

HUMAN RIGHTS COMMITTEE

86th session, (New York, 13 March to 31 March 2006)

Overview of Committee session

At its 86th session, the Human Rights Committee (the Committee), which monitors the implementation by State parties of the *International Covenant on Civil and Political Rights* (the Covenant), considered reports submitted by, the Democratic Republic of the Congo (DRC), Hong Kong Special Administrative Region-China (HKSAR), and Norway in open meetings and the country situation in St Vincent and the Grenadines in closed meetings in the absence of a report. The Committee also further deliberated on its draft revised General Comment on Article 14 (right to a fair trial).

The States parties to the Covenant elect the Committee's 18 expert members who serve in their individual capacity for four-year terms. Article 28 of the Covenant requires that "they shall be persons of high moral character and recognized competence in the field of human rights."

They are: Abdelfattah Amor (Tunisia); Nisuke Ando (Japan); Prafullachandra Natwarlal Bhagwati (India); Alfredo Castillero Hoyos (Panama); Christine Chanet (France); Maurice Glèlè-Ahanhanzo (Benin); Edwin Johnson Lopez (Ecuador); Walter Kälin (Switzerland); Ahmed Tawfik Khalil (Egypt); Rajsoomer Lallah (Mauritius); Michael O'Flaherty (Ireland); Elisabeth Palm (Sweden); Rafael Rivas Posada (Colombia); Sir Nigel Rodley (United Kingdom); Ivan Shearer (Australia); Hipolito Solari-Yrigoyen (Argentina); Ruth Wedgwood (United States); and Roman Wieruszewski (Poland).

A number of non-governmental organisations (NGOs) were in attendance at various times during the session. Over 20 international and domestic NGOs made presentations regarding the United States of America (USA) with regard to their forthcoming appearance before the Committee in Geneva in July. Regarding the State parties presenting their reports at the 86th session the presence and involvement of NGOs varied. The Human Rights Committee of the Norwegian Bar Association and the Norwegian Helsinki Committee submitted a report on Norway on behalf of themselves and five other Norwegian NGOs who were not present. The Réseau Action Femme (R.A.F.) and the Organisation Mondiale contre la Torture (OMCT) submitted a joint report on the DRC whereas 10 NGOs¹ and the Democratic Party submitted reports on HKSAR. The R.A.F and the OMCT also held a joint lunch time briefing for the Committee on 15 March 2006, as did the Hong Kong Human Rights Monitor on 20 March 2006. Unfortunately, the DRC and Hong Kong NGOs missed the first day which was dedicated to an NGO briefing thus missing an important opportunity to brief and lobby the Committee members prior to their respective States' presentations. However, a representative of the International Federation for Human Rights (FIDH) read out separate written statements on both State parties on the first day of the session, although they were not in a position to take questions from the Committee on them

Both the Norwegian and Hong Kong delegations were high-level, well prepared and included individuals from a range of departments who shared the presentation and answering of questions with regard to their specific field. The delegation from the DRC was the smallest and only the Minister for Human Rights dialogued with the Committee. Norway and HKSAR disagreed with the Committee on some points but offered explanations for their position. Norway in particular expressed willingness to address points of contention in order to ensure compliance with the Covenant. The DRC did not truly enter into the spirit of constructive dialogue of the discussion but rather approached it more as an opportunity to defend the report, and thus the DRC, from criticism of the Committee. The level of scrutiny of the DRC's report was also diminished due to the lack of information on implementation of the Covenant supplied by the State party.

Some Committee members were very sharp and concise in their questioning and followed up on the issues there were allocated to them. Others made vague, general comments, which did not make the best use of the time the Committee has to assess the implementation of the Covenant in a State party. In accordance with the Working Methods of the Committee² each Committee member was allocated a number of questions from the List of Issues and focussed on certain issues specific to their field of expertise.

¹ Radio Television Hong Kong Staff Union, Hong Kong Human Rights Monitor, Hong Kong Journalists Association, Association of Parents for the Implementation of Right of Abode in Hong Kong for their Children, Zi Teng (Sex Workers concern organisation), Hong Kong's People's Alliance on WTO, Hong Kong Human Rights Commission, Society for Community Organisation, Voices of the Rights of Asylum Seekers and Refugees, Power for Democracy and The Frontier.

² See www.ohchr.org

Reports of States

Hong Kong Special Administrative Region-China (HKSAR) (2nd periodic report³)

Information submitted to the Committee

The Committee considered the 2nd periodic report of Hong Kong Special Administrative Region-China (HKSAR) on 20 and 21 March 2006. The HKSAR⁴ submitted the report 18 months past its deadline and supplied the Committee's secretariat with written Replies to the List of Issues⁵ on the 17 March 2006 in Chinese. The written replies were not therefore available to the Committee prior to the presentation of the report. In terms of reservations, the United Kingdom (UK) entered one regarding Hong Kong's political system when the UK ratified the Covenant. The reservation is to Article 25(b) (discussed below) which requires that "genuine and periodic elections shall be held by universal and equal suffrage". In the reservation the UK reserved the right not to apply article 25(b) in so far "as it may require the establishment of an elected legislature in Hong Kong".⁶

The delegation said that the report had been prepared within HKSAR in consultations with legislators, NGOs and others. There were 10 HKSAR NGOs present as well as the Democratic Party and international NGOs such as Amnesty International (AI), FIDH and the International Confederation of Trade Unions. All of the HKSAR NGOs submitted shadow reports to the Committee⁷. Their main concerns were the lack of universal suffrage in the electoral system, freedom of the press, freedom of expression, interception of communications and covert surveillance, the right of abode, the lack of an asylum process, deportation of asylum seekers and excessive use of force by the police.

