

LEGAL RIGHTS - CRIMINAL - Protection Against Undue Delay

IV. CONCLUDING OBSERVATIONS, CONTINUED

ICCPR

- Ukraine, ICCPR, A/57/40 vol. I (2002) 32 at para. 74(17).

(17) The Committee remains concerned about the permissible length of detention as a "temporary preventive measure" (up to 72 hours) in the custody of law enforcement authorities and before detainees are informed of charges brought against them, and about the practice of extending the period of such detention for up to 10 days in certain cases on the initiative of a prosecutor. Such practice is incompatible with article 9 of the Covenant. The Committee is also concerned that no effective mechanism exists for monitoring such detention.

The State party should take all necessary measures to reduce the length of such detention and to improve judicial oversight so as to ensure compliance with Covenant rights...

- 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.

- 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. Further, the Committee is deeply concerned at ongoing pre-trial detention on police premises and the high risk of ill-treatment which it entails. It also greatly regrets that pre-trial detention of up to three years is provided for under the Act.

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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(8).

(8) Notwithstanding the information provided by the delegation that only three persons were currently subject to administrative detention, referred to as probation by the delegation, the Committee remains concerned about the continued use of this practice as prescribed under decree CP-31, since it provides for persons to be kept under house arrest for up to two years without the intervention of a judge or a judicial officer. The Committee is equally concerned at the provisions of article 71 of the Code of Criminal Procedure, pursuant to which the Principal Prosecutor may prolong the duration of the preventive detention of an individual without time limits, "if required and for serious offences against national security".

The State party should ensure that no persons are subjected to arbitrary restriction of their liberty and that all persons deprived of their liberty are promptly brought before a judge or other officer authorized to exercise judicial power by law, and that they can only be deprived of their liberty on the basis of a judgement based on law, as required by article 9, paragraphs 3 and 4, of the Covenant.

- Republic of Moldova, ICCPR, A/57/40 vol. I (2002) 76 at para. 84(11).

(11) The Committee is concerned at the length of time that elapses in practice before a person suspected of a crime is brought before a judge, and at overly lengthy periods of pre-trial detention. The Committee is concerned by the apparently frequent administrative detention for significant periods of persons qualified as "vagrants".

The State party should ensure that all persons suspected of a crime are brought promptly before a judge, as required by article 9 of the Covenant. In order to comply with articles 9 and 14, the detention of persons awaiting trial should also be reviewed periodically and their trials held without undue delay. The Committee recalls, moreover, the obligation of the State party under article 9, paragraph 4, to enable persons in administrative detention to initiate proceedings in order to test the legality of their detention.

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

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(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. It points out that it has been given no information on the total duration of pre-trial detention or the offences involved. It is concerned at the lack of clarity concerning the safeguards laid down in article 9, paragraph 3, of the Covenant...

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

(14) ...[T]he time limit of 48 hours for police custody is allegedly rarely observed in practice, and some persons have reportedly been detained for years without being charged.

...The State party should...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(14).

(14) The Committee is concerned that a person may be held in pre-trial detention for a period of 6 to 12 months before charges are brought and that such detention in exceptional cases can last for up to 4 years...

The State party should amend its legislation in order to ensure that charges are brought against persons in pre-trial detention and that all persons are tried within a reasonable time...

- Latvia, ICCPR, A/59/40 vol. I (2003) 25 at para. 65(10).

(10) While acknowledging the State party's admission that the average length of pre-trial detention is unsatisfactory and its attempt to remedy the situation in the proposed code of criminal procedure, the Committee is concerned about the length of pre-trial detention, which is often incompatible with articles 9, paragraph 3, and 14. While being aware of the draft criminal procedure law intended, *inter alia*, to speed up trials, the Committee remains concerned at the length and frequency of pre-trial detention, particularly with regard to juvenile offenders.

The State party should take all legislative and administrative measures to ensure compliance with articles 9, paragraph 3, and 14 as a matter of priority.

