

LEGAL RIGHTS - CRIMINAL - Right to Counsel or Consular Assistance

IV. CONCLUDING OBSERVATIONS, CONTINUED

CERD

- Saudi Arabia, CERD, A/58/18 (2003) 41 at para. 218.

218. The Committee is concerned at allegations that a disproportionate number of foreigners are facing the death penalty. The Committee encourages the State party to cooperate fully with the Special Rapporteur on extrajudicial, summary and arbitrary executions who has requested information on several cases of migrant workers who have not received legal assistance and have been sentenced to death.

ICCPR

- Ukraine, ICCPR, A/57/40 vol. I (2002) 32 at para. 74(15).

(15) The Committee remains concerned about the persistence of widespread use of torture and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials.

The State party should institute a more effective system of monitoring treatment of all detainees, so as to ensure that their rights under articles 7 and 10 of the Covenant are fully protected...Free access to legal counsel and doctors should be guaranteed in practice, immediately after arrest and during all stages of detention...

See also:

- Georgia, ICCPR, A/57/40 vol. I (2002) 53 at para. 78(8).
- United Kingdom of Great Britain and Northern Ireland, ICCPR, A/57/40 vol. I (2002) 36 at para. 75(19).

(19) The Committee notes with concern that, under the general Terrorism Act 2000, suspects may be detained for 48 hours without access to a lawyer if the police suspect that such access would lead, for example, to interference with evidence or alerting another suspect. Particularly in circumstances where these powers have not been used in England and Wales for several years, where their compatibility with articles 9 and 14, *inter alia*, is suspect, and where other less intrusive means for achieving the same ends exist, the Committee considers that the State party has failed to justify these powers.

The State party should review these powers in the light of the Committee's views.

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- United Kingdom of Great Britain and Northern Ireland (Overseas Territories), ICCPR, A/57/40 vol. I (2002) 36 at para. 75(34).

(34) ...The Committee...appreciates the appointment of a Public Solicitor in 1998, providing free legal advice, assistance or representation to persons so requiring.

- Switzerland, ICCPR, A/57/40 vol. I (2002) 44 at para. 76(12).

(12) The Committee is concerned that many of the guarantees in articles 9 and 14 are not contained in the criminal procedure codes of some cantons and that a unified criminal procedure code has not yet been adopted. Consequently, rights under articles 9 and 14 are not always respected. The Committee is particularly concerned at persistent reports that detainees have been denied the right to contact a lawyer upon arrest or to inform a close relative of their detention.

The State party should take measures to ensure effective implementation of all rights under articles 9 and 14 of the Covenant in all parts of its territory.

- Azerbaijan, ICCPR, A/57/40 vol. I (2002) 47 at paras. 77(11) and 77(20).

(11) The Committee is concerned that the legal right of detainees to access to counsel, medical advice and members of the family is not always respected in practice (articles 7 and 9 of the Covenant).

The State party should ensure scrupulous respect for these rights by its law enforcement agencies, procuracy and judiciary.

...

(20) With regard to the rights of aliens, the Committee considers that the provisions in the State party's legislation providing for the principle of reciprocity in guaranteeing Covenant rights to aliens are contrary to articles 2 and 26 of the Covenant. The Committee is equally concerned that according to article 61 of the Constitution, the right to immediate access to legal representation is guaranteed only to citizens.

The Committee recommends that the State party take appropriate measures to guarantee all rights of aliens in accordance with articles 2 and 26 of the Covenant.

- Georgia, ICCPR, A/57/40 vol. I (2002) 53 at para. 78(11).

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(11) The Committee expresses its concern at the difficulties that detainees and persons charged with an offence have in gaining access to lawyers, particularly court-appointed lawyers. Although the law provides for the latter, budgetary problems are obstructing the enjoyment of this right.

The State party should ensure the full enjoyment of the right to be represented by a lawyer in accordance with article 14, paragraph 3 (d), of the Covenant; this includes appropriate budgetary provisions for an effective system of legal aid.

- Hungary, ICCPR, A/57/40 vol. I (2002) 60 at para. 80(8).

(8) The Committee regrets that, under the new Criminal Procedure Act, short-term arrest of up to 12 hours remains possible. It expresses its concern both at the length of the initial pre-trial detention phase (up to 72 hours) and the difficulties experienced by detainees in contacting their families and obtaining access to a lawyer, especially if the detained person cannot afford to engage private counsel...

The State party should reconsider removing these provisions from the new Criminal Procedure Act, especially those permitting detention in police stations for more than 48 hours. The State party should ensure that its law and practice are compatible with article 9 of the Covenant. It should also bring to the attention of judges the particular risk of ill-treatment in police premises, and take appropriate measures to ensure detainees' rights to contact their families and obtain legal assistance (articles 7, 9 and 14 of the Covenant).

- Viet Nam, ICCPR, A/57/40 vol. I (2002) 67 at para. 82(13).

(13) The Committee is concerned that the legal right of detainees to access to counsel, medical advice and members of the family is not always respected in practice.

The State party should ensure scrupulous respect for these rights by its law enforcement agencies, the procuracy and the judiciary.

- Egypt, ICCPR, A/58/40 vol. I (2002) 31 at para. 77(14).

(14) The Committee regrets the lack of clarity about the law and practice in matters of detention in custody: the duration of such detention, and access to a lawyer during such detention...

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The State party is requested to elaborate on the compatibility of its legislation and practice in matters of detention in custody and pre-trial detention with article 9 of the Covenant.

