

LEGAL RIGHTS - CRIMINAL - Right to Counsel or Consular Assistance

IV. CONCLUDING OBSERVATIONS

CERD

- Guatemala, CERD, A/52/18 (1997) 14 at para. 79.

Concern is expressed that the indigenous population does not enjoy effective protection and remedies in the national courts from violations of human rights and fundamental freedoms, owing to the lack of interpreters and the insufficient availability of public legal defenders.

ICCPR

- Senegal, ICCPR, A/48/40 vol. I (1993) 23 at para. 104.

The right of access to legal counsel begins from the moment an individual is deprived of his freedom.

- Islamic Republic of Iran, ICCPR, A/48/40 vol. I (1993) 44 at para. 267.

Iranian legislation and practice should be brought into line with the provisions of articles 9 and 14 of the Covenant, which provide that all persons should have the right to a fair trial, including the assistance of counsel, the right to be brought promptly before a judge and the right to be tried in public.

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

The duration of custody should be reviewed, and an accused person should be allowed to undergo a medical examination upon request and to have access to his lawyer from the time of arrest.

See also:

- Italy, ICCPR, A/53/40 vol. I (1998) 50 at para. 342.

- Ireland, ICCPR, A/48/40 vol. I (1993) 119 at para. 605.

It is noted that, under the current restrictive system, a proper legal defence could not be ensured for many persons. Access to legal assistance is an essential right under the Covenant.

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- Japan, ICCPR, A/49/40 vol. I (1994) 23 at paras. 110 and 116.

Paragraph 110

It is of concern that the guarantees contained in articles 9, 10 and 14 are not fully complied with, in that pre-trial detention takes place not only in cases where the conduct of the investigation requires it; the detention is not promptly and effectively brought under judicial control and is left under the control of the police; most of the time interrogation does not take place in the presence of the detainee's counsel, nor do rules exist to regulate the length of interrogation; and the substitute prison system (Daiyo Kangoku) is not under the control of an authority separate from the police. In addition, the legal representatives of the defendant do not have access to all relevant material in the police record, in order to enable them to prepare the defence.

Paragraph 116

With a view to guaranteeing the full application of articles 9, 10 and 14 of the Covenant, pre-trial procedures and the operation of the substitute prison system (Daiyo Kangoku) should be made compatible with all requirements of the Covenant and, in particular, all the guarantees relating to the facilities for the preparation of the defence should be observed.

- United States of America, ICCPR, A/50/40 vol. I (1995) 52 at para. 288.

The lack of effective measures to ensure that indigent defendants in serious criminal proceedings, particularly in state courts, are represented by competent counsel is noted.

- United Kingdom of Great Britain and Northern Ireland (Hong Kong), ICCPR, A/51/40 vol. I (1996) 13 at para. 62.

Concern is expressed over the fact that the administration of legal aid in Hong Kong is refused in a large number of Bill of Rights cases that are directed against the Government or public officers.

- Mauritius, ICCPR, A/51/40 vol. I (1996) 24 at para. 161.

The need to establish a mechanism to provide legal aid for appeals to the Privy Council is stressed.

- Spain, ICCPR, A/51/40 vol. I (1996) 24 at paras. 178 and 184.

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Paragraph 178

The maintenance on a continuous basis of special legislation under which persons suspected of belonging to or collaborating with armed groups may be detained incommunicado for up to five days, may not have a lawyer of their own choosing and are judged by the *Audiencia Nacional* without possibility of appeal is of concern.

Paragraph 184

It is recommended that the legislative provisions, which state that persons accused of acts of terrorism or who are suspected of collaborating with such persons may not choose their lawyer, should be rescinded.

- Nigeria, ICCPR, A/51/40 vol. I (1996) 37 at para. 261.

The establishment by presidential decree of several types of special tribunals, including their composition and rules of procedure which exclude the free choice of a lawyer, and the absence of any provisions for appeals constitute violations of the rights provided under article 14.

- Peru, ICCPR, A/51/40 vol. I (1996) 48 at para. 363.

The Government of Peru should ensure that all trials are conducted with full respect for the safeguards of fair trial provided by article 14 of the Covenant, including in particular the right to communicate with counsel, the right to have time and facilities to prepare the defence and the right to have the conviction reviewed.

- Switzerland, ICCPR, A/52/40 vol. I (1997) 19 at paras. 98, 109 and 111.

