongolia indicated that it had instituted public awareness campaigns and trainings at the police academy, and requested advice from the Committee on how best to incorporate hate crimes into its criminal code. The Committee criticised the criminalisation of homosexuality in Togo, which contravenes the Covenant, and asked about plans to revise the criminal code. In a failed effort to deflect the Committee's disapproval, Togo said the Government was focused on building awareness and breaking down stereotypes rather than repealing laws, which they said is 'counter-productive'. Mr O'Flaherty argued that such a law creates an 'atmosphere of fear and discrimination,' regardless of whether it is actually used in prosecutions. In response to concern expressed by Ms Chanet about the economic and social rights of sexual minorities, Slovakia said non-discrimination provisions had been built into Slovak law, and a draft amendment to the law of equal treatment, regardless of sexual orientation, was under development.

In all countries under review, the Committee voiced concern about the rates of violence against women, including domestic violence. In response to questions from Ms Hellen Keller and Mr Cornelis Flinterman, Mongolia conceded that rapes were widely underreported. The Government was debating whether marital rape should be considered a crime, but current public perception on this issue precluded any rapid change. The Committee pushed Serbia to elaborate on how the Government is breaking down patriarchal stereotypes in society and taking steps to end trafficking in women.

Prison conditions and the treatment of people in police custody

The Committee asked Mongolia and Slovakia for more information about the process for detaining suspects and the mechanisms for monitoring that process. Both delegations indicated that mechanisms were in place for viewing video or audio recordings of interrogations, but the Slovak Government acknowledged that the recording is not compulsory. Despite Slovakia arguing that it has sufficient monitoring mechanisms (for example, complaints about police behaviour can be submitted to the Ministry of Interior, the prosecution office, and

the ombudsman), the Committee expressed scepticism that the relevant bodies could be independent monitors of the police force and requested the Government provide written responses on the number of complaints. The Committee pressed Serbia and Mongolia further on abuse and torture in police custody. Sir Nigel noted that in 2009 and 2010, Serbian internal police records show 299 complaints of abuse, yet only four were deemed valid. The Committee requested the Government provide them with more statistics. Mongolia noted that its high number of dismissed torture cases and lack of compensation to victims was a result of too narrow a definition of torture, which requires revision in line with recommendations made by the Committee Against Torture.

Overcrowding in prisons was also a recurring theme with several countries under review, but Togo received the harshest rebuke for its prison conditions. Sir Nigel compared the prisoners' conditions to that of farm animals, calling them deplorable and inhumane, and amounting to a serious violation of Article 7 of the Covenant. The delegation acknowledged prison overcrowding as a key challenge, and indicated that new prisons are being built to international standards, including adequate separation between men, women and minors. Mongolia also claimed the Government was closing the Denjiin Myanga detention centre and building a new facility, and underscored that international organisations such as Amnesty International visited their prisons. Slovakia was asked what institutional steps it had taken to alleviate overcrowding, such as creating alternatives to prison.

OTHER DEVELOPMENTS

At its 101st Session, the Human Rights Committee appointed the following officers:

- Chairperson:
Ms Zonke Majodina
- NGO Liaison Focal Point:
Ms Iulia Motoc
- Rapporteur for Follow-up to the Concluding Observations:
Ms Christine Chanet
- Rapporteur for New Communication and Interim Measures:
Mr Krister Thelin
- Rapporteur on the Admissibility of Communications:
Sir Nigel Rodley

The Committee began its second reading of draft General Comment 34 on article 19 on the freedom of expression, and approved 24 paragraphs of the text. A news article on the discussion is available on ISHR's website. ■

¹¹ In their 2008 review of Slovakia, CEDAW 'remain[ed] concerned' about the disparity between NGO reports and the government responses to this issue. See paragraphs 36-37. <http://bit.ly/gmhfEQ>.