

---

# How Effective is the United Nations Committee Against Torture?

Ronagh McQuigg\*

## Abstract

*This article examines the question of how states have responded to the comments of the United Nations Committee against Torture through an analysis of eight Western European states. It is concluded that the Committee's recommendations have had a substantial impact in four of the states surveyed, however only a limited effect in two other states, and little or no impact in the two remaining states. These findings lead to concerns as regards the effectiveness of the Committee against Torture. The article focuses on the Concluding Observations made by the Committee on the reports submitted by the states in question.*

The United Nations Committee against Torture is responsible for monitoring the compliance of states with their duties under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (henceforth referred to as 'the Convention'). The reporting procedure constitutes the main mechanism through which the Committee performs its monitoring functions.<sup>1</sup> All states parties to the Convention are obliged to submit periodic reports to the Committee on how the rights contained in the Convention are being implemented in their jurisdictions. States have a duty to make an initial report one year after accession, and then to submit a report every four years thereafter. As Byrnes comments, 'The examination of a state's report under a treaty can provide an occasion for exerting international pressure on the state. If members of a supervisory body are strongly critical of a state or express the view that the state has not carried out its obligations under the treaty, this can serve to

\* Lecturer, School of Law, Queen's University Belfast. Email: r.mcquigg@qub.ac.uk.

<sup>1</sup> The Committee may also consider individual communications relating to states parties which have made the necessary declaration under Art. 22 of the Convention, and initiate inquiries under Art. 20 of the Convention. The Convention is available at 1465 UNTS 85. However, in practice the reporting mechanism remains the primary method of monitoring state compliance and therefore it is on this procedure that this article focuses.

put some pressure on a government, particularly if the proceedings receive publicity internationally or nationally.’<sup>2</sup>

Through its Concluding Observations on the reports submitted by states, the Committee can make specific recommendations to states on the measures needed in relation to various issues in their particular jurisdictions. However, are these recommendations being implemented by states?

This article seeks to shed some light on this question by means of a study of the responses of states to the Concluding Observations of the Committee. The eight Western European states that have been considered by the Committee on at least two occasions during the period of time covered by Committee sessions 25 to 40 (2000–2008) will be examined in this survey. It is important for this study that the states have been considered on at least two occasions, as this gives some indication of the progress made by states. It should be emphasized nevertheless that although this survey gives some idea of the impact of the recommendations of the Committee, it cannot be assumed for certain that any progress made by states is as a direct result of the recommendations made by the Committee on a previous occasion. Progress could have been prompted by pressure emanating from other sources, such as academic commentators. This sample consists of relatively wealthy states, all of which should have the resources to implement the recommendations of the Committee. The states that will be examined are Norway, the Netherlands, Portugal, Sweden, Denmark, the Czech Republic, Iceland, and Luxembourg.

## 1 Norway

The Committee against Torture considered the state of Norway in 2002. In responding to the state’s report, the Committee commended the Government for its high level of respect for human rights generally and also for its positive record regarding the implementation of the Convention.<sup>3</sup> The Committee noted with satisfaction that a Plan of Action for Human Rights had been adopted, which included measures aimed at the further implementation of the Convention. Guidelines had been issued on the right to access to health care for persons in police custody and on the notification of arrest to relatives and lawyers. Proposals had been made to incorporate a new provision into the Penal Code to prohibit and penalize torture, and to amend the Criminal Procedure Act to reduce the use of solitary confinement in custody and strengthen judicial supervision of this measure.<sup>4</sup>

However, the Committee continued to be concerned regarding the use of pre-trial solitary confinement in custody,<sup>5</sup> and asked that information on the outcome of the proposal to amend the Criminal Procedure Act be included in the state’s

<sup>2</sup> Byrnes, ‘Enforcement Through International Law and Procedures’, in R. J. Cook (ed.), *Human Rights of Women – National and International Perspectives* (1994), at 189, 207.

<sup>3</sup> Report of the Committee against Torture, United Nations, New York (2002) (hereafter ‘2002 Report’), at para. 83.

<sup>4</sup> *Ibid.*, at para. 84.

<sup>5</sup> *Ibid.*, at para. 85.

next periodic report. The Committee also requested that information be included on other steps taken by the state to respond to concerns about this issue. In addition, it recommended that legislation be enacted to amend the Penal Code to introduce the offence of torture, in accordance with the proposal that had been made. The Committee requested that its recommendations be widely disseminated in Norway in the appropriate languages.<sup>6</sup>

Norway was next considered by the Committee in 2007. Again the state was commended for its compliance with its obligations under the Convention. The Committee welcomed the fact that a new provision had now been incorporated in the Penal Code to prohibit and penalize torture. The Criminal Procedure Act had been amended to reduce the use of pre-trial solitary confinement and to strengthen judicial supervision of this measure. In addition, solitary confinement had been abolished as a sanction. The state was commended for the measures it had taken to ensure that the Committee's Concluding Observations were promptly translated into Norwegian and distributed widely. The Committee also noted with satisfaction that a central unit had been established for the investigation of alleged crimes by members of the police and that additional resources had been allocated to the investigation of reports of such crimes.<sup>7</sup>