The report and written replies were largely thorough and dealt with issues in previous concluding observations as well as explaining policy developments and initiatives in addition to outlining legal measures. Mr O'Flaherty criticised the overuse of cross-referencing to the 1st periodic report as it gave "the impression that no subsequent practice had been taken since then regarding the implementation of the Covenant". The delegation apologised on this point and undertook to address it in the future.

Themes and Issues

The major issue under discussion was the **electoral system** in HKSAR. The focus of the discussion was the National Peoples Congress Standing Committee's (NPCSC) Interpretation of the Basic Law and Decision of April 2004⁸. The delegation defended the NPCSC's decision as both constitutional and in compliance with HKSAR's obligations under the Covenant due to the reservation made by the UK to article 25(b), reserving the right not to apply that provision to HKSAR. The Committee's position is that the reservation no longer applies and they repeatedly refuted the delegation's justification for the applicability of

³ CCPR/C/HKG/2005/2 at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.HKG.2005.2.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.HKG.2005.2.En?OpenDocument)

⁴ Under the principle of 'One Country, Two Systems', the Hong Kong Special Administrative Region of China, although part of China, is bound to the ICCPR due to having been a British colony⁴. China is not a party to the Covenant. However, in the "Joint Declaration" which was agreed between Britain and China in 1984 in relation to the hand over of sovereignty to China, detailed and binding arrangements which guarantee that Hong Kong's way of life would remain unchanged until at least 2047 were set out.⁴ One of the issues the Joint Declaration covers is that the UN human rights treaties, (i.e. the Covenant), that applied to Hong Kong as a British colony would continue to apply on the handing over of sovereignty to China. Consequently, although China is not a party to the Covenant and HKSAR is a part of China, HKSAR is bound to apply the covenant. The HKSAR administration prepares the report and forwards it to the Chinese Ministry of Foreign Affairs for submission to the UN. However, the delegation to the Committee is entirely made up of members of the HKSAR Government.

⁵ Written Answers to List of Issues. See http://www.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/china-wreplies86_En.pdf

⁶ The justification for the reservation by UK at the time was that the current system in Hong Kong allows better representation of all views than universal and equal suffrage would return.

⁷ The Hong Kong Journalists Association report can be found at <http://www.hkja.org.hk>; The report of the Democratic Party can be found at http://www.dphk.org/e_site/index_e.htm; The submission of the Hong Kong Human Rights Commission can be found at http://www.hkhrc.org.hk/homepage/index_e.htm. These are the shadow reports available online at the time of writing.

⁸ The Decision states that the next Chief Executive and Legislative Council elections will not be by universal suffrage.

the reservation, in particular by referring the delegation to its General Comment 24⁹ which sets out extensively the Committee's role in determining the applicability of reservations to the Covenant. The Committee reiterated its position that the current electoral system is not in compliance with article 2(1), 25 and 26 of the Covenant and recommended that measures be taken to remedy this, including ensuring that the Legislative Council elections be by universal and equal suffrage¹⁰. In terms of achieving reform of the electoral system and in light of the failure of a recent attempt to do so, Sir Rodley asked whether the Government had considered using a referendum. The delegation responded defensively, stating that there is no requirement for a referendum on such issues under the Covenant and that the Basic Law is very clear that changes to it can only be effected by a two-thirds majority of the Legislative Council.

There was also an extensive dialogue on the long-standing issue of the **interception of communications and covert surveillance (article 17)**¹¹. The delegation highlighted this area as one "which illustrates HKSAR's positive response to the concluding observations of the Committee" and described to the Committee proposed legislation on this issue. The Committee expressed concern in its 2006 concluding observations that there is no clear legislative framework on these issues in HKSAR and recommended that the HKSAR enact legislation in full conformity with article 17 and ensure the provision of a means of redress for individuals who claim their rights under article 17 have been violated¹². However, it is not clear from the dialogue or the recommendation in the concluding observations what exactly the Committee requires from the HKSAR since the Committee made no reference to positive or negative aspects of the proposed legislation nor to its General Comment No. 16 which elucidates on the content of article 17.

Regarding the **investigation of complaints against the police (article 2)** the Committee reiterated its concerns from 1999¹³ and again recommended that HKSAR ensure investigations of police misconduct are carried out by an independent body and added, in new language this time, that the body's decisions should be binding¹⁴. The main issue here appears to be what constitutes "independent". The Committee, through its questions, suggested that the Ombudsman would be an appropriate independent body, whereas, the delegation maintained that the current machinery was sufficient.

The delegation gave a general answer to questions on the alleged **self-censorship and harassment of the media** and its compliance with article 19 in respect of **freedom of expression (article 19)** and it failed to outline or explain any policies it has on this issue as requested by the Committee. The delegation briefly stated that HKSAR has a vibrant and diverse free press and invited the Committee to come to HKSAR on a mission so that they could verify this first-hand. The Committee did not have time to follow up on this issue orally but in its concluding observations, it appeared to take note implicitly of information provided by NGOs and recommended that HKSAR "take vigorous measures to prevent and prosecute harassment of the media" and ensure that the media operate independently from Government intervention.

