

## **DEROGATIONS**

### **IV. CONCLUDING OBSERVATIONS, CONTINUED**

#### **CERD**

- Botswana, CERD, A/57/18 (2002) 53 at para. 300.

300. The Committee expresses concern that sections 3 and 15 of the Constitution do not fully respond to the requirements of article 1 of the Convention. In particular, section 15 permits many derogations from the prohibition of racial discrimination, for instance on the basis of laws, such as the Tribal Territories Act, which were in force before the coming into force of the Constitution. The Committee recommends that the State party review these provisions.

- Luxembourg, CERD, A/60/18 (2005) 40 at para. 196.

196. The Committee notes with satisfaction the efforts made by the State party to combat offences motivated by racial hatred. It also welcomes the bill reversing the burden of proof in civil cases in favour of victims of racial discrimination. However, it notes that prosecutions in this area have been few in number.

The Committee encourages the State party to ensure that prosecutors and magistrates do prosecute racist offences under the relevant criminal laws, and apply the requisite criminal penalties. It also suggests that racist motives should be defined as a general aggravating circumstance for offences, and that derogations to the ban on discrimination such as those currently allowed under article 457-5 of the Criminal Code should be limited...

#### **ICCPR**

- Ukraine, ICCPR, A/57/40 vol. I (2002) 32 at para. 74(11).

(11) The Committee expresses concern that under the state of emergency, as envisaged in article 64 of the Constitution of Ukraine, the right to freedom of thought under article 34 of the Constitution and the right to freedom of religion could be restricted in a manner incompatible with the provisions of article 4 of the Covenant.

The State party must ensure that its framework for emergency powers during a state of emergency is compatible with article 4 of the Covenant, taking into account the Committee's General Comment No. 29.

## DEROGATIONS

- United Kingdom of Great Britain and Northern Ireland, ICCPR, A/57/40 vol. I (2002) 36 at paras. 75(4) and 75(6).

(4) The Committee welcomes the conclusion of the Belfast Agreement in April 1998 and the changes adopted in Northern Ireland, based upon the agreement, as the State party and other signatories have sought to move away from the extraordinary measures in place in that jurisdiction towards higher promotion of respect for human rights and fundamental freedoms. In particular, the Committee commends the establishment of an independent Police Ombudsman with jurisdiction over complaints in regard to all uses of force on the part of the police and with significant powers of investigation and enforcement, as well as the creation of a Human Rights Commission in Northern Ireland. Consonant with these developments, the Committee also welcomes the State party's recent withdrawal of its notice of derogation relating to article 9, paragraph 3, of the Covenant.

...

(6) The Committee notes with concern that the State party, in seeking *inter alia* to give effect to its obligations to combat terrorist activities pursuant to Security Council resolution 1373 (2001), is considering the adoption of legislative measures which may have potentially far-reaching effects on rights guaranteed in the Covenant and which, in the State party's view, may require derogations from human rights obligations.

The State party should ensure that any measures it undertakes in this regard are in full compliance with the provisions of the Covenant, including, when applicable, the provisions on derogation contained in article 4 of the Covenant.

- Switzerland, ICCPR, A/57/40 vol. I (2002) 44 at para. 76(7).

(7) The Committee is concerned that urgent legislation "that has no constitutional basis", permitted under article 165 of the Federal Constitution may lead to derogation from Covenant rights, without the requirements of article 4 of the Covenant being met.

The State party should ensure that its framework for urgent legislation ensures compliance with its obligations under article 4 of the Covenant.

- Azerbaijan, ICCPR, A/57/40 vol. I (2002) 47 at para. 77(8).

(8) While commending the constitutional provision stipulating that in a state of emergency the restriction of citizens' rights and liberties is subject to the State's international obligations (art. 71 (3)), the Committee is concerned that the notifications submitted by the State party on resorting to article 4 of the Covenant have been quite broad and vague.

## DEROGATIONS

The State party should ensure that the draft law on states of emergency, as well as any future application of that law, are compatible with article 4 of the Covenant and that in practice no derogation from rights should be made unless the conditions of article 4 have been met.

- Yemen, ICCPR, A/57/40 vol. I (2002) 72 at para. 83(14).

