

COMMITTEE AGAINST TORTURE

35th session (Geneva, 7 to 25 November 2005)

The 35th session of the Committee against Torture (the Committee), which monitors the implementation of the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (the Convention) examined reports submitted by seven State parties in an attempt to address the Committee's backlog. The countries considered were Austria, Bosnia and Herzegovina, the Democratic Republic of Congo (the DRC), Ecuador, France, Nepal, and Sri Lanka. Consideration of the country situation in Guyana (in the absence of a report) was postponed.

Overview of the Committee session

The Chair of the Committee Mr. Fernando Mariño Menendez opened the 35th session of the Committee. The working methods of the Committee were strained during this session as a result of last minute rescheduling made by the Secretariat regarding the consideration of the reports of France, Sri Lanka and the DRC. During the opening session, several Committee members expressed concern about the lack of communication regarding such schedule changes. Mr. Claudio Grossman proposed that the Committee adopt a statement that no changes can be made to the agenda without consulting members of the Committee in advance.

Key themes addressed by the Committee during the examination of State reports included: preventative measures against torture such as education and training of police and military; prison conditions; compensation to victims of torture and their families; the definition of torture; respect of the principle of *non-refoulement*; and gender based violations such as rape, trafficking and domestic violence. Ms. Felice Gaer, the Committee's Rapporteur on gender issues, raised questions relating to issues of rape, trafficking and domestic violence. Mr. Ole Vedel Rasmussen, the Committee's Rapporteur on children's issues, focused his questions on the treatment and condition of juveniles in detention facilities. Mr. Grossman concentrated his questions on legal aspects such as the definition of torture and the implementation of the Convention in domestic law. Mr. Andreas Mavrommatis often posed questions relating to victims of torture and compensation. Mr. Sayed Kassem El-Masry raised several questions regarding the principle of non-refoulement and the condition of asylum seekers in detention centres. Mr. Julio Prado-Vallejo was absent from the entire session due to an illness and Mr. Grossman was only present during the first week of the Committee session.

The examination of State reports was often interactive and resulted in a frank exchange of views between the States and Committee members. Countries such as Bosnia and Herzegovina and the DRC presenting their initial reports received more flexibility, while countries presenting their second or third reports such as Nepal and Austria were questioned more vigorously by Committee members. However, Committee members often repeated questions that were previously stated by other Committee members and the allocation of time for presentation of States' periodic reports was inadequate. For example, the Committee allocated the same amount of time for consideration of reports of States presenting initial reports and those presenting second or third periodic reports, even though more analysis and time is required for consideration of initial reports. NGOs participated actively during the session and the Committee referred heavily to information provided by NGOs through shadow reports and oral briefings.

During the final week of the session, the High Commissioner addressed the Committee focusing on reform of the human rights system requesting the Committee to provide input and share ideas for proposals to strengthen the treaty monitoring bodies.

Reports of States

Austria (3rd and 4th periodic report)¹

Overview of the country session

Austria presented its third and fourth periodic report on 16 and 17 November 2005. The State report was due in 2000. A large Austrian delegation presented the State report to the Committee, including the Ambassador, representatives from the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Interior, and the Permanent Mission. The Ambassador, Mr. Ferdinand Trauttmansdorff, acting as head of the delegation presented the report to the Committee. Mr. El-Masry was the country Rapporteur for examination of Austria's report to the Committee. Mr. El-Masry praised the efforts of the Austrian government in training of police officers and informing detainees of their rights through an information sheet

¹ CAT/C/34/Add.18

available in 26 languages. However, Mr. El-Masry strongly questioned the delegation on the delay of three years in the submission of the report. The Committee was concerned that a developed country such as Austria with many disposable resources would have difficulties meeting reporting obligations on time. Mr. Rasmussen, Ms. Gaer, Mr. Wang and Mr. Mariño Menendez also actively questioned the Austrian delegation raising concerns such as the inconsistency in the definition of torture in the Austrian criminal code and the Convention, the condition of asylum seekers in detention centres, respect of the principle of *non-refoulement*, and the condition of juveniles in detention facilities. Austria was recently visited by the European Committee for the Prevention of Torture (CPT). Austria has made the following declaration to Article 5 the Convention stating that Austria will establish its jurisdiction in accordance with Article 5 of the Convention irrespective of the laws applying to the place where the offence occurred.

Themes and issues discussed

The Austrian delegation expressed their commitment to eradicating torture both at a domestic and international level. Mr. Trauttmansdorff affirmed that during its presidency of the European Union (EU) next year Austria would prioritise the European Union (EU) Guidelines on Torture and encourage the ratification of the Optional Protocol to the Convention. The Ambassador outlined measures taken by the Austrian government to fulfill its obligations under the Convention such as amendments to the *Code of Criminal Procedure* which provides necessary procedural safeguards such as prohibiting the use of statement obtained by torture and affirming the right to contact a lawyer prior to interrogation. The delegation also promoted an information sheet available in 26 different languages informing detainees about their rights. The Austrian delegation also informed the Committee of its signing of the Optional Protocol to the Convention and envisages ratification shortly.

The Committee and the delegation spent considerable time engaged in a substantive discussion on the **definition of torture**. Austria's position that the definition of torture contained in the Penal Code provides more extensive protection than the Convention was a major concern for the Committee. The Austrian Penal Code prohibits any infliction of bodily harm and encroachment on a person's health as a criminal offence. According to the delegation this definition goes well beyond the scope of "severe pain and suffering". The delegation stated that a definition in the Penal Code that repeats the definition in the Convention would make it difficult for the justice system to maintain the high level of protection under the existing criminal law. The Committee noted that the Penal Code does not include the specific crime of torture and therefore does not make a distinction between torture and other forms of mal-treatment. Mr. El-Masry disagreed with the Austrian interpretation on this issue and stated that the intention to commit torture is an important element of the offence that is not present in the Penal Code. He also concluded that if each State party has a different definition of torture this would not contribute to the goals of the Convention to provide an international standard on the prohibition of torture. After the dialogue the Committee was still not convinced of the Austrian position and reiterated its previous recommendation that the State party "**establish adequate provisions in order to legally define torture in accordance with article 1 of the Convention**".

The Committee expressed concern over provisions of the **Asylum Law** such as sending failed refugee claimants to a supposed safe third country and limitations on stays during appeal proceedings. The practise of detention as a means to deter people from applying for asylum raised concern for the Committee as well. The Committee requested the State to provide more information on measures to rectify sections of the *Asylum Law* that the Constitutional Court has declared unconstitutional. The delegation stated that Austria is particularly sensitive to the issue of *non-refoulement* and has instituted a high level of protection. Mr. El-Masry stated that relying on diplomatic assurances as a guarantee to allow deportation to countries where there is a risk of torture is questionable. The Committee recommended the State party to provide the Committee with "**detailed information on cases of denial of extradition, return or expulsion due to the risk that the person might be subject to torture, ill-treatment or the death penalty**".