The delegation failed to answer the questions regarding the Committee's concerns that **threats and acts of vandalism** had occurred against **democratic members of the legislature (articles 19 & 25)** and that the police had failed to act. The Committee criticised the delegation for their failure to respond¹⁵ and reminded the Government in its concluding observations of the positive and negative obligations implementation of the Covenant requires¹⁶ when it recommended that the HKSAR should "*investigate* allegations of

⁹ General Comment No. 24, Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant. CCPR/C/21/Rev.1/Add.6 at paragraphs 17 and 18. See <http://www.ohchr.org/english/bodies/hrc/comments.htm>

¹⁰ Concluding Observations of the Human Rights Committee. Hong Kong Special Administrative Region, 30 March 2006, CCPR/C/HKG/CO/2, (hereinafter referred to as 2006 concluding observations) at para 18. Available at <http://www.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/CCPR.C.HKG.CO.2.pdf> General Comment 25 is also instructive as to what the Committee expects regarding implementation of the rights under article 25.

¹¹ In 1999 the Committee stated that the Telecommunications Ordinance and Post Office Ordinance violated the right to privacy in article 17. These Ordinances are still in force in Hong Kong, however new legislation has been drafted which the delegation noted ought to be enacted by July 2006. See the Committee's Concluding Observations. CCPR/C/79/Add.117 12 November 1999. Available at <http://www.unhcr.ch/tbs/doc.nsf>

¹² 2006 concluding observations, para 12

¹³ Namely that complaints of police misconduct are still investigated by the police themselves through Complaints Against Police Office (CAPO) and that the Independent Police Complaints Council (IPCC), which monitors the CAPO does not have the power to ensure the proper and effective investigation of complaints nor the implementation of its own recommendations.

¹⁴ 2006 concluding observations, para 9

¹⁵ 2006 concluding observations, para 17 and Mr Solari-Yrigogen during the dialogue.

¹⁶ See article 2 of the Covenant.

harassment of legislators [and] *ensure* that they do not recur”, as well as “take all the necessary steps for full compliance with articles 19 and 25”.

The Committee repeated its concerns and recommendation from 1999¹⁷ that the current definitions of the crimes of **sedition and treason** are too broad and that the HKSAR should amend its legislation on this issue to bring it into conformity with the Covenant (article 19). The delegation accepted that the current definitions are “unduly broad” and stated that the Government had attempted to change this through the enactment of the National Security Bill which contains a provision that would have narrowed the definition of sedition. In response to questions from Mr O’Flaherty the delegation replied that the Chief Executive has said that “in the absence of exceptional reasons” the drafting of new legislation on this issue will not be re-launched in the next two years and there is no current timetable for reviving the legislation¹⁸.

The Committee criticised the law and policies concerning the right of **abode**. The laws and policies, in the Committee’s view, caused the separation of families, which is in violation of families’ and children’s **right to protection of families and children to protection** under articles 23 and 24 of the Covenant. The Committee recommended that HKSAR ensure that its policies and practices fully take into account its obligations under these articles¹⁹. Specifically, the Committee criticised the narrowing of the grounds on which the right of abode can be claimed. It now only covers those persons born to parents of Chinese nationality where at least one parent had attained the status of Hong Kong permanent resident at the time of the birth of the person who is claiming the right to abode. The result of this is the separation of families, due to the removal to the mainland of family members who do not meet this narrow criteria. The delegation argued that there are no violations taking place and stated that the right of abode, in all aspects, as it is implemented in the territory, is consistent with UN human rights treaties although they did not elaborate further. They also highlighted a number of improvements such as the policy that where a spouse is granted HKSAR residency they have the right to bring all of their children, under 18 years with them and that the waiting time for unaccompanied minors had decreased to 1 year or less. They also noted the general policy that spouses and children are given priority in the allocation of residency and other permits.

The Committee welcomed the HKSAR’s proposed legislative reform and program initiatives²⁰ to combat **domestic violence (articles 2, 23 & 24)**, however, it expressed concern at the handling of complaints by the police and at the lack of funding provided to social services to assist victims. Thus the Committee highlighted the fact that the enactment of legislative and other measures, although essential, is not sufficient: their successful implementation is also required, necessitating adequate funding, as well as adequate prevention and investigation of acts of domestic violence by the police.

Conclusions and Next Steps

The delegation was high level and included representatives from a number of different ministries, namely the Home Affairs Bureau, the Department of Justice, the Constitutional Affairs Bureau and the Security Bureau. The delegation split the presentation of the report and the answering of the Committee’s questions between them according to their expertise. The dialogue was polite and for the most part open, although on certain issues the delegation avoided giving direct and complete answers to the Committee’s questions. The delegation expressed surprise at a number of the questions asked which was picked up on and criticised by Mr Hipolito Solari-Yrigoyen.

In its opening comments the delegation highlighted recent positive steps in its implementation of the Covenant. The delegation stated that HKSAR is currently in the process of drafting legislation on **racial discrimination**. The Committee welcomed this development but criticised HKSAR for still not actually having enacted legislation on this long-standing issue and recommended that it do so in order to ensure full compliance with article 26²¹. Positive steps announced by the delegation, which were welcomed by the

¹⁷ Concluding Observations of the Human Rights Committee. 12 November 1999 as per note 9, para 18 and 2006 concluding observations, para 14.

¹⁸ Also in response to Mr O’Flaherty the delegation stated that when reconsideration of this issue does commence, paragraphs 395-398 of the State report make it clear that the Government had pledged to consult the public fully; and that under article 59 of the Basic Law any new Bill must fully comply with the Covenant.

