
COMMITTEE AGAINST TORTURE

A call for dialogue: challenges to fostering engagement at the 48th session



Photo: Emilio Kuffner

The prohibition of torture in the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention) is framed in absolute terms. Discussion during the 48th session of the Committee Against Torture (the Committee), however, did not always reflect the conception of torture as a universal wrong. State parties shirked away from their obligations under the Convention, while the Committee faced procedural difficulties and challenges to its mandate. These currents ran throughout the session, undermining the engagement of States with the Committee and defeating calls for frank and productive dialogue.

The 48th session was held from 7 May to 1 June 2012. The Committee considered efforts taken by Albania, Armenia, Canada, Cuba, Czech Republic, Greece, and Rwanda to implement the provisions of the Convention. A meeting was also held on the current human rights crisis in Syria, but was conducted in the absence of State representatives and without the special report that had been requested from the Syrian permanent mission.

ENGAGEMENT BY STATES

While the delegations of Armenia, the Czech Republic and Greece generally engaged in effective dialogue with the Committee, the reviews of Rwanda, Canada and Cuba were partially undermined by the approach of their delegations. In addition, the actions of the Syrian delegation stood as a challenge to the Committee's authority and credibility.

In light of continuing reports of human rights violations in Syria, the Committee had requested a special report under Article 19.1 of the Convention. Ensuing correspondence between the Syrian permanent mission and the Committee contained, among other things, a rejection of the Committee's authority to request a special report and the claim that the request was contrary to the fundamental rules of diplomatic conduct. Committee member Ms Essadia Belmir noted that the delegation's failure to present itself at the session constituted a challenge to the credibility of the entire UN system. The Committee proceeded to condemn the absence of the Syrian delegation and emphasised the importance of dialogue, even when a delegation considers allegations to be unfounded. Members took information provided by NGOs, UN bodies, and intergovernmental organisations into account to prepare a report on the situation.

States also questioned the Committee's mandate and the credibility of its information sources. The Rwandan delegation set off defensively in its presentation, declaring that allegations of torture were baseless, and that they were circulated by NGOs relying on second-hand information sources. Nevertheless, the Committee pointed to 45 reported cases of serious electrocution and asked the delegation to provide a substantive response to those reports, which the delegation failed to do.

The Canadian delegation raised concerns about the scope of the Committee's mandate, noting that some questions raised by the Committee fell within the mandates of other treaty bodies, such as issues relating to violence against women. The issue of harmonising the agendas of treaty bodies has been raised repeatedly in the context of the treaty body strengthening process, directed towards ensuring coherence, efficiency and effectiveness. However, the damage done by overlapping issues is of far less concern than what might result if treaty bodies are cautious about going beyond the strict bounds of their mandates, as issues may slip through the gaps.

Not all challenges raised by States can be dismissed as attempts to undermine or question the Committee's authority. Rwanda, for example, raised a challenge to the Committee's focus on the need for torture cases to be addressed within a formal legal framework. In the aftermath of the 1994 genocide, Rwanda established the *Gacaca* community court system to deal with the overwhelming number of criminals crowding the nation's prisons. The courts are run according to the tenets of community justice, arriving at 'home grown' solutions derived from Rwandan cultural values. Significantly, the courts are not focused on upholding the rule of law, but on the values of dignity, right to life, traditional justice, truth, and reconciliation.

The Committee was concerned that these hearings amounted to 'trials without lawyers'. The delegation recognised that the *Gacaca* system was less than perfect, but said that realistically, the backlog of charges meant that formal justice mechanisms would take over 100 years to work through the cases. Although the *Gacaca* courts have now finished their work, the arguments for informal mechanisms to address torture raise questions about the foundation of the Committee's insistence on strict sentencing within a formal legal framework for torture cases.

EFFECTIVENESS OF THE COMMITTEE

In dealing with obstructive States, the Committee often found itself hampered by its own methods of work. Reviews are structured to allow all members to ask initial questions, with time provided for the delegation to respond after all questions are exhausted. Although opportunity for follow-up is provided, the format facilitates, to some degree, attempts by States to avoid answering questions, and depends upon members ensuring that they ask follow-up questions.

Committee members' tendency to deliver lengthy speeches, including compound questions covering multiple issues, blunts the force of their points. It creates an easy opportunity for States to avoid the issues they wish to ignore by expanding on favourable ones, especially as, in some cases, issues that were not addressed by the delegation were not raised again by the Committee. Rwanda's delegation, for example, skirted around the issues of child detention, corporal punishment, political prisoners, legal protection for journalists, and compensation for victims of the 1994 genocide, and these issues were not raised again by the Committee during the dialogue. In the concluding observations, however, the Committee did call for the State to explicitly prohibit corporal punishment against children, to investigate reported cases of torture and ill-treatment of political prisoners, and to ensure that journalists and human rights defenders are protected against threats, arrest and detention, including by prosecuting and punishing those responsible for such acts.¹

1 For links to CAT's concluding observations from the 48th session see, <http://bit.ly/1nIX3h>.

Providing States with long periods to answer questions also allows delegates to follow tangents and shift the focus of an issue, further undermining dialogue. This tendency manifested itself during the reviews of Cuba, Canada, and Rwanda in particular. The Cuban delegation framed discussion of the country's human rights situation in terms of its turbulent political history and the effect of the United States' policy on the country. This led to blanket denials of reports from the Inter-American Court of Human Rights that prisoners were sometimes subjected to short-term detentions without charge.

