

TREATY BODY MONITOR

International Service for Human Rights



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COMMITTEE AGAINST TORTURE 39TH SESSION NORWAY, 5TH REPORT 12 – 13 NOVEMBER 2007

Information submitted to the Committee	1
Themes and issues	2
Incorporation of the Convention in domestic law	2
Definition of torture	3
Non-refoulement	3
Detention matters	4
Education on the prohibition against torture	6
Rights for the victims.....	7
Other issues	7
Conclusion and next steps	8

Information submitted to the Committee

Norway appeared before the Committee against Torture (the Committee) on 12-13 November 2007 to present its fifth periodic report.¹ The report covered the period from October 2000 to February 2005. The first section of the report gave information on new measures and new developments relating to the implementation of the *Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention)² by Norway. Those measures and developments took place in relation to the following topics: expulsion, extradition, formation of police, prison staff, military personnel and medical personnel, criminal procedures and remand, imprisonment, detention of asylum-seekers, others form of detention and coercive measures, special investigative bodies, child welfare institutions, psychiatric treatment, mentally disabled persons, persons with senile dementia, coercion in relation to drug and alcohol abusers. The second section of the report addressed compliance with the Committee's conclusions and recommendations, which included a new penal provision concerning torture, new restrictions on the use of solitary confinement and the question of amendments to the *Immigration Act* on the basis of Security Council *Resolution 1373* (2001). The Committee

¹ CAT/C/81/Add.4, 14 February 2005, available at <http://www2.ohchr.org/english/bodies/cat/cats39.htm>

² Available at <http://www2.ohchr.org/english/law/cat.htm>

welcomed the report and the fact that Norway is a country that has a high standard of compliance, and stated that it is always a pleasure to welcome the new measures that have been taken.

The Committee addressed a list of issues to Norway that was also discussed in the plenary.³ These included the incorporation of the Convention in domestic law and the definition of torture included in the amended Penal Code; non-refoulement; detention matters such as pre-trial detention and centres for asylum-seekers; education on the prohibition against torture and victim's rights. Norway provided a written reply to this list of issues where it answered to each question.⁴ When information requested by the Committee was not yet available, Norway committed itself to provide it to the Committee as soon as possible.

Themes and issues

Norway's delegation was composed of Mr Wille, Ambassador for Human Rights and Democracy of the Ministry of Foreign Affairs; Ms Hubert, Adviser of the Ministry of Foreign Affairs; Ms Vollan, Deputy Director General of the Ministry of Justice and the Police; Mr Skuldberg, Deputy Director General of the Ministry of Justice and Police; Mr Hustad, Higher Executive Officer of the Ministry of Justice and Police; Ms Gudbrandsen, Adviser of the Ministry of Labour and Social Inclusion; Ms Winter, Adviser of the Ministry of Health and Care Services and Ms Stiro, Minister Counsellor of the Permanent Mission of Norway to the United Nations at Geneva.

In its opening statement, the delegation of Norway spoke about the need of international support and cooperation regarding the issue of torture. It emphasised that torture is one of the most severe violations of human rights and that the Norwegian Government strongly supports the Special Rapporteur on torture on the topic. It reminded that Norway has an established practice of distributing concluding observations of the Committee to the Supreme Court. A wider distribution on Ministries' websites was also considered. The delegation informed the Committee that the adoption of the Optional Protocol to the Convention (OPCAT)⁵ was well on its way. Before the consent of the Parliament, a broad consultation with the Supreme Court will be made. The ratification is expected by the end of 2008.

Incorporation of the Convention in domestic law

The delegation stated that the Convention is not incorporated directly into Norwegian law. On 2 July 2004, a new provision prohibiting torture in the General Civil Penal Code was adopted. Section 117 was adopted specially to comply with the obligations of the Convention. The Government of Norway stated that, in case of a conflict between the Norwegian Penal Code and the Convention, it would be unlikely that the former would prevail. According to the delegation, there is not a necessary link between incorporation and implementation and Norway has a tradition of progressive transformation rather than direct incorporation. It stated that the "principle of presumption" implies that national legislation shall be interpreted in a manner compatible with international obligations.

The State party expressed the reasons for incorporating only the most general international instruments in its *Human Rights Act*. It was its view that only more general conventions should be incorporated and that the adoption of some but not all specialized conventions might give rise to the idea that those not incorporated are of secondary importance. However, this issue is still debated in Norway. The Committee asked the State party if any person has been tried under the newly adopted provision for the crime of torture. The delegation

³ CAT/C/NOR/Q/5, 5 June 2007, available at <http://www2.ohchr.org/english/bodies/cat/cats39.htm>

⁴ CAT/C/NOR/Q/5/Add.1, 17 September 2007, available at <http://www2.ohchr.org/english/bodies/cat/cats39.htm>

⁵ Available at <http://www2.ohchr.org/english/law/cat-one.htm>

answered that no one has been tried under Section 117 (a) of the Penal Code since the provision has been adopted.