Mr. Trauttmansdorff reported that the **right to contact a lawyer** has been incorporated into the Code of Criminal Procedure. However, the Committee noted that police might in some contents decide to reject the presence of a lawyer during interrogation. Committee members requested more information on what circumstances a lawyer's presence may be rejected. The delegation responded that this would occur if the presence of the lawyer would delay or impede the investigation. The delegation also stated that there is no system of legal aid currently. The Committee recommended that the State party implement recommendations of the CPT to "**establish a fully fledged and properly funded system of legal aid**".

The Committee expressed concern about the conditions of **detention of juveniles**. Mr. Rasmussen referred to the CPT report that juveniles in detention did not attend educational classes and that physical exercise was limited. He also requested the State to assure the Committee that juveniles and adult offenders are kept separately. The delegation stated that if it is in

their best interests, children might be kept together with adult inmates. The Committee recommended that the State party should **"develop alternative measures of detention for juveniles"** and **"ensure strict separation of juveniles and adults in places of detention"**.

Comparison with previous reports and recent appearance before other treaty monitoring bodies

Austria last appeared before the Committee in 1999 to present its second periodic report. During the consideration of the second report, the delegation and the Committee engaged in a long dialogue on the definition of torture. In the current session, the Committee used stronger language to indicate that it remained concerned about the inadequate definition of torture. The Committee also remained concerned about insufficient measures of protection of individuals under a deportation order.

Austria also appeared before the Committee on Economic, Social and Cultural Rights (CESCR) during its 35th session a week prior to appearing before the Committee. The CESCR expressed concern over the difficulties experienced by asylum seekers to make appeals and recommended that adequate support be provided for asylum seekers during their asylum proceedings. The Committee on the Rights of the Child (CRC) considered the second periodic report of Austria in March 2005. The CRC also made similar recommendations as the Committee on issues of **juvenile justice** such as alternative measures for detention, ensuring that person below 18 are held strictly separated from adult detainees, and ensuring staff are well trained to deal with juveniles.

NGO concerns

No NGOs were present in Geneva to verbally brief the Committee and no NGO shadow reports were provided to the Committee. However, the Committee referred to NGO information from Amnesty International (AI) I and other sources raising concerns about the situation of asylum seekers. The Committee also referred to an AI report expressing concern about the long delay in investigating the death of an asylum seeker. The Committee also relied on information provided in the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment after concluding a visit in April 2004.

Bosnia and Herzegovina (initial report)²

Overview of the country session

The Committee considered the initial State report of Bosnia and Herzegovina on 8 and 9 November 2005. The delegation from Bosnia and Herzegovina was large and high-level consisting of representatives from various ministries including the Ministry of Human Rights and Refugees, the Ministry of Justice, the Ministry of Health and Social Welfare, and the Ministry of Interior. The State report was presented by Mr. Slobodan Nagradic, Assistant Minister in the Ministry of Human Rights and Refugees. The initial report covers the period from 1992 to 2003. Ms. Gaer and Mr. Xuexian Wang served as Co-Rapporteurs for examination of the initial report of Bosnia and Herzegovina. Other members of the Committee who actively questioned the delegation included Mr. Mavrommatis and Mr. Rasmussen. A former Committee member, Ms. Rueda Castañón visited the State two years ago in 2003 to assist the State. Despite the long delay in presenting the initial report due in 1993. The Committee congratulated the delegation for their genuine efforts to cooperate with the Committee. NGOs from Bosnia and Herzegovina also briefed the Committee prior to the examination of the State Report in a private session. In addition, staff from the OHCHR field office in Bosnia and Herzegovina presented an overview of the current situation in Bosnia and Herzegovina to the Committee in a closed session.

Themes and issues discussed

The delegation stated that conclusions in the State report do not correspond exactly to the precise situation of human rights today in Bosnia and Herzegovina. In the last three years, many important initiatives have been undertaken to protect against torture including legislative and institutional measures. Legislative measures included bringing the ***Criminal Code of Bosnia and Herzegovina*** and ***Criminal Procedure Code*** into line with European and international standards, enactment of the legislation such as, the *Law on the Protection of Witnesses under Threat or Vulnerable Witnesses*, the *Law on Movement and Stay of Aliens and Asylum* and the *State Law on Missing Persons*. Institutional measures included the establishment of a

² CAT/C/21/Add.6

Special War Crimes Chamber, the Court of Bosnia and Herzegovina and the Srebrenica Commission to investigate the events leading to the Srebrenica massacre. The Committee welcomed these positive developments.

Responding to concerns expressed by the Committee regarding the delay in presenting the report, Mr. Nagradic explained the delay was a result of the **complex federal structure** in Bosnia and Herzegovina, which includes the Republika of Srpska and an administrative District of Brčko. He also stated that the report covers a 10-year period, of which three of those years were times of conflict. One of the main difficulties in producing the report was that until 2000 the State was not even sure who was responsible for preparing the report. This responsibility has now been tasked to the Ministry of Human Rights and Refugees. Ms. Gear requested more information on how the complexity of the State party's structure affected implementation of the Convention. In particular Ms. Gear asked the delegation for their opinion on whether the presence of international staff in the judiciary and police helped or hindered the facilitation in these efforts.

The delegation also noted difficulties in **collecting data and statistics** to illustrate a clear picture of the overall human rights situation in Bosnia and Herzegovina. Ms. Gear also requested information from the State party on measures taken by the State to gather data, especially disaggregated data broken down by age and sex, to help identify effective measures to prevent torture. The Committee recommended that the State party should **provide detailed disaggregated statistical data on complaints related to cases of torture**.

The delegation informed the Committee that the *Criminal Code of Bosnia and Herzegovina* (the Criminal Code) includes a **definition of torture** and other forms of cruel, inhuman or degrading treatment or punishment that criminalises the offence. In addition, a separate part of the Criminal Code includes a separate definition of torture as a crime against humanity. Ms. Gaer raised a concern that a specific definition of torture is not included in the Criminal Codes of the Republika of Srpska and the District of Brčko. She asked the delegation how it works to harmonise the different legal provisions and ensure that the definition of torture at the federal level protects against torture in all parts of the country. The delegation responded that there is increasing harmonisation of laws between the different entities of Bosnia and Herzegovina as well as with Europeans and international standards. In the concluding observations, the Committee recommended the State party should **"ensure that the legal definitions in the Republika Srpska and the District of Brčko are harmonised with the Criminal Code and Criminal Procedure Code."**

The Committee was also concerned with effective prosecutions of perpetrators of **torture characterised as a crime against humanity** and requested information from the State on steps taken to improve cooperation with the International Criminal Tribunal for the former Yugoslavia to ensure that all those indicted for war crimes by the Court were brought before it. In particular, the Committee expressed concern **ethnic bias** against members of ethnic and other minorities. The delegation responded that some progress has been made on the prosecution of those who were guilty of war crimes and stated that the first trials have already started in the War Crimes Chambers. The Committee reiterated this concern in the concluding observations stating that the State party should **"take effective measure to ensure prompt and impartial investigations into all allegations of torture and other cruel, inhuman or degrading treatment"**.

