
COMMITTEE ON ECONOMIC SOCIAL AND CULTURAL RIGHTS

Discrimination and gender inequality challenge Moldova, Germany, Russia, Turkey, and Yemen



Photo: Charles Roffey

Women in Hasankeyf, Turkey.

The Committee on Economic, Social, and Cultural Rights (the Committee) held its 46th session in Geneva from 2 to 20 May 2011. The Committee reviewed reports from Turkey, Moldova, Yemen, Germany, and the Russian Federation.¹ Significant themes included the legal status of the International Covenant on Economic, Social and Cultural Rights (the Covenant), principles of non-discrimination, gender equality and women's participation in public and private sectors of the labour force.

Engagement by State Parties

The Committee examined each State report over three meetings of three hours in length. Committee members, many of whom were actively engaged throughout the reviews, divided each review into thematic quarters based on the Covenant's fifteen articles.

The Committee was impressed with the balance of gender within the delegation of Moldova, however expressed dissatisfaction over both the lack of depth and datedness of its report. In particular, the Committee was displeased with Moldova's core documents – many of which date back to 2001. Without up-to-date documents the Committee was deprived of basic statistical figures for several new initiatives in the country. The Committee was also displeased with Moldova's failure to bring a representative of its Justice ministry to the meeting. Committee member Mr Aslan Khuseinovich Abashidze stressed that judicial representation was critical in discussing specific aspects of the Moldovan penal code.

The review of Turkey was generally constructive, due in part to the extensive report submitted by the delegation. The Committee did, however, ask why the lead delegate for Turkey was not present for the review. Mr Sadi also commented on Turkey's delay in ratifying the Covenant, implying there may be a lack of political will on behalf of the Government to subscribe to certain rights within the Covenant.²

Germany was praised for its high-ranking delegation, which included Mr Andreas Storm, State Secretary in the Ministry of Labour and Social Affairs. Although the German delegation was forthcoming in answering many of the Committee's questions, the dialogue became tense when the enquiry shifted towards legality of strikes. The Committee made several allegations of overly restrictive strike regulations and inaccessible labour laws, while Germany vehemently defended its practices.

The review of Yemen was well organised and effective, however Mr Zdzislaw Kedzia said the quality of the State's report was lacking – an appraisal echoed by several other experts. This stemmed in part from the Committee's interest in following up on recommendations made at Yemen's 2009 Universal Periodic Review (UPR) session – information not included in the report.³ Although the dialogue was constructive, the tone changed when Mr Kedzia addressed Yemen's recent teacher protests, citing alleged Government involvement in the violence against peacefully assembling citizens. The delegation took a dismissive approach to these allegations, and the Committee, observing Yemen's stubbornness on the issue, moved forward in the review

1 All documents related to the 46th session are available at <http://bit.ly/ef3Mlm>.

2 Turkey became party to ICESCR on 23 September 2003.

3 UN Media coverage of Yemen's 2009 UPR Report is found at <http://bit.ly/joUGep>.

without addressing the larger, political reform protests witnessed across the country.

The Committee applauded the size and diversity of the Russian Federation's delegation, saying that, with 29 representatives, it was the second largest delegation in the history of the Committee. The Committee also appreciated the volume of the State report, yet several experts were unhappy with the lack of indicators and disaggregated data found in national statistics.

NGO participation

Keeping with previous practice, the Committee held an open meeting with NGOs on the first day of the session. Several NGOs made brief presentations and the Committee engaged in an interactive dialogue for follow-up queries and elaboration. Attention was paid to NGOs from Turkey whom focused on the construction of dams and its impact on the protection of indigenous peoples' rights, including women's rights, such as Kurdish and Roma women. NGOs from Moldova and Germany also made a strong impression on the Committee. A coalition of NGOs from Moldova advocated for the protection of vulnerable groups, such as minorities, children, women, people with HIV, and people living in poverty that affects over a quarter of the country's population. Germany's Intersex Association addressed pervasive discrimination against intersex and transsexual persons in the country, including legal barriers whereby a doctor's approval is required for making certain medical decisions.

