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IV. CONCLUDING OBSERVATIONS

CERD

- Zambia, CERD, A/48/18 (1993) 51 at para. 254.

Concern is expressed about the recent declaration of a state of emergency; the treatment accorded to certain categories of refugees; and the reported cases of brutality with discriminatory overtones on the part of the police officers. In addition, the State party's legislation has not effectively provided the remedy and compensation that should be available to an injured person in terms of article 6 of the Convention.

- Sri Lanka, CERD, A/56/18 (2001) 56 at para. 332.

The restrictions placed on civil and political rights under the Prevention of Terrorism Act and Emergency Regulations and their allegedly discriminatory application with regard to Tamils are of concern. While the recent amendments to the Emergency Regulations are commended and it is noted that the Emergency Regulations lapsed on 4 June 2001, it remains of concern that a state of emergency has been intermittently in effect in different parts of the country since 1983. It is hoped that the situation in the country will improve so that the state of emergency can be lifted.

ICCPR

- Algeria, ICCPR, A/47/40 (1992) 61 at para. 299.

Algeria should put an end as promptly as possible to the exceptional situation which prevails within its borders and allow all the democratic mechanisms to resume their functioning under fair and free conditions. Attention is drawn to the fact that the Covenant does not permit derogation from certain rights even in times of emergency and that, therefore, any excesses relating to, *inter alia*, the right to life, torture and the right to freedom of conscience and expression are violations of the Covenant which should not be allowed to continue.

- Colombia, ICCPR, A/47/40 (1992) 83 at paras. 393 and 394.

Paragraph 393

Concern is expressed at the ongoing violence, causing a rate of homicide, disappearances and torture which, although decreasing, is unacceptable. The murders of sectors of the population in so-called

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social cleansing operations ("*limpieza social*") are of special concern. Moreover, the phenomenon of impunity for police, security and military personnel is also of concern. In that connection, the measures that have been taken do not seem to be sufficient to guarantee that all members of the armed forces who abuse their power and violate citizens' rights will be brought to trial and punished. Military courts do not seem to be the most appropriate ones for the protection of citizens' rights in a context where the military itself has violated such rights. The persistence of paramilitary groups also causes concern. Furthermore, full guarantees do not exist for adequate implementation of the provisions of article 4 of the Covenant regarding states of emergency.

Paragraph 394

The State party should intensify its action against all violence resulting in human rights violations. It should eliminate impunity; strengthen safeguards for individuals *vis-à-vis* the armed forces; limit the competence of the military courts to internal issues of discipline and similar matters so that violations of citizens' rights will fall under the competence of ordinary courts of law; and disband all paramilitary groups. Finally, emergency legislation should be brought into conformity with article 4 of the Covenant.

- Yugoslavia, ICCPR, A/47/40 (1992) 103 at para. 465.

With reference to article 1 of the Covenant, the fact that there was no procedure under domestic law for implementation of the right to secede recognized in the federal Constitution, which would have enabled the crisis to be settled peacefully, is regretted, as is the fact that, under the state of emergency proclaimed in the province of Kosovo, excessive steps have been taken to limit the rights and freedoms guaranteed by the Covenant.

- Mongolia, ICCPR, A/47/40 (1992) 134 at paras. 601 and 602.

Paragraph 601

In regard to a number of fundamental rights recognized in the Covenant, some requirements and limitations presently in force in Mongolian law are so broad and numerous as to severely restrict the effective exercise of such rights in actual practice. This is true, for example, in regard to the criteria for declaring a state of emergency.

Paragraph 602

In regard to the declaration of a state of emergency, the State party should ensure that applicable legislation is in conformity with the Covenant, particularly in regard to paragraph 2 of article 4.

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- Burundi, ICCPR, A/48/40 vol. I (1993) 16 at paras. 71 and 79.

Paragraph 71

Special concern is expressed over the cases of extrajudicial executions and of torture in connection with the upheavals that took place in 1988, 1991 and 1992. In that connection, no derogation from articles 6 and 7 of the Covenant is permitted under any circumstances. The unavailability of effective remedies to victims of human rights violations; the absence of legal provisions prohibiting illegal detention; the shortage of legal personnel and the financial constraints which hampered the administration of justice; the general inadequacy of the legal and other measures designed to promote and protect human rights; the various constitutional limitations on the effective enjoyment of human rights; and problems relating to the effective implementation of articles 18, 19 and 27 of the Covenant are of concern.