Ms. Minka Smajevic, also from the Ministry of Human Rights and Refugees, stated that during the war, from 1992 to 1995, virtually the entire population was affected by torture in its various forms such as forced deprivation of liberty and sexual violence. Ms. Smajevic stated that there is no comprehensive law at the State level for **compensation for victims** and the only existing law for the protection of victims relates to missing persons entered into force in 2004. Mr. Wang expressed concern that even when awarded, compensation for victims of torture is rarely disbursed. The delegation responded that this was due to financial constraints rather than lack of political will. Mr. Wang stated that more effective measures needed to be taken to recognise as victims of torture through legislation. The delegation responded that a memorial complex has been built as a symbol to remind present and future generations.

Ms. Gaer raised a concern expressed by the CTP finding that detainees do not always have **access to a lawyer or medical doctor**. Other concerns expressed by the Committee included the conditions in the prisons such as inter-prisoner violence, training provided to police and prison officials, and the number of hours prisoners spend in their cells without meaningful activities. The Committee recommended the State party should **"ensure that all persons detained are guaranteed a right to contact their families, and have immediate access to an independent medical doctor and legal counsel from the very outset of their deprivation of liberty."**

Ms. Gaer also questioned the delegation on measures taken to combat **gender-based breaches** of the convention such as trafficking of women, domestic violence and rape. The Committee noted the efforts made by the State to combat trafficking, however, the Committee expressed concern that only a small number of cases have been investigated and prosecuted. In the

concluding observations, the Committee stated that the State party should **"take necessary measures to ensure that all law enforcement officials fully and promptly investigate all alleged cases of trafficking in persons, and that offenders are prosecuted."** Committee members asked the delegation about the **separation of women and juvenile offenders** from adult male offenders in prisons. The delegation responded that currently, women and juveniles are separated from adult male offenders in different wards within the same facility. The Committee stated that the State party should **"ensure that men, women and children were kept in separate facilities through their whole period of detention or confinement in conformity with international standards in force."**

Comparison with previous reports and recent appearance before other treaty monitoring bodies

This was Bosnia and Herzegovina's first appearance before the Committee. A week after appearing before the Committee, Bosnia and Herzegovina also presented an initial report to the CECSR during its 35th session. The CESCR also raised concerns of **sexual violence against women** including compensation to civil victims of war.

Bosnia and Herzegovina also recently appeared before the CRC in May 2005. The complex federal structure was also mentioned by the CRC as hindering the full implementation of the Convention on the Rights of the Child. Both Committees suggested that Bosnia and Herzegovina should develop a coordinated system for a comprehensive collection of data. The CRC was also concerned about the "lack of appropriate places for deprivation of liberty for person under 18, who are often detained together with adults" and recommended that the State take all necessary measure to ensure that when in custody, **juveniles are kept separated from adults**. The issue of separation of youth offenders from adult offenders was also brought up by Mr. Rasmussen and expressed in the Committee's concluding observations.

NGO concerns

According to the State delegation, NGOs played an important role in the preparation of the initial report. The delegation also reported on measures to strengthen the NGO sector and efforts to collaborate with NGOs, victims of torture, former detainees and international organisations. In a written report produced by AI, the issue of **disappearances and impunity** was highlighted as "the largest unresolved human rights issue in Bosnia Herzegovina."³ The Committee also referred to concerns expressed by Human Rights Watch that influence is often exerted on the judiciary. Other NGOs also raised concern regarding the lack of compensation and redress for victims of torture and their families. The concerns expressed by NGOs were articulated by Committee members during questions posed to the delegation.

Democratic Republic of Congo (initial report)

Overview of the country session

The examination of the State report of the Democratic Republic of Congo (DRC) took place on 21 and 22 November 2005. The DRC was represented by a small but high-level delegation consisting of the Minister of Human Rights, General Secretariat for Human Rights, the Magistrature, and representatives of the Permanent Mission. Ms. Marie-Madeleine Kalala, the Minister of Human Rights presented the State report. The delegation was well prepared and willing to answer the Committee's questions as frankly as possible. Mr. Camara and Mr. Mariño Menendez served as Co-Rapporteurs for the examination of the State report. Mr. Mavromattis, Ms. Gear and Mr. Grossman also posed questions to the delegation. Mr. Camera praised the efforts of the DRC for their expressed commitment to fulfill obligations under the Convention. Two NGOs from the DRC also provided an oral briefing to the Committee before the examination of the State report. The State under examination did not have any reservations to any articles in the Convention.

Themes and issues discussed

Mr. Camara acknowledged the difficulties faced by the DRC and praised the efforts made by the State party to fulfil its international obligations under the Convention. However, Mr. Camara noted that no exceptional circumstance of any nature justify the use of torture. The delegation of the DRC responded that the Transitional Constitution of the DRC clearly states that nobody could be subjected to torture. Mr. Camara also expressed concern that the lack of a precise **definition of torture** in the domestic legislation of the DRC poses great difficulties and requested more information on the practical aspects of implementation of various articles of the Convention. The delegation responded that the *Criminal Code* defines

³ Amnesty International. "Bosnia and Herzegovina: Honouring the ghosts – challenging impunity for 'disappearances'." March 2003 EUR 63/004/2003

torture as any act of moral or physical torture or pain inflicted on an individual in order to obtain information from them or from a third party and that the current Code is being re-worked in a draft bill.

The delegation noted the difficulties faced by **overcrowded prisons** and that the Government is working on improving the conditions of inmates. However, the delegation noted that funding was required to build new prisons. The Committee asked the delegation whether there is separation of juveniles from adults and women from men in the prisons. The delegation responded that under the law, juveniles are separated from adult offenders, but that provision is not always respected. Women however are separated from men. Ms. Gaer asked the delegation whether donor countries have been responsive to the need to build new prisons to address overcrowding. The delegation responded that although the EU is providing financial assistance to repair existing prisons, no offers from donors to build new facilities has been forthcoming.

The Committee raised numerous concerns over the **judicial system** in particular the role played by the **military courts** in the DRC. Mr. Grossman expressed concern that the military courts could try civilians for offences, which is not in conformity with international law. Mr. Mavrommatis stated that although the DRC is to be applauded for making efforts in the post-conflict phase, he was somewhat surprised that the Government's priority is restructuring/strengthening the armed forces and not civil and political institutions that sought to protect human rights. The delegation responded although civilians were still appearing in the military courts this is the exception rather than the rule and cited there were only four cases where a civilian could be judged by a military court. Mr. Camara stated that jurisdiction of military courts must be restricted to purely military violations and not to civilians under any circumstances. The Committee recommended that the State party **ensure that military jurisdictions only judge military personnel for military infractions.**

On the issue of **impunity**, the delegation provided detailed material to show that the Government is striving to combat impunity. It is working closely with the International Criminal Court and maintained that none of the crimes under the Rome Statute should be subject to the statute limitations namely war crimes, crimes against humanity and genocide. A decree for amnesty had been negotiated and aimed at protecting political personalities who were part of the past rebellion. Mr. Camara asked the delegation how the amnesty law would be applied to ensure that there was no situation of impunity. At present the National Assembly is examining a bill relating to that and it was hoped after the promulgation of such legislation would improve the human rights situation in the country. The Committee urged the State Party to take energetic measure to eliminate the impunity of perpetrators of torture and ill-treatment by **investigating promptly, impartially and fully all reports of torture**, and to ensure that they are brought to trial and sentenced appropriately.