- Togo, ICCPR, A/58/40 vol. I (2002) 36 at para. 78(14).

(14) The Committee notes with concern that...the provisions of the Code of Criminal Procedure relating to police custody contain no reference to notifying detainees of their rights, the presence of a lawyer or the right of the detainee to inform a member of his family of his arrest...

...The State party should reform the provisions of its Code of Criminal Procedure that deal with police custody with a view to ensuring the effective prevention of violations of the physical and psychological integrity of persons held in police custody, and protecting their right to a defence, pursuant to articles 7, 9 and 14 of the Covenant. It should also ensure that justice is administered in a timely fashion, in accordance with article 14.

- Portugal, ICCPR, A/58/40 vol. I (2003) 56 at para. 83(18).

(18) The Committee is concerned that lawyers and medical doctors may be required to give evidence, despite their duty of confidentiality, in cases which are described in very broad terms by the Code of Criminal Procedure (art. 17).

The State party should amend its legislation so that it specifies the precise circumstances in which limitations on the professional privilege of lawyers and medical doctors are imposed.

- Israel, ICCPR, A/58/40 vol. I (2003) 64 at paras. 85(12) and 85(13).

(12) While welcoming the State party's decision to review the need to maintain the declared state of emergency and to prolong it on a yearly rather than an indefinite basis, the Committee remains concerned about the sweeping nature of measures during the state of emergency that appear to derogate from Covenant provisions other than article 9, derogation from which was notified by the State party upon ratification. In the Committee's opinion, these derogations extend beyond what would be permissible under those provisions of the Covenant which allow for the limitation of rights (e.g. arts. 12, para. 3, 19, para. 3, and 22...). As to measures derogating from article 9 itself, the Committee is concerned about the frequent use of various forms of administrative detention, particularly for Palestinians from the Occupied Territories, entailing restrictions on access to counsel and on the disclosure of full reasons for the detention. These features limit the effectiveness of judicial review, thus endangering the protection against torture and other inhuman treatment prohibited under

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article 7 and derogating from article 9 more extensively than what in the Committee's view is permissible pursuant to article 4. In this regard, the Committee refers to its earlier concluding observations on Israel and to its general comment No. 29.

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

(13) The Committee is concerned that the use of prolonged detention without any access to a lawyer or other persons in the outside world violates the Covenant (arts. 7, 9, 10 and 14, para. 3 (b)).

The State party should ensure that no one is held for more than 48 hours without access to a lawyer.

- Philippines, ICCPR, A/59/40 vol. I (2003) 15 at para. 63(12).

(12) The Committee is concerned about the reports of persistent and widespread use of torture and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials and the lack of legislation specifically prohibiting torture in accordance with articles 7 and 10 of the Covenant...

The State party should institute an effective system of monitoring treatment of all detainees, to ensure that their rights under articles 7 and 10 of the Covenant are fully protected. The State party should ensure that all allegations of torture are effectively and promptly investigated by an independent authority, that those found responsible are prosecuted, and that victims are given adequate compensation. Free access to legal counsel and a doctor should be guaranteed in practice, immediately after arrest and during all stages of detention...

- Suriname, ICCPR, A/59/40 vol. I (2004) 43 at para. 69(14).

(14) While noting the State party's acknowledgment that there are problems with lengthy pre-trial detentions, as well as its denial that *incommunicado* detention is practised, the Committee remains concerned that domestic law provides for the possibility that a detainee may not be brought for the first time before a judge until 44 days after his detention and about reports that prisoners are kept in *incommunicado* detention, and that in both cases this apparently occurs without access to a lawyer (art. 9, paras. 3 and 4).

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The State party should correct the above practice forthwith, as it is incompatible with article 9, paragraphs 3 and 4, of the Covenant...

- Uganda, ICCPR, A/59/40 vol. I (2004) 47 at para. 70(21).

(21) The Committee is concerned about shortcomings in the administration of justice, such as delays in the proceedings and in pre-trial detention, the lack of legal assistance provided to non-capital offenders and the conditions in which a confession may be secured. Despite the measures taken by the State party to address these situations, the Committee regrets that their continued existence contributes to a widespread sense of impunity as well as impairing the full enjoyment of guarantees (art. 14).

The State party should take steps to remedy shortcomings in the administration of justice in order to ensure full respect for the judicial guarantees enshrined in the Covenant. It should revise its legislation and practices, in particular with regard to the above-mentioned concerns.

- Belgium, ICCPR, A/59/40 vol. I (2004) 56 at para. 72(16).

(16) The Committee again voices concern over the rights of individuals in custody, bearing in mind the requirements of articles 7, 9 and 14 of the Covenant.

The State party should give priority to the amendment of its Code of Criminal Procedure, which has been planned for many years, and guarantee the rights of individuals in detention to notify their immediate families that they have been detained and to have access to a lawyer and a doctor within the first few hours of detention...

- Liechtenstein, ICCPR, A/59/40 vol. I (2004) 61 at para. 73(11).

(11) The Committee is concerned about shortcomings in the protection of the rights of arrested persons and persons in pre-trial detention. It regrets that the Criminal Procedure Code does not require that persons in detention be informed of their rights to remain silent. It is also concerned about the scope of the right of an arrested or detained person to be brought promptly before a judge and to have access to legal assistance...

