

EFFECTIVE REMEDIES - COMPENSATION

IV. CONCLUDING OBSERVATIONS

CERD

- Qatar, CERD, A/48/18 (1993) 29 at para. 99.

The view of the Government that the Shariah courts and the civil courts together offer sufficient remedies for any charges of racial discrimination is noted. Concern is expressed about the criteria by which a Shariah court will determine an appropriate punishment and the necessity of separate proceedings in the civil court for the victim to obtain compensation in accordance with article 6 of the Convention.

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

The State party's legislation does not effectively provide the remedy and compensation that should be available to an injured person in terms of article 6 of the Convention.

- Bosnia and Herzegovina, CERD, A/48/18 (1993) 87 at para. 470.

All parties concerned are urged to take all measures at their disposal to bring to an end the massive, gross and systematic human rights violations occurring. In that connection, it is strongly recommended that effective action be taken to ensure that refugees and other displaced persons are allowed to return to their homes, that all detainees are released immediately into conditions of safety and that adequate reparation is given to the victims.

- Yugoslavia (Serbia and Montenegro), CERD, A/48/18 (1993) 95 at para. 539.

Reports indicating that members of national minorities in Kosovo, as well as in Vojvodina and Sandzak, had been subject to a campaign of terror carried out by paramilitary organizations with the aim of intimidating or forcing them into abandoning their homes are of deep concern. It is noted that the Government also referred to such practices directed against Serbs in Kosovo. Particular concern is expressed at the fact that the State party did not ensure that public security and law enforcement officials took steps effectively to prohibit such criminal activities, punish the perpetrators and compensate the victims, as required under article 6 of the Convention.

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- France, CERD, A/49/18 (1994) 20 at para. 155.

The State party should introduce legislation to provide effective protection of the exercise, without discrimination, of the rights to work and to housing, in both the public and private sectors, and to provide compensation to victims of discrimination.

See also:

- France, CERD, A/55/18 (2000) 26 at para. 100.

- Australia, CERD, A/49/18 (1994) 78 at para. 547.

Australia should pursue an energetic policy of recognizing Aboriginal rights and furnishing adequate compensation for the discrimination and injustice of the past.

- Trinidad and Tobago, CERD, A/50/18 (1995) 21 at para. 48.

Publicity should be given to the right to seek from national tribunals just and adequate reparation for any damage suffered as a result of racial discrimination.

- Croatia, CERD, A/50/18 (1995) 36 at para. 175.

The State party should ensure that laws and regulations concerning, *inter alia*, naturalization, acquisition of citizenship, determination of refugee status and tenure of rented accommodation are implemented in a transparent non-discriminatory manner in full conformity with the provisions of the Convention. Any victims of the discriminatory application of such rules and regulations in violation of the terms of the Convention should receive redress to the extent that this is possible.

- Yugoslavia (Serbia and Montenegro), CERD, A/50/18 (1995) 48 at para. 243.

The State party should cease immediately all policies and practices which violate rights under the Convention. It is insisted that the victims of discrimination, including ethnic Albanians, Muslims and ethnic Bulgarians, receive redress and reparation in accordance with article 6 of the Convention.

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- Romania, CERD, A/50/18 (1995) 53 at para. 272.

While the State party's new legal framework prohibits manifestations of racism, including acts of violence, the propagation of racist speech, and discriminatory employment practices, the extent to which the legal prohibition of such acts is translated into effective prohibition is unclear. Once such acts occur, it is not evident what remedies are available to victims and whether and how it is ensured that the guilty parties are prosecuted in an adequate and timely manner. It is noted in this connection that with regard to the violence on 20 September 1993, which resulted in the death of three members of the Roma and the destruction of the homes of 170 others, victims have yet to receive compensation or have their homes reconstructed.

- Mexico, CERD, A/50/18 (1995) 66 at para. 395.

The State party should ensure that violations of indigenous peoples' human rights are investigated and that the victims receive compensation.

- Denmark, CERD, A/51/18 (1996) 17 at para. 72.

Concern is expressed over the delay in compensating members of the indigenous population in Greenland who were relocated to permit the establishment of an air force base in the early 1950s.

- Brazil, CERD, A/51/18 (1996) 45 at para. 308.

The Government should put more vigorously into practice its determination to defend the fundamental rights of indigenous people, blacks, mestizos and members of other vulnerable groups, who are regularly the victims of serious intimidation and violence, sometimes leading to their death. The authorities should systematically prosecute those guilty of such crimes, whether they are members of private militias or State officials, and should take effective preventive measures, especially through training for the members of the military police. In addition, the State Party should ensure that the victims of such acts receive compensation and are rehabilitated.

- India, CERD, A/51/18 (1996) 51 at paras. 363, 365 and 370.

Paragraph 363

Although it is noted that the Supreme Court and the high courts have the jurisdiction to award compensation to victims of human rights violations, including in the field of racial discrimination, concern is expressed that there exists no specific statute providing for the right of individuals to seek

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from the courts just and adequate reparation or satisfaction for any damage suffered as a result of acts of racial discrimination, as required by article 6 of the Convention.

Paragraph 365

Special measures should be taken by the authorities to prevent acts of discrimination towards persons belonging to the scheduled castes and scheduled tribes, and, in cases where such acts have been committed, to conduct thorough investigations, to punish those found responsible and to provide just and adequate reparation to the victims.

Paragraph 370

The State party should adopt legal provisions making it easier for individuals to seek from the courts just and adequate reparation or satisfaction for any damage suffered as a result of acts of racial discrimination, including acts of discrimination based on belonging to a caste or a tribe.

- Venezuela, CERD, A/51/18 (1996) 65 at para. 469.

Doubts were expressed as to whether victims of racial discrimination have effective remedies at their disposal for seeking just and adequate reparation from the competent tribunals. The State party's legal system does not include any provisions for compensation of victims of racial discrimination, most of whom belong to various indigenous groups.

- Zaire, CERD, A/51/18 (1996) 70 at para. 534.

The importance of specific legal provisions providing for effective protection and remedies against acts of racial discrimination and for the right of individuals to seek adequate reparation for any damage suffered as a result of such discrimination, as provided for in article 6 of the Convention, is stressed.

- Guatemala, CERD, A/52/18 (1997) 14 at paras. 81 and 93.

