

LEGAL RIGHTS - CRIMINAL - Right to Examine and Cross-Examine Witnesses

IV. CONCLUDING OBSERVATIONS

ICCPR

- Colombia, ICCPR, A/52/40 vol. I (1997) 44 at para. 284

The regional judicial system, which provides for faceless judges and anonymous witnesses, does not comply with article 14 of the Covenant, particularly paragraphs 3 (b) and (e).

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

Legal aid should be available for obtaining the presence of defence witnesses for the purposes of trials.

- Finland, ICCPR, A/53/40 vol. I (1998) 40 at para. 265.

Concern is expressed that, after due notice, a person charged before the Finnish courts with certain offences may be tried in absentia, if his or her presence was not necessary, and sentenced to a fine or up to three months imprisonment with no possibility for retrial after 30 days. Unless the person has clearly agreed to this procedure and the court is fully informed of the offender's circumstances, this method of trial could raise questions of compatibility with article 14(3)(d) and 14(3)(e) of the Covenant. This procedure should be reviewed.

- Japan, ICCPR, A/54/40 vol. I (1999) 36 at para. 168.

Under the criminal law, there is no obligation on the prosecution to disclose evidence it may have gathered in the course of the investigation other than that which it intends to produce at the trial, and the defence has no general right to ask for the disclosure of that material at any stage of the proceedings. In accordance with the guarantees provided for in article 14, paragraph 3, of the Covenant, the State party should ensure that its law and practice enable the defence to have access to all relevant material so as not to hamper the right of defence.

- The Netherlands, ICCPR, A/56/40 vol. I (2001) 76 at para. 82(12).

The use of anonymous witnesses in the State party's criminal procedure is of grave concern. Use is

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made of hearing witnesses in the preliminary examination, prior to the trial, without the accused, counsel or the prosecutor being present. The identity is accordingly known only to the examining magistrate, and is subsequently unknown even to the trial judge. While not excluding the use of anonymous witnesses in appropriate instances, this practice is too broad and raises difficulties in terms of article 14 of the Covenant. The State party should make greater efforts to safeguard the right of a defendant to a fair trial through means which, while protecting witness identity in appropriate and necessary cases, provide a greater opportunity for the evidence to be tested and contested. The State party should show why ordinary means of protecting witnesses, such as police security or witness protection and relocation programmes, are considered inadequate in cases where anonymity is allegedly required on account of threats to the witness.

CEDAW

- Rwanda, CEDAW, A/51/38 (1996) 36 at para. 325.

There must be a witness protection unit in the war crimes prosecutor's office to protect those who testify about rape, sexual violence and other crimes.