The Committee also failed to pin down delegations that did not provide meaningful answers. Canada and Rwanda, for example, dismissed the Committee's concerns by appealing to legislative reform. Canada's delegation met questions about immigration detention by claiming that a draft bill that perfectly upholds the principle of non-refoulement² is being considered by Parliament. However, it did not address the situation as it stands. Rwanda, too, repeatedly referred to the passage of a new Penal Code to allay the Committee's concerns about the definition of torture. While legislative reform is important, appealing to pending change without addressing immediate steps to remedy a situation falls short of meaningfully answering the Committee's questions. However, in its concluding observations the Committee remedied its lack of oral follow-up. The Committee welcomed the fact that the new Rwandan Penal Code contains a definition of torture, but criticised the relatively lenient penalties provided for, and that those penalties do not cover the infliction of 'mental pain or suffering'. In relation to Canada, the Committee expressed concern in its concluding observations that the bill currently being considered allowed for exceptions to the principle of non-refoulement, and called for this to be amended.

A final obstruction to dialogue emerged through the Committee's failure to pursue some lines of questioning and draw out detail. For example, in response to questions about specific torture allegations, the Rwandan delegation declared that 'dignity and torture are incompatible' and that 'Rwanda does not tolerate impunity'. The delegation's failure to expand on, or provide a basis for, such statements suggests it considered them adequate responses, and the Committee allowed these responses to pass. In concluding observations, the Committee commented on the lack of information provided by the delegation on cases in which the Convention has been applied or invoked before the courts. It called on the State to carry out investigations into particular cases of alleged torture.

2 Non-refoulement is the right to not be returned to a country where there are substantial grounds for believing the person will be subjected to torture.

PROCEDURAL ADVANCES

The Committee faces several procedural challenges that have an impact on its work and functioning. One such issue is the role of the Committee as an early-warning mechanism. In theory, the Committee could play this role by alerting the international community to issues with the potential to deteriorate into human rights crises before any serious violations of the Convention occur. However, in practice limited resources and time mean that little follow-up between country reviews is possible, as was made apparent by the case of Syria. During Syria's last review in 2010, institutions that promote impunity for perpetrators of torture and the absence of legal safeguards were highlighted by the Committee. These elements can be seen to have contributed to the gravity of the current Syrian crisis.

A follow-up procedure was introduced in 2003 to identify concluding observations that could be addressed within a year. At this session, Ms Felice Gaer, the Committee's rapporteur on follow-up to concluding observations, presented her review of the follow-up mechanism. It now incorporates a dual-assessment system to rate both the amount and quality of information provided by States.

Many of the reviews were webcast by a coalition of NGOs. While this move has generally been met with appreciation, some States under review at this session expressed displeasure. In particular, Cuba's delegation said it was concerned about the potential for media manipulation.

The List of Issues Prior to Reporting procedure was commented on favourably by the United Kingdom (UK) and the United States (US). The UK felt the procedure promotes a more efficient use of resources, adding that it would follow this method in the future. The US was of the opinion that the procedure would give more focus to interactive dialogues. Under the new procedure, the Committee does not wait for a national report to be submitted before drawing up a List of Issues for the State to provide further responses to, but proceeds directly to drawing up the list on the basis of which the State submits its report. However, the procedure does not apply to initial reports submitted by States, which must still be submitted prior to the Committee drawing up its List of Issues to ensure the Committee has a comprehensive overview of a country's domestic situation as a starting point. Given that many States are yet to produce an initial report, citing financial reasons for the delay, waiting for States to submit an initial report before the review process can begin may be unrealistic. Low compliance rates highlight the need for States to be provided with technical assistance in developing their reports.

The Committee is currently developing a General Comment to explain and clarify the obligations contained in Article 14 of the Convention. Article 14 protects the rights of torture victims to an enforceable claim to fair and adequate

compensation, including the means for rehabilitation. The draft Comment clarifies the notion of 'victims' contained in the Convention and sets out that the obligations contained in Article 14 have both procedural and substantive dimensions. This means States must ensure that the right of victims to restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition is enshrined in legislation and is actionable.

The Committee's capacity to issue the General Comment has been challenged by some States as going beyond the scope of its mandate, on the grounds that the Committee cannot create new obligations that are not contained in the text of the Convention. However, General Comments do not create new obligations, but only explains those that already exist. Further, it is explicitly within the purview of the Committee's rules of procedure to issue General Comments.³ Mr Claudio Grossman, Committee Chairperson, said the General Comment would bolster the legitimacy of the Committee and improve its processes. Although it was not adopted during this session, it will be considered further and hopefully adopted at the next.

Finally, a major procedural and substantive development took place during the session with the Committee's first oral hearing on an individual case. The claim concerned the extradition of 29 refugees and asylum seekers from Kazakhstan to Uzbekistan, despite a demonstrated risk that they could be subjected to torture upon arrival. The group of Uzbeks had sought freedom from religious persecution in Kazakhstan and most of them had received refugee status. Kazakh authorities relied on an obligation of cooperation⁴ with Uzbekistan to return them and cancel their refugee status, contrary to the Convention.⁵

The oral hearing was requested by Kazakhstan, and Kazakh delegates pleaded their case before the Committee against representatives of the complainants. The Committee heard arguments about the legal content of Kazakhstan's non-refoulement obligation and about the actual state of post-extradition protections in Uzbekistan. The Committee's final decision declared Kazakhstan's actions to be in violation of its international obligations, calling for redress and the immediate return of the victims to Kazakhstan.⁶ Although concerns remain about their safety, the hearing establishes an important precedent in the area of individual complaints. ■

³ Rule 74 of the Committee's Rules of Procedure.

⁴ The Shanghai Cooperation Organization has as member States China, Russia, Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan and imposes regional cooperation obligations on members.

⁵ Article 3.

⁶ <http://bit.ly/OheVjV>.