

# HUMAN RIGHTS COMMITTEE



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Violence against women was one of the common themes addressed by the Human Rights Committee at this session.

The Human Rights Committee (the Committee) held its 98<sup>th</sup> session in New York from 8 to 26 March 2010 and reviewed reports from Argentina, Mexico, New Zealand and Uzbekistan. Uzbekistan stood out as one of the most argumentative delegations in the memory of some seasoned Committee members. Its insistence that the massacre of hundreds of protestors by Uzbek security forces in 2005 at Andijan was a 'closed chapter', was a prime case in point. This may have contributed to the Committee's high praise for New Zealand, whose review immediately followed Uzbekistan's, but it too was not spared from probing questions. Tension accompanied Mexico's review, largely as a result of the serious human rights violations that have occurred against the backdrop of rampant organised crime and drug trafficking. This, coupled with Mexico's tendency to focus on policies and programmes, rather than directly answering questions, resulted in its review running well over time. Argentina enjoyed a more constructive exchange, but generally failed to respond to requests for new information or disaggregated statistics.

To varying degrees, the common themes raised by the Committee were: poor domestic enforcement of the International Covenant on Civil and Political Rights; use of torture; overcrowded prisons and ill-treatment of detainees; violence against women and trafficking; impunity for attacks and killings of journalists and human rights defenders; and violation of indigenous rights, particularly in relation to land and resources. All States were represented by high-level delegations ranging from 30 members (Mexico) to just five (Uzbekistan). The Committee chastised Uzbekistan for its all-male delegation, but other State delegations had a good gender balance.

Over the three week session, the Committee's work was hampered by inadequate translation of documents. Each of the States under examination provided written responses to the list of issues on time, but none were translated prior to the session, forcing States to spend precious time orally conveying this information. The Special Rapporteur on follow-up on concluding observations also complained his work was affected by the same problem. Many Committee members bemoaned the situation which they thought would only worsen over time and appealed to colleagues to adopt innovative working methods that would shorten States parties' reports and improve overall efficiency.

Progress was made on the first reading of a new draft general comment on freedom of opinion and expression, and revised guidelines on State party reports, although it will be some time before either is finalised. Whilst the Committee's failure to make these draft documents public was at odds with its goal to improve transparency of its methods of work, its decision later in the session to broadcast all future public meetings on YouTube demonstrated its commitment to greater public scrutiny.

## NGO participation in the 98<sup>th</sup> session

NGO participation got off to a bad start as a result of unannounced and poorly coordinated security measures on the first morning at UN headquarters. Luckily, the Committee postponed the NGO briefing until all participants from all States under review were in attendance. As a result of the large number of NGOs, each statement was limited to three minutes. Mexico's NGO attendance was particularly large with more than ten organisations. Although only two New Zealand NGOs were represented at the session, a third organisation participated at the lunchtime briefing by video link, which worked well. New Zealand's national human rights institution (NHRI) also briefed the Committee. Committee members benefitted from more

detailed informal lunchtime briefings from NGOs and the NHRI, although these were generally poorly attended by Committee members.<sup>1</sup>

The impact of this concerted NGO input was apparent throughout the session. Committee members directly referred to individual cases and other details contained in NGO reports, and in some instances, openly conferred with NGOs during the examination. At the request of Uzbek NGOs, Ms Keller read into the record the names of human rights defenders who had suffered abuse, not only to draw attention to their situation, but with the expectation it would protect them from further abuse.

The reactions from State delegations ranged from welcoming to dismissive of NGO participation. Argentina and New Zealand thanked NGOs for their contributions,<sup>2</sup> whilst Uzbekistan accused Committee members of placing undue emphasis on NGO input which was ‘not always honest or objective’ and ‘sometime politically motivated.’