Paragraph 79

The cases of extrajudicial executions and of torture documented in the reports prepared by the Special Rapporteurs of the Commission on Human Rights on those subjects and also as reported by various non-governmental organizations is alarming. In that connection, it is noted that no derogations from articles 6 and 7 of the Covenant are permitted under any circumstances.

- Senegal, ICCPR, A/48/40 vol. I (1993) 23 at paras. 112 and 113.

Paragraph 112

The Committee does not agree with the Government's contention that the provisions of the Covenant must be interpreted and applied against the background of the conditions prevailing in the country. Rather, all efforts should be made to bring those conditions into conformity with internationally agreed human rights standards. To achieve full compliance with article 4 of the Covenant, greater efforts are needed to ensure the proper protection of human rights under a state of emergency.

Paragraph 113

Laws relating to states of emergency, the protection of the right to life and the death penalty, forced labour, the treatment of detainees and their access to a lawyer and freedom of expression -particularly restrictions imposed on the exercise by journalists of this right - should be brought into conformity with articles 4, 6, 8 and 19 of the Covenant, respectively. The proclamation of any state of emergency must be notified to the Secretary-General of the United Nations in a timely manner.

- United Republic of Tanzania, ICCPR, A/48/40 vol. I (1993) 35 at paras. 171, 184 and 188.

Paragraph 171

Concern is expressed over the constitutional provisions allowing derogations from the right to life,

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which are not compatible with article 4 of the Covenant. In this regard, changes are clearly necessary.

Paragraph 184

The position of the Covenant in national law is unclear, particularly in cases where conflicts could arise between the Covenant and the Constitution. In this regard, article 32 of the Constitution regarding emergencies is clearly not in conformity with the international obligations of the State party under article 4 of the Covenant. Under that provision no derogation is permissible from certain fundamental rights, among which is the right to life. The grounds for declaring a state of emergency are too broad and the extraordinary powers of the President in an emergency are too sweeping.

Paragraph 188

A thorough review should be undertaken of provisions relating to states of emergency with a view to ensuring their full compatibility with article 4 of the Covenant in all respects.

- Venezuela, ICCPR, A/48/40 vol. I (1993) 61 at para. 310.

The State party should take whatever steps are necessary to combat all human rights violations, in particular those that may have been committed during the various states of emergency. The State party should see to it that all members of the armed forces and the police who have committed violations of the rights guaranteed by the Covenant are tried and punished by civilian courts. The duration of custody should be reviewed, and an accused person should be allowed to undergo a medical examination upon request and to have access to his lawyer from the time of arrest. Steps should also be taken to make the remedy of *amparo* effective, and to improve conditions in places of detention substantially. The list of rights that cannot be derogated from, even during states of emergency, should be extended to include all the rights covered by article 4, paragraph 2, of the Covenant.

- Niger, ICCPR, A/48/40 vol. I (1993) 88 at para. 423.

The cases of extrajudicial executions and torture that occurred in the context of the disturbances in 1991 and 1992 in the north of the country are of extreme concern and it is deplored that these cases have not, to date, been the subject of investigations or compensation on the part of the authorities. It is recalled that the Covenant does not authorize, in any case, derogations from articles 6 and 7 of the Covenant.

- Dominican Republic, ICCPR, A/48/40 vol. I (1993) 95 at para. 459.

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The grounds for declaring a state of emergency are too broad, and the range of rights that may be derogated from is too wide to be in conformity with article 4 of the Covenant.

- Uruguay, ICCPR, A/48/40 vol. I (1993) 102 at para. 503.

Concern is expressed over the constitutional provisions relating to the declaration of a state of emergency. In particular, it is noted that the grounds for declaring a state of emergency are too broad and that the range of rights which may be derogated from does not conform to article 4 of the Covenant. Additionally, there is no mention in the relevant provision of the Constitution of non-derogable rights.

- Ireland, ICCPR, A/48/40 vol. I (1993) 119 at paras. 603 and 611.

Paragraph 603

Special concern is expressed over the continuation of the state of emergency declared with the adoption of the Emergency Powers Act in 1976. It is noted with concern that the Emergency Powers Act, particularly section 2 thereof, provides excessive powers to law enforcement officials.

