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# HUMAN RIGHTS COMMITTEE

Constructive session for the reviews of Philippines, Turkey, Germany, Bosnia and Herzegovina, and Portugal.



It was a generally productive 106<sup>th</sup> session for the Human Rights Committee, held from 15 October to 2 November 2012 in Geneva. State engagement was often constructive and frank, and information supplied by non-State actors, such as human rights defenders, was given due recognition by the Committee.

The Committee considered the reports of the Philippines, Turkey, Germany, Bosnia and Herzegovina, and Portugal.<sup>1</sup> Ivory Coast was to be reviewed in the absence of a report on 26 October 2012. However, after the Government undertook to submit its report by March 2013, the review was postponed, most likely until 2014.

The Committee also met with national human rights institutions (NHRIs) and non-governmental organisations (NGOs) and held sessions on its working methods. It considered 27 individual communications, and adopted Lists of Issues on Albania, Belize, China – Hong Kong,<sup>2</sup> Finland, and Ukraine, and a List of Issues Prior to Reporting on Australia. In public sessions, it conducted a meeting with the Committee on the Elimination on the Discrimination against Women and its first half-day general discussion on a new General Comment on the right to liberty and security of person (Article 9).

## COMMITTEE INTERACTION WITH STATES AND CIVIL SOCIETY

The UN High Commissioner for Human Rights, Ms Navanethem Pillay, opened the 106<sup>th</sup> session of the Committee, requesting its continued support for the treaty body strengthening process and acknowledging, what she described as, a ‘bleak economic outlook’ for the UN treaty body system.<sup>3</sup> The opening also highlighted some tension between the Committee and the Office of the High Commissioner for Human Rights (OHCHR) – exemplified in Committee members’ discontent at the decision to move the Committee sessions from New York to Geneva. Ms Pillay also emphasised the importance of bringing the work of the Committee closer to the ‘lives of individuals and the deliberations of States’. The Committee clearly shared these concerns, opening many of its sessions to the public.

The Committee also demonstrated the value it places on contributions by non-State stakeholders, including NHRIs and NGOs, for example, in the adoption of a paper on the ‘relationship of the Human Rights Committee with National Human Rights Institutions’;<sup>4</sup> and in the drafting process for the General Comment on the right to liberty and security of person.<sup>5</sup> Prepared by Mr O’Flaherty, the NHRI paper seeks to bolster the Committee’s relationship with NHRIs, and mirrors a similar paper on the Committee’s relationship with NGOs, which was adopted at the March 2012 session.<sup>6</sup>

In order to prepare the draft General Comment on liberty and security of person, the Committee solicited written submissions from NGOs, and during the discussion, ten NGOs made presentations. Mr Gerald Neuman, Rapporteur for the draft General

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1 State reports, lists of issues and written replies, delegation lists and statements, and civil society submissions can be found at <http://bit.ly/WqEBL2>.

2 China has not yet ratified the Covenant.

3 Ms Navi Pillay in her opening address at the 106<sup>th</sup> session, available at <http://bit.ly/ShQ1Wc>.

4 Available at <http://bit.ly/WqDoDF>.

5 These rights are enshrined in Article 9 of the Covenant.

6 Available at <http://bit.ly/WqDaw4>.

Comment, will prepare the first draft. A revised version will be open for any interested party for further comments.<sup>7</sup>

In line with standard practice, the Committee also held NHRI and NGO briefings prior to the consideration of each State's report. The presence of NGOs varied between briefings for each State. Whereas 12 civil society organisations submitted reports and attended the briefing and review sessions on the Philippines, no Portuguese NHRI or NGO attended Portugal's review. Committee member Krister Thelin suggested the absence of Portuguese civil society could be explained by the State's relatively high compliance with the Convention. Nonetheless, the State delegation of Portugal was disappointed no NGOs were present and insisted that ethnic, minority, and women's NGOs were involved in preparing the national report. Similarly, the head of the Philippines' delegation, Ms Leila M De Lima, Secretary of the Department of Justice, affirmed the State had held consultations with civil society.

