
COMMITTEE AGAINST TORTURE

Reviews of Finland, Ghana, Ireland, Kuwait, Mauritius, Monaco, Slovenia, and Turkmenistan



Photo: Paul Peracchia

The Committee against Torture (the Committee) held its 46th session in Geneva from 9 May to 3 June, and considered the compliance of eight States with the *Convention against Torture, and other cruel, inhuman or degrading treatment or punishment* (the Convention). The States under review were Finland, Ghana, Ireland, Kuwait, Mauritius, Monaco, Slovenia, and Turkmenistan. Key themes at the session included the domestic implementation of the Convention, detention conditions, abolition of the death penalty and the situation of vulnerable groups.

Finland, Kuwait, Monaco, and Mauritius submitted reports in response to the 'Lists of Issues Prior to Reporting' (LoIPR), adopted during the Committee's 45th session under the optional reporting procedure. Ghana, Ireland and Turkmenistan presented their initial reports to the Committee, all of which were at least seven years late.¹ The Committee adopted its annual report (covering the 45th and 46th sessions) and made the decision to send reminders to States whose reports have previously been submitted three or more years late.

The States examined expressed appreciation for the opportunity to engage in open and constructive dialogue with the Committee.² Most States reflected positively on the increased amount of time allocated for each State review and the prolongation of the session by one week.³ The Committee expressed its gratitude for the detailed and comprehensive reports submitted by Finland and Slovenia. However, it emphasised the need for more accurate and statistical information in the reports of Ghana, Kuwait, Turkmenistan, and Ireland.⁴

While most delegations had women as at least one third of their members, the Kuwaiti delegation had only one female representative out of 13 members. Slovenia had the largest delegation (14 members), while Finland and Monaco had the smallest (6 members).

The Committee addressed some practical and institutional issues unrelated to the more substantive State reports and reviews. It held a meeting with the Subcommittee on the Prevention of Torture (the Subcommittee) to discuss cooperation between the two bodies and other institutional matters. Mr Malcolm Evans, Chairperson of the Subcommittee, presented the Subcommittee's annual report. This was followed by questions from Committee members, mostly concerning national preventive mechanisms (NPMs) and the possibility of evaluating these. The Subcommittee responded that, while mandated to assist States with regards to NPMs, it does not have the mandate to evaluate them.

The Committee also held a meeting with States parties to discuss the Committee's working methods. Issues such as the independence of the Committee, and the ratification, implementation and practice of the new optional reporting procedure with Lists of Issues Prior to Reporting (LoIPR) were deliberated. China and Algeria expressed concerns about the reliability of information received by the Committee, claiming non-governmental organisations (NGOs) sometimes do not

1 <http://bit.ly/eub6VM>.

2 Throughout its replies and the Committee's follow-up questions, the delegation of Ghana in particular engaged in a fast-paced dialogue with the Committee, answering follow-up and other questions as soon as they were asked. However, despite the delegation's eagerness to answer all questions and its contribution to an open and frank dialogue, many Committee members noted the lack of statistical or detailed information in both the report and the answers given.

3 ISHR, *Human Rights Monitor Quarterly*, Issue 1, 2011, p. 24, available at <http://bit.ly/oUfC9l>.

4 See concluding observations at <http://bit.ly/eub6VM>.

provide accurate information, thus NGO information may be an insufficient basis for creating the LoIPR or raising issues during the actual reviews.⁵ Other States, such as the UK and Finland, expressed full support for the LoIPR procedure.

NGO AND NHRI PARTICIPATION

The Committee received numerous reports from NGOs. For the review of Ireland, seven such reports were submitted, while for Finland there was only one.⁶ The Irish Human Rights Commission was the only national human rights institution to submit a report.

As is general practice, the Committee held closed meetings with civil society before each State review. However, a disappointingly low number of NGOs participated in these meetings.

The Committee raised numerous issues during the 46th session that were in reference to and as a result of the input of NGOs. The majority of these references were in relation to individual cases.

In reference to NGO information, during the review of Turkmenistan the Committee expressed concern about the application of the right to due process by State authorities. It also referred to the NGOs' description of Turkmenistan as a closed society with little or no freedom of expression or association in its dialogue with the State delegation.

Based on NGO information, the Committee raised the issues of State restrictions on monitoring in and reporting on places of detention during multiple State reviews, and the need for some States to abolish the death penalty.⁷

NGO consultative meeting

In addition to closed meetings with NGOs in advance of the relevant country reviews, the Committee held a general meeting with NGOs, during which the positive and negative aspects of the Committee's working methods were highlighted and a number of concrete proposals were made.