Definition of torture

The Committee pointed out the fact that the wording in section 117 (a) of the Penal Code is different from the wording of the Convention. In its view, the wording Norway adopted is too restrictive because it enumerates only specific forms of discrimination as possible motives rather than referring to all types of discrimination. According to the delegation, the adopted enumeration is far-reaching and consistent, and there is no reason to limit it. It considered that a Penal Code containing a comprehensive framework is better.

In its concluding observations, the Committee recommended that the State party consider the incorporation of the Convention into domestic law in order to allow persons to invoke the Convention directly in the Courts. Regarding the definition of torture, the Committee recommended that the State party consider the possible use of wording similar to that used in the Convention so as to ensure that the definition of torture comprises all types of discrimination as possible motives.

Non-refoulement

Asylum seekers and countries declared “safe”

The Committee raised the issue of return, expulsion or extradition in countries declared “safe” and asked what criteria Norway uses to draw up and update the list of those countries. The delegation answered that the Norwegian immigration authorities do not operate with a list of “safe” countries as such. However, applications for asylum seekers who come from certain countries that are generally regarded as safe and which are assessed as manifestly unfounded shall be rejected within 48 hours (the so-called “48-hour procedure”). During the 48-hour procedure, an evaluation is undertaken based on the third State’s legal system, the functioning of the police force and the authorities’ will and ability to protect its citizens. If the application is rejected, the foreigner has the right to stay until the Norwegian Immigration Appeals Board has considered review.

Diplomatic assurances

The Committee wanted to know if Norway asks for diplomatic assurances and, if so, in which cases. The delegation answered that Norway has no practice of obtaining diplomatic assurances in cases of return or expulsion but added that the possibility cannot be ruled out in exceptional cases. Circumstances such as the risk of death penalty, the risk of prison conditions that may constitute a breach of Article 3 of the *European Convention on Human Rights* and the risk of unfair trial may conduct Norway to seek diplomatic assurances. In those cases, Norway does require diplomatic assurance and keeps in touch with representation of the country in concern. The Committee asked if Norway had information on up to twenty Uzbeks that were sent back in 2006. According to the delegation, those people were transported back to their home country but there is no systematic follow-up on returns.

Data on asylum applications

The Committee asked Norway to provide different data on asylum applications for the past five years. The State party provided several statistics but didn’t manage to give complete statistical information concerning questions 6(d) and 6(e) of the list of issues.⁶ Question 6(d) asked for the data disaggregated by age, sex and nationality for the past five years on the number of deportations or forcible returns, with an indicator of the number of deportations or returns relating to asylum-seekers whose asylum applications were rejected.

⁶ CAT/C/NOR/Q/5, 5 June 2007, available at <http://www2.ohchr.org/english/bodies/cat/cats39.htm>

Question 6(e) asked for the countries to which these people were expelled. The delegation of Norway expressed its awareness concerning the necessity of having complete and accurate statistics and committed itself to discuss this question with the relevant authorities in order to improve the situation.

ISAF and handover of Afghan prisoners

The Committee wanted to know what guarantees the Government of Norway has to know if the people it delivers to Afghanistan's national army will not be mistreated. The Committee considered that Norway has a responsibility and that a legal reference is needed to support the handover. The delegation replied that Norway has an agreement regulating transfer of detainees which states that Afghan authorities are responsible for protecting the rights of those people. The International Security Assistance Force (ISAF) personnel have access to the facilities where those prisoners are transferred. Norway also received guarantees that those prisoners shall not be killed. The delegation confirmed that officials have the possibility to interview any detainee in private. The complaints are addressed and the actions taken are notified to the relevant embassies. Norway had no indication that these arrangements have been violated. The delegation reported that less than 10 persons have been transferred in this manner. It concluded by saying that Afghan authorities are responsible for people under their jurisdiction and that the only legal references for handover of Afghan detainees are the Security Council resolutions.

