

## ARMED CONFLICT - GENERAL

### III. JURISPRUDENCE

#### ICCPR

- *Drake et al. v. New Zealand* (601/1994), ICCPR, A/52/40 vol. II (3 April 1997) 273 (CCPR/C/59/D/601/1994) at paras. 8.4-8.6.

...

8.4 The authors claim that the failure of New Zealand to provide a remedy for the injustices suffered by them during their incarceration by Japan, and for their residual disabilities and incapacities, violates article 26 of the Covenant. This claim relates to the distinction said to have been made between civilian and war veterans, and between military personnel who were prisoners of the Japanese and those who were prisoners of the Germans. The authors and the groups of whom they are representatives include both civilians and war veterans.

8.5 As regards the claim that the exclusion of civilian detainees from entitlements under the War Pensions Act is discriminatory, the Committee notes from the information before it that the purpose of the Act is specifically to provide pension entitlements for disability and death of those who were in the service of New Zealand in wartime overseas, not to provide compensation for incarceration or for human rights violations. In other words if disability arises from war service it is irrelevant to the entitlement to a pension whether the person suffered imprisonment or cruel treatment by captors. Keeping in mind the Committee's prior jurisprudence <sup>12/</sup> according to which a distinction based on objective and reasonable criteria does not constitute discrimination within the meaning of article 26 of the Covenant, the Committee considers that the authors' claim is incompatible with the provisions of the Covenant and thus inadmissible under article 3 of the Optional Protocol.

8.6 The authors have further claimed that those who were in war service are victims of a violation of article 26 of the Covenant because of the narrow class of disability for which pensions are made available under the War Pensions Act. The Committee notes that the authors have failed to provide information as to how this affects their personal situation. The authors have thus failed to substantiate their claim, for purposes of admissibility, and this part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

---

#### Notes

...

<sup>12/</sup> See, *inter alia*, the Committee's Views concerning communications Nos. 172/1984 (*Broeks v. The Netherlands*), para. 13; 180/1984 (*Danning v. The Netherlands*), para. 13; 182/1984 (*Zwaan-de Vries v. The Netherlands*), para. 13; 415/1990 (*Pauger v. Austria*), para. 7.3; and 425/1990 (*Neefs v. The Netherlands*), para. 7.2 See also the Committee's General Comment No. 18 (Non-discrimination), para. 13.

## **ARMED CONFLICT - GENERAL**

---