Paragraph 81

The problems of allocation of land and/or compensation continue, especially with respect to the return of lands to the indigenous peoples after the end of the armed conflict. Of special concern are confrontations arising over the ownership of property, in the course of which indigenous peoples have been detained and threatened.

Paragraph 93

The importance that land holds for indigenous peoples and their spiritual and cultural identity,

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including the fact that they have a different concept of land use and ownership, is stressed. The State party should use the provisions of ILO Convention No. 169 as a guideline for resolving land distribution issues and to consider, in the light of that Convention, the question of compensation for properties that cannot be restituted.

- Germany, CERD, A/52/18 (1997) 25 at para. 159.

Genocide is rightly condemned as a crime against humanity. All genocidal acts should be condemned without any distinction as to time, place or group of victims. It is hoped that schemes for compensation of the victims of genocide and for prevention of any future discrimination will cover all groups that have been or may become victims.

- Mexico, CERD, A/52/18 (1997) 42 at paras. 321 and 322.

Paragraph 321

The State party should exercise greater vigilance in the protection of the fundamental rights of indigenous inhabitants and other vulnerable groups of society, who are regularly the victims of intimidation, violence and serious human rights violations. It is hoped that the authorities will systematically prosecute those responsible for such crimes, regardless of whether they are members of private militias or State officials, and effective preventive measures should be taken, including the training of members of the police force and the army. The State party should also ensure that the victims of such acts are compensated.

Paragraph 322

The State party should find just and equitable solutions to land delimitation, distribution and restitution problems. Everything possible should be done to protect indigenous inhabitants from all forms of discrimination in such matters.

- Philippines, CERD, A/52/18 (1997) 55 at paras. 426 and 434.

Paragraph 426

With respect to article 6 of the Convention, there is concern over the lack of legislative provisions to implement the right to just and adequate reparation or satisfaction for any damage suffered as a result of acts of racial discrimination. Moreover, the absence of complaints against acts of racial discrimination to the courts raises doubts as to the extent of the publicity given to and the effectiveness of available remedies for victims of racial discrimination.

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Paragraph 434

The State party should ensure protection against any acts of racial discrimination through the competent courts, in accordance with article 6 of the Convention, by, *inter alia*, strengthening the court system, the independence of the judiciary and the confidence of the population therein. It is further recommended that the right to seek just and adequate reparation for victims of acts of racial discrimination be fully guaranteed under the law and in practice.

See also:

- Burundi, CERD, A/52/18 (1997) 73 at paras. 579 and 589.
- Cambodia, CERD, A/53/18 (1998) 55 at para. 300.

- Denmark, CERD, A/52/18 (1997) 59 at para. 454.

Concern is expressed over the long delay in resolving the compensation claim of the population of Thule, displaced from their traditional hunting grounds and places of settlement.

- Russian Federation, CERD, A/53/18 (1998) 25 at para. 48.

The State party should reinforce its measures to protect human rights in Chechnya, Ingushetia and North Ossetia. Measures should be taken in particular to ensure that serious breaches of international humanitarian law do not remain unpunished and that the victims are afforded just and adequate reparation, and also to ensure normal conditions of life and return for displaced persons.

- Israel, CERD, A/53/18 (1998) 30 at para. 85.

The right of many Palestinians to return and possess their homes in Israel is currently denied. The State party should give high priority to remedying this situation. Those who cannot repossess their homes should be entitled to compensation.

- Ukraine, CERD, A/53/18 (1998) 39 at para. 153.

The State party should continue to take all necessary steps to fully restore the rights of repatriated members of minorities, including the Crimean Tatars, and to afford them just and adequate reparation where appropriate.

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- Croatia, CERD, A/53/18 (1998) 59 at para. 315.

Concern is expressed about the serious difficulties and violence encountered by returnees and displaced persons, in particular ethnic Serbs, when returning to areas of origin, or by refugees when claiming their right to have property restored to them or to receive compensation upon return to their place of origin.

- Congo, CERD, A/54/18 (1998) 19 at para. 112.

The State party should investigate violations of human rights, in particular acts of racial discrimination, bring offenders to trial, offer compensation to victims' families and discontinue the employment of mercenaries.

- Costa Rica, CERD, A/54/18 (1999) 24 at para. 194.

The land rights of indigenous peoples in the State party are of concern. Despite the efforts made, problems relating to the allocation of land and/or compensation persist. Of special concern have been confrontations arising over the ownership of property, in the course of which indigenous people were killed and vandalism occurred.

- Mongolia, CERD, A/54/18 (1999) 27 at para. 244.

While the State party's Constitution establishes the State's obligation to provide remedies in cases of human rights violations, concern is expressed at the lack of specific legislation for the provision of compensation, as enshrined in article 6 of the Convention.

- Chile, CERD, A/54/18 (1999) 37 at para. 377.

Having recognized its part in the discrimination experienced by the indigenous population, the State party should consider the issue of a formal apology, as well as ways to ensure compensation to all those concerned, a policy which will significantly contribute to the process of reconciliation in the society as a whole.

- Uruguay, CERD, A/54/18 (1999) 41 at para. 429.

With respect to employment, education and housing, the State party should take steps to reduce

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present inequalities and adequately compensate affected groups and persons for earlier evictions from their houses.

- Azerbaijan, CERD, A/54/18 (1999) 46 at para. 499.

The State party should take further steps to facilitate equal access to the courts and administrative bodies for all persons belonging to ethnic minorities and to provide information on the right to seek just and adequate reparation for any damage suffered as a result of racial discrimination.

- Dominican Republic, CERD, A/54/18 (1999) 47 at para. 515.

The State party should address the requirements of article 6 of the Convention by facilitating access to the courts and other competent institutions for victims of racial discrimination and by ensuring that the perpetrators of racist acts are brought to trial and the victims obtain adequate reparation or satisfaction.

- Australia, CERD, A/55/18 (2000) 17 at para. 36.

The conclusions of the “National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families” are noted and the measures taken to facilitate family reunion and to improve counselling and family support services for the victims are acknowledged. Concern is expressed that the Commonwealth Government does not support a formal national apology and that it considers inappropriate the provision of monetary compensation for those forcibly and unjustifiably separated from their families, on the grounds that such practices were sanctioned by law at the time and were intended to “assist the people whom they affected”. It is recommended that the State party consider the need to address appropriately the extraordinary harm inflicted by these racially discriminatory practices.

