

## **LEGAL RIGHTS - CRIMINAL - Protection Against Retroactive Criminalization**

### **IV. CONCLUDING OBSERVATIONS**

#### **ICCPR**

- Korea, ICCPR, A/47/40 (1992) 113 at paras. 517 and 518.

#### *Paragraph 517*

Of concern are problems relating to the principle of the lawfulness of the penalties covered by article 15 of the Covenant.

#### *Paragraph 518*

The penal code should be harmonized with article 15.

- Egypt, ICCPR, A/48/40 vol. I (1993) 139 at para. 705.

The many severe measures taken by the Egyptian Government to combat terrorism in the country are of concern. The measures taken to do so should not prejudice the enjoyment of the fundamental rights enshrined in the Covenant, in particular, articles 6, 7 and 9. The Committee is particularly disturbed by the adoption in 1992 of law No. 97 on terrorism, which contains provisions contrary to articles 6 and 15 of the Covenant. The definition of terrorism contained in that law is so broad that it encompasses a wide range of acts of differing gravity. The definition in question should be reviewed by the Egyptian authorities and stated much more precisely, especially in view of the fact that it enlarges the number of offences which are punishable with the death penalty.

- Iraq, ICCPR, A/53/40 vol. I (1998) 18 at paras. 98, 100 and 101.

#### *Paragraph 98*

It is regretted that temporary decrees adversely affecting the implementation of certain Covenant rights have recently been enacted by the Revolutionary Command Council. In addition, the Committee expresses its concern that certain provisions of these decrees, which the State party has sought to justify on the ground that they are provisional, are incompatible with certain non-derogable Covenant rights, such as the right to life, the prohibition of torture and the principle of non-retroactivity of criminal laws. Therefore, a thorough review of existing temporary laws and decrees should be undertaken with a view to ensuring their compliance with the provisions of the Covenant. In this regard, it is stressed that Covenant rights may be derogated from only in accordance with article 4 of the Covenant.

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### *Paragraph 100*

Concern is expressed that Revolutionary Command Council Decree No. 115 of 25 August 1994 violates the provisions of article 6, paragraph 2, of the Covenant, which restricts the application of the death penalty to the "most serious crimes", by stipulating that the death penalty will be imposed on persons who have evaded military service several times, and that it contains retroactive provisions, contrary to article 15 of the Covenant. Therefore, it is recommended that the application of this decree should be suspended without delay and steps should be taken to repeal it.

### *Paragraph 101*

Concern is expressed over the Revolutionary Command Council (RCC) Decree No. 109 of 18 August 1994, which stipulates that any person whose hand has been amputated for a crime thus punishable by law shall be branded between the eyebrows with an "X" symbol, by the application of this decree retroactively to persons whose hands have already been amputated, and by the explanation given by the delegation that this punishment was imposed to distinguish convicted offenders from persons mutilated in the war. In this regard, the imposition of such punishments should cease immediately, and all laws and decrees providing for their imposition, including RCC Decree No. 109 of 1994, should be revoked without delay.

- Trinidad and Tobago, ICCPR, A/56/40 vol. I (2001) 31 at para. 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 in the event of a reclassification of murder being brought into effect for persons tried and convicted thereafter, those already convicted of murder should be entitled to similar reclassification, in accordance with article 15.1.

- Democratic People's Republic of Korea, ICCPR, A/56/40 vol. I (2001) 98 at para. 86(14).

Article 10 of the Criminal Code, under which punishment for an offence not provided for in the Code will be imposed in accordance with those provisions of the Code punishing offences similar in nature and gravity, is incompatible with the concept of "*nullum crimen sine lege*", enshrined in article 15 of the Covenant. Article 10 of the Criminal Code should be repealed.