The State party should bring its domestic legislation into conformity with articles 9, paragraph 3, and 14, paragraph 3 (d), of the Covenant in relation to these concerns.

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- Namibia, ICCPR, A/59/40 vol. I (2004) 64 at para. 74(16).

(16) The Committee notes with appreciation the decision of the Supreme Court in *The State v. John Sikundeka Samboma and others* (known as the Caprivi treason trial) reaffirming the right of persons in Namibia to legal aid. However, the Committee is concerned that access to this right is not properly ensured in practice.

The State party should take measures to strengthen the implementation of the legal aid scheme and ensure the provision of legal aid to individuals entitled to receive it, in particular by increasing the availability of funds.

- Albania, ICCPR, A/60/40 vol. I (2004) 25 at para. 82(18).

(18) The Committee...remains concerned, however, about alleged cases of executive pressure on the judiciary and persistent problems of corruption, lack of access to counsel and legal aid, and undue delay of trials (art. 14).

The State party ... should establish mechanisms to improve the capacity and efficiency of the judiciary, to allow access to justice to all without discrimination and ensure that unconvicted detainees are brought to trial as speedily as possible.

- Benin, ICCPR, A/60/40 vol. I (2004) 30 at paras. 83(16) and 83(20).

(16) The Committee notes with concern that the most basic rights of persons in police custody are not guaranteed under Beninese law (articles 7, 9 and 14 of the Covenant).

The State party should guarantee the right of persons in police custody to have access to a lawyer in the initial hours of detention, to inform their family members of their detention and to be informed of their rights...

...

(20) The Committee is concerned that few people, including minors, are assisted by a lawyer during criminal proceedings, and that such assistance is mandatory only in the Assize Court. It further notes with concern that in the Assize Court a lawyer is appointed only during the final questioning before the actual hearing, a situation that does not guarantee that the right to a defence is respected (article 14 of the Covenant).

The State party should ensure that lawyers are trained in adequate numbers, facilitate the access of individuals to legal assistance in criminal proceedings and ensure that lawyers are involved in proceedings from the time of arrest onward.

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- Morocco, ICCPR, A/60/40 vol. I (2004) 35 at para. 84(16).

(16) The Committee is concerned that the accused may have access to the services of a lawyer only from the time at which their custody is extended (that is, after 48 or 96 hours). It recalls that, in its previous decisions, it has held that the accused should receive effective assistance from a lawyer at every stage of the proceedings, especially in cases where the person may incur the death penalty.

The State party should amend its legislation and practice to allow a person under arrest to have access to a lawyer from the beginning of their period in custody (Covenant, arts. 6, 7, 9, 10 and 14).

- Poland, ICCPR, A/60/40 vol. I (2004) 40 at para. 85(14).

(14) The Committee notes the State party's intention to undertake a comprehensive reform of the Polish legal aid system, but regrets that persons detained cannot at this time enjoy their right to legal aid from the beginning of their detention (art. 14).

The State party should take measures to ensure that all persons, including those in detention, have access to legal aid at all times.

- Kenya, ICCPR, A/60/40 vol. I (2005) 44 at paras. 86(17) and 86(21).

(17) The Committee...is...concerned that most suspects do not have access to a lawyer during the initial stages of detention.

The State party should ... guarantee the right of persons in police custody to have access to a lawyer during the initial hours of detention.

...

(21) The Committee is concerned that only individuals facing a capital murder charge currently benefit from a legal assistance scheme, and that those charged with other capital or non-capital offences, however serious, do not benefit from legal aid (article 14, paragraph 3 (d), of the Covenant).

The State party should facilitate the access of individuals to legal assistance in all criminal proceedings where the interests of justice so require. The envisaged expansion of the legal aid scheme should be pursued actively.

- Mauritius, ICCPR, A/60/40 vol. I (2005) 52 at paras. 88(12) and 88(15).

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

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

...

(15) The Committee notes with concern that bail is not allowed under the Dangerous Drugs Act 2000... The Act also permits suspects to be remanded in custody for 36 hours without access to counsel (Covenant, art. 9).

The State party should review the Dangerous Drugs Act 2000 in order to enable judges to make a case-by-case assessment on the basis of the offence committed and to give full effect to the provisions of article 9, paragraph 2, of the Covenant.

- Uzbekistan, ICCPR, A/60/40 vol. I (2005) 56 at paras. 89(10) and 89(15).

(10) The Committee is concerned about the continuing high number of convictions based on confessions made in pre-trial detention that were allegedly obtained by methods incompatible with article 7 of the Covenant. It also notes that, while on 24 September 2004 the Plenum of the Supreme Court held that no information obtained from a detained individual in violation of the criminal procedure requirements (including in the absence of a lawyer) may be used as evidence in court, this requirement is not reflected in a law (Covenant, arts. 7 and 14).

The State party should proceed with the necessary legislative amendments to ensure full compliance with the requirements of articles 7 and 14 of the Covenant.

...

(15) The Committee notes that while under domestic law individuals have access to a lawyer at the time of arrest, this right is often not respected in practice. Those accused of criminal acts should receive effective assistance from a lawyer at every stage of the proceedings, especially in cases where the person is liable to the death penalty (Covenant, arts. 6, 7, 9, 10 and 14).

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The State party should amend its legislation and practice to allow a person who has been placed under arrest to have access to a lawyer from the time of arrest.

- Tajikistan, ICCPR, A/60/40 vol. I (2005) 70 at para. 92(11).