- Finland, CERD, A/55/18 (2000) 41 at para. 218.

In the light of article 6 of the Convention, the only way of obtaining reparation or satisfaction for any damage suffered as a result of an act of racial discrimination is through a penal proceeding. It is recommended that the State party consider ensuring alternative measures to penal proceedings in cases of discrimination.

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- Czech Republic, CERD, A/55/18 (2000) 50 at para. 283.

The Committee reiterates its concern at the lack of criminal, civil or administrative law provisions expressly outlawing racial discrimination in education, health care, social care, the penitentiary system, as well as in the private sphere. It is recommended that the State party undertake legislative reform to safeguard the enjoyment, without any form of discrimination, by all segments of the population, of the economic, social and cultural rights listed in article 5 of the Convention. Such reform should include the provision of adequate reparation for victims of racial discrimination.

- Germany, CERD, A/56/18 (2001) 27 at para. 110.

The establishment of the Foundation for the compensation of persons subjected to forced labour is noted. The fact that this Foundation will also be of benefit to Sintis and Roma populations is welcomed.

- Japan, CERD, A/56/18 (2001) 34 at para. 175.

The State party should take steps to further promote the rights of the Ainu, as indigenous people. The State party's attention is drawn to General Recommendation XXIII on the rights of indigenous peoples that calls, *inter alia*, for the recognition and protection of land rights as well as restitution and compensation for loss.

- Sudan, CERD, A/56/18 (2001) 40 at paras. 212 and 213.

Paragraph 212

The Committee repeats its concern over continuous reports and allegations regarding the abduction by armed militia of primarily women and children belonging to different ethnic groups. In this regard it notes that the State party, while disassociating itself from any such practices, attributes abduction to traditions deeply rooted among certain tribes. Notwithstanding this position, it is strongly emphasized that it is the State party's responsibility to undertake all measures to bring the practice of abduction to an end and to ensure that legal action be taken against those responsible for such acts, as well as compensatory measures to those aggrieved.

Paragraph 213

Deep concern is expressed about the forced relocation of civilians from the Nuer and Dinka ethnic groups in the upper Nile region and reports that the relocations involved significant military force resulting in civilian casualties. The State party is urged to uphold the fundamental economic and social rights of the Nuer and Dinka in the upper Nile region including the right to personal security,

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to housing, food and to just compensation for property confiscated for public use.

- United States of America, CERD, A/56/18 (2001) 64 at paras. 394 and 400.

Paragraph 394

The incidents of police violence and brutality are noted with concern, which include cases of deaths as a result of excessive use of force by law enforcement officials, particularly affecting minority groups and foreigners. The State party should take immediate and effective measures to ensure the appropriate training of the police force with a view to combatting prejudices which may lead to racial discrimination and ultimately to a violation of the right to security of persons. Firm action should also be taken to punish racially motivated violence and ensure the access of victims to effective legal remedies and the right to seek just and adequate reparation for any damage suffered as a result of such actions.

Paragraph 400

It is noted with concern that treaties signed by the Government and Indian tribes, described as “domestic dependent nations” under national law, can be abrogated unilaterally by Congress and that the land they possess or use can be taken without compensation by a decision of the Government. Further concern is expressed with regard to information on plans for expanding mining and nuclear waste storage on Western Shoshone ancestral land, placing their land up for auction for private sale, and other actions affecting the rights of indigenous peoples. The State party should ensure effective participation by indigenous communities in decisions affecting them, including those on their land rights, as required under article 5 (c) of the Convention, and the attention of the State party is drawn to general recommendation XXIII on indigenous peoples which stresses the importance of securing the “informed consent” of indigenous communities and calls, *inter alia*, for recognition and compensation for loss. The State party is also encouraged to use as guidance the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

ICCPR

- Islamic Republic of Iran, ICCPR, A/48/40 vol. I (1993) 44 at para. 260.

The persistence and extent of discrimination against women is incompatible with the provisions of article 3 of the Covenant. For example, the payment of compensation to the families of murder victims, depending on the victim's gender, is discriminatory.

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- 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. The fact that these cases have not, to date, been the subject of investigations or compensation on the part of the authorities is deplored.

- Mexico, ICCPR, A/49/40 vol. I (1994) 33 at para. 179.

All cases of extrajudicial execution, torture and arbitrary detention should be investigated in order to bring those suspected of having committed such acts before the courts. Those found guilty should be punished and the victims should be compensated.

- El Salvador, ICCPR, A/49/40 vol. I (1994) 38 at paras. 215 and 221.

Paragraph 215

Grave concern is expressed over the adoption of the Amnesty Law, which prevents relevant investigation and punishment of perpetrators of past human rights violations and consequently precludes relevant compensation.

Paragraph 221

All necessary measures should be urgently taken to combat the continuing human rights violations in El Salvador. All violations should be thoroughly investigated, the offenders punished and the victims compensated. In this connection, the Office of the Procurator for the Protection of Human Rights should be strengthened, both with regard to resources and competence, in order to ensure that the Procurator may effectively carry out his or her responsibilities.

- Togo, ICCPR, A/49/40 vol. I (1994) 44 at paras. 250 and 261.

Paragraph 250

The large number of cases of summary and arbitrary executions, enforced or involuntary disappearances, torture and arbitrary or unlawful detention committed by members of the army, security or other forces during the period under review is of concern. It is of deep concern that those violations were not followed by any inquiries or investigations, that the perpetrators of such acts were neither brought to justice nor punished and that the victims were not compensated.

Paragraph 261

All necessary measures should be taken to prevent summary or arbitrary executions, enforced or involuntary disappearances, torture and ill-treatment and illegal or arbitrary detention; all such cases

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should be systematically investigated in order to bring those suspected of having committed such acts before the courts; and those found guilty should be punished and the victims compensated.

See also:

- Cameroon, ICCPR, A/49/40 vol. I (1994) 36 at para. 203.
- Peru, ICCPR, A/51/40 vol. I (1996) 48 at para. 354.

- Azerbaijan, ICCPR, A/49/40 vol. I (1994) 50 at para. 305.

The Government should put an end to the gross violations of human rights that have occurred and continue to occur in Azerbaijan, conduct investigations into them, punish the persons guilty of such acts and compensate the victims.

- Burundi, ICCPR, A/49/40 vol. I (1994) 58 at para. 364.