Paragraph 98

The non-existence in most cantons of legal guarantees, such as the possibility for a detainee to contact a lawyer immediately after his arrest and to be examined by an independent doctor at the commencement of police custody and before he appears before the examining magistrate is regretted.

Paragraph 109

Discussions aimed at harmonizing the various cantonal laws on criminal procedure should be intensified, with due respect for the provisions of the Covenant, particularly with regard to fundamental guarantees during police custody or incommunicado detention. The Committee emphasizes in particular the need to allow suspects to contact a lawyer and their family or friends and to have suspects examined by an independent doctor as soon as they are arrested, after each period of questioning and before they are brought before the examining magistrate or released.

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Paragraph 111

The Act relating to coercive measures should be implemented in a restrictive manner and in the spirit of the Covenant, so as to ensure that the length of detention applicable under the Act is as short as possible and that the judicial review of the detention decision or the decision to extend detention is carried out in less than 96 hours. All possible measures should be taken to ensure that foreigners who are covered by that Act are informed in a language they understand of the remedies available to them and that they are assisted by counsel.

- Georgia, ICCPR, A/52/40 vol. I (1997) 40 at paras. 245, 254 and 258.

Paragraph 245

Court proceedings do not meet the conditions required by article 14 of the Covenant. For example, although the law provides for access to the assistance of counsel, in practice this is made difficult because of excessive bureaucracy.

Paragraph 254

All persons who are arrested must immediately have access to counsel, be examined by a doctor without delay and be able to submit promptly an application to a judge to rule on the legality of the detention.

Paragraph 258

The creation of an independent legal profession is a necessary precondition for the effective enjoyment of the right to defence and the right to appeal.

- Slovakia, ICCPR, A/52/40 vol. I (1997) 58 at para. 380.

Concern is expressed over the fact that the right to free legal assistance provided for by article 14, paragraph 3 (d), of the Covenant does not seem to be guaranteed in all cases, but only in cases for which the maximum penalty is more than five years' imprisonment. It is further noted with concern that although the law provides for the assistance of a lawyer immediately after arrest, many cases of failure to respect this right during police custody were reported. Legislation regulating the provision of free legal assistance should be reviewed to ensure that it conforms to the Covenant, and the implementation of laws and regulations governing the presence and assistance of lawyers should be closely monitored.

- France, ICCPR, A/52/40 vol. I (1997) 62 at paras. 404 and 410.

Paragraph 404

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Measures should be taken to reduce the length of pre-trial detention and to ensure legal aid to juveniles in legal proceedings.

Paragraph 410

The continued application of the anti-terrorist laws, which provide for a centralized court with prosecutors having special powers of arrest, search and prolonged detention in police custody for up to four days (twice the normal length), and according to which an accused does not have the same rights in the determination of guilt as in the ordinary courts, is of concern. Furthermore, concern is expressed over the fact that the accused has no right to contact a lawyer during the initial 72 hours of detention in police custody. Therefore, in the circumstances, anti-terrorist laws, which appear to be necessary to combat terrorism, should be brought fully into conformity with the requirements of articles 9 and 14 of the Covenant.

- India, ICCPR, A/52/40 vol. I (1997) 67 at para. 438.

Concern is expressed at allegations that police and other security forces do not always respect the rule of law and that, in particular, court orders for *habeas corpus* are not always complied with, particularly in disturbed areas. Concern is also expressed over the incidence of custodial deaths, rape and torture, and at the failure of the Government of India to receive the United Nations Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment. Therefore, it is recommended that:

- (a) legislation for mandatory judicial inquiry into cases of disappearance and death, ill-treatment or rape in police custody be enacted early;
- (b) special measures be adopted to prevent the occurrence of rape of women in custody;
- (c) the mandatory notification of relatives of detainees without delay be instituted;
- (d) the right of detainees to legal advice and assistance and to have a medical examination be guaranteed;
- (e) priority be given to providing training and education in the field of human rights to law enforcement officers, custodial officers, members of the security and armed forces, and judges and lawyers, and that the United Nations Code of Conduct for Law Enforcement Officials be taken into account in this regard.

- Jamaica, ICCPR, A/53/40 vol. I (1998) 15 at paras. 76 and 82.