(14) The Committee notes the lack of clarity in the legal provisions permitting the declaration of a state of emergency and derogation from the obligations established in the Covenant (article 4 of the Covenant).

The State party should see to it that its legislation conforms to the provisions of the Covenant so as to ensure in particular that there are no breaches of non-derogable rights.

- Republic of Moldova, ICCPR, A/57/40 vol. I (2002) 76 at para. 84(8).

(8) The Committee expresses its concern that, in response to members' questions, the State party indicated that no study had been undertaken to ensure that legislative and other measures in pursuance of Security Council resolution 1373 (2001) were in compliance with its obligations under the Covenant.

The State party is under an obligation to ensure that counter-terrorism measures taken under Security Council resolution 1373 (2001) are in full conformity with the Covenant.

- Egypt, ICCPR, A/58/40 vol. I (2003) 31 at para. 77(6).

(6) The Committee is disturbed by the fact that the state of emergency proclaimed by Egypt in 1981 is still in effect, meaning that the State party has been in a semi-permanent state of emergency ever since.

The State party should consider reviewing the need to maintain the state of emergency.

- Estonia, ICCPR, A/58/40 vol. I (2003) 41 at para. 79(8).

(8) The Committee is concerned that the relatively broad definition of the crime of terrorism and of membership of a terrorist group under the State party's Criminal Code may have adverse consequences for the protection of rights under article 15 of the Covenant, a provision which, significantly, is non-derogable under article 4, paragraph 2.

## DEROGATIONS

The State party is requested to ensure that counter-terrorism measures, whether taken in connection with Security Council resolution 1373 (2001) or otherwise, are in full conformity.

- Israel, ICCPR, A/58/40 vol. I (2003) 64 at paras. 85(11) and 85(12).

(11) The Committee has noted the State party's position that the Covenant does not apply beyond its own territory, notably in the West Bank and in Gaza, especially as long as there is a situation of armed conflict in these areas. The Committee reiterates the view, previously spelled out in paragraph 10 of its concluding observations on Israel's initial report (CCPR/C/79/Add.93 of 18 August 1998), that the applicability of the regime of international humanitarian law during an armed conflict does not preclude the application of the Covenant, including article 4 which covers situations of public emergency which threaten the life of the nation. Nor does the applicability of the regime of international humanitarian law preclude accountability of States parties under article 2, paragraph 1, of the Covenant for the actions of their authorities outside their own territories, including in occupied territories. The Committee therefore reiterates that, in the current circumstances, the provisions of the Covenant apply to the benefit of the population of the Occupied Territories, for all conduct by the State party's authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant and fall within the ambit of State responsibility of Israel under the principles of public international law.

The State party should reconsider its position...

(12) While welcoming the State party's decision to review the need to maintain the declared state of emergency and to prolong it on a yearly rather than an indefinite basis, the Committee remains concerned about the sweeping nature of measures during the state of emergency that appear to derogate from Covenant provisions other than article 9, derogation from which was notified by the State party upon ratification. In the Committee's opinion, these derogations extend beyond what would be permissible under those provisions of the Covenant which allow for the limitation of rights (e.g. arts. 12, para. 3, 19, para. 3, and 22...). As to measures derogating from article 9 itself, the Committee is concerned about the frequent use of various forms of administrative detention, particularly for Palestinians from the Occupied Territories, entailing restrictions on access to counsel and on the disclosure of full reasons for the detention. These features limit the effectiveness of judicial review, thus endangering the protection against torture and other inhuman treatment prohibited under article 7 and derogating from article 9 more extensively than what in the Committee's view is permissible pursuant to article 4. In this regard, the Committee refers to its earlier concluding observations on Israel and to its general comment No. 29.

The State party should complete as soon as possible the review initiated by the Ministry of

## DEROGATIONS

Justice of legislation governing states of emergency. In this regard, and pending the adoption of appropriate legislation, the State party should review the modalities governing the renewal of the state of emergency and specify the provisions of the Covenant from which it seeks to derogate, to the extent strictly required by the exigencies of the situation (art. 4).

- Sri Lanka, ICCPR, A/59/40 vol. I (2003) 30 at paras. 66(8) and 66(13).