It seems, therefore, that the Concluding Observations of the Committee have been very effective in Norway. All the issues of concern that were raised in the Committee's Concluding Observations of 2002 had been addressed by the next consideration of the state in 2007. However, in its 2007 Concluding Observations the Committee also encouraged the state to take further steps in relation to these matters. For example, the Government was encouraged to compile detailed statistics on the use of solitary confinement so as to verify the effectiveness in practice of the recent legislative amendments.<sup>8</sup> In addition, the Committee raised various other matters which had not been mentioned in its previous Concluding Observations, for example in relation to the effectiveness of human rights training programmes for police and prison officers.<sup>9</sup> Overall, the Committee's 2007 Concluding Observations were much more detailed than the recommendations that had been made in 2002. Nevertheless, it appears that the statements made by the Committee against Torture are having a very substantial impact on the policies and practices of the state of Norway.

## 2 The Netherlands

The Netherlands was considered by the Committee against Torture in 2000. The Kingdom of the Netherlands consists of three parts – the European part, the Netherlands Antilles, and Aruba. In its Concluding Observations on the state's report, the Committee noted with satisfaction that no allegations of torture in the state had been

<sup>6</sup> *Ibid.*, at para. 86.

<sup>7</sup> Report of the Committee against Torture, United Nations, New York (2008) (hereafter '2008 Report'), at sect. 35(3).

<sup>8</sup> *Ibid.*, at sect. 35(8).

<sup>9</sup> *Ibid.*, at sect. 35(11).

made. A National War Criminals Investigation Team had been established to facilitate the investigation and prosecution of war crimes, which could include torture. The Committee welcomed the fact that the Netherlands Antilles and Aruba had both recently made the act of torture punishable in criminal legislation as a separate criminal offence. The Netherlands Antilles had established a public Complaints Committee on police brutality and a national Investigation Department to investigate allegations of breaches of authority by public servants. In addition, a number of measures had been taken to improve conditions in prisons.<sup>10</sup>

However, the Committee expressed concern regarding allegations that had been made about police brutality in Aruba.<sup>11</sup> It recommended that measures be taken in the European part of the Netherlands to incorporate the Convention fully into national law, including the adoption of the definition of torture contained in Article 1 of the Convention. Under this provision, torture is defined as ‘any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity’. The Committee also stated that further measures should be taken to improve prison conditions in the Netherlands Antilles.<sup>12</sup>

The Netherlands was next considered in 2007. The Committee noted with satisfaction the ongoing efforts undertaken by the state to combat torture and to guarantee the rights of persons not to be subjected to torture and other cruel, inhuman, or degrading treatment or punishment in the Kingdom of the Netherlands. The definition of torture contained in Article 1 of the Convention had been incorporated into the national legislation of the European part of the Netherlands. An Internal Investigations Bureau had been established to receive and investigate complaints of ill-treatment by police officers in Aruba. Prison conditions in the Netherlands Antilles had been improved. In addition, new legislation on trafficking in human beings had been adopted. The Committee commended the state for the work which had been undertaken by the special team established to investigate and prosecute war crimes and crimes against humanity. The state was also commended for its cautious approach in relation to the use of diplomatic assurances and its policy of not practising extraordinary rendition of suspects.<sup>13</sup>

As with Norway, it seems that the recommendations of the Committee against Torture are having a substantial impact on the policies and practices of the Netherlands. In 2000 the Committee had expressed concern about allegations of police brutality in

<sup>10</sup> Report of the Committee against Torture, United Nations, New York (2000) (hereafter ‘2000 Report’), at para. 186.

<sup>11</sup> *Ibid.*, at para. 187.

<sup>12</sup> *Ibid.*, at para. 188.

<sup>13</sup> Report of the Committee against Torture, United Nations, New York (2007) (hereafter ‘2007 Report’), at sect. 43(3).

Aruba. The state responded by setting up an Internal Investigations Bureau to investigate reports of ill-treatment. In 2000 the Committee had urged the state to incorporate the definition of torture contained in Article 1 of the Convention into domestic law, and by the next consideration of the Netherlands this step had been taken. Likewise, the Dutch government complied with the Committee's recommendation that the state adopt further measures to improve prison conditions in the Netherlands Antilles. Interestingly, as found in the study of Norway, the Committee's 2007 Concluding Observations are far lengthier than its earlier recommendations. For example, the Committee's Concluding Observations of 2007 contain detailed consideration of the position of asylum-seekers in the Netherlands and also of the issue of trafficking. The Concluding Observations of 2000 contain no mention of these areas. However, the increased level of detail in the Committee's Concluding Observations is to be welcomed and should lead to a greater degree of effectiveness.