While the delegations of Turkey, and Bosnia and Herzegovina claimed effective consultation had taken place with civil society, this was disputed by many NGOs. For instance, NGOs from Bosnia and Herzegovina claimed the State's consultation process had discriminated among members of civil society, as only two NGOs in a large NGO coalition had been invited to discussions with the Government.<sup>8</sup>

The Committee referred to NGO-supplied information on several occasions throughout the session. For example, the lack of implementation of Turkish legislation, on access to lawyers and guarantees to legal representation, was raised after it had been included in a report by Amnesty International. Amnesty International's report on conscientious objectors, and NGO information that honour killings are on the rise, were also cited by Committee members during Turkey's review.

## STATE ENGAGEMENT WITH THE COMMITTEE

All delegations were composed of high-level ministers and government officials. The Committee took particular note of the Philippines' delegation, numbering 26 well-qualified members from diverse departments. In contrast, the Portuguese delegation comprised only five representatives, however the Committee remarked on how well-prepared the delegation was.

States' historical and political contexts framed numerous debates. For example, the peace agreement signed only a few hours before the review of the Philippines, known as the 'Framework Agreement on the Bangsamoro', between the Government and the Moro Islamic Liberation Front,

was commended by the chair of the Committee, Ms Zonke Majodina. The delegation claimed human rights protection would define the future character of the Philippines, and international law, anti-corruption, and the rule of law would lie at its foundation. The vestiges of the war in Bosnia and Herzegovina were also central to that State's review, shaping many of the problems identified by the Committee.

Previous experience in appearing before the Committee influenced the effectiveness of State discussions with the Committee, and members' expectations and assessments of delegations. The delegation of Turkey, having only submitted its initial report, appeared to be overwhelmed by its first experience before the Committee. Although vocal on its country's progress since the 1990s and its commitment to cooperating with international mechanisms, the delegation seemed unprepared and unable to respond to detailed questions. The head of the delegation responded to many questions, but sometimes inadequately, and only after consulting his legal representative for several minutes. A more constructive approach would have been to let the legal representative respond directly.

In direct contrast, on the occasion of its sixth report, the German delegation was well prepared. Nonetheless, Committee member Mr Thelin noted a higher standard of compliance with the *International Covenant on Civil and Political Rights* (the Covenant) is expected of Germany, due to its long experience with implementing the Covenant and reporting to the Committee. The Committee was most impressed by the fourth periodic report and dialogue of Portugal. Sir Nigel Rodley described the position of Portugal as 'exemplary' and held it up as a model of best practice. The Committee set the deadline for the submission of Portugal's next report to be in six years, longer than the usual four or five years.

Although most State reports were submitted late, Committee members were generally understanding of the delay and appreciated the quality of the reports. Mr Neuman described Portugal's report as 'extremely informative'. Despite sections in Germany's report that were said to be uninformative or selective, it was recognised as a well-structured model for periodic reports. Gaps were identified in some of Turkey's responses, in what was otherwise acknowledged to be a high-quality report.

## AREAS OF PROGRESS AND CONCERN

Whereas the delegations of the Philippines, Germany, and Portugal all seemed well prepared, the Committee was more critical of the engagement by Turkey, and Bosnia and Herzegovina. The Turkish delegation responded to issues selectively, meaning Committee members had to re-question the delegation on several occasions. This included on the issues of abuse of gay men within the military and the compatibility of Turkey's anti-terrorism legislation with

<sup>7</sup> See the CCPR Centre's overview of the 106<sup>th</sup> session: <http://bit.ly/WqDo6y>.

<sup>8</sup> See the CCPR's overview of the review of Bosnia and Herzegovina at <http://bit.ly/ShOY8W>.

the Covenant. In contrast, the delegation of Bosnia and Herzegovina gave frank, although at times sparse, responses. The delegation readily admitted there is a lack of freedom of expression and association for journalists and human rights defenders, and little State 'appetite' for pursuing justice for hate crimes. Mr O'Flaherty said these responses 'sounded like [those of] an NGO', not a State. Mr Thelin juxtaposed these frank responses with, what he described as, 'political inertia' to combat the issues raised.