Protection of **human right defenders**, a concern raised by NGOs from the DRC, was also highlighted during the session. Mr. Camara stated that the status of human rights defenders, NGOs and civil society is very important to countries in transition and asked the delegation what measures were being taken to protect the rights of human rights defenders.

The delegation stated that the DRC needed to establish priorities and due to **budgetary constraints** it had not always been able to implement recommendations of treaty bodies. Ms. Kalala hoped that legislation to implement some of those recommendations that is before the Parliament would be passed soon to improve the situation of human rights in the DRC.

Comparison with previous reports and recent appearance before other treaty monitoring bodies

This was the DRC's first appearance before the Committee. The DRC appeared before the CRC in 2001, which focused mainly on the presence of child soldiers and their handling in the post-conflict era. Both Committees raised concerns on juvenile justice such as poor conditions of detention centers and recommend that the State party consider the possibility of compensation for victims of torture. An important issue of concern is how the age of criminal responsibility being reduced to 10 years has affected the prisoner ratio in the DRC. Measures to combat child trafficking and sexual exploitation were also raised as issues of concern by both Committees. The DRC also appeared before the Committee on the Elimination of Discrimination against Women (CEDAW) in 2000 where the issue of sexual violence towards female prisoners and domestic violence came to the attention of the Committee. CEDAW expressed concern at the lack of information on violence in prison and during the civil conflict directed at women, such as rape, assault, and severe torture. It stated that usually women in the rural and remote regions are targets of such gender based violence and recommended that steps should be taken to overcome feelings of shame and encourage women to report these crimes so that perpetrators could be punished.

NGO concerns

Prior to the examination of the State report, NGOs from the DRC briefed the Committee on issues relating to the condition of juveniles in prisons; rehabilitation and reintegration of child soldiers; the deteriorating conditions of prisons; and the

protection of human rights defenders returning from exile. The Observatoire Congolais des Droits Humains (OCDH) requested that the Committee question the DRC on how much of the 2005 fiscal budget has gone to deal with issues of juveniles in prisons. Association Africaine de Defense des Droits de l'Homme (ASADHO) stated that the conditions in the prisons are deplorable highlighting the limited training for prison officials, poor sanitary and health conditions, and cases of rape and people dying in prisons as a result of torture. The Committee members relied on the material provided by NGOs when questioning the delegation on the measures taken to protect human right defenders in the country in light of the recent assassination of Pascal Kabungulu Kibembi in August 2005.

Ecuador (3rd periodic report)⁴

Overview of the country session

The Committee considered the third periodic report of Ecuador on 11 and 14 of November 2005. The delegation was small and included representatives from the Solicitor General and the Permanent Mission. The Ambassador, Mr. Juan Carlos Faidutti, introduced the report to the Committee. The report was due in 1997 and includes information for the period up to and including 2001. Mr. Grossman and Mr. Mariño Menendez served as the Co-Rapporteurs for the Committee's examination of the State report. Other members of the Committee who actively questioned the delegation included Mr. Grossman, Mr. Mariño Menendez, and Ms. Gaer. There were no NGOs present to provide an oral briefing to the Committee; however, the Committee did rely on alternative reports and information provided by NGOs in written form. Ecuador has made the following declaration to the Convention "in accordance with the provisions of article 42 of its Political Constitution, it will not permit extradition of its nationals."

Themes and issues discussed

Mr. Faidutti introduced the State report by affirming the States tradition of respect for and promotion of human rights consistent with its international treaty obligations. He stated that the Ecuador Constitution explicitly forbids any form of torture and other cruel inhuman or degrading treatment. The delegation stated that the Constitution of Ecuador was sufficiently broad in scope to cover all aspects of torture defined in the Convention. Mr. Grossman stated that inclusion of a Constitutional provision is not sufficient and that categorisation as a criminal offence with enforcement measures is essential. Mr. Grossman stated that **definition of torture** in the *Criminal Code* does not fully comply with the Convention, since torture can be inflicted not only through physical acts but although through mental suffering. The definition is also more restrictive in the *Criminal Code* limiting torture to cases of arrest and detention. The Committee recommended that the State party should take the necessary measures to ensure that all the acts of torture as referred to in the Convention are considered offences under domestic criminal law.

Mr. Eric Roberts from the Public Prosecutors Office, reported on the progress made in implementing the **National Human Rights Plan** (the Plan). Mr. Roberts stated that the Plan includes an Operational Plan on prison issues and there is an improvement of the situation in prisons. He reported that the handbooks are being published for training of prison officials and staff. There is also a rights leaflet that is being produced. A legal committee has been established on implementation of sentences. The delegation also stated that there is considerable input from civil society including prisoners. However, the Committee expressed concern that four of the five NGOs that have been involved in implementing the Plan have now withdrawn their participation. The delegation acknowledged that some NGOs have withdrawn from the Plan during decentralisation. The delegation affirmed that there has always been participatory process in the application of the National Plan. The Committee recommended that the State party promote the Plan by "**introducing effective operational mechanisms that permit civil-society organisations to participate in the implementation of the Plan**".

Mr. Mariño Menendez questioned the delegation on human rights training for the military as outlined in the Plan. The delegation confirmed that there is on-going **education and training** for officials on Constitutional rights. Seminars are organised for public authorities on human rights law and the "Handbook" is also disseminated to all public officials. The Committee recommended that the State party should "**improve the quality of and enhance the human rights training of State security forces and bodies and specifically concerning the requirements laid down by the Convention**". The Inter-American Court of Human Rights made a similar recommendation in a judgement against the State in 2004.

The Committee expressed concern over the prevalence of incommunicado detention and the denial for prisoners of access to their lawyers and medical doctors. The Committee also strongly indicated its concern over the **deplorable condition**

⁴ CAT/C/39/Add.6

in detention centres raising issues over corruption, poor physical conditions, and the lack of hygiene, proper food and appropriate medical care. The Committee recommended that the State party "**adopt effective measures, including approval of the budgetary funds needed to improve physical condition in detention centres**".