### 3 Portugal

Portugal was considered by the Committee against Torture in 2000. The Committee noted 'the ongoing initiatives of the state party to ensure that its laws and institutions conform to the requirements of the Convention'.<sup>14</sup> It welcomed in particular a number of developments that had taken place, such as a decision to establish an inspectorate of prisons; the creation of a database to streamline information relating to cases of abuse of public power; and the enactment of regulations governing police use of firearms. Regulations had also been enacted regarding conditions of detention in police lock-ups and a practice had been initiated of monthly prison visits by magistrates to receive prisoners' complaints concerning their treatment. In addition, active measures had been taken to reduce violence in prisons and a new system of police training had been introduced.<sup>15</sup>

Nevertheless, the Committee expressed concern at continuing reports of deaths and ill-treatment arising out of contact by members of the public with the police.<sup>16</sup> It was also concerned about continuing reports of inter-prisoner violence in prisons.<sup>17</sup> The Committee therefore recommended that the state continue to adopt disciplinary and educative measures with the aim of moving the police culture to one that respected human rights.<sup>18</sup> In particular, the state should ensure that the criminal investigation and prosecution of public officers were undertaken as a matter of course where the evidence showed that they had committed torture or inhuman or degrading treatment.<sup>19</sup> It was also recommended that the state continue to take steps to curtail inter-prisoner violence.<sup>20</sup>

<sup>14</sup> 2000 Report, *supra* note 10, at para. 99.

<sup>15</sup> *Ibid.*, at para. 100.

<sup>16</sup> *Ibid.*, at para. 101.

<sup>17</sup> *Ibid.*, at para. 102.

<sup>18</sup> *Ibid.*, at para. 103.

<sup>19</sup> *Ibid.*, at para. 104.

<sup>20</sup> *Ibid.*, at para. 105.

The state of Portugal was again considered in 2007. In its Concluding Observations on the state's report, the Committee commended the state on 'its progress in the protection and promotion of human rights' since the consideration of its last periodic report.<sup>21</sup> The Committee welcomed the adoption of a new Penal Code and a new Code of Criminal Procedure. A Police Code of Ethics had been approved and an Inspectorate-General for Justice Services had been established. In addition, legislation had been enacted whereby foreign nationals could not be deported to a country where they would be in danger of being subjected to torture or other cruel, inhuman, or degrading treatment.<sup>22</sup> The Committee also welcomed the reform of prison legislation; however, it remained concerned regarding reports of continuing violence among inmates. It therefore recommended that the state intensify its measures aimed at preventing such violence.<sup>23</sup>

It seems that Portugal constitutes another example of a state that is responding well to the recommendations of the Committee against Torture. One of the Committee's main concerns about this state related to a lack of respect for human rights standards on the part of the police. Portugal certainly seems to have taken heed of the Committee's recommendations in this area. Again it is notable that the 2007 Concluding Observations of the Committee are much more detailed than its earlier recommendations and include issues such as domestic violence and human trafficking.<sup>24</sup> It is likely that this added level of detail will further increase the effectiveness of the Committee.

## 4 Sweden

Sweden was considered by the Committee against Torture in 2002. In its Concluding Observations on the state's report, the Committee 'emphasize[d] with satisfaction the strong and steadfast commitment to human rights manifested by Sweden and the positive responses to the Committee's earlier recommendations'.<sup>25</sup> In 1997 the Committee had expressed concern regarding information it had received on isolated cases of ill-treatment by the police.<sup>26</sup> In 2000 an official parliamentary committee was established to determine whether the existing framework for handling allegations of criminal actions by the police was satisfactory.<sup>27</sup> Similarly, in 1997 the Committee had been concerned about certain methods used by the police in dealing with public demonstrations<sup>28</sup> and had recommended that the state reconsider methods used with regard to crowd control.<sup>29</sup> In its Concluding Observations of 2002, the Committee

<sup>21</sup> 2008 Report, *supra* note 7, at section 36(3).

<sup>22</sup> *Ibid.*, at sections 36(4) and (5).

<sup>23</sup> *Ibid.*, at section 36(11).

<sup>24</sup> *Ibid.*, at sections 36(15) and (16).

<sup>25</sup> 2002 Report, *supra* note 3, at para. 105.

<sup>26</sup> Report of the Committee against Torture, United Nations, New York (1997) (hereafter '1997 Report'), at para. 221.

<sup>27</sup> 2002 Report, *supra* note 3, at para. 105.

<sup>28</sup> 1997 Report, *supra* note 26, at para. 222.