The State party should initiate without delay a process of national reconciliation. This process should be accompanied by various specific measures such as the establishment of commissions of inquiry made up of members of each of the country's population groups. Impartial foreign observers could participate in the inquiries in order to identify those responsible for gross violations of human rights in the autumn of 1993, to bring them to trial and punish them and to remove all persons involved in such crimes from the various State bodies, particularly the army, the police, the gendarmerie and the security forces. The victims and their families should also be compensated.

- Argentina, ICCPR, A/50/40 vol. I (1995) 35 at paras. 158 and 161.

Paragraph 158

Mechanisms for compensating all remaining victims of past violations of human rights should be developed by amending Act 24,043 or enacting appropriate legislation for the victims of such crimes. Appropriate care should be taken in the use of pardons and general amnesties so as not to foster an atmosphere of impunity (see the Committee's general comment No. 7 (16)). The members of the armed forces or security forces against whom sufficient evidence of involvement in gross human rights violations exists should be removed from their posts.

Paragraph 161

All necessary steps should be taken to prevent cases of excessive use of force, torture, arbitrary detention or extrajudicial execution by members of the armed forces or the police. These steps should include preventive, disciplinary and punitive measures, as well as appropriate training. All violations

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should be investigated and the victims compensated.

- Paraguay, ICCPR, A/50/40 vol. I (1995) 42 at para. 209.

It is of concern that the national laws which are in conflict with the Constitution remain on the books. In addition, some constitutional provisions, such as the right to compensation for a violation of rights (art. 39), still require implementing laws.

- Haiti, ICCPR, A/50/40 vol. I (1995) 46 at para. 231.

The importance of investigating human rights violations, determining individual responsibility and fairly compensating for the victims. It is regretted that the Commission on Truth and Justice has not yet initiated its work.

- United States of America, ICCPR, A/50/40 vol. I (1995) 52 at para. 299.

Appropriate measures should be adopted to provide speedy and effective remedies to compensate persons who have been subjected to unlawful or arbitrary arrests as provided in article 9, paragraph 5, of the Covenant.

- Russian Federation, ICCPR, A/50/40 vol. I (1995) 65 at para. 403.

The serious violations of human rights which occurred and continue to occur in Chechnya should be vigorously and immediately investigated, the perpetrators should be punished and the victims should be compensated.

- Estonia, ICCPR, A/51/40 vol. I (1996) 19 at paras. 109 and 126.

Paragraph 109

It is noted with concern that no legislation has yet been adopted regarding the right to compensation for citizens whose rights have been violated by the State or by unlawful behaviour of officials.

Paragraph 126

Laws should be adopted to enable victims of violations of the rights guaranteed under the Covenant to be effectively compensated under domestic law.

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- Guatemala, ICCPR, A/51/40 vol. I (1996) 33 at paras. 229, 241 and 242.

Paragraph 229

The absence of a State policy for combating impunity has prevented the identification, trial and punishment, if found guilty, of those responsible, and the payment of compensation to the victims. The delays and failures of the process of law, and the non-compliance by the police with court decisions and orders has heightened the public perception that justice cannot be obtained.

Paragraph 241

The Government should take all pertinent measures to avoid cases of impunity and, especially, to allow the victims of human rights violations to find out the truth about those acts, to know who the perpetrators of such acts are and to obtain appropriate compensation.

Paragraph 242

The State party should endeavour to bring to justice perpetrators of human rights abuses, notwithstanding the positions they may have held, in accordance with the Covenant. The State party should investigate allegations of human rights violations, past and present, and act on the findings of its investigations, bring to justice those suspected, punish the perpetrators and compensate the victims of such acts. Persons found guilty of having committed human rights violations should be expelled from the armed or security forces and punished accordingly.

- Nigeria, ICCPR, A/51/40 vol. I (1996) 37 at paras. 283 and 298.

Paragraph 283

It is noted with concern that, following the introduction of measures to overcome certain specific violations of rights in regard to the composition of special tribunals and the right of appeal, no compensation has been offered to victims of the human rights abuses which had already occurred under the previous measures.

Paragraph 298

Effective measures should be taken to prevent arbitrary, extrajudicial and summary executions as well as torture, ill-treatment, and arbitrary arrest and detention by members of the security forces, and to investigate any such cases in order to bring before the courts those suspected of having committed or participated in such crimes, to punish them if found guilty, and to provide compensation to victims or to their families.

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- Peru, ICCPR, A/51/40 vol. I (1996) 48 at paras. 347, 358 and 359.

Paragraph 347

The amnesty, which absolves criminal responsibility from all forms of accountability, to all military, police and civilian agents of the State who are accused, investigated, charged, processed or convicted for common and military crimes for acts occasioned by the "war against terrorism" is of concern as this makes it practically impossible for victims of human rights violations to institute successful legal action for compensation. Such an amnesty prevents appropriate investigation and punishment of perpetrators of past human rights violations, undermines efforts to establish respect for human rights, contributes to an atmosphere of impunity among perpetrators of human rights violations and constitutes a very serious impediment to efforts undertaken to consolidate democracy and to promote respect for human rights and is thus in violation of article 2 of the Covenant. In this connection, this type of amnesty is incompatible with the duty of States to investigate human rights violations, to guarantee freedom from such acts within their jurisdiction and to ensure that they do not occur in the future.

Paragraph 358

The necessary steps should be taken to restore the authority of the judiciary and to give effect to the right to effective remedy under article 2 of the Covenant and thus overcome the prevailing atmosphere of impunity. In view of the fact that the amnesty laws violate the Covenant, the Government of Peru should review and repeal those laws to the extent of such violations. In particular, the Government is urged to remedy the unacceptable consequences of those laws by, *inter alia*, establishing an effective system of compensation for the victims of human rights violations and taking the necessary steps to ensure that the perpetrators of those violations do not continue to hold government positions.

Paragraph 359

Immediate measures should be taken to release innocent prisoners and to provide them with compensation and to systematically revise, on a non-discretionary basis, convictions handed down by the military tribunals in treason and terrorism cases, particularly convictions based on lack of identification documents or on evidence obtained in the application of the repentance law. The same applies to detainees awaiting trial.

- Bolivia, ICCPR, A/52/40 vol. I (1997) 35 at para. 218.