Paragraph 611

The State party should critically examine the need for the existing state of emergency and ensure that the provisions of article 4 of the Covenant are being strictly observed. The need for the Emergency Powers Act and the Special Criminal Court should also be examined and all practices in that regard should conform to the obligations of the State party under the Covenant.

- Egypt, ICCPR, A/48/40 vol. I (1993) 139 at paras. 690 and 706.

Paragraph 690

Certain powers granted to the President of the Republic under the Emergency Act are of concern, such as the ratification of judgments handed down by state security (emergency) courts, which may influence the independence of the judiciary, or the possibility of referring judicial cases to military courts. In this connection, it is considered necessary to have a clear indication of the human rights affected by the state of emergency and the extent to which they had been affected.

Paragraph 706

The long duration of the state of emergency in Egypt is of concern. Moreover, under the Emergency Act, the President of the Republic is entitled to refer cases to the State security courts, to ratify judgments and to pardon. The President's role as both part of the executive and part of the judiciary

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system is noted with concern, notwithstanding that in the matter of appeal it would act only to reduce sentences. On the other hand, military courts should not have the faculty to try cases which do not refer to offences committed by members of the armed forces in the course of their duties.

- Jordan, ICCPR, A/49/40 vol. I (1994) 41 at para. 231.

It is of concern that the State Security Court continues to exercise special jurisdiction and that, in accordance with articles 124 and 125 of the Constitution and under the new Defence Act, ordinary law can be suspended in emergency situations, contrary to the provisions of article 4 of the Covenant, which prohibit derogation from some categories of human rights. The lack of clarity with regard to accountability for acts performed under provisions of the Martial Law is also a matter of concern.

- Togo, ICCPR, A/49/40 vol. I (1994) 44 at paras. 249 and 253.

Paragraph 249

The internal disturbances in Togo during the period under review, which resulted in serious and systematic violations of the rights guaranteed by the Covenant, particularly articles 4, 6, 7, 9, 10 and 14, are noted with concern. Despite initiation of the democratic process, the rule of law has not yet been re-established in Togo and violations of human rights continue to occur. Consequently, a significant gap persists between constitutional and legal norms and their application in practice. In that context, the manifold obstacles faced by the National Human Rights Commission, which, unfortunately, is no longer operative and which is unable to contribute to the promotion of respect for human rights, is of concern.

Paragraph 253

The fact that derogations from some of the rights provided for in the Covenant through proclamation of curfews during the transitional period have not been notified to the Secretary-General in accordance with article 4 of the Covenant is regretted.

- Azerbaijan, ICCPR, A/49/40 vol. I (1994) 50 at para. 297.

It is noted that a state of emergency was declared in 1993. The lack of clarity in the law governing the conditions in which the state of emergency can be implemented is of concern.

- Russian Federation, ICCPR, A/50/40 vol. I (1995) 65 at para. 388.

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With reference to the specific situation in Chechnya, the Committee expresses concern that article 4 of the Covenant, which specifies the provisions that are non-derogable even in times of public emergency, has not been complied with. It is maintained that article 4 is applicable to the situation in Chechnya, where the use of weapons by combatants has led to the loss of life and deprivation of freedom of large numbers of persons, regardless of the fact that a state of emergency has not been formally declared.

- United Kingdom of Great Britain and Northern Ireland, ICCPR, A/50/40 vol. I (1995) 72 at paras. 429 and 430.

Paragraph 429

In the context of the elaboration of a peace settlement for Northern Ireland, further concrete steps should be taken so as to permit the early withdrawal of the derogation made pursuant to article 4 and to dismantle the apparatus of laws infringing civil liberties which were designed for periods of emergency. Specific efforts should be made to enhance in Northern Ireland confidence in the administration of justice by resolving outstanding cases and by putting in place transparently fair procedures for the independent investigation of complaints.

Paragraph 430

Given the significant decline in terrorist violence in the United Kingdom since the cease-fire came into effect in Northern Ireland and the peace process was initiated, the Government should keep under the closest review whether a situation of "public emergency" within the terms of article 4, paragraph 1, of the Covenant still exists and whether it would be appropriate for the United Kingdom to withdraw the notice of derogation which it issued on 17 May 1976, in accordance with article 4 of the Covenant.

- Sri Lanka, ICCPR, A/50/40 vol. I (1995) 75 at paras. 448 and 465.

