

## LEGAL RIGHTS -CRIMINAL - Right Against Self-Incrimination

### IV. CONCLUDING OBSERVATIONS, CONTINUED

#### 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. The State party should also ensure that all allegations of torture are effectively investigated by an independent authority, that the persons responsible are prosecuted, and that the victims are given adequate compensation...All allegations of statements of detainees being obtained through coercion must lead to an investigation and such statements must never be used as evidence, except as evidence of torture.

#### *See also:*

- Georgia, ICCPR, A/57/40 vol. I (2002) 53 at para. 78(8).

- Togo, ICCPR, A/58/40 vol. I (2002) 36 at para. 78(12).

(12) The Committee notes with concern the many allegations that torture is common practice in Togo, particularly on arrest, during police custody and in places of detention, whereas the State party claims that only a few rare cases of torture have taken place and that they were punished (art. 7).

...

The State party should ensure that all acts of torture constitute offences under its criminal law, and prohibit any statement obtained under torture from being used as evidence...

- 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 Committee notes that evidence is not admissible if it is shown to have been obtained by improper means, but remains concerned that the victim bears the burden of proof in this event.

## **LEGAL RIGHTS -CRIMINAL - Right Against Self-Incrimination**

...All allegations that statements of detainees have been obtained through coercion must lead to an investigation and such statements must never be used as evidence, except as evidence of torture, and the burden of proof, in such cases, should not be borne by the alleged victim.

- Sri Lanka, ICCPR, A/59/40 vol. I (2003) 30 at para. 66(13).

(13) The Committee is concerned that the Prevention of Terrorism Act (PTA) remains in force and that several of its provisions are incompatible with the Covenant (arts. 4, 9 and 14)...The PTA...eliminates the power of the judge to order bail or impose a suspended sentence, and places the burden of proof on the accused that a confession was obtained under duress...

The State party is urged to ensure that all legislation and other measures...taken to fight terrorism are compatible with the provisions 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.

- 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...

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.

## **LEGAL RIGHTS -CRIMINAL - Right Against Self-Incrimination**

- Albania, ICCPR, A/60/40 vol. I (2004) 25 at para. 82(13).

(13) The Committee is concerned about allegations of arbitrary arrests and detention, the excessive use of force by law enforcement officials, ill-treatment of detainees in police custody and use of torture to extract confession from suspects. It regrets that acts of torture by law enforcement officials are considered as “arbitrary acts” only and treated accordingly. It is also concerned that despite several cases of investigations and punishment of those responsible for ill-treatment, many cases have not been investigated properly and compensation to victims has not been provided (art. 7).

The State party should take firm measures to eradicate all forms of ill-treatment by law enforcement officials and ensure prompt, thorough, independent and impartial investigations into all allegations of torture and ill-treatment. It should prosecute perpetrators and ensure that they are punished in a manner proportionate to the seriousness of the crimes committed, and grant effective remedies including compensation to the victims.

- Kenya, ICCPR, A/60/40 vol. I (2005) 44 at para. 86(7).

(7) The Committee welcomes the Criminal Law (Amendment) Act 2003, which prohibits courts from accepting confessions unless they are made in court.

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

(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.

- Tajikistan, ICCPR, A/60/40 vol. I (2005) 70 at paras. 92(10) and 92(15).

(10) The Committee is concerned about the widespread use of ill-treatment and torture by investigation and other officials to obtain information, testimony or self-incriminating evidence from suspects, witnesses or arrested persons (arts. 7 and 14, para. 3 (g)).

## **LEGAL RIGHTS -CRIMINAL - Right Against Self-Incrimination**

The State party should take all necessary measures to stop this practice, to investigate promptly all complaints of the use of such practices by officials and to proceed to the rapid prosecution, conviction and punishment of those responsible, and to provide adequate compensation to the victims.

...

(15) The Committee has noted that the Constitutional Court and subsequently the Supreme Court have issued rulings prohibiting the use of evidence obtained in violation of the law. However, the Committee remains concerned about the absence of any prohibitive provision in the State party's criminal procedure law to this effect (art. 14, paras. 1 and 3 (g)).