¹⁹ 2006 concluding observations, para 15

²⁰ 2006 concluding observations, para 7. For details of initiatives see p12-17 of the written replies to List of Issues as per note 23

²¹ 2006 concluding observations, para 19

Committee, were the establishment of the **Ethnic Minorities Forum**²² and the initiatives taken to extend non-discrimination to include **sexual orientation**.²³

During the dialogue, HKSAR denied that it is a country of origin or destination for **human trafficking (article 8)** and stated that there had been one reported case in the last two years. The Committee did not follow up any further and there is no mention of trafficking in the concluding observations²⁴. It is significant to note that in 1999 and 2003 the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child respectively, made recommendations to the HKSAR regarding combating trafficking²⁵. In 2001 the Committee on the Elimination of Racial Discrimination requested information from China²⁶ about the issue of trafficking in HKSAR²⁷, on measures to prevent trafficking²⁸. In 2005, in stark contrast to the position suggested by the delegation, the Committee on Economic, Social and Cultural Rights also “expressed concern about reports of the high incidence of trafficking in persons, particularly women and children, into HKSAR, mainly for the purposes of **sexual exploitation**”²⁹. The approach of the treaty bodies regarding trafficking has been similar in that they request more information on the issue and recommend measures for prevention and/or protection of the victims. However, the Human Rights Committee did not criticise the State party on this issue in its concluding observations.

Regarding the **electoral system**, in contrast to the Human Rights Committee, the Committee on the Elimination of Discrimination against Women focused on the “structural obstacles” the system contains in terms of the **equal representation of women**³⁰.

Under its follow-up procedure the Committee asked the HKSAR to provide it, within one year, information on the action the State party takes on the recommendations on the concluding observations in paragraphs nine, 13, 15, & 18; that is concerning, the right of abode, harassment of the media, the police complaint mechanism and the electoral system.

Norway (5th periodic report³¹)

Information submitted to the Committee

The Committee considered Norway's 5th periodic report on the 13 March 2006. Norway ratified the Covenant on 13 September 1972 and has reservations to articles 10(2)(b) and 10(3), 14(5) and 14(7) and article 20(1)³². Norway is also a party to the First³³ and Second³⁴ Optional Protocols. The Norwegian

²² 2006 concluding observations, para 3.

²³ 2006 concluding observations, para 4

²⁴ The question may have been included in the List of Issues due to the Stateparty's failure to include information on “measures taken to eliminate trafficking of women and children” as required by the Committee by virtue of General Comment 28.

²⁵ 1999 Concluding Observations of the Committee on the Elimination of Discrimination against Women. A/54/38 (Part I), para 326 at <http://www.un.org/womenwatch/daw/cedaw/reports/20report.pdf>. 2003 Concluding Observations of the Committee on the Rights of the Child. CRC/C/CHN/CO/2, para 88 at <http://www.unhchr.ch/tbs/doc.nsf>

²⁶ China is a State party to the Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Elimination of Discrimination against Women (CEDAW) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), and is therefore obliged to report on CEDAW, CERD and ICESCR implementation on the Chinese mainland and in HKSAR (and also in Macao (MSAR) which is another “administrative region of China. This is achieved by including a section in the report it submits to the treaty body on HKSAR and by having HKSAR representatives in the delegation to present the report.

²⁸ A/56/18 at para 250. China is behind in its submission of reports to this committee. The State party's deadline for its joint 10th and 11th periodic reports was the 28 January 2003 and the deadline for its 12th periodic report was the 28 January 2005. The State party has missed both these deadlines.

²⁹ Concluding Observations of the Committee on Economic Social and Cultural Rights, 13 May 2005. E/C.12/1/Add.107, para 85 at <http://www.unhchr.ch/tbs/doc.nsf>

³⁰ Concluding Observations of the Committee on the Elimination of Discrimination against Women on China's 3rd and 4th periodic reports at para 319. at <http://www.unhchr.ch/tbs/doc.nsf>

³¹ 5th Periodic Report. Norway. 3 December 2004. CCPR/C/NOR/2004/5 at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.NOR.2004.5.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.NOR.2004.5.En?OpenDocument)

³² See Office of the High Commissioner for Human Rights Website at <http://www.ohchr.org/english/countries/ratification/4.htm#reservations>

³³ Ratified by Norway on 13 September 1972. See <http://www.ohchr.org/english/countries/ratification/5.htm>

³⁴ Ratified by Norway on the 5 September 1991. See <http://www.ohchr.org/english/countries/ratification/5.htm>

Helsinki Committee and the Human Rights Committee of the Norwegian Bar Association submitted a "Supplementary Report" on behalf of a group of Norwegian domestic NGOs³⁵. Their main concerns included the involuntary return of asylum seekers and their access to/need for legal aid, pre-trial detentions, conditions in police cells, solitary confinement, treatment of prisoners, discrimination, violence against women, trafficking, and freedom of religion. Norwegian journalists and a film crew were also present.

Norway submitted its report on time and supplied the secretariat with written replies³⁶ to the Committee's questions three weeks ahead of time. The Chair expressed regret that despite Norway's submission of the replies three weeks in advance of the session, the Secretariat had not managed to have the written replies translated into all of the working languages of the UN³⁷. The report is, for the most part, thorough, although on some issues the information is very brief and out of date. The report supplies information on legal measures as well as on how they will be implemented through policy and practical measures. In addition government proposals are detailed, as is follow up to previous concluding observations. However, the Committee picked up on many of the gaps, which were addressed in the written replies to the List of Issues.