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Paragraph 76

The fact that draft legislation is currently being finalized with a view to improving the system of legal aid in Jamaica is welcomed. Under the proposed system, legal aid would be extended to all aspects of criminal proceedings and appeals, to constitutional motions, to prerogative writs and to the writ of *habeas corpus*, as well as to other civil proceedings. Hopefully, the new Legal Aid Bill will be passed and will enter into force as soon as possible, and sufficient resources will be allocated for its effective operation.

Paragraph 82

The state of current legal aid representation remains of concern. This is particularly disturbing for cases involving capital punishment, where unavailability of legal aid amounts to a violation of article 6 *juncto* article 14 of the Covenant. Therefore, the State party should monitor, on a continuing basis, the availability and quality of legal aid representation, and should ensure that experienced counsel is assigned to individuals accused of capital and other serious offences. It is emphasized that adequate remuneration of lawyers acting under the Poor Prisoners' Defence Act at all stages of arrest and subsequent proceedings would greatly assist in providing a proper defence of clients in a proper manner. Legal aid should be available for obtaining the presence of defence witnesses for the purposes of trials.

- Uruguay, ICCPR, A/53/40 vol. I (1998) 38 at para. 242.

The following aspect of the new Code of Criminal Procedure is not in conformity with the Covenant: the provision in accordance with which a suspect may be placed in "incommunicado" detention until a decision is taken as to whether he should be committed to stand trial. The fact that during this period the judge may restrict contact by the suspect with a lawyer is of concern. This provision should be brought into conformity with the Covenant.

- Ecuador, ICCPR, A/53/40 vol. I (1998) 43 at para. 287.

Long delays in judicial proceedings which are incompatible with the requirements of articles 9 and 14 of the Covenant, as well as the severe shortage of public defenders for the poor in Quito and Guayaquil and their total unavailability in many parts of the country, are of concern. This situation is particularly grave since Ecuadorian law requires mandatory legal assistance in court proceedings. Therefore, the question of long judicial delays should be addressed to ensure compliance with the provisions of the Code of Criminal Procedure, which stipulates that the initial trial should be completed within 60 days. The State party is encouraged to increase the number of public defenders and to extend their presence throughout the whole of its territory.

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- Israel, ICCPR, A/53/40 vol. I (1998) 45 at para. 303.

The recent establishment of the Public Defender's Office is welcomed.

- Algeria, ICCPR, A/53/40 vol. I (1998) 52 at para. 360.

The State party must ensure that:

(a) nobody may be arrested or detained "outside the law";

(b) complaints about such arrest or detention are given immediate attention and relatives, friends or lawyers of persons detained are able to receive an effective remedy, which includes reviewing the legality of the detention;

(c) all persons arrested are kept at officially designated places of detention; their families are immediately informed; they have immediate access to a lawyer; and they are promptly charged and brought to trial;

(d) their detention should not exceed the limit provided by law and they have a right to medical examination on arrest and at the end of their detention.

- Libyan Arab Jamahiriya, ICCPR, A/54/40 vol. I (1999) 32 at para. 134.

Serious doubts arise as to the independence of the judiciary and the liberty of advocates to exercise their profession freely, without being in the employment of the State, and to provide legal aid services. Measures should be taken to ensure full compliance with article 14 of the Covenant as well as with the United Nations Basic Principles on the Independence of the Judiciary and the Basic Principles on the Role of Lawyers. Training in human rights law should be given to all judges and members of the legal profession.

- Japan, ICCPR, A/54/40 vol. I (1999) 36 at para. 164.

The guarantees contained in articles 9, 10 and 14 are not fully complied with in pre-trial detention in that pre-trial detention may continue for as long as 23 days under police control and is not promptly and effectively brought under judicial control; the suspect is not entitled to bail during the 23-day period; there are no rules regulating the time and length of interrogation; there is no State-appointed counsel to advise and assist the suspect in custody; there are serious restrictions on access to defence counsel under article 39(3) of the Code of Criminal Procedure; and the interrogation does not take

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place in the presence of the counsel engaged by the suspect. The pre-trial detention system in Japan should be reformed with immediate effect to bring it in conformity with articles 9, 10 and 14 of the Covenant.

- Austria, ICCPR, A/54/40 vol. I (1999) 42 at para. 187.

The presence of a lawyer to advise a detained person is not authorized at the preliminary stage of judicial criminal investigation (prior to the person's appearance before a judge). The Code of Criminal Procedure should be revised so as to guarantee more fully the right of a suspect to be assisted by a lawyer at all stages of the proceedings.