The State party should proceed to the necessary amendments of its Criminal Procedure Code and prohibit the use of evidence obtained in violation of the law, including under duress. All allegations of illegal use of evidence in court must be duly examined, investigations must be conducted, and courts must take into consideration the outcome of such investigations.

### **CAT**

- Indonesia, CAT, A/57/44 (2002) 22 at para. 45.

45. The Committee recommends that the State party:

...

(h) Reduce the length of pre-trial detention, ensure adequate protection for witnesses and victims of torture and exclude any statement made under torture from consideration in any legal proceedings, except against the torturer;

...

- Israel, CAT, A/57/44 (2001) 27 at paras. 52 and 53.

52. The Committee expresses concern about the following matters:

...

(k) The judicial practice of admitting objective evidence derived from an inadmissible confession is of concern to the Committee;

...

53. The Committee makes the following recommendations:

...

(j) Such legislative measures as are necessary should be taken to ensure the exclusion of not merely a confession extorted by torture, but also any evidence derived from such confession;

...

## **LEGAL RIGHTS -CRIMINAL - Right Against Self-Incrimination**

- Zambia, CAT, A/57/44 (2002) at para. 61.

61. The Committee notes with satisfaction the following elements:

...

(b) The State party's commitment to:

...

(iii) Ensure the exclusion of confessions obtained by torture and to look into the issue of derivative evidence;

...

- Russian Federation, CAT, A/57/44 (2002) 42 at paras. 91-95.

91. The Committee is deeply concerned over the following:

(a) Numerous and consistent allegations of widespread torture and other cruel, inhuman or degrading treatment or punishment of detainees committed by law enforcement personnel, commonly with a view to obtaining confessions;

...

(c) A persistent pattern of impunity for torture and other ill-treatment benefiting both civil and military officials, a lack of reported decisions by judges to dismiss or return a case for further investigation citing the use of torture to obtain a confession, and the very small number of persons convicted of violations of the Convention.

92. The Committee also expresses its concern about the following:

...

(b) The numerous cases of convictions based on confessions and the law enforcement promotion system based on the percentage of crimes solved, which, taken together, reportedly create conditions that promote the use of torture and ill-treatment to force detainees to "confess";

...

93. The Committee is particularly concerned over the following: in connection with the events in Chechnya:

(a) Numerous, ongoing reports of severe violations of human rights and the Convention, including arbitrary detention, torture and ill-treatment, including forced confessions, extrajudicial killings, and forced disappearances, particularly during "special operations" or "sweeps", and the creation of illegal temporary detention centres, including "filtration camps". Allegations of brutal sexual violence are unusually common. Additionally, armed units which are reported to be very brutal towards civilians have been sent again into the conflict area;

...

## **LEGAL RIGHTS -CRIMINAL - Right Against Self-Incrimination**

94. The Committee recommends that the State party:

...

(c) Ensure in practice absolute respect for the principle of the inadmissibility of evidence obtained by torture and review cases of convictions based solely on confessions, recognizing that many of them may have been obtained through torture or ill-treatment, and, as appropriate, provide compensation to and release persons presenting credible evidence of having been tortured or ill-treated;

...

95. With regard to the situation in Chechnya, the Committee also recommends that the State party:

...

(b) While a number of mechanisms have been put in place in Chechnya in connection with allegations of human rights violations, none has possessed the attributes associated with an independent impartial investigating body. Accordingly, the Committee reiterates its 1996 conclusion calling upon the Government of the State party to establish a credible impartial and "independent committee to investigate allegations of breaches of the Convention by the military forces of the Russian Federation and Chechen separatists, with a view to bringing to justice those against whom there is evidence that establishes their involvement or complicity in such acts" (A/52/44,para. 43(h));

...

- Saudi Arabia, CAT, A/57/44 (2002) 48 at paras. 99 and 100.

99. The Committee welcomes the following:

...