Terrorism

Norway made amendments to the *Immigration Act* in implementation of Security Council *Resolution 1373* (2001). The Committee asked whether Norway, in introducing Security Council *Resolution 1373* (2001), had not gone too far and if the definition of terrorism was not too broad. According to the delegation, Norway adopted new codes to fight financing of terrorism. The issue of defining terrorism was subject to profound considerations. Norway considers that it is important to contribute to the promotion of a legislative cooperation in Europe. Regarding this issue, it adopted the same approach as the Council of Europe. Concerning Security Council resolution 1373 (2001), the delegation claimed that Norway would include more information on this issue in its next periodic report.

The Committee asked several questions on the transport of illegally detained persons. The Committee wanted to know if those types of transits occurred in Norway, if Norway ensures and monitors the respect of human rights for all transits, or if it simply accepts information by other States. Norway answered that her Government appreciates the initiative of the Council of Europe regarding this issue. The main challenge is to detect such a situation. Its civil aviation agreements permit to register nations who may make non-scheduled flights through other airspaces without prior permission. Its air traffic authorities register such flights. However, the delegation admitted that the chances of detecting kidnapped people on board are small. Finally, it stated that in its report the Council of Europe listed the countries which are suspected and Norway is not one of them.

In its concluding observations, the Committee recommended that the State party ensure that a genuine consideration of each individual asylum application can still be provided for under the "48-hour procedure" and keep under constant review the situation in countries considered as safe. Regarding the hand over of detainees to the Afghan authorities, the Committee considered that Article 3 of the Convention and its obligation of non-refoulement apply to Norwegian military forces, wherever situated, where they exercise effective control over an individual. Norway should continue to closely monitor the compliance by the Afghan authorities with their relevant obligations in relation to the continued detention of any persons handed over by Norwegian military personnel.

Detention matters

Pre-trial detention

On 28 June 2002, Norway amended its legislation to reduce the time limit for bringing an arrested person before a judge. The Committee asked whether there is any evidence suggesting that the reform has indeed reduced the time limit and the total use of detention. It also wanted to know if complaints have been addressed and who is in charge of this issue. The State party answered that the said amendment – entered into force on 1 July 2006 – should be subject to control, but that it was too early to see if intended results have been achieved. However, the delegation stated that no one waited more than 5 days and that the waiting list was reduced. The Committee stated that it remained concerned at the lack of adequate statistics validating the effectiveness of these measures.

Solitary confinement

The Committee welcomed the abolition of solitary confinement as sanction and the reduction of its use as a preventive measure. According to the delegation, the use of this measure is now dependent on an explicit authorization by a court and even in this case, it is not used unless strictly necessary. Furthermore, it is subject to time limits set by the court. The Committee asked if there is an absolute time limit on use of solitary confinement. Apparently, it may not be used for more than 12 weeks but there is exception if there are strong cases of comprehensive transnational crimes. The Committee wanted to know which are the sanctions that are used since the solitary confinement has been abolished as a sanction. According to the delegation, if prisoners breach order, sanctions are written reprimand, loss of pay, loss of privileges, exclusion from leisure activities, and loss of entitlement to leave. Most of these are from drug use.

Centres for asylum seekers

The Committee wanted to know in which cases asylum-seekers could be detained. Concerning the Trandum Alien Holding Centre, the Committee appreciated the recent adoption of legislative measures to regulate the rights of persons staying at the centre. However, it stated that those rules seemed to be very general rules. The Committee remained concerned at the absence of any external supervision or independent complaints mechanism that would reliably ensure that the rights of persons held at the Centre are respected at all times. The Committee heard about people who were detained for a period of two years and want to have information about this issue. It also received the information that detainees were systematically waken up during the night and asked if this practice is really used. It wanted to know if journalists are allowed to visit the centre. The question about who is responsible for this centre was also asked.

The Norwegian delegation reaffirmed that asylum-seekers are not detained. There are two situations where detention is possible. They can be detained if it is deemed necessary. The authority wishing to detain must, as soon as possible, bring person before a court. Regarding detention in order to impose expulsion from Norway, there is a time limit of two weeks. This may be extended in certain cases but cannot exceed six weeks. If there is doubt of identification, the limit can be extended to twelve weeks. The extension is given for four weeks before a review. Exceptional grounds can be that the foreigner opposes police work in verifying identity but the detention cannot be arbitrary.

Regarding the Trandum Alien Holding Centre, the delegation confirmed that legislation has been passed to protect the rights of people staying at the centre. Regulations to further elaboration are currently under preparation. Among the rights that are protected there are the right to visits, religion, telephone calls, mail, medical services, and physical activity. According to the delegation, nobody has been detained in the centre for two years. The practice of waking up people during night has been abolished after several critics. Finally, journalists are given access to the centre. Concerning the question of children, unaccompanied minors shall not be placed at centre unless it is specifically required. These procedures are drafted by national police immigration service.