Paragraph 448

It is of concern that the derogation of rights under the various emergency laws and regulations may not be in full compliance with the requirement of the provisions of article 4, paragraph 2, of the Covenant. It is of further concern that courts do not have the power to examine the legality of the declaration of emergency and of the different measures taken during the state of emergency. It is emphasized that the obligations assumed by Sri Lanka as a State party to various international instruments must be respected even in times of states of emergency.

Paragraph 465

The provisions of the Covenant should be fully respected in the areas where a state of emergency has

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been proclaimed. The State party should vigorously investigate all violations of human rights - both past and present - through an independent agency, punish those guilty of such acts and compensate the victims.

- United Kingdom of Great Britain and Northern Ireland (Hong Kong), ICCPR, A/51/40 vol. I (1996) 13 at paras. 60 and 61.

Paragraph 60

It is noted with concern that there are as yet no detailed regulations to cover emergencies and that under the Court of Final Appeal Ordinance, the jurisdiction of the Court will not extend to reviewing undefined "acts of state" by the executive. It is of concern that vague terminology such as "acts of state" may be interpreted so as to impose undue restrictions on the jurisdiction of the Court, including the application of any emergency laws that may be enacted in the future.

Paragraph 61

It is regretted that there is as yet no detailed legislation to cover public emergencies and that the provision in article 18 of the Basic Law on that subject does not appear to correspond to the provisions of article 4 of the Covenant.

- Nigeria, ICCPR, A/51/40 vol. I (1996) 37 at paras. 279, 280 and 295.

Paragraph 279

The continuation of Military Government and rule by Presidential decrees which suspends or overrides constitutional rights and which are not open to review by the courts is of concern.

Paragraph 280

The number of decrees suspending or restoring previous laws, with exceptions in some cases, is of concern. The result appears to be uncertainty as to which rights may be invoked and which are suspended.

Paragraph 295

Decree No. 107 of 1993 and any other measures which abrogate or suspend the application of the basic rights enshrined in the 1979 Constitution should be abrogated, so that the legal protection of these rights is restored in Nigeria. The State party should ensure that there is no such abrogation or derogation in the future, other than in strict compliance with article 4 in times of public emergency which threatens the life of the nation and which is officially proclaimed and communicated to the Secretary-General of the United Nations.

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- Gabon, ICCPR, A/52/40 vol. I (1997) 24 at para. 136.

The State party should urgently adopt and incorporate all relevant provisions of article 4 of the Covenant into the Constitution.

- Bolivia, ICCPR, A/52/40 vol. I (1997) 35 at para. 204.

There is no constitutional provision which prohibits the derogation of the relevant rights of the Covenant and the expression "*conmoción interior*" ("internal disturbance") is much too wide to fall within the scope of article 4 of the Covenant.

- Colombia, ICCPR, A/52/40 vol. I (1997) 44 at paras. 286, 288, 299 and 301.

Paragraph 286

The adoption of recent proposals for constitutional reform aiming at suppressing time-limits on states of emergency, eliminating the powers of the Constitutional Court to review the declaration of a state of emergency, conceding functions of the judicial police to military authorities, adding new circumstances under which a state of emergency may be declared, and reducing the powers of the Attorney-General's Office and the Public Prosecutor's Office to investigate human rights abuses and the conduct of members of the military, respectively would raise serious difficulties with regard to article 4 of the Covenant.

Paragraph 288

Of concern is that the resort to declarations of states of emergency is still frequent and seldom in conformity with article 4, paragraph 1, of the Covenant, which provides that such declaration may be made only when the life and existence of the nation is threatened. Despite constitutional and legal guarantees, the enjoyment of the rights provided for in article 4, paragraph 2, of the Covenant is not fully protected in states of emergency and under article 213 of the Constitution, and the Government may issue decrees suspending any laws considered to be incompatible with the state of disturbance.

Paragraph 299

The recently proposed constitutional reforms, referred to in paragraph 286, should be withdrawn.

Paragraph 301

Constitutional and legal provisions should ensure that compliance with article 4 of the Covenant can be monitored by the courts. The application of decrees adopted under article 213 of the Constitution and their non-application at the end of the emergency period should be closely monitored.

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- Lebanon, ICCPR, A/52/40 vol. I (1997) 53 at paras. 340 and 341.