Themes and issues discussed

Norway has **reservations**³⁸ to articles 10(2)(b), 10(3), 14(5), 14 (7) and 20 (1). In its report Norway justified its reservations to article 10³⁹ and 20 and stated that no legislative amendments had been made that would make it possible for Norway to withdraw its reservations to article 14⁴⁰. Mr Wieruszewski questioned why the reservation to article 20(1) was necessary and said that Norway's reservations to the Covenant cast a shadow on the generally positive report. He also reminded the delegation that reservations are temporary measures with the aim of removal. After originally saying that "it is very unlikely" that the reservation to article 20 would be withdrawn, on further questioning by the Committee, the delegation said that the reservation may be lifted in the near future and that a new penal code is currently being drafted and "the question of whether a provision like article 20(1) should be included would be discussed". Regarding article 10 the delegation justified the reservation on the basis of the small number of juveniles in detention in Norway but stated that a White Paper covering this issue is under preparation for submission to the Parliament in the spring. The Committee recommended that the State party continue to review the possibility of withdrawing its reservations⁴¹.

Norway has recently enacted legislation **defining terrorist acts (article 2)**. In effect the legislation upgrades some crimes, e.g. arson, murder and causing bodily harm to acts of terrorism where terrorist intent is shown. The Committee was concerned that although such acts are clearly crimes and deserve to be punished, the definition in Norway's **counter-terrorism legislation** was so broad and vague as to be open to abuse⁴². Here the Committee was clearly reaffirming the point that counter-terrorist measures must be fully compliant with all articles of the Covenant. On this issue the Committee takes the same approach as the Committee on the Elimination of Racial Discrimination⁴³.

Norway allows **female prisoners** who are new mothers home leave whilst breastfeeding their babies. However, non-Norwegian nationals are generally excluded from this privilege due to their perceived flight risk and are therefore separated from their child, which is the standard practice in Norway for incarcerated mothers. The Committee characterised this as **discrimination on grounds of nationality (articles 2, 10 & 26)** on the basis of unequal treatment and although Norway disagreed that such action amounted to

³⁵ The Human Rights Committee of the Norwegian Bar Association, the Norwegian Helsinki Committee, Plan Norway, the Norwegian Organisation for Asylum Seekers, the Norwegian Refugee Council, Save the Children Norway and Human Rights House Foundation. The report is available on The Norwegian Helsinki Committee website at <http://www.nhc.no/php/files/documents/NGO-forum/2005/SkyggerapportNGOforum2005.pdf>

³⁶ [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.NOR.Q.5.Add.1.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.NOR.Q.5.Add.1.En?OpenDocument)

³⁷ Replies in French and Spanish were not available.

³⁸ This raised issues of compliance with the Covenant with regard to articles 2, 10, 14 and 20.

³⁹ Written Replies by the Government of Norway to the List of Issues. CCPR/C/NOR/Q/5/Add.1. 8 March 2006, para 10 at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.NOR.Q.5.Add.1.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.NOR.Q.5.Add.1.En?OpenDocument)

⁴⁰ As above, para 18

⁴¹ Concluding Observations of the Human Rights Committee, CCPR/C/NOR/CO/5, 24 March 2006. (Hereinafter referred to as the 2006 concluding observations. Para 8. Available at

<http://www.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/CCPR.C.NOR.CO.5.pdf>

⁴² 2006 concluding observations, para 9

⁴³ The concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/63/CO/8. 10 December 2003) on Norway's 16th periodic report. For report, see www.unhcr.ch.tbs.doc.nsf

discrimination the delegation undertook to “work on this to try and find a solution”. It is also clear from the concluding observations that the Committee considers the separation of infants and incarcerated mothers generally to be in non-compliance with the Covenant and recommended that Norway review this practice and suggested the imposition of non-custodial sentences as a solution in this respect.

Norway recently enacted amending legislation the purpose of which is to, “reduce the overall use of **solitary confinement (articles 7, 9 & 10)** and to strengthen overall judicial supervision⁴⁴”. It took repeated questioning by the Committee for it to ascertain the time limits permitted for solitary confinement and to be informed that in “extreme cases” solitary confinement can be authorised beyond these statutory time limits⁴⁵. The Committee recommended that Norway review its legislation to ensure compatibility with the Covenant. The length of time an individual could be subjected to solitary confinement is the main issue in terms of falling foul of articles 6, 7 & 10; regarding pre-trial confinement an added concern was that this may result in the detainee not being able to assist in the preparation of their case. Sir Rodley said it was “disturbing that there is potentially no limits to a court ordering and prolonging solitary confinement. This is a matter of serious concern”. Concerning **suicides in solitary confinement** in police stations, the delegation thanked the Committee for “helping them put pressure on the relevant authority to get this information” through their questioning and announced a national study on suicide.

In response to the Committee’s previous recommendation⁴⁶ that Norway review its legislation and practice regarding **pre-trial detention (article 9)** due to the Committee’s concern that the excessive length of time it was used in some cases did not comply with the Covenant, the State party noted that it has amended section.185, and is considering enacting an amendment to section.183 of its Criminal Procedure Act. There was extensive discussion of the latter amendment due to worries in the NGO community that it could result in the legal length of pre-trial detention being extended to 72 hours⁴⁷. The delegation responded that the aim of the amendment is to transfer individuals within 48 hours although they noted that this is not always possible due to the lack of prison cells in Norway. The Committee criticised the use of pre-trial detention for excessive periods of time⁴⁸ and recommended the State party implement the relevant provisions of the Covenant without delay.