NGOs generally commended the Committee for the progressive and innovative approach demonstrated by some of its working methods. For example, the LoIPR procedure, which

has since been adopted by other treaty bodies,⁸ and the scheduling of NGO meetings before each State review, which has provided the Committee with more and better tailored country-specific information. The creation of a specific webpage on follow-up, in the Committee's section of the Office of the High Commissioner for Human Rights' (OHCHR) website, was welcomed and said to be increasing the transparency and visibility of follow-up efforts.

A number of NGOs proposed the Committee give more consideration and importance to the Committee's other mandates, such as the individual communications procedure and adoption of general comments. Moreover, NGOs highlighted three main areas of concern related to the cooperation between the Committee and NGOs.

Firstly, to improve accessibility to the Committee for NGOs there should be regular and transparent scheduling of reviews, which would allow NGOs enough time to provide substantive input. Regarding this suggestion, the Committee asserted that opportunities for NGO input are promoted through the scheduling of closed NGO meetings prior to each country review but very few NGOs take up this opportunity.

NGOs suggested the creation of a transparent forum for discussion through 'the wider use of technology', such as webcasts and video conferencing, which may help to increase involvement by NGOs around the world. The Committee responded positively to this suggestion, although said it was likely to be more efficient for NGOs to implement such measures themselves.

Secondly, NGO participation in relation to the LoIPR procedure was addressed. The new procedure was expressed by NGOs to be 'a very welcome innovation'; however, timely access to information on the adoption of LoIPRs was noted as essential in order for NGOs to participate. NGOs suggested the Committee be more strategic and rigid about State report submission deadlines, to prevent information from becoming out of date, and 'should consider adopting the current procedure of the Human Rights Committee to review one non-reporting State per session'.

Finally, the involvement of NGOs in the follow-up process was highlighted as an area needing improvement. It was suggested NGOs be allowed to intervene during the Committee's meetings on follow-up to concluding observations and views. NGOs also advised the Committee to allocate more time to the discussion of follow-up issues during the session and suggested the specific rapporteur(s) assigned to each State review be more involved in the follow-up process. It was recommended the Committee improve its recommendations and concluding observations by making them more concise and offering targeted remedies; that a lack of implementation

5 China emphasised that NGOs consulted by the Committee should, at a minimum, be ECOSOC accredited to increase the reliability of information provided to the Committee. Mr Grossmann responded by saying the Committee does not accept all information from NGOs uncritically, and has included a disclaimer on the website concerning information posted there by NGOs. The Committee also expressed the desire for increased involvement of local NGOs. Since many national NGOs do not possess ECOSOC accreditation, the Committee's firm stance to not introduce such criteria is key for human rights defenders.

6 All reports can be found at <http://bit.ly/eub6VM>.

7 Ghana, Monaco and Kuwait.

8 The LoIPR procedure has subsequently been adopted by the *Committee for Migrant Workers* and the *Committee on Civil and Political Rights*.

of the Convention be addressed (for example, through follow-up country visits by Committee members); that the Committee should study best-practices to further analyse the follow-up procedure.

THEMES

The Committee raised a diverse range of issues during the session, with each Committee member focusing on similar themes for all examinations. Two rapporteurs were assigned for each State review to address issues related to the main articles of the Convention, making for a structured and organised process.

Domestication of the Convention

The domestication of the Convention and its integration into national legislation was raised in all State examinations, with the Committee stressing the need to adopt national definitions of torture in line with the Convention's definition in Article 1.⁹ Ghana and Kuwait were criticised for not having a definition incorporated in their national legislation at all, while the Committee recommended Ireland, Monaco and Turkmenistan amend their existing definitions to align them with the Convention.

The Committee reflected on the States' legal safeguards against torture and judicial or other preventive measures. The independence and accessibility of complaints mechanisms were raised as issues of concern during the reviews of Turkmenistan, Finland and Kuwait. The Committee recommended these States revise their complaint mechanism and ensure citizens are aware of their rights and the protection available to them.¹⁰

General, over-arching concerns included impunity, denial of the right to a fair trial, inaccurate records and data, and insufficient or non-existent witness protection. The responsibility of the State to end impunity and torture was underlined throughout the review of Turkmenistan.