(8) The Committee is concerned that article 15 of the Constitution permits restrictions on the exercise of the fundamental rights set out in chapter III (other than those set out in articles 10, 11, 13.3 and 13.4) which go beyond what is permissible under the provisions of the Covenant, and in particular under article 4, paragraph 1, of the Covenant. It is further concerned that article 15 of the Constitution permits derogation from article 15 of the Covenant, which is non-derogable, by making it possible to impose restrictions on the freedom from retroactive punishment (article 13, paragraph 6, of the Constitution).

The State party should bring the provisions of chapter III of the Constitution into conformity with articles 4 and 15 of the Covenant.

...

(13) The Committee is concerned that the Prevention of Terrorism Act (PTA) remains in force and that several of its provisions are incompatible with the Covenant (arts. 4, 9 and 14). The Committee welcomes the decision of the Government, consistent with the Ceasefire Agreement of February 2002, not to apply the provisions of the PTA and to ensure that normal procedures for arrest, detention and investigation prescribed by the Criminal Procedure Code are followed. The Committee is also concerned that the continued existence of the PTA allows arrest without a warrant and permits detention for an initial period of 72 hours without the person being produced before the court (sect. 7), and thereafter for up to 18 months on the basis of an administrative order issued by the Minister of Defence (sect. 9). There is no legal obligation on the State to inform the detainee of the reasons for the arrest; moreover, the lawfulness of a detention order issued by the Minister of Defense cannot be challenged in court. The PTA also eliminates the power of the judge to order bail or impose a suspended sentence, and places the burden of proof on the accused that a confession was obtained under duress. The Committee is concerned that such provisions, incompatible with the Covenant, still remain legally enforceable, and that it is envisaged that they might also be incorporated into the Prevention of Organized Crimes Bill 2003.

The State party is urged to ensure that all legislation and other measures...taken to fight terrorism are compatible with the provisions of the Covenant. The provisions of the Prevention of Terrorism Act designed to fight terrorism should not be incorporated into the draft Prevention of Organized Crime Bill to the extent that they are incompatible with the Covenant.

## DEROGATIONS

- Colombia, ICCPR, A/59/40 vol. I (2004) 35 at para. 67(10).

(10) The Committee expresses its concern with regard to draft legislative act No. 10 of 2002, which seeks to amend certain provisions of the Constitution dealing with the administration of justice. This draft legislation proposes modifications to *amparo* proceedings, rendering them inadmissible for reviews of certain judicial decisions. Furthermore, the draft proposes to eliminate constitutional controls on the declaration of states of emergency.

The State party should take into consideration the fact that some of the provisions of this draft legislation would be in clear contradiction with provisions of the Covenant, in particular articles 2, 4 and 14. If it were to be adopted, such fundamental remedies as *amparo* proceedings could be jeopardized.

- Germany, ICCPR, A/59/40 vol. I (2004) 39 at paras. 68(10) and 68(20).

(10) The Committee regrets that Germany maintains its reservations, in particular regarding article 15, paragraph 1, of the Covenant, a non-derogable right, and those made when the Optional Protocol was ratified by the State party which partially limits the competence of the Committee with respect to article 26 of the Covenant.

The State party should consider withdrawing its reservations.

...

(20) While it takes note of the firm stance of Germany in favour of respect for human rights within the framework of the anti-terrorism measures it adopted subsequent to the events of 11 September 2001, the Committee expresses its concern regarding the effect of those measures on the situation of human rights in Germany, in particular for certain persons of foreign extraction, because of an atmosphere of latent suspicion towards them (arts. 17, 19, 22 and 26).

(a) The State party should ensure that anti-terrorism measures are in full conformity with the Covenant. The State party is requested to ensure that the concern over terrorism is not a source of abuse, in particular for persons of foreign extraction, including asylum-seekers.

...

- Suriname, ICCPR, A/59/40 vol. I (2004) 43 at para. 69(9).

(9) The Committee regrets that the State party has not provided the information requested on the domestic application of article 4 of the Covenant and whether national legislation further spells out the modalities under which article 23 of the Constitution may be invoked.

## DEROGATIONS

The Committee has no information as to which factors are considered “a threat to the life of the nation” justifying derogation from particular rights, or which factors justify continued derogation.

The State party should ensure that the implementation of article 23 of the Constitution is in conformity with article 4 of the Covenant. Instances of detention during a public emergency should be strictly limited.