- Cambodia, ICCPR, A/54/40 vol. I (1999) 57 at para. 307.

Reports that children are detained in juvenile detention facilities for considerable periods without charge, and without access to a lawyer or to a court is of concern. It is of particular concern that these children are subjected to beatings and to ill-treatment. The State party should ensure strict observance of articles 7, 9 and 10 and should take appropriate measures to ensure the protection of children in accordance with article 24 of the Covenant.

- Mexico, ICCPR, A/54/40 vol. I (1999) 61 at para. 322.

The Committee deplores the fact that arrested persons do not have access to legal counsel before the time they are required to make a formal statement to the Office of the Public Prosecutor and that the situation regarding access by members of an arrested person's family was not clarified during consideration of the report.

- Morocco, ICCPR, A/55/40 vol. I (2000) 24 at para. 108.

Concern is expressed that the maximum length of detention of a suspect before being brought before a judge may in some cases be as long as 96 hours, that the Crown Prosecutor General has power to extend this period, that persons detained may not have access to counsel during this period, and about the length of pre-trial detention.

- Kyrgyzstan, ICCPR, A/55/40 vol. I (2000) 57 at para. 394.

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The State party should ensure that anyone arrested or detained on a criminal charge be brought promptly before a judge (art. 9, para. 3), that all other aspects of its law and practice be harmonized with the requirements of article 9 of the Covenant, and that detained persons have access to counsel and contact with their families.

- Ireland, ICCPR, A/55/40 vol. I (2000) 61 at paras. 436-439.

Paragraph 436

That legal assistance and advice may not be available until a person has been charged is regretted.

Paragraph 437

Steps should be taken to ensure that all criminal procedures are brought into compliance with articles 9 and 14 of the Covenant.

Paragraph 438

That legal aid is not available to detainees between arrest and charge and does not extend to visits to persons in detention is of concern.

Paragraph 439

The State party should ensure that all aspects of detention, including the period of detention and availability of legal aid, are administered in full compliance with article 9 of the Covenant.

- Kuwait, ICCPR, A/55/40 vol. I (2000) 65 at para. 472.

The State party should ensure that anyone arrested or detained on a criminal charge is brought promptly before a judge or other officer authorized by law to exercise judicial power (art. 9, para. 3), that all other aspects of its law and practice are harmonized with the requirements of article 9 of the Covenant, and that detained persons have immediate access to counsel and contact with their families.

- Trinidad and Tobago, ICCPR, A/56/40 vol. I (2001) 31 at paras. 72(6) and 72(7).

Paragraph 72(6)

The extension of legal aid, both in terms of geographical distribution and of the tribunals before which it is available, as well as the raising of fees so as to attract higher quality advocates, will increase the State party's compliance with article 14.3 (d).

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Paragraph 72(7)

The denunciation of the Optional Protocol is profoundly regretted. In the light of the continued existence of the death penalty, and despite assurances by the delegation that proposals to extend the death penalty have been rejected, it is recommended that the assistance of counsel should be ensured, through legal aid as necessary, immediately on arrest and throughout all subsequent proceedings to persons accused of serious crimes, in particular in cases of offences carrying the death penalty.

- Gabon, ICCPR, A/56/40 vol. I (2001) 41 at para. 75(13).

The State party should take action to ensure that detention in police custody never lasts longer than 48 hours and that detainees have access to lawyers from the moment of their detention.

- Uzbekistan, ICCPR, A/56/40 vol. I (2001) 59 at paras. 79(7) and 79(21).

Paragraph 79(7)

Free access to lawyers, doctors and family members should be guaranteed immediately after the arrest and during all stages of detention.

Paragraph 79(21)

Cases of children being detained, arrested and held in custody without being able to exercise their right to a lawyer, and subjected to ill-treatment and unlawful investigative methods, in contravention of articles 7, 10, and 24 of the Covenant, are of concern. The lack of information on this subject and on the policy the State party intends to pursue to address this problem is also of concern. The State party should enact a new criminal procedure law to deal specifically with juveniles.

- Croatia, ICCPR, A/56/40 vol. I (2001) 65 at para. 80(5).

Judgments holding inadmissible evidence obtained from suspects without the presence of a lawyer and striking down as unconstitutional criminal sanctions for criticism of high officials are welcomed.

- Syrian Arab Republic, ICCPR, A/56/40 vol. I (2001) 70 at para. 81(14).