In a similar vein, the lack of effective and adequate means for victims of torture or ill-treatment (or their families) to obtain justice and redress was raised as a matter of concern during the reviews of Turkmenistan, Kuwait, Mauritius, and Monaco. In particular, the Committee recommended the penalties for torture and ill-treatment be increased and clarified, and that accurate statistical information be recorded and presented to the Committee on cases related to torture or ill-treatment.¹¹

Conditions of detention

Prominent issues during country reviews were the conditions of detention and the procedures around detention, arrest,

interrogation and trial. The Committee recommended States address problems of overcrowding, for example, by introducing non-custodial sentences. The Committee commended Finland for its efforts to reduce overcrowding by instigating a system of 'weekend prisoners'; prisoners are given the freedom to attend to their regular duties during the week and are only in custody during the weekend.¹²

It was highlighted that the audio or video recording of all interrogations is an essential preventive measure and the Committee recommended States work to enable such recordings. The training of personnel and authorities in accordance with the Istanbul Protocol was recommended as another preventive measure.¹³

Deaths in prisons were also a matter of concern to the Committee. Recommendations were made to increase prison infrastructure and monitoring of prisoners, and on ways to decrease violence between prisoners.¹⁴

Death penalty

The Committee requested more information on the use of the death penalty and demanded its abolition in Ghana, Kuwait and Monaco. Other forms of corporal punishment were also addressed. Ms Myrna Kleopas expressed concern over the possible reform of the Kuwaiti penal code aligning it with Islamic law and, thus, allowing flogging, amputations and other forms of cruel punishment. The Kuwaiti delegation offered a short, vague response to this, stating that such forms of ill-treatment are not allowed according to Kuwait's civil laws.

Vulnerable groups

Despite the possible overlap with the mandates of other treaty bodies, the Committee addressed the situations of vulnerable groups extensively.

Committee member, Ms Nora Sveaass focused many of her queries on the situation of persons with physical or mental disabilities. She expressed concern about the possible use of electro-convulsive therapy, sterilisation of girls and women, involuntary hospitalisation, and other restrictive measures in Slovenian mental health institutions; the lack of easily accessible complaint mechanisms in Slovenia, Kuwait, Mauritius, and Ghana; and the generally abhorrent state of the healthcare system in Turkmenistan.

The situation and ill-treatment of refugees and asylum seekers

¹² See concluding observations on Finland at <http://bit.ly/eub6VM>.

¹³ *The Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* is a set of international guidelines for the assessment of persons who allege torture and ill-treatment, for investigating cases of alleged torture and for reporting findings to the judiciary or any other investigative body. For more information see: <http://bit.ly/nG41Z5>.

¹⁴ See concluding observations at: <http://bit.ly/eub6VM>.

⁹ For more information see: <http://bit.ly/4mwIA>.

¹⁰ See concluding observations at <http://bit.ly/eub6VM>.

¹¹ See concluding observations at <http://bit.ly/eub6VM>.

was raised in all the reviews by the Committee Rapporteur dealing with Article 3 of the Convention¹⁵ and by other members of the Committee. The issue of non-refoulement was particularly prominent in the reviews of Monaco, Turkmenistan, Mauritius, and Slovenia. Ireland was commended for its anti-trafficking efforts, specifically with regards to protecting asylum seekers and refugees. Finland was questioned concerning its procedure for establishing the identity of asylum seekers, and whether there existed specific legal and practical procedures to protect them from trafficking.

Domestic and sexual abuse were raised as issues of concern to the Committee in most of the State reviews. The Committee asked questions concerning the use and prevention of corporal punishment of children within the home in Ireland. The Irish delegation responded that corporal punishment of children is a long accepted tradition in Irish society and its prohibition would surely be 'met with disdain' by Irish parents.

Domestic and sexual violence against women was particularly highlighted during the reviews of Ghana, Turkmenistan and Kuwait. The situation of minorities was raised briefly during the reviews of Slovenia and Kuwait, in reference to discrimination against the Roma population and the 'Bidun' (meaning: 'without nationality') people respectively.

Individual cases

The Committee referred to a number of individual cases of ill-treatment or torture by government officials, demanding more information on the status of these cases, the whereabouts of those involved and other details.¹⁶ A particularly large number of cases were raised during the examination of Turkmenistan. The delegation of Turkmenistan replied to the Committee's concerns by stating that, in most cases, the Committee's information was incorrect – denying any unjust or inhuman treatment at the hands of government officials had occurred.