Paragraph 340

The circumstances under which a state of emergency may be proclaimed and enforced in Lebanon are excessively broad and may be used to restrict the exercise of basic rights in an unjustifiable manner. The failure to notify the Secretary-General of the United Nations and through him other States parties to the Covenant of the proclamation of a state of emergency is deplored.

Paragraph 341

All future proclamations of states of emergency should be strictly limited in time and notified in scrupulous accordance with the requirements of article 4, paragraph 3, of the Covenant.

- India, ICCPR, A/52/40 vol. I (1997) 67 at para. 434.

It is regretted that some parts of the State party have been declared as disturbed areas over many years, and that, in these areas, the State party is in effect using emergency powers without resorting to article 4, paragraph 3, of the Covenant. It is recommended that the application of emergency powers be closely monitored so as to ensure its strict compliance with the Covenant.

- Iraq, ICCPR, A/53/40 vol. I (1998) 18 at paras. 93 and 98.

Paragraph 93

The sanctions and blockades which have caused suffering and death in Iraq, especially to children, are noted. The Government of Iraq is reminded that, whatever the difficulties, the State party remains responsible for implementing its obligations under the Covenant.

Paragraph 98

It is regretted that the temporary decrees adversely affecting the implementation of certain Covenant rights have recently been enacted by the Revolutionary Command Council. In addition, the Committee expresses its concern that certain provisions of these decrees, which the State party has sought to justify on the ground that they are provisional, are incompatible with certain non-derogable Covenant rights, such as the right to life, the prohibition of torture and the principle of non-retroactivity of criminal laws. Therefore, a thorough review of existing temporary laws and decrees should be undertaken with a view to ensuring their compliance with the provisions of the Covenant. In this regard, it is stressed that Covenant rights may be derogated from only in accordance with article 4 of the Covenant.

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- Uruguay, ICCPR, A/53/40 vol. I (1998) 38 at para. 241.

The broad grounds possible for declaring a state of emergency are of concern. The State party should restrict its provisions relating to the possibilities of declaring a state of emergency, and constitutionally specify those Covenant rights which are non-derogable.

- Israel, ICCPR, A/53/40 vol. I (1998) 45 at paras. 307 and 317.

Paragraph 307

The continued state of emergency prevailing in Israel, which has been in effect since independence, is of deep concern. The Government should review the necessity for the continued renewal of the state of emergency with a view to limiting as far as possible its scope and territorial applicability and the associated derogation of rights.

Paragraph 317

Despite the reduction in the number of persons held in administrative detention on security grounds, persons may still be held for long and apparently indefinite periods of time in custody without trial. Palestinians detained by Israeli military order in the occupied territories do not have the same rights to judicial review as persons detained in Israel under ordinary law. At least some of the persons kept in administrative detention for reasons of State security (and in particular some Lebanese) do not personally threaten State security but are kept as "bargaining chips" in order to promote negotiations with other parties on releasing detained Israeli soldiers or the bodies of deceased soldiers. This application of administrative detention is incompatible with articles 7 and 16 of the Covenant, neither of which allows for derogation in times of public emergency. A State party may not depart from the requirement of effective judicial review of detention. The application of detention should be brought within the strict requirements of the Covenant and effective judicial review should be made mandatory.

- Morocco, ICCPR, A/55/40 vol. I (2000) 24 at paras. 96 and 97.

Paragraph 96

Moroccan law does not specify or limit the derogations on rights which are permitted in times of public emergency and does not ensure compliance with article 4 of the Covenant.

Paragraph 97

The full compliance of the State party's law and practice with its obligations under article 4 should be ensured.

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- Kyrgyzstan, ICCPR, A/55/40 vol. I (2000) 57 at para. 399.

Concern is expressed that the Law on Public Emergency does not specifically restrict the power of derogation from certain specific Covenant provisions, as stipulated in article 4 of the Covenant.

- Ireland, ICCPR, A/55/40 vol. I (2000) 61 at para. 440.

The review of the Constitution should take fully into account the obligations of the State party under article 4 of the Covenant, particularly with regard to permitted derogations.

- Trinidad and Tobago, ICCPR, A/56/40 vol. I (2001) 31 at para. 72(9).