(c) The State party's expression that its domestic law provides that no exceptional circumstances, including superior orders, may be invoked as a defence to a charge of torture, the reassurance that statements obtained by torture are inadmissible in proceedings, and the oral assurance that confessions are revocable at any point of proceedings...

...

100. The Committee is concerned about the following:

...

(f) The requirement of article 100 of the statute of the Directorate of Public Security for an investigating officer to endeavour "by judicious means" to ascertain the reasons for an individual's silence. While the article in question formally proscribes resort to torture or coercion, such a requirement unjustifiably heightens the risk of conduct violating the Convention;

...

- Sweden, CAT, A/57/44 (2002) 51 at paras. 107 and 108.

## LEGAL RIGHTS -CRIMINAL - Right Against Self-Incrimination

107. The Committee...records its concern at the following:

...

(e) Although the periodic report claims that statements obtained under duress cannot be used as evidence in proceedings, there seems to be no legislative rule which clearly spells out such a prohibition.

...

108. The Committee recommends that the State party should:

...

(h) Ensure that the prohibition on the use of statements obtained by torture as evidence in proceedings is clearly formulated in domestic law.

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

115. The Committee expresses concern about the following:

...

(f) The *de facto* refusal of judges to take account of evidence of torture and ill-treatment provided by the accused, so that there are neither investigations nor prosecutions;

...

(h) The numerous cases of convictions based on confessions, and the continued use of the criterion of "solved crimes" as the basis for promotion of law enforcement personnel, which, taken together, create conditions that promote the use of torture and ill-treatment to force detainees to "confess";

...

116. The Committee recommends that the State party:

...

(d) Ensure in practice absolute respect for the principle of the inadmissibility of evidence obtained by torture;

...

(j) Review cases of convictions based solely on confessions in the period since Uzbekistan became a party to the Convention, recognizing that many of these may have been based upon evidence obtained through torture or ill-treatment, and, as appropriate, provide prompt and impartial investigations and take appropriate remedial measures;

...

### ***See also:***

- Ukraine, CAT, A/57/44 (2002) 31 at paras. 57 and 58.
- Egypt, CAT, A/58/44 (2002) 22 at para. 39.

## LEGAL RIGHTS -CRIMINAL - Right Against Self-Incrimination

39. The Committee welcomes the following:

...

(c) Decisions taken by the Egyptian courts to refuse any confession made under duress as evidence;

...

- 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;

...

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

98. The Committee is concerned about the following:

...

(h) The importance given to confessions in criminal proceedings and the reliance of the police and the judiciary on confessions to secure convictions;

...

99. The Committee recommends that the State party:

...

(f) Take measures to ensure that evidence obtained under torture is not invoked in court;

...

### *See also:*

- Turkey, CAT, A/58/44 (2003) 46 at para. 121.
- Republic of Moldova, CAT, A/58/44 (2003) 53 at paras. 138 and 139.
  
- Iceland, CAT, A/58/44 (2003) 43 at paras. 107 and 109.

107. The Committee is still concerned by the fact that Icelandic law does not contain specific provisions ensuring that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, as required by article

## **LEGAL RIGHTS -CRIMINAL - Right Against Self-Incrimination**

15 of the Convention.

...

109. The Committee urges the State party to reconsider its previous recommendations, namely:

...

(b) The recommendation that legislation concerning evidence to be adduced in judicial proceedings be brought into line with the provisions of article 15 of the Convention so as to exclude explicitly any evidence obtained as a result of torture.

- Turkey, CAT, A/58/44 (2003) 46 at para. 120.

120. The Committee welcomes the following positive aspects:

...

(d) The inclusion in domestic legislation of the principle that evidence obtained through torture shall not be invoked as evidence in any proceedings;

...

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

129. The Committee is concerned about:

...

(o) The fact that rules on the exclusion of evidence obtained as a result of torture have emerged only from the decisions of the courts, and that judges seem to retain discretionary power in that regard.

...

131. The Committee recommends that the State party:

...

(n) Clearly state in national legislation that evidence obtained under torture is automatically inadmissible and must therefore not be submitted for consideration by the court itself.