The State party is urged to investigate allegations of human rights violations, act on the findings of its investigations, bring to justice the perpetrators and provide proper compensation to the victims, particularly with respect to continuing occurrences of torture and ill-treatment by the police and security forces. An independent mechanism should be instituted for dealing with complaints of police violence and the existence of this mechanism should be publicized.

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- Georgia, ICCPR, A/52/40 vol. I (1997) 40 at para. 253.

Systematic and impartial investigations into all complaints of ill-treatment and torture should be undertaken, persons charged with violations as a result of these investigations should be brought to trial, and victims should be compensated.

- France, ICCPR, A/52/40 vol. I (1997) 62 at para. 413.

An institutional mechanism should be established by the Government of France for receiving complaints of violations of human rights, including all forms of discrimination, with the power to determine whether such complaints are justified, to act as conciliator between the parties and to award compensation.

- Belarus, ICCPR, A/53/40 vol. I (1998) 26 at para. 145.

The numerous allegations of ill-treatment of persons by police and other law enforcement officials during peaceful demonstrations and on arrest and detention, and the high number of cases in which police and other security officials resort to the use of weapons are of concern. Noting that investigations of such abuses are not conducted by an independent mechanism and that the number of prosecutions and convictions in these cases is very low, the Committee expresses concern that these phenomena may lead to impunity for members of the police and other security officials. Therefore, in order to combat impunity, steps should be taken to ensure that all allegations of ill-treatment and unlawful use of weapons by security and police officials are promptly and impartially investigated by an independent body, that the perpetrators are prosecuted and punished, and that the victims are compensated.

- Lithuania, ICCPR, A/53/40 vol. I (1998) 30 at para. 167.

It is of concern that women still suffer from discrimination, especially in the area of employment and in access to leadership positions in politics and society, and that the proposed law on gender equality has not yet been enacted. Therefore, concrete measures should be taken to eliminate all discrimination against women and to enhance and reinforce the position of women in society by providing legal remedies for discrimination in all areas, including employment and commercial advertising. Mechanisms should be established to monitor non-discrimination laws, to receive and investigate complaints from victims, and to award compensation where appropriate.

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- Zimbabwe, ICCPR, A/53/40 vol. I (1998) 35 at para. 218.

All cases of alleged excessive use of force committed by members of the police or the army should be investigated by an independent and impartial body, and the taking of action against those officers found to have committed abuses and the payment of compensation to the victims is urged.

- Finland, ICCPR, A/53/40 vol. I (1998) 40 at para. 260.

Criminal law may not alone be appropriate to determine appropriate remedies for violations of certain rights and freedoms. Priority should continue to be given to positive measures and to civil processes which are able to determine issues of compensation or other remedies, especially in cases of discrimination.

- Ecuador, ICCPR, A/53/40 vol. I (1998) 43 at para. 278.

The adoption of legislation which establishes measures for the compensation of victims of human rights violations is welcomed. Satisfaction is expressed with the information that the next-of-kin of two particularly serious cases of human rights violations have been compensated by the State party.

- Israel, ICCPR, A/53/40 vol. I (1998) 45 at para. 314.

The introduction by the Government of a draft law, which would deny victims compensation for excesses committed by members of the security forces against Palestinian residents of the occupied territories, is regretted.

- Japan, ICCPR, A/54/40 vol. I (1999) 36 at para. 173.

While the forced sterilization of disabled women has been abolished, the necessary legal steps should be taken to provide a right of compensation to persons who were subjected to forced sterilization.

- Republic of Korea, ICCPR, A/55/40 vol. I (2000) 29 at paras. 154 and 155.

Paragraph 154

A requirement that the author of a communication submitted under the Optional Protocol on which the Committee has expressed its Views to seek a remedy through the domestic courts, by way of further appeal or a claim for compensation is inappropriate.

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Paragraph 155

Rather than referring such cases back to the domestic courts which have already pronounced on the matter, the State party should immediately proceed to give effect to the Views expressed by the Committee.

See also:

- Cameroon, ICCPR, A/55/40 vol. I (2000) 36 at para. 224.
- Cameroon, ICCPR, A/55/40 vol. I (2000) 36 at paras. 204 and 210.

Paragraph 204

The prompt investigation of allegations of extrajudicial killings by security forces, the bringing to justice of responsible persons and the compensation of victims should be ensured.

Paragraph 210

Investigations of disappearances of persons must be carried out and compensation must be provided to victims or their families.

- Kyrgyzstan, ICCPR, A/55/40 vol. I (2000) 57 at paras. 404 and 415.

Paragraph 404

The State party should ensure that existing laws relating to violence against women and trafficking are vigorously enforced; adopt effective measures to protect women; provide victims of violence and abuse with a measure of compensation and rehabilitation; and combat trafficking in all appropriate ways, including the prosecution and punishment of those responsible. Specific legislation on the prohibition and punishment of domestic violence and trafficking in women should be enacted.

Paragraph 415

Journalists and human rights activists subjected to imprisonment in contravention of articles 9 and 19 of the Covenant should be released, rehabilitated, and given compensation pursuant to articles 9, paragraph 5, and 14, paragraph 6, of the Covenant.

- Kuwait, ICCPR, A/55/40 vol. I (2000) 65 at paras. 469 and 474.

Paragraph 469

The cases of persons still held under sentences handed down in 1991 by the Martial Law Courts should be reviewed by an independent and impartial body, and compensation should be paid pursuant

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to articles 9, paragraph 5, and 14, paragraph 6, of the Covenant, where appropriate.

Paragraph 474

All cases of abuse by the police and prison personnel should be investigated by independent authorities, action should be taken against perpetrators, and victims should be granted compensation.

- Denmark, ICCPR, A/56/40 vol. I (2001) 34 at para. 73(11).

The delay in resolving the claim for compensation by the members of the Thule community in Greenland in respect of their displacement from their lands and the loss of traditional hunting rights on account of the construction of the military base at Thule is regretted. Reports that the alleged victims in the Thule case were induced to reduce the amount of their claim in order to meet the limitations set in legal-aid requirements are of concern.

- Argentina, ICCPR, A/56/40 vol. I (2001) 38 at para. 74(4).

The operation of a number of institutions and programmes designed to serve as a channel of redress for victims of past abuses, including the Historical Reparation Programme, the National Commission on the Disappearance of Persons and the National Commission for the Right to an Identity is noted with satisfaction. The efforts being made to provide financial and other compensation to victims of arbitrary detention and the families of persons who died or disappeared under the military regime are appreciated.