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

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(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 Committee welcomes the decision of the Government, consistent with the Ceasefire Agreement of February 2002, not to apply the provisions of the PTA and to ensure that normal procedures for arrest, detention and investigation prescribed by the Criminal Procedure Code are followed. The Committee is also concerned that the continued existence of the PTA allows arrest without a warrant and permits detention for an initial period of 72 hours without the person being produced before the court (sect. 7), and thereafter for up to 18 months on the basis of an administrative order issued by the Minister of Defence (sect. 9)...The Committee is concerned that such provisions, incompatible with the Covenant, still remain legally enforceable, and that it is envisaged that they might also be incorporated into the Prevention of Organized Crimes Bill 2003.

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. The provisions of the Prevention of Terrorism Act designed to fight terrorism should not be incorporated into the draft Prevention of Organized Crime Bill to the extent that they are incompatible with the Covenant.

- Suriname, ICCPR, A/59/40 vol. I (2004) 43 at paras. 69(14), 69(15) and 69(17).

(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).

The State party should correct the above practice forthwith, as it is incompatible with article 9, paragraphs 3 and 4, of the Covenant. It should amend its relevant legislation without delay to ensure that anyone arrested or detained on a criminal charge is brought promptly before a judge, in conformity with the provisions of article 9, paragraph 3, of the Covenant.

(15) While acknowledging the efforts made by the State party to reform its prison system and construct new prison facilities to overcome the problem of overcrowding, the Committee expresses its concern at the persistence of poor prison conditions and serious overcrowding. It also notes that the backlog in the adjudication of cases encountered by the judicial system contributes to this situation.

The State party should take appropriate measures to reduce the number of persons in

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detention and to improve prison conditions in order to comply with article 10 of the Covenant. Additional resources should be allocated to the judiciary, in order to reduce the number of detainees in pre-trial detention.

...

(17) The Committee is concerned about the compatibility with the Covenant of the low age of criminal responsibility in Suriname (10 years), having regard in particular to reliable information about the ill-treatment of children in detention and the long delays in pending trials.

The State party should revise its legislation with regard to the age of criminal responsibility, which at its present level is unacceptable under international standards. The State party should inform the Committee as to how its practice complies with articles 10, paragraph 2 (b), 14, paragraph 4, and 24 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.

- Lithuania, ICCPR, A/59/40 vol. I (2004) 52 at para. 71(13).

(13) The Committee is...concerned that persons may be detained in police custody beyond the 48-hour limit within which they must either be brought before a judge on criminal charges or be made subject to the proceedings applicable to administrative offences, and that they may be returned to police custody for further investigation (arts. 7 and 9).

The State party should...ensure that persons ordered detained beyond the statutory 48-hour period are not held in police custody and that, once remanded in detention in prison, they cannot be returned to police custody.

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- 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 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. Finally, it expresses concern about the justification of the rule allowing extensions of time for “imprisonment with restrictions” (arts. 9 and 14).

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.

- Namibia, ICCPR, A/59/40 vol. I (2004) 64 at paras. 74(13) and 74(17).

(13) The Committee appreciates the efforts undertaken by the State party in increasing the number of magistrates throughout the country, so as to ensure strict observance of the 48-hour rule for bringing a suspect before a trial judge. Nevertheless, it remains concerned that cases of prolonged pre-trial detention not compatible with article 9 of the Covenant may continue to occur.

The State party should continue its efforts to ensure respect of the 48-hour rule and should closely monitor all cases where this rule is not respected.

...

(17) The Committee is concerned that the State party is not complying fully with the obligation to ensure the right to be tried without undue delay as enshrined in article 14, paragraph 3 (c), of the Covenant, especially taking into account the number of cases that remain pending.

The State party should take urgent steps to guarantee that trials take place within a reasonable period of time. Special measures should be taken to address the backlog of cases, in particular through the necessary increase in the number of judges.

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

(18) The Committee has taken note of the efforts undertaken by Albania to strengthen the independence and efficiency of its judiciary. It 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 guarantee the independence of the judiciary, take measures to eradicate all forms of interference with its independence, ensure prompt, thorough,

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independent and impartial investigations into all allegations of interference and prosecute and punish perpetrators. It 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 para. 83(18).