- Chile, CAT, A/59/44 (2004) 28 at paras. 54, 56 and 57.

54. The Committee notes the following positive developments:

...

(h) Assurances by the representatives of the State party that mechanisms have been created to ensure that any testimony obtained under torture will not be admissible in court, and their recognition of the serious problem of coercing confessions from women who seek life-saving treatment in public hospitals after illegal abortions;

...

## **LEGAL RIGHTS -CRIMINAL - Right Against Self-Incrimination**

56. The Committee expresses concern about the following:

...

(j) Reports that life-saving medical care for women suffering complications after illegal abortions is administered only on condition that they provide information on those performing such abortions. Such confessions are reportedly used subsequently in legal proceedings against the women and against third parties, in contravention of the provisions of the Convention;

...

57. The Committee recommends that the State party should:

...

(m) Eliminate the practice of extracting confessions for prosecution purposes from women seeking emergency medical care as a result of illegal abortion; investigate and review convictions where statements obtained by coercion in such cases have been admitted into evidence, and take remedial measures including nullifying convictions which are not in conformity with the Convention. In accordance with World Health Organization guidelines, the State party should ensure immediate and unconditional treatment of persons seeking emergency medical care;

...

- United Kingdom of Great Britain and Northern Ireland (Crown Dependencies and Overseas Territories), CAT, A/60/44 (2004) 16 at paras. 39 and 40.

39. The Committee expresses its concern at:

(a) Remaining inconsistencies between the requirements of the Convention and the provisions of the State party's domestic law which, even after the passage of the Human Rights Act, have left continuing gaps; notably:

(i) Article 15 of the Convention prohibits the use of evidence gained by torture wherever and by whomever obtained; notwithstanding the State party's assurance set out in paragraph 38, subparagraph (g), supra, the State party's law has been interpreted to exclude the use of evidence extracted by torture only where the State party's officials were complicit; and

...

40. The Committee recommends that:

...

(b) The State party should review, in the light of its experience since its ratification of the Convention and the Committee's jurisprudence, its statute and common law to ensure full consistency with the obligations imposed by the Convention; for greater clarity and ease of access, the State party should group and publish the relevant legal provisions;

...

## **LEGAL RIGHTS -CRIMINAL - Right Against Self-Incrimination**

(d) The State party should appropriately reflect in formal fashion, such as legislative incorporation or by undertaking to Parliament, the Government's intention as expressed by the delegation not to rely on or present in any proceeding evidence where there is knowledge or belief that it has been obtained by torture; the State party should also provide for a means whereby an individual can challenge the legality of any evidence in any proceeding plausibly suspected of having been obtained by torture;

...

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

83. The Committee expresses concern:

...

(g) That there is no clear legal provision prohibiting the use as evidence of any statement obtained under torture as well as no clear legal provision stating that an order from a superior may not be invoked as justification of torture;

...

84. The Committee recommends that the State party:

...

(g) Adopt clear legal provisions prohibiting the use as evidence of any statement obtained under torture and establishing that orders from a superior may not be invoked as a justification of torture;

...

## **CRC**

- Uzbekistan, CRC, CRC/C/111 (2001) 117 at paras. 562 and 563.

562. The Committee is deeply concerned by numerous and continuing reports of ill-treatment of persons under 18 by the militia, including psychological intimidation, corporal punishment, including for purposes of extorting confessions...

563. In the light of article 37 of the Convention, and recalling the Code of Conduct for Law Enforcement Officials, adopted by the General Assembly in its resolution 34/169 of 17 December 1979, the Committee urges the State party to:

...

(c) Provide the militia with training on how to deal with persons under 18;

(d) Ensure children are adequately informed of their rights when they are arrested and detained;

...

## **LEGAL RIGHTS -CRIMINAL - Right Against Self-Incrimination**

- 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:

...

(c) Children are sometimes forced by the police to confess to criminal offences when they are held in custody at police stations, and are sometimes subject to ill-treatment;

...

464. The Committee recommends that the State party:

...

(d) Ensure the protection of child detainees from ill-treatment and/or being forced to make confessions by the police;

...