There were also many cases of States providing insufficient responses to questions. For example, the Philippines' delegation did not provide any statistics to support its assertion that torture is not prevalent in the country. Moreover, abortion was not referred to in either the Philippines' report or its written replies. Similarly, Turkey did not refer to its reservation to and declarations on the Covenant in its report. There were also cases of States clearly disagreeing with Committee claims. For example, in response to Ms Motoc's statement that the protection of minorities in Bosnia and Herzegovina appeared to be lacking, the delegation said there has been great progress in promotion of Roma rights and programmes, and capacity building of Roma NGOs.

However, delegations were at times willing to admit to issues. The delegation of the Philippines conceded prejudices against lesbian, gay, bisexual and transgender (LGBT) people are persistent, despite the Supreme Court's landmark *Ang Ladlad* ruling, which was welcomed by the Committee.<sup>9</sup> It also acknowledged the extremely high number of teenage pregnancies in the Philippines requires attention, outlining efforts undertaken on reproductive health. Germany professed a willingness to reconsider its reservation to Article 15 of the Covenant,<sup>10</sup> and agreed to make changes to the definition of torture in the Criminal Code, as proposed by the Committee.

Positive developments were noted by the Committee, such as the Philippines' enactment of several laws since its previous examination in 2003, including the Anti Trafficking Law, Anti-Violence Against Women and their Children Act, the Magna Carta of Women, and the law abolishing the death penalty. The Committee Chair recognised Turkey's judicial reform package, including the abolition of the death penalty and the alignment of domestic laws with its international obligations. Examples of more specific instances of progress included Bosnia and Herzegovina's improved model to

combat trafficking, and Portugal's inclusion of sexual orientation as a prohibited ground of discrimination.

However, the Committee also identified numerous areas of concern. In the review of the Philippines, impunity for extrajudicial killings and enforced disappearances, the impact of Sharia law on women, highly restrictive reproductive rights and access to contraception, the criminalisation of abortion, discrimination against LGBT people, and prison overcrowding, were all noted. For Turkey, the number of laws existing in draft form, and a lack of information on their implementation, the State's refusal to recognise conscientious objection to military service, or to include sexual orientation and gender identity as a prohibited ground of discrimination, were also raised. Gender equality and minority and racial discrimination remained issues in both Germany and Bosnia and Herzegovina, as did the duration of pre-trial detention in Portugal, and the lack of a maximum preventative detention period in Germany.

## CONCLUSION

As the High Commissioner said in her opening remarks at the session, the increase in the number of UN treaty bodies has caused a 'mushrooming of differing working methods and practices [...] threatening the accessibility of the system to individuals and States alike'. Throughout the 106<sup>th</sup> session, the Committee displayed some awareness of its position as one part of the overall UN human rights system, an understanding not always demonstrated by all treaty bodies.

However, while Mr O'Flaherty affirmed treaty bodies should go in the same direction, without striving for homogenisation, other members displayed scepticism about the treaty body strengthening process. Ms Christine Chanet emphasised the differences between treaties and between methods of work, while Ms Motoc argued the contrasting nature of treaty bodies explains why harmonisation has not worked.

Across its meetings with the Committee on the Elimination of Discrimination against Women and the Committee against Torture, on methods of work, and during its own discussions on the same, the Committee was enthusiastic to share knowledge and a hope that it would serve as a model for other treaty bodies. This included recognition of the need for the Committee to share its practices in engaging positively with NGOs and other stakeholders, particularly with a view to the ongoing treaty body strengthening process. ■

<sup>9</sup> In April 2010, the Supreme Court found that *Ang Ladlad*, an LGBT organisation, could be registered as a party-list organisation for elections. For more information, see <http://bit.ly/WqDQ40>. The decision can be found at <http://bit.ly/WqDPHg>.

<sup>10</sup> Article 15 provides that a person may only be held guilty of a criminal offence for an act or omission that was constituted a criminal offence at the time it was committed. Similarly, no higher penalty shall be imposed than the penalty applicable at the time the act or omission was committed.