Regarding the transit centres, the Committee asked how the system works comparing to the main centre. According to the delegation, standards in those centres are dissent. Private institutions run them. Food, blankets and health care are provided. The centres are opened and people are free to come and go. Two centres for rejected asylum-seekers were opened in 2006 and 2007 just outside Oslo. Those rejected often turned up in social security offices to ask for support. These facilities assume State's responsibility to offer food and shelter to everyone in the country. Former asylum-seekers are offered to stay until they leave. The total capacity is 200. Unaccompanied minors are offered to stay in regular centres. Currently, there are 93 persons in the first centre and zero in the second.

Use of force by the police

The Committee expressed concern about reports on the use of unnecessary force by the police and about reports of discriminatory treatment based on ethnicity. One member of the Committee spoke about two cases in which bad treatment seemed to have been inflicted on people who died from it. Investigations seem not systematically led and when it is the case, no criminal procedures are instituted. Furthermore, concerning those two cases, it seems that it is about a manifestation of discrimination.

The delegation emphasized that police brutality is not a big problem in Norway and stated that every appropriate measure is taken. Adequate training to officers is provided. Police ethics are introduced in the curriculum. Allegations of brutality are subject to investigations by a special unit. If they do not investigate, this may be appealed. Cases are tried by regular criminal courts. According to the delegation, the special unit does not lack objectivity. The threshold is low for investigation as all deaths are investigated. The special unit is not part of the police and members have different professional backgrounds. The delegation added that the special unit would be evaluated during 2008.

Inter-prisoner violence

The Committee raised the question on inter-prisoner violence and asked for statistical information. The delegation answered that the last inter-prisoner killing occurred in 1982 and that there were 48 incidents of violence in 2006. However, the State party had difficulty to find accurate data and said that this will be improved. The delegation also mentioned that every year, prisoners are asked to evaluate the system of the prison and their own experience of personal security. In high security prisons, quality of life is measured on academic index.

In its concluding observations, the Committee recommends to the State party to compile detailed statistics on the application of pre-trial detention and the use of solitary confinement so as to verify the effectiveness of recent amendments to its relevant legislation in practice. The State party should also compile statistics relating to the application of recent amendments to the Immigration Act concerning the detention of foreign nationals. Concerning the Trandum Holding Centre, the Committee recommends to the State party to designate an external body to supervise the operation of the centre and ensure that individual complaints from persons held at the centre may be received by an Ombudsperson or other external and independent entity. Regarding the use of force by the police, the Committee recommends to the State party to ensure that all appropriate measures are taken to counter the possible persistence of practices involving the use of unnecessary force by the police, and the risks posed by any discriminatory treatment in this regard.

Education on the prohibition against torture

Trainings

The Committee noted that several training programmes were being held for the following professions: police, prison staff, military personnel, child welfare institutions and medical personnel. The question about the evaluation of those training has been asked. On that precise subject, the Committee was not satisfied with the

answer regarding the training programmes for police and prison officers. The Committee regrets that there was no available information on the impact of the training on reducing incidents of violence and ill-treatment, including incidents that may be racially motivated. One member of the Committee asked if neck holding by officers was allowed. The delegation answered that the police has revised guidelines for managing rampage behaviour. If a person is placed face down, this shall end when the police conclude the situation. The Police Academy instructs officers to limit time in face down position. Sitting on back is not allowed and neck holding shall never be used or just in self-defence. The Police Academy is managed by an independent agency and there is no independent body to monitor the trainings.

In its concluding observations, the Committee states that the State party should ensure that through educational programmes, law enforcement personnel and justice officials are fully aware of the provisions of the Convention, applicable limitations on the use of force and the need to avoid any discriminatory treatment. Furthermore, it recommends to the State party to develop and implement a methodology to assess the effectiveness and impact of relevant training programmes on the incidence of cases of torture, violence and ill-treatment.

Rights for the victims

Prompt and impartial investigations

The Committee noted that the State party has taken measures to further improve investigation of relevant allegations, such as the replacement of the former special criminal investigation bodies (SIBs) by a new central unit. However, the question of objectivity and independence of the investigation was asked. The Committee remains concerned about allegations concerning violations committed by law enforcement officials, including allegations relating to discriminatory treatment, and about the impartiality of subsequent investigations. The delegation of Norway could only reassert the impartiality and objectivity of the investigations.

Complaints

Regarding the issue of complaints, the report stated that information provided in the two previous periodic reports still applies. The Committee asked information on the complaints of detainees received by the Parliamentary Ombudsman. The answer was given in the written replies and seemed complete enough as the question was not asked again during the plenary.