<sup>29</sup> *Ibid.*, at para. 226.

welcomed the establishment of an official committee entrusted with the task of determining the steps that should be taken by the police on the occasion of public demonstrations to protect public order and also the right to demonstrate. The Committee also welcomed the adoption of a national action plan for human rights, which included the issue of international protection against torture as a priority topic. A special commission had been established to review legislation and case law regarding the application of decisions relating to expulsion from Swedish territory. Numerous projects had been implemented to enhance the national legal system for the protection of human rights, particularly in relation to the improvement of the procedure regarding requests for asylum. It was noted with satisfaction that the Swedish government had given an assurance that it acted in accordance with the Committee's observations concerning individual complaints and that it recognized its duty not to send persons back to states where there was a risk that they might be tortured. The Committee welcomed the fact that the national Aliens Act contained a provision to enable the immigration authorities to base their decisions directly on observations made by international bodies.<sup>30</sup>

In 1997 the Committee had highlighted the fact that Sweden has a dualistic theory of incorporation of international treaty norms into its domestic law, which meant that the provisions of the Convention against Torture needed enabling legislation to become part of Swedish national law. The Committee stated that the continued failure of Sweden to enact such legislation rendered the full implementation of the Convention more difficult.<sup>31</sup> It had therefore recommended that the state incorporate the provisions of the Convention against Torture into domestic law in the same manner as it had already incorporated the European Convention on Human Rights.<sup>32</sup> Particular concern had been expressed that the state had not incorporated into national law the definition of torture contained in Article 1 of the Convention.<sup>33</sup> However, by 2002 the state had not taken any steps in relation to this problem. Appropriate legislation for the incorporation of the Convention against Torture had not been adopted and national legislation still did not contain a definition of torture in keeping with Article 1 of the Convention. Also, neither torture nor cruel, inhuman, and degrading treatment was identified as a specific offence in Swedish criminal law.<sup>34</sup>

In its Concluding Observations of 2002, the Committee also expressed concern about allegations that some foreigners had been sent back to countries with which they had no significant ties. The state was urged to ensure that if foreigners were sent back, they were expelled to countries with which they had real ties and where there were no substantial grounds for believing that they would be in danger of being subjected to torture. It was highlighted that the national Special Control of Foreigners Act allowed foreigners who were suspected of terrorism to be expelled under a procedure which might be contrary to the Convention, as there was no provision for appeal. The state was urged to bring this legislation into line with the Convention. The Committee

<sup>30</sup> 2002 Report, *supra* note 3, at para. 105.

<sup>31</sup> 1997 Report, *supra* note 26, at para. 218.

<sup>32</sup> *Ibid.*, at para. 223.

<sup>33</sup> *Ibid.*, at para. 219.

<sup>34</sup> 2002 Report, *supra* note 3, at para. 106.

recommended that the Swedish government strengthen the machinery for following up guarantees of proper treatment given by states to which foreigners were expelled, and also that more comprehensive investigations be undertaken into the human rights situations in the countries of origin of asylum-seekers.<sup>35</sup>

The Committee remained concerned regarding the occurrence of cases of excessive force being used by police personnel and prison guards, leading to the death of the persons concerned. Allegations had been made of imprecise and inadequate guidelines and lack of training for police and prison guards in relation to the use of force. The Committee urged the state to ensure that all allegations of violations by such personnel were investigated impartially and promptly. Also, human rights education programmes for police and prison guards should be strengthened. In addition, the Committee pointed out that there appeared to be no legislative rule which clearly set out that statements obtained under duress could not be used as evidence in judicial proceedings and recommended that such a prohibition be clearly formulated in national law.<sup>36</sup>

Sweden was again considered by the Committee in 2008. In its Concluding Observations, the Committee welcomed 'the ongoing efforts at the state level to reform its legislation, policies and procedures in order to ensure better protection of human rights, including the right not to be subjected to torture and ill-treatment'.<sup>37</sup> Particular mention was made of an amendment to the Aliens Act, which introduced a new appeal system and provided for the granting of refugee status to persons claiming fear of persecution on grounds of gender and sexual orientation. New legislation had been adopted on fundamental safeguards for detainees, such as access to a lawyer and notification of custody. A common Action Plan had been developed by the Migration Board, the Border Control Police, and the Social Services which aimed to minimize the risks of unaccompanied asylum-seeking children disappearing and becoming victims of trafficking. In addition, the government had allocated additional resources to the Prison and Probation Administration to create better facilities in prisons.<sup>38</sup>

However, the Committee regretted that the state had still not changed its position in relation to the incorporation into national law of the crime of torture as defined in Article 1 of the Convention.<sup>39</sup> Although measures had been taken to ensure fundamental safeguards for detainees, the Committee was of the opinion that more steps needed to be taken. For example, notification of custody was not systematically delivered to family members and was frequently delayed.<sup>40</sup> As regards the position of asylum-seekers, pre-deportation detention was common, and there was no absolute limit on the length of time that an asylum-seeker could be detained.<sup>41</sup> Also, the Committee

<sup>35</sup> *Ibid.*, at paras 107–108.

<sup>36</sup> *Ibid.*, at paras 107–108.

<sup>37</sup> 2008 Report, *supra* note 7, at section 43(5).

<sup>38</sup> *Ibid.*, at section 43(5).

<sup>39</sup> *Ibid.*, at section 43(9).

<sup>40</sup> *Ibid.*, at section 43(11).