Responding to concerns raised by the Committee that the existence of **military and police courts** is not being incorporated into the judicial system, the delegation asserted that there is no conflict of jurisdiction between the police and military courts and the ordinary civil courts and that each has its own criminal legislation. Mr. Roberts assured the Committee that all judges and magistrates report to the judiciary. The delegation stated that there is great pressure in Ecuador to ensure that police and military courts are brought into the normal judicial sphere. The Committee recommended that the State party "**speed up the process of gradual incorporation of police and military courts into the judicial system**".

Mr. Grossman referred to an Inter-American Court conclusion that some cases **compensation to victims of torture** is being paid in lieu of prosecution. Mr. Grossman stated that financial compensation is not sufficient and that the best way to respect human rights is to investigate and punish those who are guilty of violations. The delegation stated that other compensation mechanisms included putting the names of victims in memorials and the publication in the press establishing the responsibility of the State to provide compensation. The Committee recommended that the State party should "**establish a specific regulatory framework to govern compensation for acts of torture, and should devise and implement programmes of all-round care and support for victims of torture**".

The Committee expressed regret that rules of due process are not fully complied with in deportation cases. The Committee stated there is an inadequacy in the process to enable authorities to check whether an individual runs the risk of torture if returned to his or her country of origin. The delegation reported that the State respects the principle of *non-refoulement*. In addition, an executive decree in 1992 prohibits expulsion of people where there is a risk of torture and immigration authorities must inform the Ministry of Foreign Affairs if an individual faces a risk of torture. The Committee did not find these reassurances satisfactory and recommended that the State party organize "**training programmes on international refugee law with emphasis on the content and scope of the principle of non-refoulement**".

Ms. Gaer questioned the delegation on attacks perpetrated by the police on the **lesbian, gay, bisexual, transgender community**. The delegation responded that homosexuality has been decriminalised and that the State is introducing legislation prohibiting discrimination against sexual minorities. Ms. Gaer also raised a concern that sexual abuse and trafficking are not offences in the criminal code. Ms. Gaer also stated that the **violence against women** legislation is not being implemented by the State. The delegation reported that there has been a drop in number of complaints of **domestic violence** stating that NGOs have played an important role in heightening awareness in preventing incidents of violence. The Committee recommended that the State party ensure allegation of torture and ill-treatment of members of vulnerable groups such as indigenous communities, sexual minorities and women, are thoroughly investigated and those responsible brought to trial.

Comparison with previous reports and recent appearance before other treaty monitoring bodies

Ecuador appeared before the Committee in 1993 to present its second periodic report. The Committee took a stronger approach during the current examination using stronger language to reiterate concerns previously expressed regarding the making torture an offence under domestic law and bringing the criminal justice system under the direct supervision of the judiciary.

The CRC considered the State report of Ecuador in May 2005 and expressed concern over juvenile justice issues such as providing legal assistance, remaining in contact with their families and training for prison officials. Ecuador appeared before the Committee on the Elimination of Racial Discrimination (CERD) in March 2003. CERD expressed concern about reported instances of excessive use of force by the police and armed forces against indigenous people, however, this issue was not addressed by the Committee. The CESCR examined the report of Ecuador in June 2004 and expressed similar concerns raised by the Committee that domestic violence is widespread and does not constitute a criminal offence in the State.

NGO concerns

There were no NGOs present to present an oral briefing to the Committee on Ecuador. There was an alternative report in Spanish prepared by the Clínica de derechos Humanos submitted to the Committee. The Committee referred to concerns

expressed by NGOs that individuals accused of torture and mal-treatment have been released before being prosecuted and have never been brought before the courts.

France (3rd periodic report)

Overview of the country session

The Committee examined the third periodic report of France on 17 and 18 November 2005. The State report was due in 1996 and was submitted seven years late in 2003. France was represented by a large delegation consisting of the French Ambassador for Human Rights, representatives of the Minister of Foreign Affairs, the Ministry of the Interior, the Ministry of Justice and the Ministry of Overseas Territories. The delegation made an effort to provide exhaustive and clear replies to the questions raised by the experts. Mr. Camara and Mr. Mavrommatis were the Co-Rapporteurs for the examination of France's report. Other Committee members that actively engaged in the dialogue with France were Mr. El-Masry, Mr. Rasmussen, Mr. Fernando Mariño Menendez and Ms. Gear. The main themes addressed during the session dealt with overcrowding in prisons; cases of complaints by prisoners of inhuman and degrading treatment; compensation; a request for an elaboration of the special circumstances for incommunicado detention; data collection and statistics; asylum procedures and *non-refoulement*; and ban on measures blocking the respiratory system during the deportation process. Mr. Michel Doucin, the French Ambassador for Human Rights introduced the report highlighted measures taken to improve the physical conditions for the deprivation of liberty; the reinforcement of the guarantee not to be subjected to torture; the training and education on the ban on torture; and the promotion of the Convention internationally. France has signed the Optional Protocol to the Convention in September 2005 and the delegation stated ratification would ensue without undue delay. France has made a declaration that it shall not be bound by the provisions of Article 30(2) of the Convention.

Themes and issues discussed

The Committee expressed concern regarding the lack of a **comprehensive definition of torture** in French domestic law. While French legislation does not contain a definition of torture in conformity with the Convention, the delegation maintained that France has adequate protections against torture. The delegation referred to directive of the Ministry of Justice on the new Criminal Code that expressly refers to Article 1 of the Convention. The Committee stated that torture inflicted on a person in State custody must be included as a separate criminal offence from general acts of violence. In the concluding observations, the Committee reiterated its concern that the **State party incorporate into French domestic law a definition of torture in conformity with the Convention.**

In relation to **overcrowded prisons** the delegation stated that a number of steps are being taken to improve the conditions in prisons and pre-trial detention facilities. These measures include construction and renovation of prisons and programs for the reintegration of former prisoners into society to prevent re-offending. In addition, a special commission was established up to ensure that places of detention are up to standard. Ms. Gaer requested more information from the delegation on the detention of women and children. The delegation responded that minors and adults are held together in some circumstances.

The Committee expressed concern over reports that **incommunicado detentions** was common practice in the State. The delegation stated that in France incommunicado detention is prohibited under French law and that detainees have the option of contacting their families along with having outside contact such as receiving mails and visits. Furthermore, in response to several questions raised by Mr. El-Masry on the rule that deprived detainees from making contact with the outside world for 72 hours, the delegation stated that in cases linked to terrorism and drug trafficking, suspects could be held in police custody for 72 hours without access to a lawyer, but that these detentions are under the supervision of the Public Prosecutor. In addition, authorisation of a judge is required to detain a suspect for more than 48 hours.