- Peru, ICCPR, A/56/40 vol. I (2001) 45 at para. 76(11).

The fact that Peru has released some of the persons convicted of the crime of terrorism on insufficient evidence and has pardoned them is appreciated. However, a pardon does not constitute full compensation for the victims of proceedings in which the rules of due process have been breached and in which innocent persons have been found guilty.

- Dominican Republic, ICCPR, A/56/40 vol. I (2001) 54 at para. 78(9).

Reports that acts of torture have not been investigated, that the perpetrators of those acts have in the majority of cases not been brought to trial and that victims and their families have not been compensated are cause for concern. The State party should take prompt action to comply fully with article 7 of the Covenant and to have violations thereof investigated so that the culprits may be tried and punished by ordinary courts and redress provided.

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- Uzbekistan, ICCPR, A/56/40 vol. I (2001) 59 at paras. 79(16) and 79(24).

Paragraph 79(16)

The information that more than 1300 Tajiks, citizens of Uzbekistan, were resettled from their villages in the mountains to the steppes of the Sherabad region, about 250 miles away, is of deep concern. While the State party explained that the action was taken in order to improve the living conditions of the people concerned, it did not refute the information that the resettlement was enforced by military forces, that the Tajiks had to leave their homes without their belongings, and that their villages were subsequently destroyed. The State party should immediately stop any further action to expel people from their homes, in violation of articles 12 and 17 and possibly, in certain situations article 27 of the Covenant. The State party should take steps to compensate the individuals concerned for the loss of their property and their suffering, resulting from their forcible displacement and its aftermath.

Paragraph 79(24)

Provisions of the Freedom of Conscience and Religion Organisations Act that require religious organisations and associations to be registered to be entitled to manifest their religion and beliefs are of concern. Also of concern is article 240 of the Penal Code, which penalizes the failure of leaders of religious organisations to register their statutes. It is strongly recommended that the State party abolish the said provisions, which are not in conformity with the provisions of article 18, paragraph 1 and 3, of the Covenant. Criminal procedures initiated on the basis of these provisions should be discontinued and convicted persons pardoned and compensated.

- Czech Republic, ICCPR, A/56/40 vol. I (2001) 83 at para. 83(6).

The apparent absence of procedures for dealing with the implementation of the Views of the Committee under the Optional Protocol is of concern. The position adopted by the State party in the cases of Simunek (516/1992) and Adam (586/1994), regarding the restitution of property or compensation under Act 87/91 is deeply regretted. The State party's response to the Committee's decision that the pre-condition of Czech citizenship to restitution or compensation under Act 87/91 was discriminatory and in violation of article 26 of the Covenant is also regretted. A decision by the Constitutional Court on the constitutionality of the relevant law cannot exonerate the State party from its obligations under the Covenant (article 2; Optional Protocol, articles 1 and 4). The State party should reconsider its present law regarding the right to seek restitution of property or compensation. It should also put in place procedures to deal with Views of the Committee under the Optional Protocol.

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- Guatemala, ICCPR, A/56/40 vol. I (2001) 93 at paras. 85(8) and 85(12).

Paragraph 85(8)

The Committee welcomes the State party's recognition of "institutional responsibility", as endorsed by the President of the Republic, for the Las Dos Erres massacre and other serious violations of human rights which occurred during the civil war for the purpose of being able to provide financial compensation to the victims and guarantee the prosecution of those responsible.

Paragraph 85(12)

The absence of a State policy intended to combat impunity has prevented the identification, trial and punishment of those responsible for violations of article 6 and the payment of compensation to the victims. It is of concern that delays in and the shortcomings of legal procedure and the failure of the authorities to comply with the decisions and orders of the courts have strengthened the perceptions by the public that justice is not being done. The State party should strictly apply the National Reconciliation Act, which explicitly excludes crimes against humanity from amnesty, set up an appropriate independent body to investigate disappearances and provide adequate compensation for the victims of human rights violations.

ICESCR

- Algeria, ICESCR, E/1996/22 (1995) 54 at para. 301.

Extensive consciousness-raising campaigns should be launched to prevent family violence. Adequate information should also be provided to the victims of such violence with regard to their right to obtain compensation.

- United Kingdom of Great Britain and Northern Ireland (Hong Kong), ICESCR, E/1997/22 (1996) 58 at para. 357.

The Sex Discrimination Ordinance should be amended to include provisions on reinstatement in employment and to remove the current maximum amount for recovery compensation.

- Russian Federation, ICESCR, E/1998/22 (1997) 27 at para. 117.

More vigorous steps should be taken to ensure the protection of women against sexual discrimination in employment, and victims of sexual discrimination should receive compensation from employers who act illegally.

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- Libyan Arab Jamahiriya, ICESCR, E/1998/22 (1997) 38 at para. 185.

Concern is expressed at reports that thousands of foreign workers were arbitrarily expelled from the State party and were not given adequate compensation. It is regretted that there was no possibility for a legal or judicial remedy against those expulsions. It is alarming that the justification for this action was that foreign workers were the cause of many of the State party's social problems, such as violent crime, immoral activities, black-market transactions, drug trafficking, trafficking in women and the spread of communicable diseases. Such a rationale is unacceptable and a clear violation of the Covenant.

- Germany, ICESCR, E/1999/22 (1998) 54 at para. 335.

As an act of national reconciliation, the State party should ensure that compensation will be provided to civil servants, professionals and scientists associated with the old regime in the former German Democratic Republic and should ensure that such compensation is both adequate and fair.

- Honduras, ICESCR, E/2002/22 (2001) 33 at para. 130.

Concern is expressed about the occurrence of forced evictions, especially among peasants and indigenous populations and in the areas where mining activities are conducted, without adequate compensation or appropriate relocation measures.

- Republic of Korea, ICESCR, E/2002/22 (2001) 45 at paras. 235 and 251.

Paragraph 235

Concern is expressed that victims of private construction projects are not provided with compensation or temporary lodging, unlike private homeowners who are evicted as a result of public projects.

Paragraph 251

It is recommended that the State party establish a focal point within the Government for dealing with complaints or appeals for assistance on housing matters. Protection should be provided, such as compensation and temporary housing, to victims of forced evictions resulting from private development projects.

- Nepal, ICESCR, E/2002/22 (2001) 83 at paras. 544 and 569.