- Lithuania, ICCPR, A/59/40 vol. I (2004) 52 at para. 71(7).

(7) The Committee is concerned about the formulation of the draft law on the legal status of foreigners, which, according to the State party’s third report to the Counter-Terrorism Committee of the Security Council, may allow for the removal of foreigners who are regarded as a threat to State security, despite the fact that they may be exposed to a violation of their rights under article 7 in the country of return. The Committee is also concerned that in cases of alleged threat to the State, the implementation of the decision to remove a foreigner may not be suspended prior to consideration of an appeal, which may have the effect of denying that individual a remedy under article 2.

The State party is requested to ensure that counter-terrorism measures, whether taken in connection with Security Council resolution 1373 (2001) or otherwise, are in full conformity with the Covenant. In particular, it should ensure absolute protection for all individuals, without exception, against *refoulement* to countries where they risk violation of their rights under article 7.

- Liechtenstein, ICCPR, A/59/40 vol. I (2004) 61 at para. 73(6).

(6) While noting the constitutional amendments approved in 2003 whose provisions aim at clarifying the conditions governing the power of the Princely House to derogate from obligations under the Covenant, the Committee is concerned that these provisions do not conform to the requirements of article 4 of the Covenant, including the lack of a requirement to proclaim a state of emergency (art. 4).

The State party should bring the provisions governing the powers of derogation into conformity with all the requirements set out in article 4 of the Covenant.

- Serbia and Montenegro, ICCPR, A/59/40 vol. I (2004) 68 at paras. 75(13) and 75(19).

## DEROGATIONS

(13) The Committee is concerned at the measures taken under the state of emergency, which included substantial derogations from the State party's human rights obligations under the Covenant. The Committee notes the ruling of the Constitutional Court of Serbia of 8 July 2004, declaring unconstitutional some of the measures derogating from the Covenant taken by the Republic of Serbia under the state of emergency, and steps taken to punish violations that have occurred during this period and to provide compensation to all victims. Nevertheless, the Committee regrets that several concerns remain, particularly with regard to allegations of torture of detainees in the context of "Operation Sabre" (arts. 4, 7, 9, 14, 19).

The State party should take immediate steps to investigate all allegations of torture during "Operation Sabre" and take all necessary steps to ensure adequate mechanisms to prevent such violations and any abuse of emergency powers in future. The Committee draws the attention of the State party to its general comment No. 29 for the assessment of the scope of emergency powers.

...

(19) The Committee takes note of efforts undertaken by Serbia to strengthen the independence of the judiciary. However, it is concerned at alleged cases of executive pressure on the judiciary in Serbia, and measures regarding the judiciary undertaken during the state of emergency (art. 14).

The State party should ensure strict observance of the independence of the judiciary.

- Albania, ICCPR, A/60/40 vol. I (2004) 25 at para. 82(9).

(9) The Committee notes with concern the State party interpretation of possible derogations from articles 9, paragraph 4, and 10, paragraph 1, of the Covenant during a state of emergency (art. 4).

In the light of the Committee general comment No. 29, the State party should ensure that, in order to protect non-derogable rights, the right to take proceedings before a court, in order that the court may decide without delay on the lawfulness of a detention, as well as the right of all persons deprived of their liberty be treated with humanity and with respect for the inherent dignity of the human person, must not be reduced by a derogation from Covenant provisions during the state of emergency.



## DEROGATIONS

- Morocco, ICCPR, A/60/40 vol. I (2004) 35 at para. 84(10).

(10) The Committee is concerned that Moroccan legislation on states of emergency is still vague, does not specify or place limits on the derogations that may be made from the provisions of the Covenant in emergencies and does not guarantee the implementation of article 4 of the Covenant.

The State party is invited to review the relevant provisions of its legislation in order to bring them fully into line with article 4 of the Covenant.

- Kenya, ICCPR, A/60/40 vol. I (2005) 44 at para. 86(5).

(5) The Committee appreciates the State party's circumspection in legislating on the pending Suppression of Terrorism Bill, a draft of which was made available for comments to civil society stakeholders, and its intention to balance security concerns with human rights concerns in the adoption of this bill. In this context, the State party is invited to take into account pertinent considerations set out in the Committee's general comment No. 29 on derogations during states of emergency and general comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant.