The number of people held in pre-trial detention, some of whom are in solitary confinement is of concern. Hundreds of people have reportedly been arrested and detained without an arrest warrant or indictment, only to be released without judicial procedures having been initiated and, in many cases, after many years in detention. Anyone arrested or detained on a criminal charge must be brought promptly before a judge (article 9, paragraph 3, of the Covenant). The State party must

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ensure that all other aspects of its practice are consistent with the provisions of article 9 of the Covenant and that detainees have access to counsel and are permitted to contact their families.

- The Netherlands (Aruba), ICCPR, A/56/40 vol. I (2001) 76 at para. 82(22).

The fundamental safeguards against unlawful actions by the authorities contained in the revised Code of Criminal Procedure (1997), notably the availability of legal assistance beginning with a suspect's initial contact with the criminal justice authorities are welcomed.

- Czech Republic, ICCPR, A/56/40 vol. I (2001) 83 at paras. 83(17) and 83(21).

Paragraph 83(17)

It is of concern that the period of up to 48 hours before being brought before a court is excessive, and that access to a lawyer is not available during that period to a suspect who cannot afford one (art. 9). The State party should ensure that detained persons are brought promptly before a court and that access to a lawyer is available from the moment of deprivation of liberty.

Paragraph 83(21)

The system of legal aid in the State party does not ensure that legal aid will be made available in all cases required under article 14(3)(d) of the Covenant. The legal aid system should be reviewed in order to ensure that legal assistance will be available to all defendants in criminal cases where the interests of justice so require.

- Monaco, ICCPR, A/56/40 vol. I (2001) 89 at para. 84(15).

Concern is expressed about the inadequacy of the guarantees available to persons in police custody, particularly the right of such persons to legal assistance (article 9). Appropriate legislative measures should be taken to ensure that the rights of persons in police custody are protected and, specifically, that they are allowed to obtain the assistance of a lawyer.

- Democratic People's Republic of Korea, ICCPR, A/56/40 vol. I (2001) 98 at para. 86(18).

The compatibility of the State party's pre-trial detention practices and preliminary investigation procedures with article 9 of the Covenant is a matter of concern. Anyone arrested or detained on a criminal charge must be brought promptly before a judge. The State party must ensure that all of its practices are consistent with the provisions of article 9 of the Covenant and that detainees have access to counsel and are permitted to contact their families from the moment of apprehension.

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CAT

- United Kingdom of Great Britain and Northern Ireland, CAT, A/47/44 (1992) 19 at para. 125.

The absence of video recordings of interrogations by the police, the lack of a suspect's entitlement to the presence of a solicitor during interrogation, and the refusal of the right to silence is of concern. The proposal to establish an independent commissioner to inspect interrogation centres is welcomed, but such monitoring must apply to interrogation rules as well as to methods and practices.

- China, CAT, A/48/44 (1993) 62 at para. 427.

Arrested or detained persons should have more extensive guarantees immediately following their arrest and should have prompt and regular access to their family, lawyer and doctor.

- Spain, CAT, A/48/44 (1993) 68 at para. 456.

All offences specified in article 1 of the Convention need to be punished with equal vigour. General application of the procedural standards relating to the holding of persons incommunicado and to the choice of a trustworthy counsel is desirable.

- Switzerland, CAT, A/49/44 (1994) 20 at para. 132.

Reform of the legislation and practice relating to police custody and pre-trial detention is desirable, particularly the right to get in touch with one's family, immediate access to a lawyer and the right to a medical examination by a doctor of the detained person's choice or drawn from a list of doctors compiled by the Medical Association.

- Chile, CAT, A/50/44 (1995) 10 at para. 60.

In a spirit of collaboration an in-depth review of procedure should be undertaken, especially as regards police powers of detention and the right of the detainee to free access to and communication with family members and legal advisers and a physician whom he trusts; and the advisability of explicitly abolishing those rules such as automatic obedience, which are not compatible with the Convention.

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- Libyan Arab Jamahiriya, CAT, A/50/44 (1995) 16 at para. 101.

A person deprived of his liberty should have guaranteed free access to a lawyer, to a doctor of his choice and to his relatives at all stages of detention.

See also:

- Libyan Arab Jamahiriya, CAT, A/54/44 (1999) 20 at para. 187.

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

The State party should monitor effective compliance with safeguards during preliminary custody, especially access to a doctor and legal counsel.