Ms. Gaer questioned the French delegation on reports from NGOs that alleges police officers have a two-tier system in which charges were swiftly brought against other citizens, but took a long time when **charges were made against police officers**. The delegation stated that police officers who broke the law incurred both penal and disciplinary sanctions but noted that first-time offenders were often given suspended sentences. The Committee also expressed concern over **excessive use of force by police officers**. The delegation stated that in response to concerns expressed by the Committee, a reference to the Convention would be included in the next edition of the Code of Ethic of the National Police Force. In addition, the delegation noted that the training curricular for judicial police officers highlighted the need to respect the rights of detainees. The Committee recommended that the State party should take all necessary measure to ensure that **any public official** or person acting in an official capacity who was responsible for acts of torture, be **investigated and punished proportionally to the gravity of the acts committed.**

Mr. Camara raised several concerns regarding the treatment of **asylum-seekers**. He asked what system was in place to ensure that asylum-seekers could exercise all legal remedies guaranteed by law. The delegation stated that special guarantees are in place to protect the rights of asylum-seekers. A new law introduced in 2003 accords "subsidiary protection status" to persons who are not recognised as refugees but are at risk of torture in their country of origin. The Committee recommended the State party should take all necessary measure to **ensure that no expulsion takes place of any person who could be submitted to torture if returned to a third party State**. The Committee also recommended that the State party consider instituting a procedure that would **allow for a distinction to be made between request for asylum based on Article 3** of the Convention and other requests.

Several Committee Members raised questions relating to **administrative and judicial measures taken following the recent urban riots**. Mr. El-Masry commented that the expulsion of foreign national convicted of criminal acts during the riots is discriminatory since it targeted foreign nationals only. He was concerned that such individuals would be denied a fair and public hearing before an independent and impartial tribunal. Ms. Gaer requested more information on the number of women and minors detained during the riots and the places of detention.

Comparison with previous reports and recent appearance before other treaty monitoring bodies

This is France's third periodic report to the Committee. In comparison to the previous reports, the Committee uses stronger to express ongoing concerns addressed in previous reports. The Committee "reiterated" many concerns including incorporation of the definition of torture into domestic law in conformity with the Convention. The Committee also expressed concern regarding application of Article 3 of the Convention.

France appeared before CERD earlier this year where discriminatory practices towards asylum seekers and detainees were addressed. The use of French only for application or detention documents was raised by both Committees, which recommended that the State party provide asylum seekers with interpreters. Another common view is held on creating awareness among members of the security forces and other public officials of efforts to combat discrimination and torture against specific ethnic groups. The status of the French overseas territories was raised on the grounds of any distinction being drawn in regards to the both the conventions and that it would be useful to provide a report on the proceedings next time. The CRC examined the report of France in 2004 and raised similar concerns as the Committee that foreign unaccompanied minors continue to be deprived of their liberty and placed in some detention centers as adults. Both Committees recommended special protection measures where minors are concerned.

NGO concerns

The various issues that were taken up by the NGO's present at the session were such as the border problems dealing with foreigners; the decision of liberty; the unhealthy conditions; the persecution of people responsible for torture and providing the victims the right to action; and the rising incidents of mass arrests and deportation of undocumented aliens. Committee members relied on information provided by NGOs on questions regarding the review of the expulsion law and the number of people arrested as a result of the recent riots in France.

Nepal (2nd periodic report)⁵

Overview of the country session

The Committee considered the second periodic report of Nepal on 9 and 10 November 2005. The delegation was small consisting of representatives from the Ministry of Law, Justice and Parliamentary Affairs, the under-secretary of the Ministry of Home Affairs and the Permanent Mission. Mr. Gyan Chandra Acharya, the Ambassador of Nepal presented the State report to the Committee. The report is a compilation of the second, third and fourth periodic reports and covers the period from 1996 to 2004. The Committee noted that the report does not conform to the guidelines for the preparation of periodic reports and lacks information on practical aspects of the implementation of the Convention. In considering the report, the Committee also noted the difficulties faced by the State party as a result of internal armed conflict and the absence of a sitting Parliament since 2002. Mr. Rasmussen and Mr. El-Masry were the Co-Rapporteurs for examination of the State report. Other members of the Committee who actively questioned the delegation included Mr. Mavrommatis, Mr. Grossman, and Ms. Gaer. NGOs briefed the Committee prior to the examination of the State Report raising concern over the

⁵ CAT/C/33/Add.6

continuation of widespread and systemic use of torture by police and the Royal Nepalese Army (RNA) and the impact caste discrimination by perpetrators of torture.

Themes and issues discussed

Mr. Acharya introduced the State report by affirming that Nepal does not condone the use of torture and attributed increasing incidents of torture to the Maoist insurgency. The delegation highlighted legislative measures taken by the State to prevent torture such as the enactment of the *Compensation Relating to Torture Act* (CRT), 1996 and the *Human Rights Commission Act*, 1997. The delegation also referred to institutional measures such as the establishment of a National Human Rights Commission (NHRC) charged with the responsibility of promoting and protecting human rights including monitoring the conditions of detained persons.

On the **definition of torture**, Mr. Acharya stated that the definition in the CRT is not inconsistent with the Convention. He argued that while the definition is not as wide as the Convention, the courts have room to expand the definition on a case-by-case basis. The delegation noted that in the **absence of a parliament**, legislation incorporating torture as a crime into domestic law is yet to be enacted. However, the delegation noted that a draft new penal code includes provisions to make torture a domestic crime. Mr. Grossman expressed concern that the definition only applied to cases of torture in detention only, and Mr. El-Masry noted that the draft penal code has a maximum sentence of three years imprisonment for the crime of torture. The Committee recommended that the State party "**should adopt domestic legislation which ensures that acts of torture, including the acts of attempt, complicity and participation are a criminal offence punishable in a manner proportionate to the gravity of the crimes committed**".

The Committee expressed concern over the **widespread use of torture** in Nepal. The Special Rapporteur on torture, Mr. Manfred Nowak, visited Nepal in September 2005 and concluded that the RNA and police systemically practice torture to extract confessions in Nepal. Mr. Rasmussen reminded the delegation that no exceptional circumstances justify the use of torture and stated that the State party needs to send a clear message against torture. The delegation noted that in follow-up to the Special Rapporteur's recent visit **guidelines** have been issued to the police and the RNA to ensure detainee's access to legal aid, family members and medical care. The Committee stated that the State party should "**make a public condemnation of the practise of torture and take effective measures to prevent acts of torture in any territory under its jurisdiction.**"

The Committee also raised the issue of **impunity** and the lack of an independent body to conduct investigations into acts of torture and ill treatment committed by law enforcement personnel. The delegation responded that there is no total impunity and that torture is not a State policy. The delegation further stated that the Government takes allegations of torture very seriously taking appropriate actions such as investigations and where necessary punishment of perpetrators. However, the delegation further stated that many of the allegations of torture are baseless and biased with the "aim to tarnish and defame the image of security personnel". In the concluding observations, the Committee recommended the State party "**establish an independent body to investigate acts of torture and ill treatment committed by law enforcement personnel**".