The delegation stated that Norway is a destination country for **trafficking**⁴⁹. The main concern of the Committee was the treatment and protection of the victims of trafficking, in particular, in terms of their protection from their traffickers and from the harsh effects of immigration rules, thus underlining the responsibility of State parties to protect the human rights of all individuals within its jurisdiction (article 2) in the implementation of the Covenant. The delegation stated that it is considering making it easier for victims of trafficking to get temporary resident permits. The Committee noted the positive measures the State party has adopted regarding trafficking and recommended that Norway ensure it effectively protects victims and witnesses in trafficking cases, for example by granting residence permits for victims of trafficking on humanitarian grounds where appropriate⁵⁰.

Despite the State party’s outlining of numerous measures to tackle **domestic violence**, the Committee, due to the continued high incidence of domestic violence in Norway, recommended that the State party; reinforce its policy against domestic violence; prepare adequate statistics on the issue, and take more effective measures to prevent it and assist victims⁵¹.

⁴⁴ 5th periodic report. Norway as per note 30 at para 56 and 57

⁴⁵ It can initially be ordered for two weeks but on request can be prolonged by two or four weeks (depending on the age of the detainee) at a time for up to a maximum of 6 or 12 weeks and in extreme cases for longer than this, i.e. until trial. 5th Periodic Report as per note 40 at para 59, p18.

⁴⁶ Concluding observations of the Human Rights Committee. CCPR/C/79/Add.112. 1 November 1999 at www.unhcr.ch/tbs/doc.nsf

⁴⁷ The proposed amendment changes the requirement of bringing an arrested person before a judge from “as soon as possible and as far as possible on the day after arrest” to “as soon as possible and at latest the 3rd day after the arrest”.

⁴⁸ In its current report, Norway stated that the average length of pre-trial detention is two months. 5th periodic report as per note 40 at para 114, p27

⁴⁹ Written replies as per note 39 p32-40.

⁵⁰ In 2005, out of 18 claims for asylum from alleged victims of trafficking, Norway granted five individuals refugee status, six individuals permanent residence permits, one individual a temporary permit and rejected six cases.

⁵¹ 2006 concluding observations, para 10

The Committee criticised Norway's application of the **internal flight alternative**⁵² in the cases of **asylum seekers (articles 2, 6 & 7)**. Norway ensured the Committee that it does not have a policy of refusing all asylum applications from certain regions or countries⁵³ but looks at each case on the basis of its individual merit. However, the Committee reiterated that Norway should only apply the internal flight alternative where they can be sure the individual's human rights will be fully protected⁵⁴. Regarding a Kosovan child who died shortly after being returned there by Norway, against the advice of the United Nations High Commissioner for Refugees (UNHCR), the Committee questioned how Norway would prevent this from occurring again. Although denying that lack of health care caused the child's death, the delegation said Norway is looking into creating contact between Norwegian and country of origin health authorities to ensure continuity of health treatment in such cases. There was also an extensive dialogue regarding the **treatment of asylum seekers** and failed asylum seekers in terms of their gaining access to social services. The delegation claimed that Norway does not deny these groups of individuals **social basic rights**.

Conclusions and next steps

Mr Peter Wille, Deputy Director of the Department of Global Affairs, led the eight-member Norwegian delegation. The delegation was high-level and comprised representatives from the Ministry of Justice and the Police, the Ministry of Labour and Social Inclusion, the Ministry of Foreign Affairs and the Directorate for Health and Social Affairs⁵⁵. The discussion as a whole was frank, open and honest. The delegation appeared co-operative and well prepared. The Committee addressed the main human rights concerns in the State party and on one issue, discriminatory leave for breast-feeding for incarcerated mothers, the Committee persisted with its questioning until the State party said that the government would look into remedying the situation, though they did not consider that they had bound themselves in a legal sense to take some action on this issue (since they did not accept the government had violated the Covenant on the issue). The State party had acted on some of the issues in previous concluding observations, however, adequate action on issues of pre-trial detention, discriminatory police stops, and reservations to the Covenant is still outstanding⁵⁶.

Key positive announcements made by the delegation and welcomed by the Committee included the improvement of the **Gender Equality** legislation⁵⁷, the adoption of the Finnmark Act regarding the **Sami minority**⁵⁸ and the adoption of the **Anti-Discrimination Act**⁵⁹. The delegation also noted the positive measure it had taken to comply with the Committee's views in Communication No. 1155/2003 regarding **freedom of religion (article 18)**. Although the Committee welcomed these measures it recommended that the State party also repeal article 2(2) of their Constitution in order to ensure full compliance with article 18⁶⁰. The Committee did not request the State party to follow-up in written form on its concluding observations before the submission of its 6th periodic report.

Democratic Republic of the Congo (DRC) (3rd periodic report⁶¹)

Information submitted to the Committee

The Committee considered the 3rd periodic report of the DRC on the 15 and 16 March 2006. The DRC acceded to the Covenant on 1 November 1976⁶². The State party has no reservations or declarations in respect of the Covenant and is also a party to the First Optional Protocol⁶³ of the Covenant, as well as the

⁵² The concept of the internal flight alternative allows a host state to deny asylum when it determines that the asylum-seeker did not exhaust all possibilities of reaching safety in an area within his or her own country before seeking international protection.

⁵³ Kosovo and Chechnya as well as Afghanistan and Somalia were mentioned.