<sup>41</sup> *Ibid.*, at section 43(12).



expressed concern that the principles of effectiveness, independence, and promptness may not have been heeded in all cases of complaints of police misconduct.<sup>42</sup>

On the whole, Sweden seems to have responded fairly well to the recommendations of the Committee against Torture. As recognized by the Committee, the state appears to hold a steadfast commitment to the better protection of human rights standards, including the right to be free from torture and cruel, inhuman, or degrading treatment. However, it is true that Sweden does not uniformly comply with the recommendations of the Committee. One particular issue that remains problematic is the failure of the state to incorporate into domestic law the crime of torture as defined in Article 1 of the Convention. Sweden has been repeatedly urged to take this step, however so far it has not done so. Nevertheless, in general the recommendations of the Committee do seem to have a significant impact in this state.

## 5 Denmark

The state of Denmark was considered by the Committee against Torture in 2002. In its Concluding Observations, the Committee welcomed the way in which the state had addressed in a separate part of its report previous recommendations that had been made.<sup>43</sup> In 1997 the Committee had urged the state to consider incorporating the provisions of the Convention against Torture into national law.<sup>44</sup> It seems that Denmark responded to this recommendation, as in 2002 the Committee welcomed the fact that a proposal had been made within the state to incorporate the Convention into domestic law.<sup>45</sup> In its 2002 Concluding Observations, the Committee also noted with satisfaction that legislation had been adopted to afford a more protective status to asylum seekers and that efforts had been made to ensure that educational programmes for police included human rights components.<sup>46</sup>

However, in 1997 and also in previous Concluding Observations, the Committee had urged the state to incorporate into national law provisions on the crime of torture, including a definition of torture in conformity with Article 1 of the Convention.<sup>47</sup> By 2002 the state had still not taken this step and the Committee again reiterated its recommendation in this regard.<sup>48</sup> In 1997 the Committee had also been concerned about the use of solitary confinement in custody<sup>49</sup> and had recommended that the use of this measure be abolished, or at least that it should be strictly and specifically regulated by law and that judicial supervision should be introduced.<sup>50</sup> In 2002 the Committee welcomed the adoption of an amendment to the Act on the Administration of Justice,

<sup>42</sup> *Ibid.*, at section 43(18).

<sup>43</sup> 2002 Report, *supra* note 3, at para. 69.

<sup>44</sup> 1997 Report, *supra* note 26, at para. 184.

<sup>45</sup> 2002 Report, *supra* note 3, at para. 71.

<sup>46</sup> *Ibid.*, at para. 72.

<sup>47</sup> 1997 Report, *supra* note 26, at para. 185.

<sup>48</sup> 2002 Report, *supra* note 3, at para. 74.

<sup>49</sup> 1997 Report, *supra* note 26, at para. 181.

<sup>50</sup> *Ibid.*, at para. 186.

which tightened the controls over the use of solitary confinement, decreased its use, and provided for judicial control over solitary confinement while on remand.<sup>51</sup> However, concern was expressed about the lack of effective recourse procedures against decisions imposing solitary confinement upon persons serving sentences.<sup>52</sup> It was recommended that the state continue to monitor the effects of solitary confinement on detainees, and that the law governing solitary confinement for convicted prisoners should establish adequate review mechanisms.<sup>53</sup>

The Committee considered the state of Denmark again in 2007. In its Concluding Observations on the state's report, the Committee welcomed ongoing efforts made to improve conditions in prisons and to introduce alternative measures to custody, such as the use of electronic monitoring.<sup>54</sup> It was noted with appreciation that the Danish government had decided to allocate additional funds to improving the living conditions in asylum centres.<sup>55</sup> Funds had also been allocated to projects to facilitate the rehabilitation of traumatized refugees and their families residing in Denmark.<sup>56</sup> In addition, the Committee welcomed the state's cooperation with non-governmental organizations engaged in eradicating torture and providing assistance to victims.<sup>57</sup>

However, the Committee regretted that the Convention against Torture had still not been incorporated into national law.<sup>58</sup> Also, the specific offence of torture, as defined in Article 1 of the Convention, had not been incorporated into the Danish Criminal Code.<sup>59</sup> As regards the issue of solitary confinement, the Committee noted with appreciation that the upper limit for solitary confinement of persons under the age of 18 had been reduced from eight weeks to four weeks. Nevertheless, despite legislative amendments to limit the use of solitary confinement, the Committee remained concerned about the placement of persons in prolonged solitary confinement during pretrial detention. In particular, persons suspected of offences against the independence and security of the state could be held indefinitely in solitary confinement during pretrial detention. However, the Committee did note that there was a judicial review mechanism in place to review the need to continue solitary confinement.<sup>60</sup>

Denmark has certainly adopted various measures during the period of time in question with the aim of protecting the right to be free from torture and inhuman or degrading treatment, all of which have been met with approval by the Committee. However, three recurring themes can be seen in the Committee's recommendations. These are the incorporation of the Convention against Torture into the domestic law of Denmark; the incorporation of a specific offence of torture, as defined in Article 1 of the Convention, into the Danish Criminal Code; and the issue of solitary confinement.