(11) The Committee is concerned about the widespread accounts of detainees' access to a lawyer being obstructed, particularly in the period immediately following arrest. It appears that the right to consult a lawyer only arises in the State party when an arrest is registered, rather than from the actual moment of arrest (arts. 7, 9 and 14, para. 3 (b)).

The State party should take measures to ensure that the right to counsel arises at the moment of arrest, and that any instances where law enforcement officers are alleged to have obstructed access to a lawyer are fully investigated and appropriately punished. This right should also be ensured in respect of persons in need of free legal assistance.

- Slovenia, ICCPR, A/60/40 vol. I (2005) 74 at para. 93(9).

(9) The Committee is concerned...that legal assistance may not be available from the beginning of detention for those who do not have the means to pay for it (art. 7).

The State party should take appropriate measures to prevent and punish all forms of ill-treatment by law enforcement officials to ensure the provision of legal assistance to all from the beginning of detention and prompt, thorough, independent and impartial investigation into all allegations of violations of human rights. It should prosecute perpetrators of such acts and ensure that they are punished in a manner proportionate to the seriousness of the offences committed by them, and grant effective remedies, including compensation, to the victims.

- Thailand, ICCPR, A/60/40 vol. I m(2005) 83 at paras. 95(15) and 95(16).

(15) ...The Committee is...concerned about reports of the widespread use of torture and cruel, inhuman or degrading treatment of detainees by law enforcement officials, including in the so-called "safe houses"...

The State party should guarantee in practice unimpeded access to legal counsel and doctors immediately after arrest and during detention. The arrested person should have an opportunity immediately to inform the family about the arrest and place of detention...

(16) The Committee is concerned...that the right of detainees of access to lawyers and

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members of the family is not always observed in practice...

The State party should bring prison conditions into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners as a matter of priority...

CEDAW

- Trinidad and Tobago, CEDAW, A/57/38 part I (2002) 19 at para. 137.

137. ...The Committee commends the State party for steps to provide emergency legal aid, in particular in cases of domestic violence.

CAT

- Indonesia, CAT, A/57/44 (2002) 22 at para. 44.

44. The Committee...expresses its concern about the following:

...

(e) The length and terms of police custody, and the lack of adequate guarantees of the rights of persons deprived of liberty, including to notify a close relative or third party and to have access to medical assistance and counsel of their choice;

...

- Israel, CAT, A/57/44 (2002) 27 at para. 53.

53. The Committee makes the following recommendations:

...

(c) The State party should review its laws and policies so as to ensure that all detainees, without exception, are brought promptly before a judge and are ensured prompt access to a lawyer;

...

- Ukraine, CAT, A/57/44 (2002) 31 at paras. 57 and 58.

57. The Committee expresses its concern about the following:

...

(f) The information received by the Committee that relatives and lawyers are informed about the detention only after the arrested person has been transferred from police custody to a pre-

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trial detention facility, a process that usually takes not less than two weeks. The Committee is also concerned about the lack of clear legal provisions about the exact time when a detained person can exercise his right to a defence counsel, a medical examination, and to inform a family member of his detention;

...

58. The Committee recommends that the State party:

...

(e) Clarify and reconcile the sometimes contradictory provisions pertaining to the time at which a detained person has the right to a defence counsel and to ensure that this right is exercised from the moment of arrest;

(f) Ensure that there is a legal prohibition against carrying out interrogations of detainees without the presence of a defence counsel of his/her choice;

(g) Take appropriate measures to ensure the independence of the judiciary and counsel for defence, as well as the objectivity of the Procuracy, in the performance of their duties, in conformity with international standards;

...

- Zambia, CAT, A/57/44 (2001) 34 at para. 66.

66. The Committee recommends that the State party:

...

(d) Undertake legal and other measures to address impunity and ensure that acts of torture are prosecuted to the full extent of the law and that complainants have access to legal advice as necessary;

...

- Denmark, CAT, A/57/44 (2002) 37 at para. 72.

72. [The Committee]...notes with satisfaction:

...

(b) The circulars of the National Commissioner of Police, prescribing, *inter alia*, earlier access by family to detainees, mandatory medical examination of all persons placed in a detention cell, and access to a lawyer and an interpreter without delay;

...

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- Norway, CAT, A/57/44 (2002) 40 at para. 84.

84. The Committee notes with satisfaction:
...
(b) The issuance of guidelines on the notification of arrest to relatives and lawyers, as well as concerning the right to access to health care for persons in police custody;
...
- Russian Federation, CAT, A/57/44 (2002) 42 at paras. 92 and 94.

92. The Committee...expresses its concern about the following:
...
(c) The lack of adequate access for persons deprived of liberty, immediately after they are apprehended, to counsel, doctor and family members, an all-important safeguard against torture;
...
94. The Committee recommends that the State party:
...
(b) Adopt measures to permit detainees access to a lawyer, doctor, and family members from the time they are taken into custody; inform suspects and witnesses of their rights at the beginning of detention; and ensure that legal assistance and a doctor will be provided at the request of detained persons rather than solely when permitted by officials...
...
- Saudi Arabia, CAT, A/57/44 (2002) 48 at paras. 99-101.