(18) The Committee notes the efforts made by the State party to bring the system of justice closer to the people but remains concerned at reports of serious dysfunctions in the administration of justice, owing chiefly to the lack of human and material resources, the overcrowding of dockets, the slow pace of proceedings, corruption and the interference of the executive in the judiciary...

The State party should give greater priority to efforts to address these problems. It should ensure the prompt and effective implementation of the Act of 27 August 2002 on the organization of the judiciary increasing the number of courts and tribunals, strengthen the independence of the justice system by effectively prohibiting any interference by the executive in the judiciary, and ensure that appeals are dealt with in a reasonable amount of time. It should also provide effective reparation for violations established by the Constitutional Court...

- Morocco, ICCPR, A/60/40 vol. I (2004) 35 at para. 84(15).

(15) The Committee considers the period of custody during which a suspect may be held without being brought before a judge - 48 hours (renewable once) for ordinary crimes and 96 hours (renewable twice) for crimes related to terrorism - to be excessive.

The State party should review its legislation on custody with a view to bringing it into line with the provisions of article 9 and all the other provisions of the Covenant.

- Poland, ICCPR, A/60/40 vol. I (2004) 40 at para. 85(4).

(4) In its concluding observations on the State party's fourth report, the Committee expressed concern about excessive delays in criminal and civil trials in Poland. It therefore welcomes the recent passage of legislation making provision for complaints against the violation of the right of a party in judicial proceedings to have his or her case examined without undue delay.

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- Kenya, ICCPR, A/60/40 vol. I (2005) 44 at paras. 86(17) and 86(20).

(17) The Committee notes with concern the differential between the time in which those accused of having committed an offence must be brought before a judge (24 hours) and the time limit that applies to a person accused of a capital offence (14 days); the latter is incompatible with article 9(3) of the Covenant. It is further concerned that most suspects do not have access to a lawyer during the initial stages of detention.

The State party should ensure that those accused of the capital offence of murder fully benefit from the guarantees of article 9(3) of the Covenant. It should further guarantee the right of persons in police custody to have access to a lawyer during the initial hours of detention.

...

(20) The Committee remains concerned about reports of serious dysfunctions in the administration of justice, owing primarily to the lack of human and material resources as well as the slow pace of proceedings...

The State party should give priority to its efforts to combat corruption in the judiciary and to address the need to provide increased resources to the administration of justice.

- Mauritius, ICCPR, A/60/40 vol. I (2005) 52 at paras. 88(15) and 88(16).

(15) The Committee notes with concern that bail is not allowed under the Dangerous Drugs Act 2000 for persons arrested or held in custody for the sale of drugs, especially where they have already been convicted of any drug offence. 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.

(16) The Committee notes with concern the alarming finding of the report “Developments in the conduct of imprisonment” drawn up in the wake of the Beau Bassin prison incidents of 26 September 2003, which shows, in particular, the considerable percentage of the inmate population in pre-trial detention (36 per cent) and the excessive length of such detention for serious offences (Covenant, art. 9).

The State party is urged to draw all appropriate conclusions from the above mentioned report and ensure that its pre-trial detention practice is compatible with article 9 of the Covenant.

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- Uzbekistan, ICCPR, A/60/40 vol. I (2005) 56 at para. 89(14).

(14) The Committee considers that the length of custody for which a suspect may be held without being brought before a judge or an officer authorized to exercise judicial power - 72 hours - is excessive (Covenant, art. 9).

The State party should ensure that a judge reviews all detentions to determine if they are legal and that all cases of detention are brought before a judge for that purpose, in conformity with the provisions of article 9 of the Covenant.

- Tajikistan, ICCPR, A/60/40 vol. I (2005) 70 at para. 92(12).