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Paragraph 544

There is concern about the occurrence of forced evictions, such as in the cases of the people displaced by the Kulekhani and Marshyangdi hydropower projects, without adequate compensation or appropriate relocation measures.

Paragraph 569

Adequate compensation and appropriate relocation measures should be provided to those who are forcibly evicted because of development projects, such as in the cases of the Kulekhani and Marshyangdi hydropower projects, in line with General Comments No. 4 (1991) on the right to adequate housing (art. 11, para. 1, of the Covenant) and No. 7 (1997) on forcible evictions.

- Japan, ICESCR, E/2002/22 (2001) 90 at paras. 605 and 632.

Paragraph 605

Concern is expressed that the compensation offered to wartime "comfort women" by the Asian Women's Fund, which is primarily financed through private funding, has not been deemed an acceptable measure by the women concerned.

Paragraph 632

It is strongly recommended that the State party find an appropriate arrangement, in consultation with the organizations representing the "comfort women", on ways and means to compensate the victims in a manner that will meet their expectations, before it is too late to do so.

CEDAW

- Croatia, CEDAW, A/50/38 (1995) 110 at para. 591.

Above all, it is necessary to break the silence concerning the sexual abuse and aggression of which women are the victims, identify the guilty parties and bring them before national and international courts, and provide financial compensation to the victims.

CAT

- Chile, CAT, A/46/46 (1991) 44 at para. 262.

It is stressed that the concepts of civil and criminal liability are very different and that in the absence of a criminal conviction the State might still be held liable to compensate a victim of torture for the

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acts committed.

- Italy, CAT, A/47/44 (1992) 57 at para. 337.

It is emphasized that, in accordance with the Convention, the State should be held civilly responsible for the acts of its servants.

- Paraguay, CAT, A/49/44 (1994) 11 at para. 60.

Concern is expressed about the slow pace of judicial proceedings relating to violations of human rights committed under the previous regime and also about the apparently inadequate system for the civil compensation and rehabilitation of victims.

- Poland, CAT, A/49/44 (1994) 12 at paras. 71 and 72.

Paragraph 71

Reforms of criminal legislation and criminal procedure are overdue and incomplete. There are no special provisions for compensating victims of torture.

Paragraph 72

Adequate redress and compensation for victims of torture should be ensured and guaranteed.

- Israel, CAT, A/49/44 (1994) 24 at para.170.

All victims of illegal interrogation should be granted access to appropriate rehabilitation and compensation measures.

- Morocco, CAT, A/50/44 (1995) 17 at para. 114.

The State party should take all the necessary measures to ensure that victims of torture are fully compensated and rehabilitated.

See also:

- Nepal, CAT, A/49/44 (1994) 22 at para. 146.

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- Italy, CAT, A/50/44 (1995) 21 at para. 157.

The State party should better guarantee the right of a victim of torture to be compensated by the State and provide some programme of rehabilitation for him.

- Colombia, CAT, A/51/44 (1996) 15 at para. 82.

The State party should keep under systematic review the rules, methods and practices referred to in article 11 of the Convention, conduct human rights education and training programmes for military, police, medical and civilian guard personnel, and establish appropriate systems of compensation and rehabilitation for the victims.

- Georgia, CAT, A/52/44 (1997) 20 at para. 120.

The current failure to make proper provision for compensation, restitution and rehabilitation of victims of torture is of concern.

- Ukraine, CAT, A/52/44 (1997) 23 at para. 152.

There is a need to establish by law a procedure for providing redress for injury caused to victims of torture, including compensation for moral injury, and to define the arrangements, amount and conditions for such compensation.

- Mexico, CAT, A/52/44 (1997) 26 at para. 165.

In practice, the failure by the authority responsible for criminal investigation to investigate reports of torture promptly and impartially, as stipulated in articles 12 and 13 of the Convention, results in the denial of the right of victims to take legal action to claim compensation for the violation of their rights.

- Paraguay, CAT, A/52/44 (1997) 30 at para. 203.

The fact that the report submitted by the State party makes no mention of the existence of programmes for the compensation and physical and mental rehabilitation of victims, thus leading to the conclusion that there are no such programmes, is of concern. As to the right to fair and adequate compensation, concern arises because the State party has only subsidiary responsibility for the actions

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of its officials, which makes victims responsible for laying claim to the assets of their torturers in order to exercise that right; the State may be required to assume responsibility only if such assets are non-existent, insufficient or cannot be found.

- Namibia, CAT, A/52/44 (1997) 35 at paras. 240 and 247.

Paragraph 240

The fact that there are no legal instruments to deal specifically with compensating victims of torture or other ill-treatment is of concern. The existing procedures for obtaining redress, compensation and rehabilitation seem to be inadequate and in many cases ineffective. Moreover, they limit the right to redress and compensation to the victim of torture by failing to give, in accordance with article 14 (1) of the Convention, the same standing to the deceased victim's dependants.

Paragraph 247

The cases of disappearance of former members of the South West Africa People's Organization (SWAPO) should be promptly and impartially investigated. In all situations where reasonable grounds exist to believe that those disappearances amounted either to torture or to other forms of cruel, inhuman or degrading treatment, the dependants of the deceased victims should, according to article 14 of the Convention, be afforded fair and adequate compensation.

- Cuba, CAT, A/53/44 (1998) 12 at para. 118.

The establishment of a compensation fund for victims of torture and other prohibited treatment is recommended.

- Germany, CAT, A/53/44 (1998) 19 at para. 192.

In order to ensure that alleged ill-treatment by police officers is open to the fullest scrutiny, criminal procedures should be open to subsidiary prosecution by the victims of ill-treatment and adherence procedures (Adhäsionsprozesse) and civil procedures for damages should be made more widely applicable and possible. Adequate legal assistance by competent legal counsel should also be made available.

- Peru, CAT, A/53/44 (1998) 21 at para. 205.

Pursuant to articles 6, 11, 12, 13 and 14 of the Convention, measures to ensure that victims of torture or other cruel, inhuman or degrading treatment, and their legal successors, receive redress,

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compensation and rehabilitation in all circumstances should be considered.

- Yugoslavia, CAT, A/54/44 (1999) 6 at para. 51.