- Mauritius, ICCPR, A/60/40 vol. I (2005) 52 at para. 88(12).

(12) While the Committee understands the security obligations required in the fight against terrorism, it believes that the impact of the Prevention of Terrorism Act 2002 may be all the more serious as the notion of terrorism is vague and lends itself to broad interpretations. While noting that no arrests have been made under the counter-terrorism Act and despite certain guarantees undertaken by the State party such as video recordings of interrogations and of suspects in detention, the Committee expresses concern that the provisions of that Act denying bail and access to counsel for 36 hours are at variance with the provisions of the Covenant (Covenant, arts. 7 and 9).

The State party should ensure that its legislation adopted in the context of the fight against terrorism is fully consistent with all the provisions of the Covenant, including article 4, taking into account general comment No. 29.

- Uzbekistan, ICCPR, A/60/40 vol. I (2005) 56 at para. 89(13).

(13) The Committee is concerned that the provisions of the Constitution on states of emergency and related laws do not explicitly specify, or place limits, on the derogations

## DEROGATIONS

from the rights protected by the Covenant that may be made in emergencies, and do not guarantee the full implementation of article 4 of the Covenant (Covenant, art. 4).

The State party should review the relevant provisions of its domestic law and bring them into line with article 4 of the Covenant.

- Yemen, ICCPR, A/60/40 vol. I (2005) 65 at para. 91(13).

(13) The Committee notes the statement by the State party that although its effort to combat terrorism has had an impact on the enjoyment of civil and political rights in Yemen, this has not resulted in systematic and continuing violations. The Committee remains concerned, however, about reported grave violations of articles 6, 7, 9 and 14 of the Covenant committed in the name of the anti-terrorism campaign. It notes with concern reported cases of extrajudicial killings, enforced disappearances, arbitrary arrests, indefinite detention without charge or trial, torture and ill-treatment, and deportation of non-citizens to countries where they are in danger of being subjected to torture or ill-treatment.

The State party should ensure that the utmost consideration is given to the principle of proportionality in all its responses to terrorist threats and activities. It should bear in mind the non-derogable character of specific rights under the Covenant, in particular articles 6 and 7, which must be respected in all circumstances...

- Syrian Arab Republic, ICCPR, A/60/40 vol. I (2005) 78 at paras. 94(6) and 94(12).

(6) The Committee notes with concern that the state of emergency declared some 40 years ago is still in force and provides for many derogations in law or practice from the rights guaranteed under articles 9, 14, 19 and 22, among others, of the Covenant, without any convincing explanations being given as to the relevance of these derogations to the conflict with Israel and the necessity for these derogations to meet the exigencies of the situation claimed to have been created by the conflict. The Committee has further noted that the State party has not fulfilled its obligation to notify other States parties of the derogations it has made and of the reasons for these derogations, as required by article 4 (3) of the Covenant. In this regard, the Committee has noted the statement of the delegation that the Baath Party Congress in June 2005 had resolved that emergency provisions would be limited to activities which threaten State security. The Committee, however, remains concerned at the absence of any indication that the resolution has become law (art. 4).

The State party, guided by the Committee's general comment No. 29 (2001) on derogations during a state of emergency (article 4 of the Covenant), should ensure firstly that the measures it has taken, in law and practice, to derogate from Covenant rights are strictly

## DEROGATIONS

required by the exigencies of the situation; secondly, that the rights provided for in article 4 (2) of the Covenant are made non-derogable in law and practice; and thirdly, that States parties are duly informed, as required by article 4 (3) of the Covenant, of the provisions from which it has derogated and the reasons therefor, and of the termination of any particular derogation.

...

(12) The Committee is concerned at the obstacles imposed on the registration and free operation of non-governmental human rights organizations in the State party and the intimidation, harassment and arrest of human rights defenders. It also continues to be deeply concerned about the continuing detention of several human rights defenders and the refusal to register certain human rights organizations (arts. 9, 14, 19, 21 and 22).

The State party should immediately release all persons detained because of their activities in the field of human rights and end all harassment and intimidation of human rights defenders. Furthermore, the State party should take urgent steps to amend all legislation that restricts the activities of these organizations, in particular state of emergency legislation which must not be used as an excuse to suppress activities aimed at the promotion and protection of human rights. The State party should ensure that its law and practice allow these organizations to operate freely.