⁵⁴ 2006 concluding observations, para 11

⁵⁵ Taken from the Delegations List at <http://www.ohchr.org/english/bodies/hrc/hracs86.htm>

⁵⁶ These highlights were areas of concern in the Committee 1999 concluding observations.

⁵⁷ 2006 concluding observations, para 3(c)

⁵⁸ 2006 concluding observations, para 5

⁵⁹ 2006 concluding observations, para 3(d)

⁶⁰ 2006 concluding observations, para 15

⁶¹ CCPR/C/COD/2005/3 at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.COD.2005.3.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.COD.2005.3.En?OpenDocument)

⁶² See OHCHR website at <http://www.ohchr.org/english/countries/ratification/4.htm>

⁶³ Acceded 1 November 1976 see above at <http://www.ohchr.org/english/countries/ratification/5.htm>

five other major human rights treaties. The DRC submitted its 3rd periodic report after a fifteen-year absence of reporting to the Committee. As well as its report and written responses⁶⁴ to the List of Issues⁶⁵, the delegation provided the Committee members with copies of its recently enacted Constitution on request of the Chairperson, Ms. Chanet.

All of the Committee members expressed their disappointment at the quality of the report. They complained that there were insufficient facts in the report to allow the Committee to “fully ascertain the situation in the DRC”⁶⁶ and stated that they need to know “how the Covenant is implemented not just in terms of legislation but in fact”⁶⁷. The report was in the main a summary of legal provisions, with as Mr Maurice Glèlè-Ahanhanzo pointed out, limited reference to any successes or failures in terms of implementation of the Covenant which would have allowed a constructive dialogue to take place. Furthermore, as Ms Chanet noted, many of the laws quoted were currently being discussed in the DRC’s Parliament, so the Committee could not consider them passed and therefore a part of the legal system of the DRC.

The NGOs OMTIC, R.A.F. and Observatoire Congolais des Droits de l’Homme (OCDH) submitted a joint shadow report. Their main concerns were the mistreatment and abuse of street children, discrimination against women, the harassment and murder of journalists and human rights defenders, and the lack of a definition of torture in domestic law. The NGOs AI, FIDH were also present during the meeting, as well as members of the Burkina Faso Mission and a representative from the UN Office of the Special Advisor on Africa (OSAA).

*Themes and issues discussed*⁶⁸

The Committee was extremely critical of the consistent **failure** of the State party **to co-operate** with it in terms of answering **communications** under the **First Optional Protocol (article 2)**. The State party had given no indication of action taken to give effect to the views of the Committee in five communications listed in question 3 of the Committee’s List of Issues for the State party.⁶⁹ The Protocol allow individuals who allege their human rights under the Covenant have been violated to submit a communication to them for consideration, where the State party in question is a party to the Protocol. The delegation simply answered that “the DRC has started taking measures concerning the findings of the Committee in these cases” and that in respect of Communication 933/2000, the 315 magistrates who had been barred from sitting on the bench have been re-appointed and compensated for the disbarring. Mr Shearer and Sir Rodley asked for clarification on exactly how the decisions of the Committee are and will be implemented by the State party in the future. Sir Rodley, furthermore, noted that the lack of co-operation from the State party before, during and after the war in DRC is not compliant with the State party’s obligations under the Protocol. Under Article 4 of the Protocol the Committee is obliged to provide the State party with information regarding any communication made against it and the State party is obliged within 6 months to provide the Committee with “written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State”.⁷⁰ The delegation responded that it is difficult to get concrete information on events that occurred in the 1990s. The delegation also stated that the Committee was too harsh on this issue and claimed that there must be a problem with the mail dispatch between Geneva and New York and the DRC.

The delegation did not accept the assertion by the Committee that the DRC suppresses and **harasses journalists (article 19)**. The delegation stated that the media freely do their job in the DRC and repeatedly noted that the media “do not behave properly” in carrying out their job, for example, by not respecting people’s privacy. Mr Tawfik Khalil stated that the laws affecting freedom of the press are too severe, noting both that individuals in public office should be more tolerant of criticism than ordinary people and the necessity for the press to be able to criticise Government in a democracy. With regard to the harassment and killing of **human rights defenders (articles 21 & 22)** the delegation deplored the “cowardly killing” of Pascal Kabungulu and stated that the DRC is “staying on-top of this case”.

⁶⁴ At time of writing the State party’s written replies were not available in English.

⁶⁵ CCPR/C/COD/Q/3 at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.COD.Q.3.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.COD.Q.3.En?OpenDocument)

⁶⁶ Mr Yriyogen

⁶⁷ Mr Amor

⁶⁸ At time of writing the Committee’s concluding observations on the DRC were not available in English. They are available in French and Spanish at <http://www.unhchr.ch/tbs/doc.nsf>

⁶⁹ For the full text of the List of Issues please see <http://www.unhchr.ch/tbs/doc.nsf>

⁷⁰ Article 4(2) Optional Protocol at <http://www.ohchr.org/english/law/ccpr-one.htm>

Torture (article 7) is not in its own right defined and criminalised in the law of the DRC, rather it is viewed as an “aggravating circumstance” of certain other offences⁷¹. The Committee asked to what extent those in the DRC know that torture is a human rights violation and are aware of the remedies available in the event of a breach. The delegation stated that the Government is working with NGOs and international organisations to undertake awareness-raising campaigns in this respect and that a police training event had recently taken place regarding the protection of those who have committed a crime. Sir Rodley and Mr Solari Yriyogen were very critical of the legal position regarding torture in the DRC’s legal system. Sir Rodley stated that a definition of torture is not required to comply with article 7 where it is covered by other crimes but that having it as an “aggravated circumstance to another offence” is not acceptable. Under further questioning by Sir Rodley, the delegation stated that a Bill had been before the Parliament since 2004 which would “attune” the definition of torture in the DRC “to international standards”. The delegation stated that this Bill had not, as suggested by NGOs, been blocked by the Government and attributed its failure to be enacted to the heavy workload of the Parliament in reforming institutions, the Army and other matters related to the end of the conflict.