LGBTI issues

Compared to the time and follow-up effort given by the Committee to the issues mentioned above, its lack of focus on the issues faced by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons was disappointing. None of the specific concerns raised by NGOs regarding the treatment and protection of LGBTI persons were followed up by the Committee during the reviews. However, LGBTI issues more generally were brought up in three of the eight State reviews, which is noteworthy considering the sensitive nature certain States have attributed to sexual orientation and gender identity issues.

During the review of Kuwait, Ms Sveaass referred to allegations of people being detained and abused by State officials. She emphasised that homosexuality cannot be prohibited and enquired about the State's plans to decriminalise homosexuality and stop abusive behaviour towards LGBTI people. The Kuwaiti delegation did not respond to this directly but referred to the general protection of all people and their dignity in accordance with the State's Islamic laws. The Committee recommended in its concluding observations that the State investigates all crimes and cases of discrimination and ill-treatment against all vulnerable groups.

In the case of Monaco, Ms Sveaass said the Committee had received information on the lack of legal protection for LGBTI persons and asked for more information on this. Her request was especially in light of the fact that sexual discrimination is not regarded as an aggravating circumstance in Monaco's legal system. The delegation responded openly and clearly, indicating that promoting hatred or violence against any group can be punishable by imprisonment, and those who use 'foul language' against a person based on sexual orientation can be held in prison for up to five days with a fine of 5,000 euro.

During the examination of Mauritius, Ms Sveaass asked for information regarding a new bill on equal opportunity, said to include LGBTI rights, including how this bill would be implemented in practice. Additionally, she mentioned the practice of hospitalising lesbian girls (between 2005 and 2006) as acts of ill-treatment. The only response offered by the delegation to these concerns was that the aforementioned bill was ready to be passed in a drafting committee, but this had unfortunately been preceded by the committee chairman's death. The bill had been put to one side while a new election took place and there was a change in committee members. It has not moved forward since.

Human rights defenders and reprisals

The situation and treatment of human rights defenders was addressed during the review of Turkmenistan. Ms Felice Gaer, referencing UN and civil society sources, said the Committee had received reports that civil society was being repressed. She expressed concern that certain legal reforms in the country could result in further oppression and ill-treatment of human rights defenders. The Committee mentioned alleged acts of intimidation, threats and serious reprisals (such as arrests on criminal charges) against human rights defenders, journalists, and their families. The Committee also expressed 'its grave concern about the threats against defenders by the President on public television'.

Multiple individual cases of reprisals against political activists and human rights defenders were highlighted and the Committee demanded more information about the State's investigations into the grounds for the arrests of these people and their relatives. In its concluding observations the Committee recommended the State ensure human rights

¹⁵ Article 3 of the Convention concerns the principle of non-refoulement as a preventive measure. For more information see: <http://bit.ly/4mwIA>.

¹⁶ See concluding observations at <http://bit.ly/eub6VM>.

defenders, including journalists, are 'protected from intimidation or violence as a result of their activities', and demanded the State investigate acts of prosecution and reprisals, punish the perpetrators, and provide updates on the outcomes of these investigations.

In reference to two individual cases brought to the Committee's attention, it was recommended that the State 'Implement the decision of the Working Group on arbitrary detention, and release the concerned individuals.'¹⁷ The Turkmen delegation offered defensive and vague responses to the issue of reprisals against human rights defenders and restrictions on their work. It said NGO registration is governed by the law on social organisation, as well as other legislation, and more than 200 NGOs are registered in the country, indicating a growth in civil society. In regard to individual cases, the delegation denied any wrongful action on the part of the State and blamed the Committee's concerns on inaccurate information.

COOPERATION WITH OTHER TREATY BODIES

In conclusion, it is worth noting that the Committee has made significant efforts to emphasise the importance of the work of other treaty bodies and their conventions related to torture and ill-treatment. As previously mentioned, the Committee extensively addressed the situation of vulnerable groups, such as persons with physical or mental disabilities, women, children, and migrants, and also mentioned the need for protection for human rights defenders and LGBTI people. The Committee's recommendations regarding these groups overlap with the mandates of other committees, such as the Committee on the Elimination of Discrimination against Women, Committee on the Rights of the Child, Committee on the Rights of Persons with Disabilities, Committee on Migrant Workers, and others. Certain issues previously raised and recommendations made by these committees were explicitly supported by the Committee against Torture at its 46th session. This support was also highlighted by the Committee's commending of States that had ratified other treaty body conventions. ■

17 The Committee referred to Opinion No. 15/2010 of the Working Group, regarding Mr Annakurban Amanklychev and Mr Sapardurdy Khajiev.