In order to diminish the recurrence of torture, the State party should legally and practically ensure the independence of the judiciary, the unrestricted access to counsel immediately after arrest, the shortening of the length of police custody to a maximum period of 48 hours, the shortening of the period of pre-trial post-indictment detention, strict exclusion of all evidence directly or indirectly derived from torture, effective civil redress and vigorous criminal prosecution in all cases of torture and breaches of article 16 of the Convention.

- Tunisia, CAT, A/54/44 (1999) 11 at para. 102.

The State party should ensure the right of a victim of torture to lodge a complaint without the fear of being subjected to any kind of reprisal, harassment, harsh treatment or prosecution, even if the outcome of the investigation into the claim does not prove his or her allegation, and to seek and obtain redress if these allegations are proven correct.

- Italy, CAT, A/54/44 (1999) 19 at para. 169.

The legislative authorities in the State party should proceed to incorporate into domestic law the crime of torture as defined in article 1 of the Convention and provide for an appropriate system of compensation for torture victims.

- Morocco, CAT, A/54/44 (1999) 21 at para. 196.

The State party should initiate, urgently if such has not already been done, impartial inquiries into the serious allegations of human rights violations and ensure, in recognized cases, that appropriate penalties are imposed on those responsible and that equitable compensation is granted to the victims.

- Paraguay, CAT, A/55/44 (2000) 27 at paras. 150 and 151.

Paragraph 150

The lack of programmes for redress and the rehabilitation of the physical and mental health of the victims of torture, as required by article 14 of the Convention is of concern. No information was received on any case in which a victim of torture obtained the right to redress.

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Paragraph 151

The legal recognition of the right of victims of torture to redress and fair and adequate compensation at the expense of the State is recommended.

- El Salvador, CAT, A/55/44 (2000) 28 at para. 167.

The right of torture victims to fair and adequate compensation at the State's expense should be regulated, with the introduction of programmes for as full as possible physical and mental rehabilitation of the victims.

- United States of America, CAT, A/55/44 (2000) 31 at para. 179.

Concern is expressed that legal action by prisoners seeking redress has been significantly restricted by the requirement of physical injury as a condition for bringing a successful action.

- Armenia, CAT, A/56/44 (2001) 17 at para. 37.

It is of concern that there is a lack of effective compensation for victims of acts of torture committed by government officials, in contravention of the provisions of article 14 of the Convention.

- Cameroon, CAT, A/56/44 (2001) 28 at paras. 65 and 66.

Paragraph 65

The absence of legislative provisions for the compensation and rehabilitation of victims of torture, contrary to the provisions of article 14 of the Convention is of concern.

Paragraph 66

A mechanism should be introduced into legislation for the fullest possible compensation and rehabilitation of the victims of torture.

- Georgia, CAT, A/56/44 (2001) 35 at para. 82.

In order to ensure that perpetrators of torture do not enjoy impunity, urgent steps should be taken to: i) establish an effective and independent complaints mechanism; ii) make provisions for the systematic review of all convictions based upon confessions that may have been obtained through torture; iii) make adequate provisions for compensation and rehabilitation of victims of torture.

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- Bolivia, CAT, A/56/44 (2001) 40 at para. 96.

The exceptional nature of those few cases in which the State has accepted its obligation to compensate for damage caused by exceptionally serious violations of the right to life would appear to demonstrate the absence of any State policy relating to redress for victims of human rights violations.

- Slovakia, CAT, A/56/44 (2001) 43 at para. 105.

Adequate provisions should be made for compensation and rehabilitation of victims of torture and ill-treatment.

- Brazil, CAT, A/56/44 (2001) 49 at paras. 119 and 120.

Paragraph 119

The absence of an institutionalized and accessible procedure to guarantee victims of acts of torture the right to obtain redress and to be fairly and adequately compensated, as provided for in article 14 of the Convention is a matter of concern.

Paragraph 120

Measures should be taken to regulate and institutionalize the right of victims of torture to fair and adequate compensation payable by the State, and to establish programmes for their fullest possible physical and mental rehabilitation.

CRC

- Indonesia, CRC, CRC/C/34 (1994) 16 at para. 78.

The Committee remains seriously disturbed by the continuing pattern of violation of the right to freedom of assembly and the great number of complaints of ill-treatment of children attributed to the police, security or military personnel, in particular in situations of arrest and detention. The failure of the authorities to take effective steps to punish those found guilty of such violations and rehabilitate and compensate the victims of such acts is also disturbing.

- Chad, CRC, CRC/C/87 (1999) 45 at para. 200.

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The lack of resources available to support the rehabilitation and social reintegration of demobilized child soldiers is of serious concern. The situation of traumatized or permanently disabled former child soldiers and their lack of access to compensation or other support services is particularly of concern. Legislation banning the recruitment of children under 18 years should be ensured. Efforts should be redoubled to allocate the necessary resources, if necessary with international assistance, to the rehabilitation and social reintegration of former child soldiers, and in particular to provide compensation and support services to traumatized or permanently disabled former child soldiers.

- India, CRC, CRC/C/94 (2000) 10 at paras. 72 and 100.

Paragraph 72

The State party should implement the recommendations made by the National Police Commission in 1980 and the Parliamentary Committee in 1996, which, *inter alia*, call for a mandatory judicial inquiry in cases of alleged rape, death or injury of persons in police custody; the establishment of investigative bodies; and payment of compensation to people who have been victims of custodial abuse. Amendment to the Juvenile Justice Act is recommended to provide for complaints and prosecution mechanisms for cases of custodial abuse of children. Section 43 of the Police Act should be amended so that police cannot claim immunity for actions while executing a warrant in cases of illegal detention or custodial abuse.

Paragraph 100

The State party should ensure that laws provide criminal and civil remedies, especially in the light of decisions of the Supreme Court in relation to compensation funds for child labourers (*M.C. Mehta vs. The State of Tamil Nadu* and *M.C. Mehta vs. Union of India*). Court procedures should be simplified, so that responses are appropriate, timely and child-friendly. Enforcement of minimum-age standards should be vigorously pursued.

- Democratic Republic of the Congo, CRC, CRC/C/108 (2001) 31 at para. 182.

The State party is strongly urged to strengthen its efforts to address the causes and incidence of torture and cruel, inhuman or degrading treatment of children by, among others, the police, the military, teachers and in the family, to end and prevent these violations of children's rights and to ensure that the persons responsible for these acts are brought to justice. The possibility of compensation for the victims of torture and other acts should be considered.