
COMMITTEE AGAINST TORTURE

Committee creates rapporteur on reprisals



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In an effort to better protect civil society and human rights defenders from harm, the Committee against Torture (the Committee) at its 49th session created a rapporteur on reprisals.¹ It is yet to appoint a member to the role. After the Subcommittee on the Prevention of Torture, the Committee against Torture is the second treaty body to create a specific mechanism to respond to the increasingly-recognised problem of reprisals against those who cooperate or seek to cooperate with the UN and its mechanisms.²

The Committee's advances on reprisals occur at a moment of greater concern within the broader UN human rights system about the harassment, intimidation or reprisal of those who cooperate with its human rights mechanisms. The Human Rights Council's first ever panel discussion on reprisals held in September³ saw unanimous rejection of the practice of reprisals, by participating States and panelists, including the Chair of the Committee against Torture. The swift establishment of a rapporteur on reprisals, somewhat following the High Commissioner's recommendations of treaty body 'focal points' on reprisals in her report on the treaty body strengthening process,⁴ further indicates that efforts towards a more systemic response by the UN system to the protection needs of human rights defenders are gaining momentum.

In terms of State reviews, a frank interaction between States and Committee members is essential to guarantee a comprehensive and effective review of national implementation of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention).⁵ Some States engaged openly with the Committee during the session, which was held in Geneva from 29 October to 23 November 2012. However, many failed to fully cooperate due to their inability or unwillingness to provide sufficient information. Committee members also sometimes failed in their duties, by not holding all States to the same standards, and by being permissive of the delayed submission of State reports.

The Committee considered the reports of Peru, Mexico, Norway, Qatar, Senegal, Tajikistan, Gabon, the Russian Federation and Togo.⁶ It also held private briefings with non-governmental organisations (NGOs) prior to each State review and several closed sessions on working methods, communications and the adoption of concluding observations. Furthermore, the Committee adopted its third General Comment, on redress and compensation for victims of torture (Article 14).⁷ Its meeting with the Subcommittee on Prevention of Torture and its session on follow-up to articles 19 and 22 were both public, revealing the Committee's willingness to share its working methods with relevant treaty bodies and its procedures on follow-up.

1 See <http://bit.ly/SiiQ4Z>.

2 In February 2012, the Subcommittee established a working group on the issue of reprisals with a view to formulating a strategy to prevent and combat the issue.

3 Read ISHR's news piece 'Landmark panel on reprisals at the Human Rights Council' at <http://bit.ly/Var1PX>.

4 See <http://bit.ly/WJCfrl>.

5 See <http://bit.ly/VaqD4a>.

6 All States reports, as well as their lists of issues and written replies, delegation lists and statements, and civil society submissions can be found at <http://bit.ly/VaqGgc>.

7 General Comment No 3 of the Committee can be found at <http://bit.ly/VaqIom>. Article 14 of the Convention provides for redress and compensation for victims of torture.

VARIED ENGAGEMENT BY STATES UNDER REVIEW

The Committee's consistent commendation on the quality of the State discussions masked the varying capacity and willingness of State delegations to engage with it. Many States engaged openly with the Committee, illustrating elements of their histories and current political situations that present obstacles to implementing the Convention. For example, the delegation of Togo acknowledged its Criminal Code only exists in draft form, and explicitly recognised the shortcomings in its torture legislation. The delegation acknowledged the seriousness of the conflict that had rendered Togo's legal system so fragile, and stated its commitment to passing the necessary torture legislation. Ms Essadia Belmir, Committee Vice-Chairperson, commended the delegation for the frank dialogue.

In contrast to this open engagement, many States evaded their obligation to provide sufficient responses in their reports and during the dialogues. Without sufficient State information, the Committee's capacity to effectively assess implementation of the Convention is significantly diminished.

When States did not engage effectively with the Committee, it was due to both the omission of information, meaning issues were insufficiently addressed, and deliberate efforts to manipulate facts and the progression of the dialogue. The report submitted by Mexico failed to tackle certain issues. Mr Abdoulaye Gaye, Co-Rapporteur for the report of Mexico, said the report contained many information gaps regarding disappearances of women. These deficiencies are more surprising given it was the combined 5th and 6th periodic report of Mexico, and the State had sent such a high-level delegation, comprising 34 representatives.

Conversely, the delegation of the Russian Federation gave detailed responses and expressly affirmed its commitment to the Convention. Nonetheless, it was reluctant to admit it has problems related to torture, and inconsistencies existed within its report and dialogue. For example, the delegation revealed a discrepancy in the State's position regarding the protection of human rights defenders. Whereas the report said human rights defenders did not merit special protection, a 2001 decision of the Russian Constitutional Court made reference to the vulnerability and protection needs of defenders, and cited the UN Declaration on human rights defenders. Despite these inconsistencies, Committee Vice-Chairperson Xuexian Wang described the dialogue with the Russian Federation in his concluding remarks as constructive and fruitful, which may indicate the Committee is not always as critical as it should be.