<sup>51</sup> 2002 Report, *supra* note 3, at para. 72.

<sup>52</sup> *Ibid.*, at para. 73.

<sup>53</sup> *Ibid.*, at para. 74.

<sup>54</sup> 2007 Report, *supra* note 13, at section 39(4).

<sup>55</sup> *Ibid.*, at section 39(6).

<sup>56</sup> *Ibid.*, at section 39(5).

<sup>57</sup> *Ibid.*, at section 39(7).

<sup>58</sup> *Ibid.*, at section 39(9).

<sup>59</sup> *Ibid.*, at section 39(10).

<sup>60</sup> *Ibid.*, at section 39(14).

Despite repeated urging by the Committee, the first two of these recommendations have not been implemented. In 2002 the Committee noted that a proposal had been made within the state to incorporate the Convention into national law; however, this proposal was ultimately rejected. As regards the issue of solitary confinement, the state has certainly taken a number of steps to tighten controls and decrease the use of this measure. However, in 2007 the Committee still remained concerned about the placement of persons in prolonged solitary confinement during pretrial detention. On the whole, therefore, it seems that the recommendations of the Committee have had only a limited effect on the state of Denmark.

## 6 The Czech Republic

The Czech Republic was considered by the Committee against Torture in 2001. In its Concluding Observations on the state's report, the Committee welcomed the adoption of a new Aliens Law and a new Asylum Law. It also commended the state on an amendment to the Citizenship Law which resolved problems of statelessness that had affected the Roma minority.<sup>61</sup> However, concern was expressed about instances of racism and xenophobia, including an increase in racially motivated violence against minority groups. The Committee remained concerned regarding continuing incidents of discrimination against Roma. There had been reports of degrading treatment by the police of members of minority groups and it had been alleged that the police and judicial authorities had failed to provide adequate protection to Roma from violent attacks. In addition, it had been alleged that the police had failed to investigate and prosecute such crimes. The Committee recommended that the state continue its efforts to counter all forms of discrimination against minorities. It also urged the state to increase its efforts to combat police ill-treatment of minorities and the failure to provide adequate protection.<sup>62</sup>

Concern was expressed about allegations of the excessive use of force by law-enforcement officials during and after demonstrations. The Committee expressed particular concern regarding alleged instances of inhuman and degrading treatment of persons arrested and detained as a result of demonstrations that had taken place during an International Monetary Fund/World Bank meeting in Prague in September 2000. It was recommended that the state ensure the independence and thoroughness of investigations of all allegations of ill-treatment, both in general and in connection with the events of September 2000. The Committee noted the absence of a mechanism of external control over the work of the police and recommended that such a mechanism be introduced. It drew attention to the lack of adequate guarantees of the rights of persons deprived of liberty to notify a third party of their choice, to have access to a doctor of their choice, and to have access to a lawyer of their choice from the outset of their custody. It was recommended that these rights be guaranteed. The Committee noted the lack of legal regulation of external inspections of the prison system and the

<sup>61</sup> Report of the Committee against Torture, United Nations, New York (2001), at para. 108.

<sup>62</sup> *Ibid.*, at paras 113–114.

lack of an effective mechanism for processing prisoners' complaints. It also noted the prevalence of inter-prisoner violence. The Committee recommended that the state establish an independent and effective system of control over prisoners' complaints and for the external inspection of the prison system. It also requested that the state provide information in its next periodic report on the possibilities for redress and the rehabilitation services available for victims of torture and inhuman or degrading treatment.<sup>63</sup>

The Czech Republic was again considered by the Committee in 2004. On this occasion, the Committee welcomed amendments to the Residence of Aliens Act, which established an independent judicial second instance body to review asylum cases. The Act on Serving Prison Terms had been amended to offer greater protection to detainees. The Penal Code had also been amended to provide that offences allegedly committed by members of the police would be investigated by the State Prosecuting Attorney, instead of by the police investigator. In addition, a National Strategy on Combating Trafficking in Human Beings had been introduced.<sup>64</sup>

However, the Committee expressed concern regarding the persistent occurrence of acts of violence against Roma and the alleged reluctance on the part of the police to provide protection and to investigate such crimes. It also noted that there were still no explicit legal guarantees of the rights of all persons deprived of liberty to have access to a lawyer and to notify their next of kin from the outset of their custody. Concern was again expressed about the occurrence of inter-prisoner violence and also about the lack of complete information from the state on compensation and redress provided to victims of torture.<sup>65</sup>

It seems that, as with Denmark, the recommendations of the Committee against Torture have had only a limited impact in the Czech Republic. Although legislative amendments were made to offer greater protection to detainees, by 2004 there was still no legal guarantee of the rights of those deprived of their liberty to notify their next of kin and to have access to a lawyer from the outset. Also, it appears that little had been done to reduce inter-prisoner violence. Likewise, acts of violence against Roma still occurred and an alleged reluctance on the part of the police to provide protection and to investigate such crimes remained. In addition, despite the Committee's recommendation in 2001 that information be provided in the state's next periodic report on the possibilities for redress for victims of torture, it seems that this request was not met. It is, however, true that the state did take steps to ensure the independence of investigations involving offences allegedly committed by members of the police.