## THEMES

### Legal status of the Covenant

In its concluding observations, the Committee directed all four States to fully entrench the provisions of the International Covenant on Civil and Political Rights (ICCPR) in their domestic laws and ensure they were implemented. It was unmoved by repeated arguments from Mexico and Argentina that their federal structures made it difficult to ensure compliant legislation was enacted or enforced at the local level. Whilst it acknowledged the raft of legislative reforms Uzbekistan had undertaken since its last report, the Committee was unconvinced they achieved the direct application of the Covenant. After reading from Human Rights Watch’s submission, Mr Thelin concluded that progress towards democracy and the rule of law appeared to have ‘gone backwards’ and ‘Uzbekistan expressed all the traits of a totalitarian State’. In the case of New Zealand, the Committee was concerned that the Parliament had adopted almost twenty bills, despite formal notification that they were inconsistent with the Bill of Rights Act, which itself was not fully compliant with the Covenant. Ms Majodina and Ms Keller referred to New Zealand’s recent commitment under the UPR process to better incorporate its international human rights obligations into domestic law, and suggested it start by assuring all victims access to effective domestic remedies.

### Torture and ill-treatment

The Committee was deeply concerned by evidence of wide-

spread torture (Argentina, Mexico, Uzbekistan). Delegations were asked whether: the definition of torture in national legislation was consistent with the Convention against Torture (Mexico, Uzbekistan); the State (rather than the victims of torture) bore the burden of proof (Mexico); and if evidence obtained under torture was admissible in court proceedings (Mexico, Uzbekistan). In all three States, the Committee expressed concern about the lack of hard data on reports of torture and official disinterest in properly investigating them, which fed a culture of impunity. It reminded States parties of their obligation to ensure the prompt and independent investigation of all such reports, provide victims of torture or their families with reparations, and sentence perpetrators proportionately with the seriousness of the crime. Mr Rodley also encouraged Mexico and Uzbekistan to require that all interrogations be recorded to prevent torture.

Regarding ill-treatment of prisoners, the Committee’s primary concern was overcrowding, which was evident in all four States under review, but extreme in Mexico. Other concerns included: treatment of mentally ill prisoners (New Zealand), privatisation of prison management (New Zealand); failure to separate male and female prisoners (Mexico); lengthy pre-trial detention (Argentina, Mexico, Uzbekistan); incommunicado detention (Mexico); excessive use of force by police and prison staff (Argentina). Argentina was asked to report back within one year on its efforts to improve prison conditions and reduce torture and ill-treatment by police and prison staff.

### Violence against women, including trafficking

Given the prevalence of killings of women in parts of Mexico, particularly at the hands of the military, and the culture of impunity surrounding these crimes, it was no surprise that Mexico came under intense questioning in this respect. Citing individual cases in NGO submissions, Mr Salvioli pressed for more detailed information to assess the State’s overall commitment to investigate, prosecute and prevent these crimes. Although Mexico pointed to a range of initiatives to improve legal protections, provide access to justice and support victims, it admitted that these were yet to significantly reduce the level of violence against women. The Committee recommended that Mexico make a more concerted effort and report back within a year on its progress.

Domestic and family violence were acknowledged as problems where all the States examined needed to improve. However, Uzbekistan was singled out for particular criticism, given its failure to criminalise such violence, as was Argentina, whose legislative protections were limited to the province of Buenos Aires. The persistence in Uzbekistan of practices that Ms Wedgewood labelled ‘medieval’, such as polygamy, forced marriage and bride abduction, were also condemned by the Committee as unacceptable, regardless of their cultural or religious origins.

<sup>1</sup> Members who attended a number of the briefings included Ms Majodina, Mr O’Flaherty, Mr Rodley, Mr Salvioli, Mr Thelin.

<sup>2</sup> However, NGOs were critical of the State’s failure (Argentina) or poor attempt (New Zealand) at consulting them about the content of their State reports.

The Committee also recognised trafficking in women as a universal problem for the four States, and was thus surprised by New Zealand's rationale it was immune from the global trade, given no case had been brought under its trafficking law. The Committee recommended training for law enforcement and judicial personnel to raise awareness of the crime and the rights of victims.

### Violations of rights to freedom of expression and association

The Committee was gravely concerned by the level of harassment, violence and killings experienced by human rights defenders and journalists in Mexico and Uzbekistan, as well as the impunity enjoyed by perpetrators. Committee members used detailed information provided by NGOs to confront each State about specific cases and seek responses.