- Thailand, ICCPR, A/60/40 vol. I (2005) 83 at paras. 95(13) and 95(18).

(13) The Committee is concerned that the Emergency Decree on Government Administration in States of Emergency which came into immediate effect on 16 July 2005, and on the basis of which a state of emergency was declared in three southern provinces, does not explicitly specify, or place sufficient limits, on the derogations from the rights protected by the Covenant that may be made in emergencies and does not guarantee full implementation of article 4 of the Covenant. It is especially concerned that the Decree provides for officials enforcing the state of emergency to be exempt from legal and disciplinary actions, thus exacerbating the problem of impunity. Detention without external safeguards beyond 48 hours should be prohibited (art. 4).

The State party should ensure that all the requirements of article 4 of the Covenant are complied with in its law and practice, including the prohibition of derogation from the rights listed in its paragraph 2. In this regard, the Committee draws the attention of the State party to its general comment No. 29 and the obligations imposed upon the State party to inform other States parties, as required by its paragraph 3.

...

(18) The Committee is concerned about reports of intimidation and harassment against local and foreign journalists and media personnel as well as of defamation suits against them, originating at the highest political level. It is also concerned at the impact of the Emergency

## DEROGATIONS

Decree on Government Administration in States of Emergency which imposes serious restrictions on media freedom (art. 19, para. 3).

The State party should take adequate measures to prevent further erosion of freedom of expression, in particular, threats to and harassment of media personnel and journalists, and ensure that such cases are investigated promptly and that suitable action is taken against those responsible, regardless of rank or status.

### ICESCR

- Israel, ICESCR, E/2004/22 (2003) 42 at paras. 258 and 274.

258. The Committee...reiterates its concern about the State party's position that the Covenant does not apply to areas that are not subject to its sovereign territory and jurisdiction, and that the Covenant is not applicable to populations other than the Israelis in the occupied territories. The Committee further reiterates its regret at the State party's refusal to report on the occupied territories.<sup>14/</sup> In addition, the Committee is deeply concerned at the insistence of the State party that, given the circumstances in the occupied territories, the law of armed conflict and humanitarian law are considered as the only mode whereby protection may be ensured for all involved, and that this matter is considered to fall outside the sphere of the Committee's responsibility.

...

274. The Committee recognizes that the State party has serious security concerns, which must be balanced with its efforts to comply with its obligations under international human rights law. However, the Committee reaffirms its view that the State party's obligations under the Covenant apply to all territories and populations under its effective control. The Committee repeats its position that, even in a situation of armed conflict, fundamental human rights must be respected and that basic economic, social and cultural rights, as part of the minimum standards of human rights, are guaranteed under customary international law and are also prescribed by international humanitarian law. Moreover, the applicability of rules of humanitarian law does not by itself impede the application of the Covenant or the accountability of the State under article 2, paragraph 1, for the actions of its authorities...

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### Notes

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<sup>14/</sup> [Official Records of the Economic and Social Council], 1999, Supplement No. 2 (E/1999/22-E/C.12/1998/26), chap. IV, para. 237.

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- Italy, ICESCR, E/2005/22 (2004) 54 at paras. 429 and 449.

## **DEROGATIONS**

429. The Committee notes with concern the explanation given by the State party in connection with case law (judgements No. 6030 of 29 May 1993 and No. 4570 of 17 May 1996) according to which the principle of equal pay for work of equal value cannot be fully implemented in the Italian legal order.

...

449. The Committee reaffirms that the principle of equal pay for work of equal value, as enshrined in article 7 (a) of the Covenant must be implemented immediately and that the State party cannot derogate from this article without being in breach of its Covenant obligations.

### **CEDAW**

- Israel, CEDAW, A/60/38 part II (2005) 129 at paras. 253 and 254.

253. The Committee is concerned about the State party's temporary suspension order of May 2002, enacted into law as the Nationality and Entry into Israel Law (Temporary Order) of 31 July 2003, which suspends the possibility, subject to limited and subjective exceptions, of family reunification, especially in cases of marriages between an Israeli citizen and a person residing in the Occupied Territories. The Committee notes with concern that the suspension order, which has been extended until the end of August 2005, has already adversely affected the marriages and family life of Israeli Arab women citizens and Palestinian women from the Occupied Territories.