## 7 Iceland

The Committee against Torture considered the state of Iceland in 2003. In its Concluding Observations on the state's report, the Committee noted with satisfaction that

<sup>63</sup> *Ibid.*, at paras 113–114.

<sup>64</sup> Report of the Committee against Torture, United Nations, New York (2004), at para. 85.

<sup>65</sup> *Ibid.*, at para. 86.

it had not received any complaints of torture having occurred in Iceland.<sup>66</sup> It welcomed certain legislative developments, such as amendments to the Police Act, which provided for allegations of offences having been committed by members of the police force to be submitted directly to the General Prosecutor for investigation.<sup>67</sup> The Committee noted with satisfaction that remand prisoners who were kept in solitary confinement had the right to have this measure reviewed by a court and that they must be informed of the existence of this right.<sup>68</sup> In the Committee's Concluding Observations on the state's previous report, concern had been expressed about the use of solitary confinement, particularly as a preventive measure during pre-trial detention.<sup>69</sup> It had been recommended that the Government review the provisions regulating pre-trial detention in order to reduce the number of cases to which solitary confinement could be applicable.<sup>70</sup> On the evidence of the Committee's comments in 2003, it seems that significant progress had been made on this issue.

However, in 2003 the Committee commented that it remained concerned that Icelandic law did not contain specific provisions to ensure that any statement made as a result of torture could not be invoked as evidence in judicial proceedings.<sup>71</sup> In its previous Concluding Observations in 1998, the Committee had recommended that the relevant national legislation be amended explicitly to exclude any statement made as a result of torture.<sup>72</sup> It is clear therefore that the state did not comply with this recommendation. In 2003 the Committee again urged the state to make the necessary legislative amendment.<sup>73</sup> Another issue that remained problematic was the fact that torture was not considered to be a specific crime in the penal legislation of Iceland. In 1998 the Committee had urged the state to make torture a specific crime in national legislation,<sup>74</sup> however, this statement was ignored and the Committee had to reiterate its recommendation in 2003.<sup>75</sup>

Iceland was next considered by the Committee in 2008. In its Concluding Observations, the Committee regretted that the state had still not incorporated torture as a specific crime into national criminal legislation.<sup>76</sup> It also remained concerned that evidence that might have been obtained through torture could still be used in judicial proceedings.<sup>77</sup> The Committee again reiterated its previous recommendations on both these matters. As regards the issue of solitary confinement in custody, the Committee

<sup>66</sup> Report of the Committee against Torture, United Nations, New York (2003) (hereafter '2003 Report'), at para. 103.

<sup>67</sup> *Ibid.*, at para. 104.

<sup>68</sup> *Ibid.*, at para. 105.

<sup>69</sup> Report of the Committee against Torture, United Nations, New York (1999) (hereafter '1999 Report'), at para. 59.

<sup>70</sup> *Ibid.*, at para. 60.

<sup>71</sup> 2003 Report, *supra* note 66, at para. 107.

<sup>72</sup> 1999 Report, *supra* note 69, at para. 60.

<sup>73</sup> 2003 Report, *supra* note 66, at para. 109.

<sup>74</sup> 1999 Report, *supra* note 69, at para. 60.

<sup>75</sup> 2003 Report, *supra* note 66, at para. 109.

<sup>76</sup> 2008 Report, *supra* note 7, at section 41(5).

<sup>77</sup> *Ibid.*, at section 41(13).

expressed concern about reports of the frequent and excessive use of this measure. It urged the state to investigate the matter and adopt measures to restrict the use of solitary confinement.<sup>78</sup>

The recommendations of the Committee against Torture seem to be having very little impact on the policies and practices of Iceland. Despite repeated urging by the Committee, the state has still not made torture a specific crime under national legislation. Similarly, it has not made the necessary legislative amendments to ensure that evidence that may have been obtained by the use of torture is inadmissible in judicial proceedings. In 2003 it appeared that progress had been achieved on the issue of solitary confinement; however in 2008 the excessive use of this measure had again become problematic.