(12) The Committee is concerned that a procurator, rather than a judge, remains responsible for authorizing arrests. This creates an imbalance in the equality of arms between the accused and the prosecution, as the procurator may have an interest in the detention of those who are to be prosecuted. Further, detainees are not brought before the procurator following their arrest. An appeal to a court to review the lawfulness and grounds of arrest is possible, but it does not guarantee the participation of the detainee (art. 9).

The State party should revise its criminal procedure legislation and introduce a system that ensures that all detainees are as a matter of course brought promptly before a judge who will decide without delay on the lawfulness of the detention.

- Slovenia, ICCPR, A/60/40 vol. I (2005) 74 at para. 93(12).

(12) The Committee has taken note of the efforts undertaken by the State party to reduce backlogs in court cases by adopting strategies such as the “Hercules project”, but it remains concerned that the backlog is increasing for certain categories of cases (art. 14).

The State party should take steps to further reduce the backlog, while guaranteeing access to justice to all, and ensure that those persons remanded in custody for trial are brought to trial as speedily as possible.

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

(15) The Committee is concerned about the persistent allegations of excessive use of force by law enforcement officials, as well as ill-treatment at the time of arrest and during police

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custody. The Committee is also 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...Provision should also be made for prompt and effective remedies to allow detainees to challenge the legality of their detention. Anyone arrested or detained on a criminal charge must be brought promptly before a judge...

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- 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-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;

(g) The duration of pre-trial detention, which can last for up to 18 months according to the law but which in practice can be extended for up to three years, of administrative detention for up to 15 days, and of detention of “vagrants” for up to 30 days;

...

58. The Committee recommends that the State party:

...

(e) Clarify and reconcile the sometimes contradictory provisions pertaining to the time at

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which a detained person has the right to a defence counsel and to ensure that this right is exercised from the moment of arrest;

...

(k) Shorten the current 72-hour pre-trial detention period during which detainees may be held in isolation cells prior to being brought before a judge;

...

- Russian Federation, CAT, A/57/44 (2002) 42 at paras. 93 and 95.

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

...

(d) The dual system of jurisdiction in Chechnya involving both military and civilian prosecutors and courts, which leads to long and unacceptable delays in registering cases, resulting in a cyclical process whereby case information and the responsibility for opening investigations continue to be passed from one official to another and back, without resulting in the initiation of prosecutions...

...

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

(a) Clarify the jurisdiction over the events in Chechnya, which currently have an uncertain status, as there is no state of exception and there is also a non-international armed conflict in progress. Such clarification could provide individuals with an effective means of seeking redress for any violations committed, so they will not be caught in a vicious circle of various military and civilian departments and agencies with differing degrees of responsibility;

...

(f) Consider the formation of a joint investigative group of both military and civilian procuracy officials until specific responsibility can be identified and jurisdiction can be established.

- Saudi Arabia, CAT, A/57/44 (2002) at para. 100.

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 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...

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...

- 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 paras. 41 and 42.

41. The Committee is concerned about the following:

...

(b) The many consistent reports received concerning the persistence of the phenomenon of torture and ill-treatment of detainees by law enforcement officials, and the absence of measures to ensure effective protection and prompt and impartial investigations. Many of these reports relate to numerous cases of deaths in custody;

...

(h) The excessive length of many of the proceedings initiated in cases of torture and ill-treatment, and the fact that many court decisions to release detainees are not enforced in practice;

...

42. The Committee recommends that the State party:

...

(c) Guarantee that all complaints of torture or ill-treatment, including those relating to death in custody, are investigated promptly, impartially and independently;

...

(g) Ensure that legislation gives full effect to the rights recognized in the Convention and institute effective remedies for the violation of such rights; ensure in particular that

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proceedings take place within a reasonable time after the submission of complaints, and that any court decision to release a detainee is actually enforced;

...

- 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 paras. 58, 63 and 67.

58. The Committee...notes with satisfaction:

...

(f) Reduction in numbers of prison inmates awaiting sentencing;

...