99. The Committee welcomes the following:
...
(b) Legal developments designed to enhance the rule of law and the proper administration of justice that have occurred since preparation of the report, such as aspects of the newly promulgated Code of Civil Procedure, Code of Criminal Procedure and Code of Practice for Lawyers. The Committee welcomes, in particular, that the Code of Criminal Procedure guarantees every accused person the right to avail himself or herself of the services of a lawyer at all stages of an investigation and trial;
...
100. The Committee is concerned about the following:
...
(d) Allegations of prolonged pre-trial detention of some individuals beyond the statutory limits prescribed by law, which heightens the risk of, and may on occasion of itself

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constitute, conduct in violation of the Convention. In this connection, the Committee expresses its concern at instances of denial, at times for extended periods, of consular access to detained foreigners...

(e) Reports of *incommunicado* detention of detained persons, at times for extended periods, particularly during pre-trial investigations. The lack of access to external legal advice and medical assistance, as well as to family members, increases the likelihood that conduct violating the Convention will not be appropriately pursued and punished;

...

101. The Committee recommends, in particular, that the State party:

...

(h) Ensure, in practice, that persons detained in custody are able to exercise prompt access to legal and medical expertise of choice, to family members and, in the case of foreign nationals, to consular personnel;

...

- Uzbekistan, CAT, A/57/44 (2002) 54 at paras. 115 and 116.

115. The Committee expresses concern about the following:

...

(b) The lack of adequate access for persons deprived of liberty, immediately after they are apprehended, to independent counsel, a doctor or medical examiner and family members, an important safeguard against torture;

...

116. The Committee recommends that the State party:

...

(f) Adopt measures to permit detainees access to a lawyer, a doctor and family members from the time they are taken into custody and ensure that doctors will be provided at the request of detained persons without the need to obtain the permission of prison officials; and maintain a register with the names of all detainees, the times at which notifications of lawyers, doctors and family members have taken place and the results of medical examinations; this register should be accessible to the lawyers and others as appropriate;

...

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

42. The Committee recommends that the State party:

...

(e) Ensure that all detained persons have immediate access to a doctor and a lawyer, as well as contact with their families;

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...

- Estonia, CAT, A/58/44 (2002) 26 at paras. 49 and 50.

49. The Committee is concerned that:

...

(d) The point at which a suspect or detainee can obtain access to a doctor of choice - assuming one is available at all - is not clear. In any event, there are legal exceptions to the right to have access to a lawyer and to “a person of choice” that could be abused by police. In general, no precise time frame is set for the exercise of the rights of persons detained in police custody;

...

50. The Committee recommends that the State party:

...

(e) Strengthen the safeguards provided in the Code of Criminal Procedure against ill-treatment and torture and ensure that, in law as well as in practice, persons in police custody and in remand have the right of access to a medical doctor of their choice, the right to notify a person of their choice of their detention and access to legal counsel. Legal exceptions to these rights should be narrowly defined. Persons deprived of their liberty, including suspects, should immediately be informed of their rights in a language that they understand. The right of criminal suspects to have a defence counsel should be extended to witnesses and to persons who have not yet been charged. The State party should introduce a precise chronology that would specify at what point the rights of all detainees may be exercised and must be respected;

...

- Spain, CAT, A/58/44 (2002) 29 at para. 62.

62. The Committee continues to be deeply concerned at the fact that *incommunicado* detention up to a maximum of five days has been maintained for specific categories of particularly serious offences. During this period, the detainee has no access to a lawyer or to a doctor of his choice nor is he able to notify his family. Although the State party explains that *incommunicado* detention does not involve the complete isolation of the detainee, who has access to an officially appointed lawyer and a forensic physician, the Committee considers that the *incommunicado* regime, regardless of the legal safeguards for its application, facilitates the commission of acts of torture and ill-treatment.

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- Venezuela, CAT, A/58/44 (2002) 32 at para. 76.

76. The Committee welcomes with satisfaction the entry into force on 30 December 1999 of the new Constitution of the Bolivarian Republic of Venezuela, which demonstrates progress in human rights. In particular, the Committee considers as positive the following aspects of the Constitution:

...

(g) It stipulates a series of safeguards for the detainee, such as access to a lawyer immediately on being detained and a ban on obtaining confessions by torture;

...

- Azerbaijan, CAT, A/58/44 (2003) 36 at paras. 88 and 89.

88. The Committee is concerned about:

...

(g) The lack, in many instances, of prompt and adequate access of persons in police custody or remand centres to independent counsel and a medical doctor, which is an important safeguard against torture; many persons in police custody are reportedly forced to renounce their right to a lawyer, and medical experts are provided only on the order of an official and not at the request of the detainee;

...

(k) Reports that the ability of detained persons to lodge a complaint is unduly limited by censorship of correspondence and by the failure of the authorities to ensure the protection of the complainants from reprisals;

...

89. The Committee recommends that the State party:

...

(c) Clearly instruct police officers, investigative authorities and remand centre personnel that they must respect the right of detained persons to obtain access to a lawyer immediately following detention and a medical doctor on the request of the detainee, and not only after the written consent of detaining authorities has been obtained. The State party should ensure the full independence of medical experts;

...

(f) Ensure the prompt creation of the new bar association and take measures to guarantee an adequate number of qualified and independent lawyers able to act in criminal cases;

...

(k) Ensure the right of detainees to lodge a complaint by ensuring their access to an independent lawyer, by reviewing rules on censorship of correspondence and by guaranteeing in practice that complainants will be free from reprisals;

...

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- Cambodia, CAT, A/58/44 (2003) 40 at paras. 98 and 99.

98. The Committee is concerned about the following:

...