Concern is expressed about the fact that a thorough review of domestic law to ensure compliance with the Covenant norms has not yet been completed. The State party should align the limitations imposed by article 4 of the Covenant with domestic measures to be taken in cases of public emergency, so as to:

- (a) Comply with the categorization of an emergency as a threat to the "life of the nation";
- (b) Respect the prohibition on derogation contained in article 4.2; the State party should establish that measures permitted under emergency powers are so compatible; and
- (c) Ensure that any derogations from the State party's obligations under the Covenant do not exceed those strictly required by the exigencies of the situation.

- Gabon, ICCPR, A/56/40 vol. I (2001) 41 at para. 75(10).

The lack of safeguards and effective remedies available to individuals during a state of emergency is of concern. The State party is invited to clarify the rights of the Covenant affected by the various types of states of emergency. Effective remedies should be established in legislation that are applicable during a state of emergency.

- Peru, ICCPR, A/56/40 vol. I (2001) 45 at para. 76(4).

The fact that the state of emergency affecting areas of the national territory has been rescinded, is welcomed.

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- Croatia, ICCPR, A/56/40 vol. I (2001) 65 at para. 80(9).

Article 17 of the Constitution, dealing with a state of emergency, is not entirely compatible with the requirements of article 4 of the Covenant, in that the Constitutional grounds justifying a derogation are broader than the "threat to the life of the nation" mentioned in article 4; that measures of derogation are not restricted to those strictly required by the exigencies of the situation; and that non-derogable rights do not include the rights under article 8, paragraphs 1 and 2, article 11 and article 16 of the Covenant. Furthermore, article 101 of the Constitution, which allows the President to issue decrees in 'the event of a state of war or an immediate threat to the independence and unity of the State', has been employed so as to derogate *de facto* from Covenant rights in a manner that would seem to circumvent the restrictions in article 17 of the Constitution. The State party should ensure that its Constitutional provisions on a state of emergency are compatible with article 4 of the Covenant and that in practice no derogation from rights should be permissible unless the conditions of article 4 have been met.

- Syrian Arab Republic, ICCPR, A/56/40 vol. I (2001) 70 at paras. 81(6) and 81(7).

Paragraph 81(6)

The fact that Legislative Decree No. 51 of 9 March 1963 declaring a state of emergency has remained in force ever since that date, placing the territory of the Syrian Arab Republic under a quasi-permanent state of emergency, thereby jeopardizing the guarantees of article 4 of the Covenant, is of concern. It is regretted that the delegation did not provide details of the application of the state of emergency in actual situations and cases. While noting the information given by the State party's delegation that the state of emergency is rarely put into effect, it is recommended that it be formally lifted as soon as possible.

Paragraph 81(7)

The information given by the State party concerning the conditions for proclaiming a state of emergency is still not sufficiently precise. It remains of concern that some of the provisions of the 22 December 1962 Legislative Decree are too vague and imprecise and do not appear to be compatible with the requirements of article 4 of the Covenant, and that the legislation does not provide remedies against measures limiting citizens' fundamental rights and freedoms. The State party should take appropriate steps to bring its state of emergency legislation fully into line with the requirements of article 4 of the Covenant.

- The Netherlands (Antilles), ICCPR, A/56/40 vol. I (2001) 76 at para. 82(16).

The breadth of article 137 of the Constitution, which regulates the imposition of a state of emergency without taking into account the limitations imposed by article 4 of the Covenant for exceptional

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circumstances endangering the life of the nation, is of concern. The State party should ensure that its rules on states of emergency are in full conformity with all the requirements of the Covenant.

- Guatemala, ICCPR, A/56/40 vol. I (2001) 93 at para. 85(11).

Concern is expressed about the wide variety of possible states of emergency listed in the Constitution. The possibility of suspending article 5 of the Constitution during states of exception does not appear to be compatible with the Covenant, since it suspends in general terms the right of the individual to do what the law does not prohibit and not to be compelled to obey illegal orders. Likewise, concern is expressed that the state of exception declared in June 2001 has not been duly notified to the other States parties through the intermediary of the Secretary-General of the United Nations. The State party should ensure that its constitutional provisions for emergency situations are compatible with article 4 of the Covenant. It should also comply with the obligation to notify the other States parties through the intermediary of the Secretary-General of the United Nations in all cases when an emergency situation is declared and to inform them of the provisions from which it has derogated and of the reasons for the derogation.