Compensation

The Committee recognized that certain conditions have to be fulfilled in the case of compensations. However, it asked if those conditions do not restrict the victim's right. Furthermore, the Committee stated that the compensations for traumatized victims were not enough. The delegation answered that the person must as a main rule, report the situation to the police without delay.

In its concluding observations, the Committee recommends that the State party closely monitor the effectiveness of the new procedures for the investigation of alleged crimes committed by law enforcement officials, including in particular those in which discriminatory treatment based on ethnicity is alleged. The State party is requested to provide detailed information on the results of the ongoing review process in its next periodic report.

Other issues

Health and Care Services

According to the delegation, compulsory mental care is applied only if it is needed. This is a criterion. Treatment requires that patients have serious disorder or dangerous behaviour and that they need to be treated. Concerning coercive means in mental health care, Norwegian authorities are working to reduce risks. When a person is placed under coercive care, a supervisory commission reviews the procedures. It will assess whether there is the need to continue. Under inspection, all information regarding coercive means is evaluated. All supervision deemed necessary is carried out. One of the aims is to reduce compulsory detention. The goal is to have accessible services. The Mental Health Care Act consolidates a uniform interpretation.

Concerning the rehabilitation of victims of torture, violence and trauma, the Government of Norway is dedicated to strengthen health care services. The aim is to established clinical competence in treating those persons. Norwegian Centre for Traumatic Stress offers treatment. A study on treatment of refugees is conducted.

Production, trade, export and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment

The Committee reiterated its question on manufacturing or export of equipment specifically designed to inflict torture. It wanted to know if Norway has any legislation aimed at preventing and prohibiting those practices and if not, if the adoption of such legislation is being considered. According to the Committee, some businesses have contributed to build facilities in Guantanamo. The delegation referred to its written reply, which says that Norway has not adopted any particular legislation on this specific issue.

Interim measures

The Committee wanted to know what is Norway's position concerning interim measures regarding Article 22 of the Convention which is on communications from or on behalf of individuals who claim to be victims of a violation by a State Party. The delegation of Norway stated that it could not answer to this question because the Government was currently developing his position.

In its concluding observations, the Committee recommends that the State party consider its position with regard to interim measures requested by the Committee in light of Article 22 of the Convention and the principle of good faith, with a view to generally allowing the Committee sufficient time to consider any case that may arise in the future before any action is taken.

Conclusions and next steps

As the session ended, the Committee thanked warmly the delegation for its professional work. It added that it is always a pleasure to have this dialogue with Norway. It stressed the fact that it is one of the leading nations in the Human Rights field. According to the Chairperson, this position of standards bearer strengthens the necessity of a full incorporation of Human Rights Convention in Norwegian legislation.

Previously, other treaty bodies made recommendations on issues dealt with by the Committee during its review of the report of Norway. On expulsion of asylum-seekers in their home country, the Human Rights Committee recommended that Norway apply the so-called internal relocation alternative only in cases where such alternative provides full protection for the human rights of the individual.⁷ The Committee on Economic, Social and Cultural Rights recommended that the State party pursue efforts to ensure the full independence of the Norwegian Centre for Human Rights as a national human rights institution in compliance with the Paris Principles.⁸ On the issue of discrimination, the same Committee recommended that the State party strengthens

⁷ CCPR/C/NOR/CO/5 (HRC, 2006)

⁸ E/C.12/1/ADD.109 (CESCR, 2005)

measures to combat discrimination against persons of immigrant background and ensures the effective monitoring of anti-discrimination legislation.⁹ On female genital mutilation, the Human Rights Committee recommended that the State party strengthens its measures to prevent and eradicate these practices, as well as to effectively protect victims and witnesses, inter alia, by granting residence permits where appropriate on the basis of humanitarian considerations.¹⁰ On the issue of domestic violence, the Human Rights Committee noted with concern the persistence of domestic violence despite legislation adopted by the State party. It also noted with regret the lack of statistics with regard to this issue. Therefore, the Human Rights Committee recommended to the State party to reinforce its policy against domestic violence and, in this regard, to prepare adequate statistics and take more effective measures to prevent domestic violence and assist the victims.¹¹

The next periodic report of Norway is due at the latest on the 30 December 2011.

Last revised and updated: 15 January 2008.

⁹ E/C.12/1/ADD.109 (CESCR, 2005)

¹⁰ CCPR/C/NOR/CO/5 (HRC, 2006)

¹¹ CCPR/C/NOR/CO/5 (HRC, 2006)

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