COMMITTEE CRITIQUE INCONSISTENT

Throughout the session, Committee members critically engaged with delegations by pointing out the lack of detail

in State reports and responses. Special Rapporteurs for the States under review referred frequently to articles of the Convention, to highlight shortcomings and seek clarification on issues of concern. For example, in the review of Gabon, Mr Satyabhoosun Gupt Domah, Committee Co-Rapporteur, pointed out that Gabon's training on torture is insufficient as it is only provided to law enforcement officials and not civil, military and public officials, as required by Article 10 of the Convention. The Committee later expanded on the topic by enquiring about the levels of participation and effectiveness of the trainings. This shows the importance of the Committee's attention to detail, which compels States to further strengthen their legislation against torture.

There were also instances in which the Committee effectively questioned States on improvements made since their last interaction with the Committee. During the dialogue with Norway, Committee members were sceptical about advancements on the issue of solitary confinement, even though Norway had been commended in 2007 for abolishing solitary confinement in its legislation.⁸ The Committee referred to a specific case⁹ and concluded that certain practices of long-term detention were de-facto solitary confinement. This example shows the importance on following up on past reviews, even if the legislation of the respective State is said to comply with the Committee's recommendation. By doing so, the Committee assures that States remain firm in their previous commitments.

However, the Committee members were more permissive with regards to procedural concerns, such as reporting delays. Delayed reports are not a new phenomenon, but the Committee has not yet established an effective method to combat the problem. During the 49th session, Senegal, Gabon and Qatar submitted reports with a delay of 16, 11 and 3 years respectively. Although the Committee expressed concern with the delays, there was no real sense of urgency in addressing the issue. The Committee does have the option of scheduling reviews in the absence of reports, which often incites the concerned State to speed up the submission of its report, and may limit the excessive delays currently observed. However, it does not do so as systematically as other treaty bodies, such as the Human Rights Committee, do.

There was some lack of consistency in the Committee's questioning of States. For instance, during the reviews of the Russian Federation and Qatar, the Committee refrained from addressing the abolition of the death penalty, despite the fact that both States have yet to ratify the *Second Optional Protocol to the International Covenant on Civil and Political Rights*.¹⁰ Conversely, when examining the cases of Tajikistan and Gabon, the Committee persistently asked

8 Report on Norway's 2007 review by the Committee against Torture can be found at <http://bit.ly/VaqOwh>.

9 A man had been put in solitary confinement for 110 days and this had only been interrupted due to his needing to be hospitalised.

10 See <http://bit.ly/VaqQ7q>.

and recommended that both countries amend legislation in order to abolish the death penalty.¹¹ Although it is important Committee members review States based on their individual progress, they should also make sure to limit such discrepancies between the reviews of each State.

Lack of congruency between the reviews and concluding observations presents another concern of the 49th session. Some of the concluding observations raised by the Committee addressed issues that were not explicitly discussed during the reviews. This could present a challenge to the implementation of recommendations, as the discussion leading to concluding observations can provide useful context for their implementation.

EFFECTIVE ENGAGEMENT WITH NGOS

Across its consideration of State reports, the Committee displayed a high regard for NGO information and a concern for the protection of NGOs combating torture. The structure of the Committee's sessions is particularly amenable to soliciting information from NGOs. As in past sessions, the Committee held formal private briefings with NGOs for one hour prior to each State review. The majority of Committee members took this opportunity to interact with the NGOs. Due to the detailed discussion and debate, many of the briefings ran over time. Such devotion of time to NGOs is an effective element of the Committee's working methods, and provides it with a solid factual base on which to question States.

However, the briefings are not without their problems. During the 49th session, the NGO presence was so large for Mexico and the Russian Federation that the Committee experienced logistical difficulties in conducting the NGO meeting. In contrast to the considerable contribution from civil society for the reviews of the Russian Federation, Mexico, and Peru, very few NGOs attended the sessions on Gabon, Norway and Senegal. No more than three made submissions to the Committee for each State, and the submissions were often limited in content, outlining only one issue.¹² Consequently, no comprehensive NGO reporting was made available to the Committee in relation to these States, diminishing members' ability to effectively assess and question the States' delegations.

Nonetheless, the Committee did rely on the information it received from civil society to raise as issues during the State reviews. For example, NGO information was used to refute the Russian Federation's claim it had brought legal certainty to the definition of torture, despite having been asked to revise its definition numerous times. Furthermore, Ms Felice Gaer, Committee Rapporteur for the report of the Russian

Federation, raised NGO concerns over the independence of public oversight committees in Russia. The use of this information thus clearly increased the quality and reliability of members' interaction with States.

Committee concern was also apparent for the inclusion of NGOs in the implementation of recommendations, and for the protection of NGO workers so they can work effectively to combat torture within States. In its concluding observations on the Russian Federation, the Committee expressed a serious concern about amendments to the Criminal Code threatening human rights defenders and persons providing information to the Committee and other treaty bodies. The Committee was also concerned about serious acts of reprisals against human rights defenders and the failure of the State to effectively investigate these acts. In this way, the Committee addressed the space for NGOs to combat torture and sought to assure their protection. ■

11 The Committee recommended for Tajikistan to transform its death penalty Moratorium into abolition; For Gabon, the Committee asked to a progress draft law to a de facto abolition of the death penalty.

12 See <http://bit.ly/VaqGgc> for all civil society submissions for each State reviewed during the 49th session.