ICESCR

- Egypt, ICESCR, E/2001/22 (2000) 38 at para. 152.

The Committee is of the view that the state of emergency that has been in place in Egypt since 1981 limits the scope of implementation of constitutional guarantees for economic, social and cultural rights.

- Congo, ICESCR, E/2001/22 (2000) 43 at para. 201.

Deep concern is expressed about the abrogation of the Constitution in October 1997 by the Government of President Denis Sassou-Ngueso, resulting in a legal vacuum which has been detrimental to the enjoyment of economic, social and cultural rights by the citizens of the Republic of the Congo. The "Fundamental Act", which was adopted to replace the Constitution, cannot guarantee the enjoyment of these rights.

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CAT

- Panama, CAT, A/48/44 (1993) 52 at para. 339.

The defence of superior orders in the perpetration of an act of torture does not comply with article 2, paragraph 3, of the Convention.

See also:

- Uruguay, CAT, A/52/44 (1997) 16 at para. 91.

- Egypt, CAT, A/49/44 (1994) 14 at paras. 85 and 89.

Paragraph 85

The state of emergency proclaimed in Egypt without interruption since 1981 is one of the main obstacles to the full application of the provisions of the Convention.

Paragraph 89

The measures taken or to be taken by the State party for the purpose of combating terrorism must never result in non-compliance with the Convention or in any case justify torture. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political stability, an order from a superior officer or a public authority or any other public emergency, may be invoked as a justification of torture.

- Israel, CAT, A/49/44 (1994) 24 at para. 167.

The defences of "superior orders" and "necessity" are in clear breach of obligations under article 2 of the Convention.

- United Kingdom of Great Britain and Northern Ireland, CAT, A/51/44 (1996) 12 at para. 64.

The Committee is concerned about:

The practice of vigorous interrogation of detainees under the emergency powers, which may sometimes breach the Convention;

The practice of the army in Northern Ireland of dispersing, with plastic bullets, what have been

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described by non-governmental organizations as peaceful demonstrations;

The failure to provide for counsel to be present during interrogation in Northern Ireland for terrorist-related offences.

- Armenia, CAT, A/51/44 (1996) 17 at paras. 90 and 97.

Paragraph 90

It is emphasized that the difficult situation of the State party can never provide a justification for failure to comply with its obligations under the Convention.

Paragraph 97

Orders received from a superior implying the perpetration of an act of torture are illegal and should be sanctioned under criminal law. In addition, they cannot be considered by the person receiving such orders as justification for having committed torture. This should be clearly incorporated into domestic law.

- Senegal, CAT, A/51/44 (1996) 19 at paras. 111 and 114.

Paragraph 111

While taking into account the particular problem of Casamance, which is threatening the integrity and security of the State, a democracy must, whatever the circumstances, ensure that only legitimate means are used to protect the security of the State, peace and stability.

Paragraph 114

The State party should consider introducing explicitly in national legislation the following provisions:

A blanket prohibition of any act of torture, with the stipulation that no exceptional circumstance may be invoked to justify torture;

An express provision stipulating that an order from a superior officer or from a public authority may not be invoked to justify torture.

- Uruguay, CAT, A/52/44 (1997) 16 at para. 93.

Legal reforms must be introduced to bring internal legislation into conformity with the provisions of the Convention, in particular as regards the definition of torture as a specific offence and the elimination of obedience to a superior as justification for exculpation from the crime of torture.

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- Poland, CAT, A/52/44 (1997) 18 at para. 99.

Shortcomings in the legislation in force to combat torture are of concern. Domestic legislation does not contain any definition of torture, as required in articles 1 and 4 of the Convention. Moreover, there is no way to determine whether, under existing legislation, obedience to a legitimate hierarchical authority may be invoked in justification of an act of torture.

- Namibia, CAT, A/52/44 (1997) 35 at paras. 234 and 241.

Paragraph 234

It is emphasized that no exceptional circumstances can ever provide a justification for failure to comply with certain terms of the Convention.