(j) The use of *incommunicado* detention for 48 hours, at least, before a person is brought before a judge, during which the detainee has no access to legal counsel or to his/her relatives. Furthermore, recent legal amendments allow the police to extend this period;

(k) The lack of access by detainees in general to legal counsel and a medical doctor of their choice;

...

99. The Committee recommends that the State party:

...

(h) Undertake all necessary measures to guarantee to any person deprived of his or her liberty the right of defence and, consequently, the right to be assisted by a lawyer, if necessary at the State's expense;

...

- Turkey, CAT, A/58/44 (2003) 46 at paras. 121 and 123.

121. The Committee expresses concern about:

...

(c) Allegations that persons in police custody have been denied prompt and adequate access to legal and medical assistance and that family members have not been promptly notified of their detention;

...

123. The Committee recommends that the State party:

(a) Ensure that detainees, including those held for offences under the jurisdiction of State Security Courts, benefit fully in practice from the available safeguards against ill-treatment and torture, particularly by guaranteeing their right to medical and legal assistance and to contact with their families;

...

(e) Guarantee that the detention records of detainees in police custody are properly kept from the outset of the custody period, including for the times they are removed from their cells, and that such records are made accessible to their families and lawyers;

...

- Belgium, CAT, A/58/44 (2003) 49 at paras. 129 and 131.

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129. The Committee is concerned about:

...

(h) The lack of legislation on the rights of persons under judicial or administrative arrest to have access to a lawyer, to inform their family of their detention, to be clearly informed of their rights and to be examined by a doctor of their choice;

...

131. The Committee recommends that the State party:

...

(g) Expressly guarantee in national legislation the right of all persons who are judicially or administratively detained to have access to a lawyer and a doctor of their choice immediately following their arrest, to be informed of their rights in a language they understand and to inform their families promptly of their detention;

...

- Republic of Moldova, CAT, A/58/44 (2003) 53 at paras. 138 and 139.

138. The Committee expresses concern about:

...

(b) The reported lack of prompt and adequate access by persons in police custody to legal and medical assistance, and to family members;

...

139. The Committee recommends that the State party:

(a) Ensure that the fundamental safeguards against torture and ill-treatment of detainees, including those held for administrative offences, are available in practice, including their right to medical assistance and legal counsel and to contact with their families from the earliest stages of their detention;

...

- Bulgaria, CAT, A/59/44 (2004) 19 at paras. 32 and 33.

32. The Committee expresses concern about the following:

...

(d) The reported lack of prompt and adequate access by persons in custody to legal and medical assistance and to family members, and that access to free legal aid is quite limited and ineffective in practice...

...

33. The Committee recommends that the State party:

...

(d) Ensure that, in law as well as in practice, all persons deprived of their liberty are duly

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registered at the place of custody and guaranteed, and informed of, the rights to have access to counsel, to contact next of kin and to a doctor. In this respect an independent free legal aid system for detainees should be established...

...

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

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

(a) Adopt, as a matter of great urgency, and ensure the effective implementation of a law establishing the right of all persons held in police custody, during the initial hours of detention, of access to a lawyer of their choice and an independent doctor, and to inform their relatives of their detention. The Committee remarks that any extension of detention in custody ought to be approved by a judge;

...

- Czech Republic, CAT, A/59/44 (2004) 42 at paras. 86 and 87.

86. The Committee expresses concern about the following:

...

(b) The lack of explicit legal guarantees of the rights of all persons deprived of liberty to have access to a lawyer, and to notify their next of kin from the very outset of their custody;

...

87. The Committee recommends that the State party:

...

(d) Strengthen safeguards provided in the Code of Criminal Procedure against ill-treatment and torture, and ensure that, in law as well as in practice, all persons deprived of their liberty be guaranteed, and systematically informed of, their right to a lawyer and to notify their next of kin;

...

- Latvia, CAT, A/59/44 (2003) 48 at paras. 98, 100 and 101.

98. The Committee notes with appreciation the ongoing efforts by the State party aimed at strengthening human rights in Latvia. In particular, the Committee welcomes the following:

(a) Legislative measures:

...

(iv) The entry into force of the new Immigration Law in May 2003 which, *inter alia*,

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provides a maximum length of detention for foreigners arrested in violation of the Law and the right of an arrested foreigner to submit a complaint to a prosecutor, to contact the consulate and to have access to legal aid;

...

100. The Committee expresses concern about the following:

...

(g) The fact that although the draft new Criminal Procedure Law has addressed many of the existing shortcomings, the Criminal Procedure Law currently in force does not include the right of a detainee to contact family members. Concern is also expressed about the information that access to a doctor of choice is subject to the approval of the authorities;

(h) Allegations that in many cases, even where so provided by law, access to a lawyer is denied or delayed in practice to persons in police custody, and that defendants have to pay back the costs of legal aid if their case is lost;

...

101. The Committee recommends that the State party:

...

(c) Guarantee that detainees in police custody have the right to contact their families and have access to a medical doctor of their choice and to legal counsel from the outset of their deprivation of liberty;

...

- Lithuania, CAT, A/59/44 (2003) 52 at paras. 109 and 110.

109. The Committee expresses concern about the following:

...

(b) The failure in practice to enable detained persons to obtain access from the outset of their detention to a lawyer, independent doctor or family members;

...

(f) Reports that some State-appointed lawyers have shown little interest in how their clients who are detained are treated;

...

110. The Committee recommends that the State party:

...