254. The Committee calls on the State party to balance its security interests with the human rights of persons affected by such policies, and to reconsider them with a view to facilitating family reunification of all citizens and permanent residents. It calls on the State party to bring the Nationality and Entry into Israel law (Temporary Order) of 31 July 2003 into line with articles 9 and 16 of the Convention...

### **CAT**

- Russian Federation, CAT, A/57/44 (2002) 42 at para. 90.

90. The Committee appreciates the frank explanations provided by the delegation regarding the difficulties still faced by the State party in overcoming the inheritance of a system characterized by "arbitrariness and impunity" and in building and strengthening democratic institutions and the rule of law. It notes that these challenges are compounded by "acts of terrorism" and threats to security. Nonetheless, the Committee reiterates that, in accordance with article 2 of the Convention, "no exceptional circumstance whatsoever... may be invoked as a justification of torture".

## DEROGATIONS

- Uzbekistan, CAT, A/57/44 (2002) 54 at para. 114.

114. The Committee is aware of the difficulty of overcoming the inheritance of a totalitarian system in the transition towards a democratic form of governance, and that this is compounded by instability in the region. Nonetheless, the Committee stresses that such circumstances cannot be invoked as a justification of torture.

- Egypt, CAT, A/58/44 (2002) 22 at paras. 40-42.

40. The Committee is aware of the difficulties that the State party faces in its prolonged fight against terrorism, but recalls that no exceptional circumstances whatsoever can be invoked as a justification for torture, and expresses concern at the possible restrictions of human rights which may result from measures taken for that purpose.

41. The Committee is concerned about the following:

(a) The fact that a state of emergency has been in force since 1981, hindering the full consolidation of the rule of law in Egypt;

...

42. The Committee recommends that the State party:

(a) Reconsider the maintenance of the state of emergency;

...

- Spain, CAT, A/58/44 (2002) 29 at para. 59.

59. The Committee is aware of the difficult situation confronting the State party as a result of the serious and frequent acts of violence and terrorism which threaten the security of the State, resulting in loss of life and damage to property. The Committee recognizes the right and the duty of the State to protect its citizens from such acts and to put an end to violence, and observes that its lawful reaction must be compatible with article 2, paragraph 2, of the Convention, whereby no exceptional circumstances whatsoever may be invoked as a justification of torture.

- Venezuela, CAT, A/58/44 (2002) 32 at para. 78.

78. The Committee takes note with satisfaction of the adoption of various legislative provisions and the establishment of units in various sectors of the State administration as an

## DEROGATIONS

indication of the importance assigned to better protection and promotion of human rights. Important instances of such provisions are the basic laws on states of emergency, on refugees and asylum-seekers, on the Public Prosecutor's Office and on the protection of children and young people. Among the units established, mention should be made of the Human Rights Department of the Ministry of the Interior and Justice.

- Turkey, CAT, A/58/44 (2003) 46 at para. 120.

120. The Committee welcomes the following positive aspects:

...

(b) The lifting of the long-standing state of emergency;

...

- Cameroon, CAT, A/59/44 (2003) 23 at para. 45.

45. The Committee...recommends that the State party should:

...

(c) Ensure that detention in custody under the Act on states of emergency conforms to international human rights standards and is not prolonged beyond what the situation requires. The State party should abolish administrative and military custody as options;

...

- Colombia, CAT, A/59/44 (2003) 33 at para. 68.

68. The Committee...expresses its concern at:

...

(c) The judicial reform bill, should it be approved, would reportedly provide for constitutional limitation of *amparo* proceedings and reduce the powers of the Constitutional Court, particularly with respect to the review of declarations of states of emergency. Similarly, the Committee expresses its concern at the "alternative penalties" bill, which, if approved, would, even if they had committed torture or other serious breaches of international humanitarian law, grant conditional suspension of their sentences to members of armed groups who voluntarily laid down their arms;

...

- Yemen, CAT, A/59/44 (2003) 64 at paras. 144 and 146.