Paragraph 241

The State party should enact a law defining the crime of torture in terms of article 1 of the Convention and should legally integrate this definition into the substantive and procedural criminal law system, taking especially into account: (a) the need to define torture as a specific offence committed by or at the instigation of or with the consent of a public official (*delictum proprium*) with the special intent to extract a confession or other information, to arbitrarily punish, to intimidate, to coerce or to discriminate; (b) the need to legislate for complicity in torture and attempts to commit torture as equally punishable; (c) the need to exclude the legal applicability of all justification in cases of torture; (d) the need to exclude procedurally all evidence obtained by torture in criminal and all other proceedings except in proceedings against the perpetrator of torture himself; and (e) the need to legislate for and enforce prompt and impartial investigation into any substantiated allegations of torture.

- Peru, CAT, A/53/44 (1998) 21 at para. 202.

The maintenance of emergency legislation hardly conducive to respect for human rights in general and the elimination of torture in particular is of concern.

- Israel, CAT, A/53/44 (1998) 23 at paras. 237 and 238.

Paragraph 237

A state of insecurity cannot justify torture.

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Paragraph 238

The following is of concern:

The continued use of the “Landau rules” of interrogation permitting physical pressure by the General Security Services, based upon domestic judicial adoption of the justification of necessity, contrary to article 2, paragraph 2, of the Convention;

Resort to administrative detention in the occupied territories for inordinately lengthy periods and for reasons that do not bear on the risk posed by releasing some detainees.

- Yugoslavia, CAT, A/54/44 (1999) 6 at para. 42.

Unrest and ethnic friction in the province of Kosovo is taken into account. However, it is emphasized that no exceptional circumstances can ever provide a justification for failure to comply with the terms of the Convention.

- Croatia, CAT, A/54/44 (1999) 8 at para. 66.

It is noted that the Amnesty Act is applicable to a number of offences characterized as acts of torture or other cruel, inhuman or degrading treatment or punishment within the meaning of the Convention.

- United Kingdom of Great Britain and Northern Ireland, CAT, A/54/44 (1999) 9 at para. 75.

Factors and difficulties impeding the application of the Convention include the continuation of the state of emergency in Northern Ireland. No exceptional circumstances can ever provide a justification for failure to comply with the Convention.

See also:

- Tunisia, CAT, A/54/44 (1999) 11 at para. 94.

- Mauritius, CAT, A/54/44 (1999) 15 at para. 123.

The State party should clarify, through appropriate legislation, that superior orders can never be invoked as a justification of an act of torture.

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- Venezuela, CAT, A/54/44 (1999) 16 at paras. 138 and 148.

Paragraph 138

Provisions exempting from criminal responsibility persons who act on the basis of due obedience to a superior are incompatible with article 2, paragraph 3 and article 47 of the Convention.

Paragraph 148

The State party should repeal rules providing for exemption from criminal responsibility on the grounds that the person concerned is acting in due obedience to a superior. In practice these rules leave open to judicial interpretation provisions which are incompatible with article 3, paragraph 2, of the Convention.

- Bulgaria, CAT, A/54/44 (1999) 18 at para. 156.

Difficulties such as economic problems could never justify breaches of articles 1, 2 and 16 of the Convention.

- Libyan Arab Jamahiriya, CAT, A/54/44 (1999) 20 at para. 181.

The effect of the embargo on the State party causes severe difficulties in its economic and social life. However, such difficulties may not be invoked as justification of breaches of the provisions of the Convention, especially articles 1, 2 and 16.

- Egypt, CAT, A/54/44 (1999) 22 at para. 206.

A terrorist threat may not be invoked as justification for breaches of the provisions of the Convention, especially articles 1, 2 and 16.

- Peru, CAT, A/55/44 (2000) 13 at para. 59.

Of concern is the maintenance in some parts of the country of emergency laws which abrogate ordinary human rights protection.

- Slovenia, CAT, A/55/44 (2000) 34 at para. 206.

The Aliens Act as a general rule precludes the expulsion of an alien to a country where he or she

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would be in danger of being subjected to torture. However, it is of concern that article 51, paragraph 2, of the Act, which allows for the derogation from the general rule in cases where a person constitutes a threat to public security, does not respect the State party's obligations under article 3 of the Convention.

- Cameroon, CAT, A/56/44 (2001) 28 at para. 65.

It is of concern that security considerations seem to be given precedence over all other matters, including the prohibition of torture.

CRC

- Indonesia (preliminary), CRC, CRC/C/20 (1993) 13 at para. 44.

Concern is expressed over the fact that the rights contained in article 14 of the Convention are not fully protected, in spite of the fact that they are non-derogable.