Mr. Rasmussen expressed concern about incommunicado detention of persons in army barracks and that the *Terrorist and Disruptive (Control and Punishment) Ordinance* permits **preventative detention** for up to 15 months without fundamental guarantees. The Committee made several recommendations on **detention and interrogation**, including the transfer of all detainees to legally designated places of detention, documentation of all arrests and detentions, and the prohibition of incommunicado detention. The Committee also stated in the concluding observations that anti-terrorist measures should be "**carried out with full respect of, inter alia, international human rights law, including the Convention.**"

Several Committee members questioned the delegation about **caste discrimination** issues at the base of allegations of abuse and ill treatment. Mr. El-Masry and Ms. Gaer requested the State to provide disaggregated data by caste. The delegation responded that statistics are not kept on the basis of caste since this would reinforce the concept of caste divisions in society. The delegation also highlighted the creation of the National Dalit Commission (the Commission) and the participation of Dalit communities in decision-making in the Commission. Ms. Gaer also brought up **gender-based violations** of the Convention such as sexual violence against women and children in custody. In the concluding observations the Committee recommends the State party should **ensure that procedures are in place to investigate all allegations of torture an ill treatment, including sexual violence.**

Comparison with pervious reports and recent appearance before other treaty monitoring bodies

The Committee considered the initial report of Nepal in 1994 and raised concern about the lack of a comprehensive definition of torture in the proposed legislation **incorporating a crime of torture into domestic law**. In the absence of a parliament, the delegation still does not have a definition of torture in conformity with the Convention incorporated into its domestic law. The Committee also previously recommended the State undertake to implement a programme of **education and training** for police officers and border guards. The delegation reported to the Committee during this session that all law enforcement officers, including members of the RNA, the police and prison officials receive human rights training. However, the Committee noted the lack of information provided on the impact of such education and training efforts.

The CRC considered the second periodic report of Nepal earlier this year in June 2005 and expressed similar concerns as the Committee that the State should provide sufficient human and financial resources to the NHRC. Both Committees recommended strengthening the **juvenile justice system** to comply with international standards and expressed concern over the allegation of children being held under the *Terrorist and Disruptive (Control and Punishment) Ordinance*. CERD considered the report of Nepal in March 2004 and also recommended that the State party strengthen the NHRC. CERD also expressed concern over **caste discrimination** by law enforcement officials and recommended that the Dalit Commission be strengthened.

NGO concerns

Mr. Kundan Aryal of the Informal Sector Service Centre (INSEC) an NGO based in Kathmandu, Nepal presented a joint alternative report on behalf of 34 NGOs to the Committee highlighting concerns over the widespread and systematic use of torture by the police and the RNA. These NGOs reported that over 17 thousands cases of torture have been reported to these organisations and that torture is often a tool used by the State to deal with the insurgency. INSEC made several recommendations such as a central register of detainees including the location, time and date of detention. This information should be made available to detainees, their family and legal counsel, and other interested parties. The Lutheran World Federation presented an alternative report on behalf of the Center for Human Rights and Global Justice. The report highlights the nexus between the practice of torture in Nepal and caste discrimination stating that Dalits are targeted both by the State and Maoist insurgents. The NGOs raised concern that caste discrimination is not addressed in the State report and requested the Committee members to raise these issues with the delegation.

Sri Lanka (2nd periodic report)⁶

Overview of the country session

The Committee considered the second periodic report of Sri Lanka on 10 and 11 November 2005 (due in 1999). The delegation from Sri Lanka was a small but high-level consisting of the Solicitor-General, the Deputy Solicitor-General, and bureaucrats from the Ministry of Foreign Affairs. The Ambassador, Ms. Sarala Fernando, introduced the report and stated that the long delay in presenting the report was due to burdensome reporting obligations to various treaty bodies. She expressed a preference for a harmonised reporting procedure for the treaty bodies. The Sri Lankan delegation focused on the measures taken to implement previous recommendations from the Committee. These include strengthening of the Human Rights Commission of Sri Lanka (the Commission), creating the National Police Commission (NPC), promptly investigating allegations of torture, and the release of all individuals in preventative detention, and education and training of police and armed forces on humanitarian law. Mr. Andreas Mavrommatis and Mr. Vedel Rasmussen served as Co-Rapporteurs for the consideration of Sri Lanka's report. Other Committee members posing questions to the Sri Lankan delegation included Ms. Gear and Mr. Grossman. NGOs also actively participated in a briefing to the Committee prior to the consideration of the State report. The Committee took note of the difficult situation arising from the internal armed conflict in Sri Lanka. Mr. Mavrommatis and Mr. Yu Mengjia, a former Committee member, conducted an Article 20 visit to Sri Lanka in 2000 to inquire as to whether torture was being systematically practised in Sri Lanka. The delegation also responded to measures taken in response the recommendations⁷ made by the Committee as a result of the Article 20 visit.

Themes and issues discussed

In introducing the State report, Ms. Fernando stated that the Government of Sri Lanka condemns the use of torture and has **"zero tolerance" for torture**. She affirmed that even during the time of conflict the Sri Lankan Government has followed a tradition of respect for human rights and cooperation with treaty bodies. According to Ms. Fernando, the human rights

⁶ CAT/C/48/Add.2

⁷ A/47/44, paras 117-195

situation has improved tremendously since the Cease Fire Agreement (CFA) has been in place in March 2002. The Ambassador stated that despite significant steps taken by the State, extrajudicial killings in the areas under the control of the Liberation Tigers of Tamil Eelam (LTTE) remain a problem. The Committee acknowledged the decrease in reported cases of torture and encouraged the parties to resume the peace talks. However, Mr. Mavromattis expressed concern about well-documented allegations of widespread torture and ill-treatment and disappearances committed by the police as a routine method of criminal investigation. The Committee recommended that the State party should **"ensure prompt, impartial and exhaustive investigations into all allegations of violations of torture and ill-treatment and disappearances committed by law enforcement officials"**.

The Ambassador stated that the **Human Rights Commission of Sri Lanka** is a fully independent body and measures have been taken to protect against torture such as fast tracking of torture cases, appointment of teams for special visits to places of detention and posters in all three languages to inform detainees about their rights. Several Committee members requested the delegation to comment on an incident that occurred earlier in the year, which NGOs such as AI and HRW claim was an attack on the Commission. The delegation denied that this was an attack on the Commission and assured the Committee that no confidential documents were destroyed and that an investigation has been initiated. The Committee expressed concern regarding the lack of implementation of recommendations made by the Commission and recommended that the State party provide **"adequate resources, notification of arrests and full cooperation in implementing its 24-hour torture hotline and improving the system of inspection visits."** Responding to concerns raised by NGOs on the possibility of a protection gap if new Commissioners are not appointed when the present terms ends in March 2006, the Committee also recommended the State party to **"ensure prompt reappointment of Commissioners"**.

The Committee was not satisfied with the delegation's response concerning **visits to places of detention**. The delegation stated that international and national monitors could visit any prison and place of detention without prior notice. However, Mr. Mavromattis noted that monitors cannot visit everywhere within the facility. Mr. Rasmussen stated there must be mechanism in place for follow-up to implement changes as a result of findings from visits. In his opinion, the Commission does not have the capacity to make such changes. The Committee recommended that the State party allow independent human rights monitors, **"full access to all places of detention, including police barracks, without prior notice, and set up a national system to review and react to findings of the systematic review"**.