THEMES

Legal status of the Covenant

Throughout the session, the Committee urged all five States 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. Although the Committee complimented Turkey and Moldova's efforts to allow direct invocation of international law, it had reservations regarding practical applicability since neither country, when questioned, was able to produce concrete examples of legal cases demonstrating this privilege. The Committee also expressed frustration over the Russian Federation's vague commitment to the Covenant; the Russian delegation argued the Covenant defined 'the spirit' of how domestic law should be drafted rather than allowing it to be invoked directly. This was akin to Germany's rationale, however the delegation claimed German domestic law is a direct reflection of international covenants and thus direct invocation would be redundant.

Other relevant issues included Turkey's continued reservations to the Covenant and the Committee's concern over Germany's decision to elevate its constitutional law over

that of the treaty.⁴ Each State was pressed to consider adopting the 2008 Optional Protocol, however only Turkey and Moldova mentioned concrete steps towards signing and ratification.⁵

Discrimination, vulnerable group recognition and entitlement

Vulnerable groups, including minorities, migrant workers, refugees, internally displaced persons (IDPs), people with HIV, and persons with disabilities were, as during previous sessions, a central theme throughout the State reviews. In particular, the outright refusal by States to give constitutional recognition to many vulnerable groups left the Committee struggling to elaborate comprehensive recommendations that would enhance these groups' protection. During the review of Yemen, the delegation stressed that the Al-Akhdam, an ethnic minority group making up nearly 5 percent of the Yemeni population, did not need to be recognised as a vulnerable group. This was contrary to evidence presented by the Committee of discrimination against the Al-Akhdam peoples in health services, educational development, employment and economic mobility. The Yemeni delegation claimed all persons living in Yemen were of equal legal status, thus making any law specifically protecting vulnerable groups unnecessary.

For Turkey, the socio-economic and cultural marginalisation of Kurdish and Roma populations were of concern, along with the displacement of indigenous populations in lieu of dam and hydroelectric developments by both the Turkish Government and European investment groups. The Committee also expressed alarm at Moldova's treatment of Roma populations, which includes systemic favouritism by Moldovan teachers for children and families that can pay for additional, unofficial salaries – a practice many Roma families are unable to comply with.

Other issues raised included inadequate pensions for elderly and disabled people in Germany, technical challenges and lack of political will for establishing a national birth registry in Moldova, vague and frequently revised indigenous land-protection laws in Russia, and insufficient government infrastructure for assisting vulnerable groups to exercise their legal rights in Turkey and Yemen. The insufficient human rights infrastructure in States often included a lack of viable national human rights institutions (NHRI).

During discussions on the status of minorities, the reviewed States were consistently defensive in both the tone and content of their responses. When confronted with the suggestion of constitutionally acknowledging the Al-Akhdam people, the head speaker of the Yemeni delegation, Dr Rashad Al-Rassas,

4 For details of Turkey's reservations to the Covenant see: <http://bit.ly/I9QIxi>.

5 The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008) establishes and reinforces a direct, individual complaints mechanism for the Covenant. Additional information is available at <http://bit.ly/eQKSA8>.

retorted it was a 'non-issue'. This was similar to the tone struck by the Turkish delegation regarding the Kurdish minority in the east of Turkey, and the Russian delegation regarding Chechnyan minority in the south of Russia. One factor explaining these hard-line positions may be the context of a public United Nations forum and the general political sensitivity of ethnic minority rights. The process of having independent experts review policies and recommend changes may be taken by delegations as a threat to State sovereignty. This is compounded by the devolution of power that accompanies granting rights and elevating the status of minority groups.⁶ Together, this perceived 'squeezing' of political autonomy from external and internal fronts may drive States to revert to a more defensive position on these issues.