144. The Committee, while aware of the difficulties that the State party faces in its

## DEROGATIONS

prolonged fight against terrorism, recalls that no exceptional circumstances whatsoever can be invoked as a justification for torture. It stresses in particular that the reactions of the State party to such threats must be compatible with article 2, paragraph 2, of the Convention and within the limits of Security Council resolution 1373 (2001).

...

146. The Committee recommends that the State party:

...

(f) Ensure that all counter-terrorism measures taken are in full conformity with the Convention;

...

- United Kingdom of Great Britain and Northern Ireland (Crown Dependencies and Overseas Territories), CAT, A/60/44 (2004) 16 at paras. 39 and 40.

39. The Committee expresses its concern at:

...

(c) The incomplete factual and legal grounds advanced to the Committee justifying the derogations from the State party's international human rights obligations and requiring the emergency powers set out in Part IV of the Anti-terrorism, Crime and Security Act 2001; similarly, with respect to Northern Ireland, the absence of precise information on the necessity for the continued emergency provisions for that jurisdiction contained in the Terrorism Act 2000;

...

40. The Committee recommends that:

...

(g) The State party should re-examine its review processes, with a view to strengthening independent periodic assessment of the ongoing justification for emergency provisions of both the Anti-terrorism, Crime and Security Act 2001 and the Terrorism Act 2000, in view of the length of time the relevant emergency provisions have been operating, the factual realities on the ground and the relevant criteria necessary to declare a state of emergency;

...

## CRC

- United Kingdom of Great Britain and Northern Ireland, CRC, CRC/C/121 (2002) 23 at paras. 145 and 146.

145. ...The Committee remains concerned at the negative impact of the conflict in Northern



## DEROGATIONS

Ireland on children, including in the use of emergency and other legislation in force in Northern Ireland.

146. The Committee recommends that the State party:

...

(c) In line with its previous recommendations ([CRC/C/15/Add.34], para. 34), review the emergency and other legislation, including in relation to the system of administration of juvenile justice, at present in operation in Northern Ireland to ensure its consistency with the principles and provisions of the Convention.

- Indonesia, CRC, CRC/C/137 (2004) 8 at paras. 88 and 91.

88. The Committee is concerned that martial law in Aceh might have a negative impact on the protection and implementation of the rights of children.

...

91. The Committee urges the State party:

...

(b) To ensure that the application of martial law in Aceh under no circumstances contradicts the rights guaranteed in the Convention on the Rights of the Child;

...

- Nepal, CRC, CRC/C/150 (2005) 66 at paras. 291-294 and 358.

291. The Committee notes the extremely negative impact of the armed conflict between the State party and the Communist Party of Nepal (the Maoists) on children in Nepal, and that it has created conditions in which even minimal implementation of the Convention is difficult. The Committee notes that the climate of fear, insecurity and impunity resulting from the armed conflict and the states of emergency, declared in 2000 and 2004, have had a seriously negative physical and psychological impact on the sound development of children in the State party. The Committee is extremely concerned at the large-scale bombing, destruction and closing of schools by Maoist insurgents, which are violations of the fundamental rights to education of children. The Committee also notes with deep concern that the conflict has also exacerbated the existing problems in the implementation of the Convention in the State party, as outlined in the present concluding observations.

292. The Committee further notes with serious concern that the absence of the parliament which was dissolved in 2002, does not allow the State party to enact or amend legislation, nor to ratify international conventions, including the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

## DEROGATIONS

293. While noting the *de facto* control by non-State actors of areas of the State party's territory, the Committee emphasizes the full responsibility of the State party, and urges the Communist Party of Nepal (the Maoists) to respect child rights within the areas in which they operate. The Committee reminds the State party of its obligation to respect the Convention at all times and not to derogate from any of its provisions, even in exceptional circumstances, including the state of emergency. The Committee further recommends the State party to take stronger measures to combat impunity with regard to violence against children.

294. The Committee recommends to the State party that it undertake all necessary measures to restore the regular functioning of the State party, including the parliament, and to ratify the Optional Protocols to the Convention.

...

358. The Committee further recommends to the State party that it take all measures, as a matter of priority, to eliminate negative impacts of the conflict (and the state of emergency) on the educational system, and to facilitate reconstruction and reopening of schools, return of teachers and pupils to schools and ensure that adequate resources are provided for these purposes.