Uzbekistan denied that any journalist had been persecuted, pointing to various laws guaranteeing freedom of expression, and defending its counter-terrorism legislation against accusations it was misused to silence 'dissident' individuals. Mexico came under pressure from the Committee to justify the presence of military forces in parts of the country to maintain law and order, given there was no declared state of emergency. Members were particularly concerned by the use of military (not civilian) courts to hear cases against human rights defenders that were committed by the military. Reflecting the urgent need for concerted improvement, the Committee asked Uzbekistan and Mexico (within a year) to report back on their efforts to: guarantee human rights defenders the right of freedom of expression and to safely undertake their work; promptly and impartially investigate all threats, attacks and killings of defenders; provide detailed information about the prosecution of perpetrators; and review or decriminalise defamation laws.

### Indigenous peoples' rights

Although the Committee addressed the need for Mexico and Argentina to protect indigenous ownership of their traditional lands, and in the case of Argentina, to end violent evictions of indigenous communities, New Zealand came under greater scrutiny for its treatment of indigenous rights. Information provided by Maori organisations was directly incorporated into Committee members' questions, which covered long-standing areas of dispute, including lack of legal enforceability of the Treaty of Waitangi after almost 200 years, as well as the credibility of the Government's efforts to consult with Maori to settle land, foreshore and seabed claims in good faith. Equal emphasis was given to whether Maori enjoyed equality before the law, given their alarmingly high rates of incarceration, and the apparent targeting of Maori communities and use of extreme force when implementing counter-terrorism laws.

### Other thematic issues

Other issues addressed during the examinations included: reservations (Mexico, New Zealand); access to abortion

(Argentina and Mexico); due process protections in counter-terrorism responses (New Zealand, Uzbekistan); treatment of asylum seekers (New Zealand); age of criminal responsibility (Argentina, New Zealand, Uzbekistan); violence against children (New Zealand); forced child labour (Uzbekistan); women's participation in leadership positions (New Zealand); discrimination on grounds of sexual orientation (Mexico, Uzbekistan); and freedom of religion/belief (Argentina, New Zealand, Uzbekistan).

## OTHER DEVELOPMENTS

The Committee held three public meetings to continue its first reading of a new draft general comment on freedom of opinion and expression.<sup>3</sup> Progress was slow but steady, enabling the Committee to approach the halfway point of the text and begin what will be a lengthy discussion on the 'limitations to freedom of expression'. One public meeting on 'methods of work' was held to continue the first reading of 'draft revised guidelines for State party reports under the ICCPR'. Considerable time was spent debating whether to set page limits for State party reports, but strong differences of opinion prevented consensus. Lengthy discussions on other parts of the text meant overall progress on the text was marginal.

In its closed meeting on working methods, one of the topics discussed was 'focused reports'. As is already the practice with the Committee against Torture, the option to submit a report based solely on a State party's responses to the list of issues would provide an alternative to the lengthy, more comprehensive periodic reports.<sup>4</sup> Although the Committee did not indicate its views on 'focused reports', this issue will be the main theme for discussion at the next Inter-Committee Meeting in June 2010. ■

The Committee also announced the following decisions:

- As of its 100<sup>th</sup> session in October 2010, a State party whose initial report to the Committee is ten or more years overdue will be asked to report by a specific deadline. Failure to do so will result in the Committee considering that country in the absence of a report.
- Appointment of Ms Majodina as the focal point to deal with NGOs, with a focal point on national human rights institutions to follow. All correspondence should be sent via the Secretary of the Committee, Ms Prouvez, [nprouvez@ohchr.ch](mailto:nprouvez@ohchr.ch)
- A high-level interactive dialogue will be held to mark the Committee's 100<sup>th</sup> session in October.

<sup>3</sup> ISHR has published an article outlining the main areas of progress on the draft general comment, as well as unresolved issues that the Committee will take up at its next session. Available at <http://www.ishr.ch/draft-general-comments/present-draft-general-comments>

<sup>4</sup> It is proposed that either the State party or the Committee could request that a 'focused report' is submitted in place of a periodic report.