The Committee expressed concern about allegations of **intimidation and harassment** exerted by police on complainants and witnesses of torture reporting acts of torture and ill-treatment. Mr. Rasmussen noted that according to NGO sources, torture survivors and witnesses are reluctant to bring complaints out of fear of reprisals. The Committee recommended the State party to **"take effective steps to ensure that all persons reporting acts of torture or ill-treatment are protected from intimidation and reprisals"**. Committee members raised several questions to the delegation on the conditions in prisons and **safeguards** put in place to protect fundamental rights. The Committee recommended the State party to ensure that fundamental safeguards are respected including **"the right to habeas corpus, the right to inform a relative, access to a lawyer and a doctor of their own choice and the provision of information about their rights"**.

The delegation stated that since March 2002 there have been no reported cases of **custodial rape** and reported that the present legal provisions are adequate protection. However, referring to several incidents reported by AI, Ms. Gaer asked the delegation to provide information on what procedures are in place to facilitate monitoring of sexual violence and abuse in custody. The delegation stated that women arrestees are placed in custody under the care of female police officers and during transfer are accompanied by a female officer. The Committee recommended that the State party ensure **"full implementation of the directive concerning the treatment of women in custody"**.

Comparison with previous reports and recent appearance before other treaty monitoring bodies

Sri Lanka presented its initial report to the Committee in 1998 and the Committee recommended that the State take necessary measures to ensure that justice is not delayed and to strengthen the Human Rights Commission of Sri Lanka. These two recommendations were reiterated by the Committee during this session. The Committee in 1998 expressed concern over emergency regulations and the *Prevention of Terrorism Act* (PTA). Since the CFA came into force, the delegation noted that no arrests and detentions were carried out under the PTA. The delegation stated that the PTA will become obsolete since all criminal investigations or arrests are now carried out under the *Criminal Procedure Code* (CPC).

Sri Lanka has appeared before several other treaty-monitoring bodies over the last few years. Sri Lanka recently appeared before the Human Rights Committee in December 2003. The Human Rights Committee also expressed concern about reports of torture and that victims are intimidated from bringing complaints. The Human Rights Committee made a similar

recommendation that the State party should ensure allegations of torture are investigated promptly and effectively with a view to prosecuting perpetrators. The Human Rights Committee also welcomed the decision not to apply the provision of the PTA and ensure that normal procedures for arrest and detention under the CPC are applied. Sri Lanka appeared before the CRC in July 2003 and it expressed concerns over issues of juvenile justice and demobilisation and reintegration of combatants under the age of 18.

NGO concerns

NGOs expressed concern over the **prevailing culture of impunity** in Sri Lanka. NGOs from Sri Lanka provided the Committee with reports of numerous documented cases of torture committed by the police. According to the NGOs cases of torture in Sri Lanka are not isolated, rather they are evident of the use of torture as a routine method of investigation. The Asian Legal Resource Centre stated that the number of custodial deaths as a result of torture has increased. NGOs were also concerned about the erosion of power of the Human Rights Commission of Sri Lanka referring to an attempted attack on the building that houses the Human Rights Commission. The People Against Torture Coalition (PATC) expressed concern that there is a lack of institutional support for victims of torture and their families. PATC cited examples of witnesses in torture cases being harassed pressured by the police to withdraw their cases. NGOs emphasised the need for police reform to address wide spread corruption and abuse in the system.

NGO Briefing on the USA

Overview

AI, Human Rights Watch, American Civil Liberties Union (ACLU), and the World Organisation Against Torture (OMCT) organised a lunchtime briefing on issues concerning torture and the USA. The USA appears before the Committee at its 36th session in May 2006. This was the first time that an informal briefing was organised to assist Committee members in preparing the list of issues. Mr. Camara, Mr. El-Masry, Ms. Gaer, Mr. Mariño Menendez, Mr. Mavrommatis, Mr. Rasmussen and Mr. Wang attended the lunchtime briefing. After the initial presentations by the NGOs, Committee members asked questions and sought clarifications on several issues.

Themes and issues discussed

NGOs expressed their concern over the **conditions of detainees** in Guantanamo Bay, Cuba, Afghanistan and Iraq. Many NGOs also alerted the Committee of the clear policy by the USA to purposely transfer foreign nationals to countries where they are likely to be tortured citing examples of several high-profiled cases such as the El-Masry and the Arar cases.

Ms. Angela Wright from AI expressed concern with the position of the USA that there is no legal prohibition on the use of cruel inhumane and degrading treatment against **non-nationals held in the custody of US officials outside of the USA**. She stated that while the USA asserts in its second periodic report an unequivocal opposition to the use of torture under any circumstances, in practise these assurances are lacking in sufficiency. AI has documented cases of thousands of detainees who remain in US custody in conditions described as "conducive to torture and ill-treatment, including incommunicado detention denial of access to lawyers and the courts, and secret detention." Mr. Camara commented that the detention of non-nationals outside the USA is a complex issue. He stated that the Committee must make a distinction between detainees in Guantanamo Bay and those who are held within the USA. NGOs responded that the Committees approach should be that wherever the USA holds detainees under its control and authority those actions are relevant to the Committee. Mr. El-Masry also pointed out the legal opinion given to the Committee in a prior matter which stated that the convention applies to "any territory under its jurisdiction" and not to "its territory".

Ms. Ann Beeson from the ACLU, brought the Committee's attention to the **prevailing and total impunity** in the USA. Mr. Yakovlev asked the NGOs to describe to what extend superiors have been held responsible for incidents of torture. Ms. Beeson stated that despite irrefutable evidence of hundreds of cases of serious torture and abuse in detention facilities abroad there is yet to be a senior official held accountable. She pointed out that all of the investigations so far have been flawed. All of these investigations have been done internally by the military and none of them have been independent. Ms. Beeson urged the Committee to recommend an overall and independent investigation in these cases. Mr. Rasmussen commented that NGOs should find out who is responsible for acts of torture and ill-treatment and take these matters to the domestic courts. In response Ms. Beeson described the hurdles that face NGOs in initiating complaints in domestic courts of the USA. One such hurdle is the lack of transparency in gathering information since the State labels relevant materials as "classified".

NGOs were also concerned about **domestic practises** that contravene provisions of the Convention. AI noted violations of Article 16 of the Convention describing the deplorable **conditions in the super-maximum security prisons** in the USA. Ms. Wright described how prisoners were kept confined for 23 hours a day to small solitary windowless cells in these facilities. The ACLU also raised the issues of treatment of **juveniles in prisons** and the conditions of **immigration detention centres**. The Minnesota Advocates for Human Rights highlighted other aspects of tortures such as **trafficking of women** and **domestic violence** as prevailing issues that remain unaddressed in the USA.