- Jordan, CAT, A/50/44 (1995) 23 at para. 174.

The State party should further strengthen measures to protect the rights of detainees, especially their access to judges, lawyers and doctors of their choice.

- United Kingdom of Great Britain and Northern Ireland, CAT, A/51/44 (1996) 12 at paras. 61, 64 and 65.

Paragraph 61

The maintenance of emergency legislation in Northern Ireland and of separate detention or holding centres will inevitably continue to create conditions leading to the breach of the Convention. This is particularly so because at present the practice of permitting legal counsel to consult with their clients at their interrogations is not yet permitted.

Paragraph 64

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

Paragraph 65

Extending the taping of interrogations to all cases and not merely those that do not involve terrorist-related activities and in any event to permit lawyers to be present at interrogations in all cases is recommended.

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- China, CAT, A/51/44 (1996) 22 at para. 150.

Access to legal counsel should be granted to all those detained, arrested or imprisoned as a matter of right and at the earliest stage of the process. Access to the family and to a medical doctor should also be accommodated.

- Malta, CAT, A/51/44 (1996) 27 at para. 171.

The absence from national legislation of the right of persons deprived of their liberty to have immediate access to a lawyer is of concern.

- Russian Federation, CAT, A/52/44 (1997) 9 at para. 43.

The following is recommended:

Programmes to inform detainees and the public of their rights and the means available under the law to protect them should be adopted;

Abolish acts, rules and regulations allowing remand in custody for longer than 48 hours without judicial authorization, and those limiting access to legal assistance. Unimpeded access to counsel should be safeguarded at all times.

- Republic of Korea, CAT, A/52/44 (1997) 12 at para. 68.

Counsel should be permitted to be present during interrogation, especially since such presence would be in furtherance of the implementation of article 15 of the Convention.

- Poland, CAT, A/52/44 (1997) 18 at para. 110.

The likelihood of commission of acts of torture or of other cruel, inhuman or degrading treatment would be limited if suspects had easy access to a lawyer, doctor or family member during the 48 hours of police custody.

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- Ukraine, CAT, A/52/44 (1997) 23 at paras. 138, 143 and 146.

Paragraph 138

A major obstacle in efforts to prevent torture is the difficulty experienced by accused persons in gaining access to a lawyer of their choice in cases where the lawyer's participation in the proceedings depends on his presentation of an authorization to act as defence counsel; this problem can be solved only by the Ministry of Justice which issues such authorizations.

Paragraph 143

The adoption of a new criminal code, defining torture as a punishable offence, and a new code of criminal procedure, guaranteeing the right of an accused person to counsel at all stages of criminal proceedings is advocated.

Paragraph 146

Interrogation of any person detained or arrested, without the participation of defence counsel or when the person is being held incommunicado, should be prohibited by law.

- Argentina, CAT, A/53/44 (1998) 8 at para. 58.

Implementation of the following provisions of the new Code of Criminal Procedure should help prevent the practice of torture: prohibiting the police from taking a statement from a person who has been charged; strictly limiting cases in which the police may detain persons without a court order and obliging them to bring the detainee before the competent judicial authority immediately or within six hours; limiting the length of incommunicado detention; and stipulating that the fact that an individual is being held incommunicado may under no circumstances prevent him from communicating with his defence counsel before making any statement or before any proceeding requiring his personal participation.

- Switzerland, CAT, A/53/44 (1998) 11 at para. 96.

The need to allow suspects to contact a lawyer or family member or friend and to be examined by an independent doctor immediately upon their arrest, or after each session of questioning, and before they are brought before an examining magistrate or released is emphasized.

- Cuba, CAT, A/53/44 (1998) 12 at para. 111.

The information disclosed in some reports suggests that there occur serious violations of the Convention with regard to arrest, detention, prosecution, access to counsel and imprisonment of

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individuals, especially persons referred to in the reports as dissidents, and that serious violations occur in prisons affecting the safety, dignity and health of prisoners.

- Spain, CAT, A/53/44 (1998) 14 at paras. 131 and 135.

Paragraph 131

Prolonged detention incommunicado, when the detainee cannot receive the assistance of a lawyer of his choice, seems to facilitate the practice of torture.

Paragraph 135

Eliminating instances in which extended detention incommunicado and restrictions of the rights of detainees to be assisted by a defence lawyer of their choice should be considered.

- Germany, CAT, A/53/44 (1998) 19 at paras. 192 and 195.