## 8 Luxembourg

The state of Luxembourg was considered by the Committee in 2002. In responding to the state's report, the Committee welcomed the fact that torture had been incorporated into the Penal Code as a specific crime and also as an aggravating circumstance of crimes against the person. It welcomed the establishment of an Advisory Commission on Human Rights and the ratification by Luxembourg of the Rome Statute of the International Criminal Court.<sup>79</sup> However, the Committee expressed concern that minors ordered to be placed in disciplinary centres were put in adult prisons, and urged the state to refrain from this practice. In addition, it expressed concern about the use of solitary confinement in custody, particularly as a preventive measure during pre-trial detention. It was recommended that solitary confinement be strictly regulated by law and that judicial supervision of this measure be strengthened, with a view to its abolition.<sup>80</sup>

Luxembourg was next considered in 2007. In its Concluding Observations on the state's report, the Committee again expressed concern about the placement of minors in adult prisons and urgently reiterated its previous recommendation that this practice be abolished. It also regretted Luxembourg's persistent use of solitary confinement and the state's intention to maintain the use of this measure despite the Committee's previous comments on the issue. Again the Committee urgently reiterated its recommendation that solitary confinement be strictly and specifically regulated by law and that judicial supervision be strengthened. The state was urged to take the necessary steps to put an end to the practice of solitary confinement and alter the relevant regulations accordingly.<sup>81</sup>

The recommendations of the Committee against Torture seem to be having very little impact in the state of Luxembourg. In 2002 the Committee had emphatically urged the state to refrain from putting minors into adult prisons and to regulate strictly

<sup>78</sup> *Ibid.*, at section 41(9).

<sup>79</sup> 2002 Report, *supra* note 3, at para. 78.

<sup>80</sup> *Ibid.*, at paras 79–80.

<sup>81</sup> 2007 Report, *supra* note 13, at sections 42(9) and (10).

the use of solitary confinement, with a view to the abolition of this measure. However, in 2007 minors were still being placed in adult prisons and it was Luxembourg's stated intention to maintain its use of solitary confinement, despite the Committee's views on this issue. It certainly appears that the Committee's recommendations are having little, if any, effect on the policies and practices of Luxembourg.

## 9 Conclusion

It seems that the recommendations of the Committee against Torture are having a very substantial impact in Norway, the Netherlands, and Portugal, and a significant effect in Sweden. However, they appear to be having only a limited impact in Denmark and the Czech Republic, and little or no effect in Iceland and Luxembourg. This inconsistency leads to concerns regarding the effectiveness of the Committee against Torture, particularly as the states surveyed are all relatively wealthy and should therefore have the resources to implement the Committee's recommendations in their entirety.

There are certainly significant problems with the enforcement of international human rights standards. Copelon remarks that 'the international human rights system still operates more in rhetoric than in reality.'<sup>82</sup> Although governments will usually acknowledge that human rights considerations should have a part to play in their decisions, nevertheless they may also argue that other factors are of greater importance.<sup>83</sup> As Byrnes comments, "The limitations of international law generally when it comes to enforcement of binding standards are well known, and international human rights law is no exception in that regard."<sup>84</sup> For example, the UN has no real method of forcing governments to alter their policies. The human rights treaty bodies can highlight the shortcomings of states, thus bringing international pressure to bear on governments and shaming them into compliance. As Risse and Sikkink comment, 'Countries most sensitive to pressure are not those that are economically weakest, but those that care about their international image.'<sup>85</sup> However, if a state still consistently refuses to act in accordance with human rights principles, there appears to be little that can be done. It seems that the impact of the UN human rights treaties depends largely on the degree of commitment held by states to give effect to their obligations. A major difficulty with the enforcement of the Convention against Torture is that it has no official 'teeth'. If a state refuses to comply with its provisions, the Committee against Torture cannot impose sanctions: for example, no fines can be ordered. Essentially, as Vesa comments when dealing with international human rights systems, 'one

<sup>82</sup> Copelon, 'International Human Rights Dimensions of Intimate Violence: Another Strand in the Dialectic of Feminist Lawmaking', 11 *Am U J Gender, Social Policy and the Law* (2003) 865, at 875.

<sup>83</sup> Robinson, 'Making Human Rights Matter: Eleanor Roosevelt's Time Has Come', 16 *Harvard Hmn Rts J* (2003) 1, at 4.

<sup>84</sup> Byrnes, *supra* note 1, at 191–192.

<sup>85</sup> Risse and Sikkink, 'The Socialization of International Human Rights Norms into Domestic Practices: Introduction', in T. Risse, S.C. Ropp, and K. Sikkink (eds), *The Power of Human Rights – International Norms and Domestic Change* (1999), at 1, 27–38.

should remain aware of an overarching issue that straddles all human rights systems; enforceability is still a lingering weakness',<sup>86</sup>

However, a major part of the value of the statements of international human rights bodies lies in the fact that they can be used by Non-Governmental Organizations to put pressure on governments to comply with their obligations. National NGOs can play a substantial role in ensuring that the Convention against Torture is firmly embedded in local cultures. Essentially NGOs can publicize the fact that the state has obligations under the Convention and that it is failing to comply with these duties. The government may then be shamed into fulfilling its obligations. It seems that the effectiveness of the Convention against Torture and its Committee would certainly be increased by a greater awareness of the potential of the Convention to be used in such a manner.

<sup>86</sup> Vesa, 'International and Regional Standards for Protecting Victims of Domestic Violence', 12 *Am U J Gender, Social Policy and the Law* (2004) 309, at 360.