The delegation did not answer the Committee’s question regarding **abuse of street children by the police (article 24)**. The only information provided by the delegation was that a Decree exists to deal with children who are forced to beg or who fall into delinquency and that where this occurs a court decides whether they should be returned to their families or taken into the care of a private establishment. The delegation did not mention the alleged abuse of such children. The Committee, potentially due to lack of time did not follow up on this⁷². The delegation noted that the problem of the **prostitution of the girl child (article 8)**⁷³ was “on-going” and had “gained ground”. The delegation linked this “delicate problem” to “endemic poverty” and stated that “this is being dealt with in the economic redress programme with the international institutions”.

The delegation denied that **trafficking (article 8)** is a problem in the DRC. Mr O’Flaherty challenged this, stating that it is well documented both that trafficking is a regional problem in the Great Lakes and that the DRC is a source country. On this basis he asked the delegation to what extent the DRC is involved in the regional initiatives to combat trafficking. The delegation responded that the DRC has not been approached with information on this matter and offered a written reply after the session which was acknowledged by Ms Chanet in her summing up. The delegation noted that trafficking is a problem in Rwanda and Burundi and stated that “given the agreements being created between these countries she doubts that children would be trafficked through the DRC”.

In terms of **impunity (article 2)** for violations of the Covenant, the delegation stated that transitional justice mechanisms have been set up “so that all victims can receive reparation” and noted the ongoing investigations of the International Criminal Court (ICC) in cooperation with the DRC government. The delegation stated that the Human Rights Ministry had suggested an independent commission be set up to investigate crimes committed before 2002 (i.e. for violations not within the jurisdiction of the ICC), but that the proposal was not received favourably by the Government. The delegation then turned to highlighting the impunity of the **United Nations peacekeeping forces (UNMONUC)** for the sexual abuse and prostitution of Congolese girls where they were offered food for sex. Mr Amor requested more information and expressed concern that there could be negative ramifications in terms of domestic remedies for children borne out of this abuse. The delegation responded that if the “father is near then we can get a response”, but that often the children do not know who their father is. The delegation explained that a “zero tolerance” policy was implemented in this respect two years ago and that the result was that the soldiers were often sent home and given a three-year suspended sentence for their crimes.

On the issue of **child soldiers (article 24)** the delegation stated that “there is no recruitment of children into the army”, that thousands have been demobilised, and that any children still in the army are being rehabilitated. The delegation noted that there are non-state groups who want to recruit children and also praised the work of the Red Cross, who, they stated have reunited 6,672 girls with their families. The Committee did not press for a full answer to its question 19 in the List of Issues, however, Mr. O’Flaherty welcomed the “categorical assertion that recruitment has stopped” and asked whether child soldiers from the non-state groups were being treated and rehabilitated in the same way as those from the army. The delegation responded that all children are treated the same.

⁷¹ 3rd periodic report at para 73ff

⁷² An hour and 45 minutes remained at this stage to discuss questions 15 through 21 of the List of Issues.

⁷³ Mr Amor, noted that there is not just one type of slavery but that there are unlimited forms. He highlighted prostitution of the girl child as a particularly worrying form of slavery in the DRC.

Conclusions and Next Steps

The Committee asked the delegation about the main human rights concerns of the NGOs but given the lack of information they were provided with in the State report they did not achieve the depth of analysis they did with the other two reporting States. The delegation was the smallest of the session and only one of the members, the Minister for Human Rights, spoke during the meetings. She did not liaise with the other members of the delegation and on numerous occasions, she used the phrase that she had come to “defend the report”. Although she admitted to problems in some areas of concern, such as child prostitution and the existence of discrimination against women, this attitude resulted in the lack of a real constructive dialogue between the Committee members and the delegation.

The main positive step announced by the delegation was the coming into force of the new Constitution on 18 February 2006. In its opening statement the delegation devoted a significant period of time to listing the provisions of the new Constitution that protect human rights which resulted in there being less time for the dialogue part of the process.

The delegation also announced that the DRC is currently in the process of completing periodic reports to the Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child.

In terms of the State party's recent appearance before other treaty bodies, the delegation's position before the Committee regarding **trafficking** contrasts significantly with that before the Committee on the Rights of the Child in 2001. Then the Committee on the Rights of the Child expressed deep concern due to; “information, including for example in the state party's report, of the trading, trafficking, kidnapping and use for pornography of young girls and boys within the State party, or from the State party to another country and that domestic legislation does not sufficiently protect children from trafficking”⁷⁴.

Under its follow-up procedure the Committee asked the State party to provide it, within one year, information on the action the State party takes on the recommendations on the concluding observations in paragraphs, 9, 10, 15, & 24.

⁷⁴ Concluding Observations of the Committee on the Rights of the Child: Democratic Republic of Congo. 09/07/2001 CRC/C/15/Add.153 at para 68. at <http://www.unhchr.ch/tbs/doc.nsf>