Gender inequality and domestic violence

The issue of gender inequality in employment, education and public service was raised with all reviewed States. Turkey, Moldova and Yemen reasoned that cultural and social practices pressured young women to either work in informal sectors of the labour force or remove themselves entirely to start families.

Turkey emphasised several governmental working groups currently in force, including a newly designed 'Let's go to school' programme to promote enrolment and continued education for girls. Yemen's response was convoluted, acknowledging cultural forces that prevent women from gaining support and access to public office while nevertheless blaming women for their own slow ascendance in society. When given the opportunity to vote, women often elected men, claimed Yemen's head speaker Dr Rashad Al-Rassas – citing this as the reason why the number of female candidates in the previous local elections amounted to less than one percent.

During the review of the Russian Federation, the Committee took issue with the State's labour law that currently excludes women from more than 400 different occupations. The delegation's initial defence of this law underscored Russia's concern over female maternity and the protection of women, however after attracting criticism from the Committee, conceded the law was archaic and discriminatory.

The Committee expressed concern over the Russian Federation's non-inclusion of sexual harassment as a specific crime, choosing instead to try perpetrators under its current law on 'coercive relations'. The Committee was also troubled over Russia's workplace protocol requiring employees to obtain approval from their supervisors before filing sexual harassment suites, citing that it may lead to conflicts of interest. Several experts noted a lack of sexual harassment cases filed as evidence of this inadequate legal procedure.⁷ Such

6 Sisk, Timothy D. *Power Sharing and International Mediation in Ethnic Conflicts*. Washington, DC. US Institute of Peace Press, 1996.

7 This assessment is based on international averages that can be verified at <http://bit.ly/pTUNoe>.

was also the case in Turkey where, Ms Jun Cong said, the 556 cases of domestic abuse filed in 2010 are well below international averages; particularly in light of NGO reports quoted by Mr Kedzia asserting that 39 percent of Turkish women are subject to domestic violence. Mr Kedzia said the number of reported cases is likely restricted by pervasive cultural repression and fear of reprisals by men.

Discussions concerning gender-related issues were primarily introduced by the three female Committee members, Ms Jun Cong, Ms Heiscoo Shin, and Ms Rocío Barahona-Riera. In addition, female delegates, when present, often led responses to these issues. In a post-session conference with human rights defenders, Committee member Mr Eibe Riedel cautioned against allowing certain issues to be co-opted by 'one group of experts over another'.

Without male participation in this debate gender inequality remains largely a women's-only matter, which may weaken the accountability of men – both Committee members and State representatives – in upholding gender equality. Unfortunately, when male delegates have referenced gender-related issues, their comments have rarely spoken directly to the challenges at hand, often preferring to sidestep arguments and avoid active engagement.

Yemen's head speaker Dr Rashad Al-Rassas concluded the discussion on women's employment by remarking that, if he is still a minister when Yemen came to provide its second report, he would make sure 'all of [his] delegation is female'. While the comment seemed to be intended in a light-hearted manner, it demonstrates unwillingness by male delegates to address gender in a substantive context, supported in part by the failure of male Committee members to tackle the subject. Having a greater balance between male and female Committee members that address gender equality could help set the tone for a more inclusive and active engagement by States.⁸

SPECIFIC CONCERNS OF THE COMMITTEE

The Committee requested more detailed information on the production of Qat, currently grown on 25 percent of Yemen's irrigable land and consuming 30 percent of the nation's threatened water supply.

De-facto discrimination and stigmatisation of drug users in the Russian Federation was also debated, with attention given to the State's rejection of the WHO's recommendation for a rehabilitation-centred approach in handling drug users.

Committee members also wanted a more detailed action plan on how to alleviate the pervasive sanitation challenges in Moldova that currently prevent 45 percent of the population from accessing clean drinking water. ■

8 For more information on Committee members see: <http://bit.ly/jtA9gR>.