63. The Committee...expresses its concern at the following:

(a) The substantial delays attending legal investigations into complaints of torture, which may lead to convicted persons being pardoned or not serving their sentences owing to the length of time since the offence was committed. This further delays the realization of the rights of victims to moral and material compensation;

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(b) The failure of the administration, in some cases, to initiate disciplinary proceedings when criminal proceedings are in progress, pending the outcome of the latter. Delays in judicial proceedings may be such that, once criminal proceedings have concluded, disciplinary proceedings are time-barred;

...

- 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:

...

(f) It regulates custody safeguards appropriately, e.g. a prior court order is required for any arrest or detention, except *in flagrante delicto*; it establishes a period of 48 hours for bringing a detainee before a judicial authority, as the Code of Criminal Procedure already provides; it regards as the general rule that persons charged should remain at liberty and pre-trial custody as the exception;

...

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

88. The Committee is concerned about:

...

(f) Reports that some persons have been held in police custody much beyond the time limit of 48 hours established in the Code of Criminal Procedure, and that in exceptional circumstances, persons can be held in temporary detention for up to 10 days in local police facilities;

(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;

...

89. The Committee recommends that the State party:

...

(b) Guarantee that, in practice, persons cannot be held in initial preventive detention (police custody) longer than 48 hours, and eliminate the possibility of holding persons in temporary detention in local police facilities for a period of up to 10 days;

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(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;

...

- Cambodia, CAT, A/58/44 (2003) 40 at para. 98.

98. The Committee is concerned about the following:

...

(i) The unwarranted protraction of the pre-trial detention period during which detainees are more likely to be subjected to torture and other ill-treatment;

(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;

...

- Slovenia, CAT, A/58/44 (2003) 44 at para. 114.

114. The Committee welcomes the ongoing efforts by the State party to reform its legal system and revise its legislation so as to strengthen human rights in Slovenia. In particular, the Committee welcomes:

...

(b) The decision of the Supreme Court adopted in December 2000, which limits the duration of remand in custody to two years;

...

(f) The “Hercules” special programme conducted by the Supreme Court of Slovenia and introduced in 2001, aimed at reducing and eliminating court backlogs;

...

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

120. The Committee welcomes the following positive aspects:

...

(c) The constitutional and legal reforms intended to strengthen the rule of law and to bring the legislation into line with the Convention, including the reduction of periods of detention in police custody; the elimination of the requirement to obtain administrative permission to

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prosecute a civil servant or public official; and the decrease in the number of crimes under the jurisdiction of State Security Courts;

...

- Cameroon, CAT, A/59/44 (2003) 23 at paras. 41 and 45.

41. The Committee notes with concern that:

...

(b) The period of police custody may, under the draft code of criminal procedure, be extended by 24 hours for every 50 kilometres of distance between the place of arrest and the place of custody;

(c) The time limits on custody are reportedly not respected in practice;

(d) The periods of police custody under Act No. 90/054 of 19 December 1990 to combat highway robbery (15 days, renewable) and Act No. 90/047 of 19 December 1990 on states of emergency (up to 2 months, renewable) are too long;

...

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;

(b) Abandon the notion, in its draft code of criminal procedure, of extending the period of police custody depending on the distance between the place of arrest and the place of custody, and ensure observance of the time limits on custody in practice;

(c) Ensure that detention in custody under the Act on states of emergency conforms to international human rights standards and is not prolonged beyond what the situation requires. The State party should abolish administrative and military custody as options;

...

- Chile, CAT, A/59/44 (2004) 28 at para. 54.

54. The Committee notes the following positive developments:

...

(e) The reduction in the period of detention in police custody to a maximum of 24 hours;

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...

- Colombia, CAT, A/59/44 (2003) 33 at paras. 67 and 69.

67. The Committee expresses its concern that measures adopted or being adopted by the State party against terrorism and illegal armed groups could encourage the practice of torture. In this regard the Committee expresses its concern, in particular, at:

...

(b) Constitutional reform bill No. 223/2003, which, if adopted, would seem to confer judicial powers on the armed forces and enable persons to be detained and questioned for up to 36 hours without being brought before a judge.

...

69. The Committee recommends that the State party take all necessary measures to prevent the acts of torture and ill-treatment that are being committed in its territory, and in particular that it:

...