Paragraph 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 widely applicable and possible. Adequate legal assistance by competent legal counsel should also be made available.

Paragraph 195

All detainees, at the outset of their custody, should be given a form in a language they understand, outlining their rights, including the right to be informed of the reason for their arrest, to contact a relative and a lawyer of their choice, to submit a complaint about their treatment and to receive medical assistance.

- Yugoslavia, CAT, A/54/44 (1999) 6 at paras. 46 and 51.

Paragraph 46

Regulating pre-trial detention is of specific significance for the prevention of torture. Two issues are crucial in this respect, namely incommunicado detention and access to counsel.

Paragraph 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

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derived from torture, effective civil redress and a vigorous criminal prosecution in all cases of torture and breaches of article 16 of the Convention.

- Hungary, CAT, A/54/44 (1999) 10 at para. 84.

All necessary measures, including, in particular, prompt access to defence counsel assistance soon after arrest and improved training, should be taken to prevent and eradicate torture and all acts of cruel, inhuman or degrading treatment or punishment.

- Kyrgyzstan, CAT, A/55/44 (2000) 17 at para. 72.

The provisions of the new Code of Criminal Procedure permitting a detained person access to the lawyer of his choice from the moment of detention and obliging the investigating officer to notify the detained person's family of his arrest from the moment of arrest are noted with satisfaction.

- China, CAT, A/55/44 (2000) 24 at para. 126.

The State party should consider abolishing the requirement of applying for permission before a suspect can have access for any reason to a lawyer whilst in custody.

- Armenia, CAT, A/56/44 (2001) 17 at para. 39.

Counsel, family members and the doctor of their own choice must be guaranteed immediate access to persons deprived of liberty.

- Georgia, CAT, A/56/44 (2001) 35 at paras. 81 and 82.

Paragraph 81

The lack of adequate access for persons deprived of liberty to counsel and doctors of their choice as well as visits of family members is of concern.

Paragraph 82

Measures should be taken to ensure that all persons deprived of their liberty or arrested by law enforcement officials: i) are informed promptly of their rights, including the right to complain to the authorities against ill-treatment, the right to be informed promptly of the charges against them and the right to counsel and doctor of their choice; ii) have prompt access to counsel and doctor of their

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choice as well as family members. The State party should desist from the practice by its law enforcement officers of characterizing suspects under detention as witnesses, which has had the effect of denying them the right to have the assistance of a lawyer.

- Bolivia, CAT, A/56/44 (2001) 40 at paras. 94 and 97.

Paragraph 94

Deficiencies in the legal aid system mean, in practice, that most detainees are deprived of their constitutional right to a defence lawyer.

Paragraph 97

All necessary measures should be adopted to ensure that every person deprived of liberty exercises his/her right to a defence and receives the assistance of a lawyer, if necessary at the expense of the State.

See also:

- Brazil, CAT, A/56/44 (2001) 49 at para. 120.
- Slovakia, CAT, A/56/44 (2001) 43 at para.104.

The lack of adequate guarantees of the rights of persons deprived of liberty to have access to counsel and a doctor of his or her choice, as well as prompt medical exams, is of concern.

- Czech Republic, CAT, A/56/44 (2001) 46 at paras. 113 and 114.

Paragraph 113

The lack of adequate guarantees of the rights of persons deprived of liberty to notify a close relative or third party of their choice, to have access to doctors of their choice and to have access to counsel as from the outset of their custody is of concern.

Paragraph 114

All persons deprived of their liberty should be guaranteed the rights to notify a close relative or third party of their choice, the right to have access to a lawyer of their choice, as from the very outset of their custody, and the right to have access to a doctor of their choice in addition to any medical examination carried out by the police authorities.

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- Kazakhstan, CAT, A/56/44 (2001) 52 at para. 129.

The State party should proceed with the adoption of measures to permit defence counsel to gather evidence, and to be involved in cases from the very start of the detention period, and to ensure that doctors will be provided on the request of detained persons, rather than the orders of prison officials.

- Costa Rica, CAT, A/56/44 (2001) 55 at para. 134.

The explicit inclusion in the Constitution and laws of the rights and guarantees of every person deprived of liberty are noted with satisfaction, including the obligation of the person making an arrest to inform the arrested person of the reason for his arrest and his rights to remain silent, to inform anyone he wishes of the arrest and to have the services of a defence counsel of his choice.