(b) Ensure that all detained persons have immediate access to a doctor and a lawyer, as well as contact with their families at all stages of detention (art. 2);

...

(h) Continue efforts to provide an effective legal aid system by, *inter alia*, public financing of defence counsel offices, providing adequate remuneration, and involving the Bar

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Association in coordinating appointments;

...

- Monaco, CAT, A/59/44 (2004) 56 at paras. 117 and 118.

117. The Committee expresses concern about:

...

(e) The fact that persons in custody are not entitled to the assistance of counsel, there being no provision for such assistance until they first appear before the investigating magistrate, and can inform their next of kin that they have been detained only with the magistrate's authorization;

...

118. The Committee recommends that the State party:

...

(d) Guarantee the right of individuals in detention to have access to a lawyer of their choosing and inform their next of kin within the first few hours of being detained;

...

- Morocco, CAT, A/59/44 (2003) 58 at paras. 126 and 127.

126. The Committee expresses concern about:

...

(c) The non-existence, during the period of police custody, of guarantees of rapid and appropriate access by persons in custody to a lawyer and a doctor, and to a relative;

...

127. The Committee recommends that the State party:

...

(c) Limit the period of police custody to a strict minimum and guarantee the right of persons in police custody to rapid access to a lawyer, a doctor and a relative;

...

- New Zealand, CAT, A/59/44 (2004) 61 at para. 133.

133. The Committee notes with appreciation:

...

(d) The Police Detention Legal Assistance Scheme, which provides for initial free legal advice to be obtained by persons in police custody;

...

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- Greece, CAT, A/60/44 (2004) 20 at para. 46.

46. The Committee notes the following positive developments:

(a) The ongoing efforts by the State party to revise its legislation and adopt other necessary measures, so as to strengthen the respect for human rights in Greece and give effect to the Convention. In particular the Committee welcomes the following:

...

(iii) The new Law on Legal Aid (Law 3226/2004), which stipulates that lawyers must be appointed to draw up and submit complaints on behalf of torture victims and victims of trafficking, and that the prison prosecutor has the duty to offer legal counselling to detainees;

...

- Canada, CAT, A/60/44 (2005) 25 at paras. 56-58.

56. The Committee notes:

...

(g) The requirement that body cavity searches be carried out by medical rather than correctional staff in a non-emergency situation and after written consent and access to legal advice have been provided;

...

57. The Committee expresses its concern at:

...

(b) The alleged roles of the State party's authorities in the expulsion of Canadian national Mr. Maher Arar, expelled from the United States of America to the Syrian Arab Republic where torture was reported to be practised;

...

58. The Committee recommends that:

...

(d) The State party should insist on unrestricted consular access to its nationals who are in detention abroad, with facility for unmonitored meetings and, if required, of appropriate medical expertise;

...

- Albania, CAT, A/60/44 (2005) 34 at paras. 83 and 84.

83. The Committee expresses concern:

...

(i) At the lack of implementation of the fundamental legal safeguards for persons detained

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by the police, including guaranteeing the right to inform a relative, access to a lawyer and a doctor of their own choice, the provision of information about their rights and, for juveniles, the presence of their legal guardians during interrogation;

...

84. The Committee recommends that the State party:

...

(i) Implement the fundamental legal safeguards for persons detained by the police, guaranteeing their rights to inform a relative, to have access to a lawyer and a doctor of their own choice and to be provided with information about their rights and, for juveniles, to have their legal guardians present during interrogation;

...

- Uganda, CAT, A/60/44 (2005) 39 at para. 98.

98. The Committee...recommends that the State party:

(a) Establish an effective national legal aid scheme;

...

- Bahrain, CAT, A/60/44 (2005) 44 at paras. 108 and 109.

108. The Committee expresses its concern at:

...

(e) The inadequate access to external legal advice while in police custody, to medical assistance and to family members, thereby reducing the safeguards available to detainees;

...

109. The Committee recommends that the State party:

...

(j) Ensure that all detained persons have immediate access to a doctor and a lawyer, as well as contact with their families, and that detainees held by the Criminal Investigation Department are given prompt access to a judge;

...

CRC

- Cameroon, CRC, CRC/C/111 (2001) 71 at para. 393.

393. ...[T]he Committee recommends that the State party:

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...
(d) Provide children with legal assistance at an early stage of the proceedings;

...

See also:

- Burkina Faso, CRC, CRC/C/121 (2002) at para. 489.

- Greece, CRC, CRC/C/114 (2002) 25 at paras. 170 and 171.

170. Noting that the State party has a system of special juvenile justice courts and that a committee was established to look into issues of concern in the criminal justice system and a new bill relating to the care of juvenile delinquents and children at risk, the Committee remains concerned:

...

(e) That the right of children to legal representation or other appropriate assistance is not always systematically guaranteed;

...

171. The Committee recommends that the State party:

...

(d) Ensure respect for all juvenile justice standards including the rights of children during arrest and detention procedures, minimum conditions of detention, the non-restricted rights of appeal and to legal representation, free interpretation where needed and other relevant assistance;

...

- Switzerland, CRC, CRC/C/118 (2002) 78 at paras. 310 and 311.

310. The Committee is concerned at the reservations made by the State party to articles 5, 7, 10, 37 and the four reservations made with regard to article 40, but welcomes the information that the State party is considering the withdrawal of most of these reservations thanks to recent and current revisions of the Constitution and other relevant laws, following a tentative timetable presented during the dialogue. Despite this information, the Committee remains concerned at the rather slow pace of this withdrawal process and even more at the fact that some reservations may not be withdrawn at all, or only in the distant future.