(b) Reconsider...in the light of its obligation to prevent torture and ill-treatment under the Convention:

...

(ii) The adoption of measures that appear to give military forces powers of criminal investigation under which suspects can be detained for long periods without judicial control;

...

- Germany, CAT, A/59/44 (2004) 45 at paras. 91 and 92.

91. The Committee expresses its concern at:

(a) The length of time taken to resolve criminal proceedings arising from allegations of ill-treatment of persons in the custody of law enforcement authorities, including in particular serious cases where death has resulted, such as that of Amir Ageeb, who died in May 1999;

...

92. The Committee recommends that:

(a) The State party take all appropriate measures to ensure that criminal complaints lodged against its law enforcement authorities are resolved expeditiously, in order to resolve such allegations promptly and avoid any possible inference of impunity, including in cases where

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counter-charges are alleged;

...

- 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*, 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;

...

(vi) The draft new Criminal Procedure Law that aims at simplifying the legal proceedings and would, *inter alia*, decrease the time for bringing a suspect before a judge from 72 to 48 hours;

...

100. The Committee expresses concern about the following:

...

(d) The length of legal proceedings and the excessive periods of pre-trial detention, especially in short-term detention isolators;

...

101. The Committee recommends that the State party:

...

(d) Take all appropriate steps to shorten the length of legal proceedings and the current pre-trial detention period;

...

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

126. The Committee expresses concern about:

...

(b) The considerable extension of the time limit for police custody, the period during which the risk of torture is greatest, both in criminal law and in anti-terrorist legislation, which has been effected subsequent to the consideration of the second periodic report;

(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;

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...

(f) The application to acts of torture of the prescription period provided for by ordinary law, which would appear to deprive victims of their imprescriptible right to initiate proceedings;

...

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;

(d) Include in the Code of Criminal Procedure provisions organizing the imprescriptible right of any victim of an act of torture to initiate proceedings against any torturer;

...

- Yemen, CAT, A/59/44 (2003) 64 at paras. 145 and 146.

145. The Committee expresses concern about the following:

...

(c) Reports of the frequent practice of *incommunicado* detention by Political Security Department officials, including occurrences of mass arrests and detention for prolonged periods without judicial process;

(d) The failure in practice to enable detained persons to obtain access to a lawyer, a doctor of their choice or relatives from the outset of their detention;

(e) The apparent failure to investigate promptly, impartially and fully the numerous allegations of torture and breaches of article 16 of the Convention and to prosecute alleged offenders;

...

(h) The situation of women who have served their prison sentences but who remain in prison for prolonged periods;

...

146. The Committee recommends that the State party:

...

(c) 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 and that detainees held by the Political Security Department are given prompt access to judges;

...

(h) Take measures to establish an effective, reliable and independent complaints system to undertake prompt and impartial investigations into allegations of ill-treatment or torture by police and other public officials, and punish the offenders;

...

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(k) Continue and expand efforts to establish "half-way homes" for women in order to avoid their remaining in prison beyond the expiration of their sentence;

...

- Albania, CAT, A/60/44 (2005) 34 at paras. 81, 83 and 84.

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

(a) The adoption of a democratic Constitution in 1998 that enhances protection of human rights, including the prohibition of torture, establishes a maximum 48-hour limit on detention before which a person must be brought before a judge, and the direct applicability of ratified international treaties and their superiority over domestic laws;

...

83. The Committee expresses concern:

...

(c) That a climate of *de facto* impunity prevails for law enforcement personnel who commit acts of torture or ill-treatment, in view of:

...

(iii) The lack of prompt and impartial investigation of allegations of torture and ill-treatment committed by law enforcement personnel; and

...

(j) At the poor conditions of detention and long pre-trial detention periods of up to three years;

(k) At the existence of an additional 10-hour administrative detention period for interrogation before the maximum 48-hour period within which a detainee must be brought before a judge begins;

...

84. The Committee recommends that the State party:

...