CRC

- Lebanon, CRC, CRC/C/54 (1996) 7 at para. 43.

The field of juvenile justice and treatment of young offenders requires further reform. Problems appear to exist in relation to the low age of criminal responsibility, non-separation of children from adult detainees, the lack of available health and educational facilities for young detainees, the existence and length of pre-trial custody and the non-availability of legal assistance.

- Ecuador, CRC, CRC/C/80 (1998) 9 at para. 55.

The State party should undertake further measures to ensure full compatibility with the Convention and other relevant UN standards. Particular attention should be paid to ensuring that the deprivation of liberty is only used as a measure of last resort, that children have access to legal aid and that alternative care (for example, in foster families) should be provided for children living in prisons with one of their parents. Training programmes on the relevant international standards should be conducted for all professionals involved with the juvenile justice system. In this regard, technical assistance from, *inter alia*, the Office of the United Nations High Commissioner for Human Rights, the Centre for International Crime Prevention, the International Network on Juvenile Justice and UNICEF through the Coordination Panel on Juvenile Justice should be considered.

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- Kyrgyzstan, CRC, CRC/C/97 (2000) 51 at paras. 328 and 329.

Paragraph 328

It is of concern that juvenile offenders are not dealt with separately under the justice system and that there are no special procedures or specially trained personnel. Despite laws to the contrary, the militia often do not notify parents of arrests, and often neither parents nor lawyers are present during questioning of juveniles. Concern is also expressed about the limited access to adequate legal aid for poor individuals.

Paragraph 329

All measures should be taken to integrate fully into its legislation and practice the provisions of the Convention, in particular articles 37, 40 and 39, as well as other relevant international standards in this area, such as the Beijing Rules, the Riyadh Guidelines, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System.

- Cambodia, CRC, CRC/C/97 (2000) 64 at para. 395.

With regard to the situation of children in conflict with the law, concern is expressed at the lack of special legislation, policies and programmes in this area; at reports of children detained in prisons with adults; the situation of children detained for extended periods without being charged and without access to a lawyer or to a court; and the reports of detained children allegedly being subjected to beatings and other ill-treatment.

- Saudi Arabia, CRC, CRC/C/103 (2001) 71 at paras. 415 and 416.

Paragraph 415

The lack of adequate access to legal counsel may put a child at risk of arbitrary arrest and detention under the 1977 Detention and Imprisonment Regulations and the 1983 Principles of Arrest, Temporary Confinement and Preventative Detention Regulations.

Paragraph 416

The State party should expedite the promulgation of a criminal code and a code of criminal procedure. Particular attention should be paid to ensure that: deprivation of liberty is only used as a measure of last resort; children have access to legal aid and independent and effective complaints mechanisms; and persons under 18 are not detained with adults.

LEGAL RIGHTS - CRIMINAL - Right to Counsel or Consular Assistance

- Turkey, CRC, CRC/C/108 (2001) 18 at paras. 119 and 120.

Paragraph 119

It is noted that in a number of cases children are held *incommunicado* when in police or *gendarma* custody and are not allowed the presence of a lawyer, practices which can provide protection from torture and ill-treatment, and are not interrogated in presence of a prosecutor, as established by law.

Paragraph 120

In the light of article 37(a) of the Convention and in line with the recommendations of the Special Rapporteur on Torture (see E/CN.4/1999/61/Add.1), it is strongly recommended that the State party enforce, or, where appropriate, review existing legislation, with a view to preventing children being held *incommunicado*, and investigate in an effective way cases of torture and ill-treatment of children.

- Guatemala, CRC, CRC/C/108 (2001) 47 at para. 283.

Serious concern is expressed that the Committee's previous recommendation, encouraging the reform of the juvenile justice system to ensure its full compatibility with the principles and provisions of the Convention, has not yet been implemented because of the postponement of the entry into force of the Children and Adolescent Code of 1996. In particular, the concern about the doctrine of "irregular situation" is reiterated and it is noted that legal assistance for children is not mandatory and that the presence of a translator for indigenous children is not required.

- Bhutan, CRC, CRC/C/108 (2001) 85 at para. 485.

The State party should ensure that children have access to legal aid and independent and effective complaints mechanisms.

See also:

- Oman, CRC, CRC/C/111 (2001) 36 at para. 202.
- Uzbekistan, CRC, CRC/C/111 (2001) 117 at para. 593.