311. In light of the 1993 Vienna Declaration and Programme of Action, the Committee recommends that the State party:

...

(d) Expedite the approval and enactment of the new Juvenile Penal Law in order to start as

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soon as possible thereafter the withdrawal of the reservation to article 40(2)(b)(ii) regarding legal assistance and to article 37(c) regarding separation of juveniles deprived of their liberty from adults;

...

- Saint Vincent and the Grenadines, CRC, CRC/C/118 (2002) 101 at paras. 463 and 464.

463. While recognizing the State party's efforts in this domain the Committee remains concerned that:

...

(b) With only very limited exceptions, the State party does not provide legal assistance to children, and that children from disadvantaged backgrounds are frequently left without such support;

...

464. The Committee recommends that the State party:

...

(b) Ensure that all children benefit from free legal assistance in the context of juvenile justice proceedings;

...

- The Netherlands (Antilles), CRC, CRC/C/118 (2002) 129 at paras. 587 and 588.

587. The Committee is seriously concerned about the implications of the reservation entered by the State party on the applicability of adult criminal law to children over 16 years of age which is applicable to the Netherlands Antilles, and the reservation to article 40, which stipulates that for minor offences children need not be heard in the presence of a legal representative...

588. The Committee recommends that the State party:

...

(c) Ensure that minors are always heard in the presence of a legal representative...

...

- United Kingdom of Great Britain and Northern Ireland, CRC, CRC/C/121 (2002) 23 at paras. 152 and 154.

152. [T]he Committee notes with concern that:

...

(c) Children in custody do not always have access to independent advocacy services and to

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basic services such as education, adequate health care, etc.;

...

154. ...[T]he Committee recommends that the State party:

...

(f) Ensure that every child deprived of his or her liberty has access to independent advocacy services and to an independent, child-sensitive and accessible complaint procedure;

...

- Israel, CRC, CRC/C/121 (2002) 131 at paras. 612 and 613.

612. The Committee is concerned about:

...

(c) Military Orders Nos. 378 and 1500, as well as all other military orders which may allow prolonged *incommunicado* detention of children, and which do not provide due process guarantees, access to legal assistance and family visits.

613. The Committee recommends that the State party:

...

(c) Ensure that children have access to legal aid and independent and effective complaint mechanisms;

...

(e) Rescind all provisions in the military orders which violate international standards on the administration of juvenile justice.

- Estonia, CRC, CRC/C/124 (2003) 9 at para. 73.

73. The Committee recommends that the State party:

...

(b) Ensure that children have access to legal aid and independent and effective complaints mechanisms;

...

- Republic of Korea, CRC, CRC/124 (2003) 24 at paras. 134 and 135.

134. The Committee is concerned that juveniles accused of violating the law and subject to protective measures may be deprived of their liberty without undergoing criminal proceedings or having access to legal assistance.

135. The Committee recommends that the State party:

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...

(b) Use deprivation of liberty only as a measure of last resort and ensure that all juveniles involved in protection measures that may result in deprivation of liberty have access to legal counsel at an early stage;

...

- Romania, CRC, CRC/124 (2003) 49 at paras. 260 and 261.

260. Although encouraged by information from the delegation that the State party is undertaking reforms in the area of juvenile justice, the Committee remains concerned that:

...

(c) The prosecutor has discretionary powers to deny a detainee access to a lawyer for up to five days in the interest of an investigation;

261. The Committee recommends that the State party:

...

(f) Guarantee that children in pre-trial detention will not be denied access to a lawyer.

- Bangladesh, CRC, CRC/C/133 (2003) 93 at paras. 509 and 510.

509. The Committee acknowledges the efforts made by the State party to improve the juvenile justice system. However, the Committee remains concerned at the limited progress achieved in establishing a functioning juvenile justice system throughout the country. In particular, the Committee is concerned at:

...

(f) The failure to ensure full respect for the right to a fair trial, including legal assistance for alleged child offenders and the very long periods of pre-trial detention;

...

510. ...[T]he Committee recommends that the State party:

...

(c) Ensure the full implementation of the right to a fair trial, including the right to legal or other appropriate assistance;

...

- Togo, CRC, CRC/C/146 (2005) 104 at paras. 587 and 588.

587. The Committee is concerned about the absence of a juvenile justice system compatible with the provisions and principles of the Convention, particularly about:

...

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(d) The lack of access to free legal advice;

...

588. The Committee recommends...that the State party:

...

(e) Guarantee availability of legal advice and of specialized judges for juveniles in all jurisdictions;

...

- Nigeria, CRC, CRC/C/146 (2005) 135 at paras. 742 and 745.

742. The Committee notes with appreciation the efforts made by the State party to reform the Juvenile Justice Administration (JIA), including the establishment of a National Working Group on Juvenile Justice Administration in 2002 and the introduction of the draft National Policy on Child Justice Administration in Nigeria for discussion. However, the Committee remains gravely concerned that the juvenile justice system in the State party, in particular, the sharia court system, does not conform to international norms and standards, in particular that:

...

(g) Persons below 18 are often not legally represented during their trials;

...

745. ...[T]he Committee urges the State party to, in particular:

...

(b) Guarantee that all persons below 18 have the right to appropriate legal assistance and defence and ensure speedier fair trials for them;

...