(c) Investigate all allegations of ill-treatment and torture by law enforcement personnel, carrying out prompt and impartial investigations to bring the perpetrators to justice in order to eliminate the *de facto* impunity for law enforcement personnel who commit acts of torture and ill-treatment;

...

(j) Improve conditions in places of detention, ensuring that they conform to international minimum standards, adopt necessary measures to reduce the pre-trial detention period and continue to address overcrowding in places of detention;

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(k) Take the necessary measures to abolish the 10-hour administrative detention period for interrogation prior to the 48-hour period within which a suspect must be brought before a judge;

...

- Uganda, CAT, A/60/44 (2005) 39 at paras. 93 and 97.

93. The Committee is...concerned about:

(a) The length of pre-trial detention, including detention beyond 48 hours as stipulated by article 23, clause 4, of the Constitution and the possibility of detaining treason and terrorism suspects for 360 days without bail;

...

(e) The disproportion between the high number of reports of torture and ill-treatment and the very small number of convictions for such offences, as well as the unjustifiable delays in the investigation of cases of torture, both of which contribute to the impunity prevailing in this area;

...

97. The Committee recommends that the State party take all necessary legislative, administrative and judicial measures to prevent acts of torture and ill-treatment in its territory, and in particular that it:

...

(e) Reduce the length of pre-trial detention;

...

(g) Take vigorous steps to eliminate impunity for alleged perpetrators of acts of torture and ill-treatment, carry out prompt, impartial and exhaustive investigations, try and, where appropriate, convict the perpetrators of torture and ill-treatment, impose appropriate sentences on them and properly compensate the victims;

...

CRC

- Cameroon, CRC, CRC/C/111 (2001) 71 at paras. 391 and 393.

391. ...[T]he Committee is deeply concerned at the poor conditions of detention, due notably to overcrowding in detention and prison facilities, overuse and long periods of pre-trial detention, the length of time before the hearing of juvenile cases, the absence of assistance towards the rehabilitation and reintegration of juveniles following judicial proceedings, and the sporadic training of judges, prosecutors and prison staff...

...

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

...

(c) Consider deprivation of liberty only as a measure of last resort and for the shortest possible period and limit by law the length of pre-trial detention;

...

See also:

- Côte d'Ivoire, CRC, CRC/C/108 (2001) 59 at paras. 348 and 350.
- Uzbekistan, CRC, CRC/C/111 (2001) 117 at paras. 592 and 593.
- Burkina Faso, CRC, CRC/C/121 (2002) 103 at paras. 487 and 489.

- Republic of Moldova, CRC, CRC/C/121 (2002) 89 at paras. 422 and 423.

422. ...[T]he Committee notes that there is no legal provision limiting the period of pre-trial detention...

423. The Committee recommends that the State party:

...

(c) Take legislative measures to set limited and short periods for pre-trial detention, in accordance with the provisions and principles of the Convention;

(d) Use detention, including pre-trial detention, only as a measure of last resort, for as short a time as possible and for no longer than the period prescribed by law, and ensure that children are always separated from adults;

...

- Poland, CRC, CRC/C/121 (2002) 120 at paras. 543 and 544.

543. The Committee is concerned at the high number of juveniles spending extensive periods of time in emergency blocks either as a pre-trial detention measure or as punishment for their actions in the juvenile reform centres...

544. The Committee recommends that the State party:

...

(b) Enforce the regulations allowing a maximum stay of three months in emergency blocks;

(c) Use deprivation of liberty only as a measure of last resort and protect the rights of children deprived of their liberty, including those pertaining to conditions of detention.

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- Estonia, CRC, CRC/C/124 (2003) 9 at paras. 72 and 73.

72. The Committee notes the existence of the Crime Prevention Council and a new training council to train judges and prosecutors, and appreciates that the minimum age of criminal responsibility has recently been raised to 14 years. However, the Committee is concerned:

...

(c) That the period for investigation and pre-trial detention can be prolonged for up to six months;

...

73. The Committee recommends that the State party:

...

(d) Ensure that deprivation of liberty is only used as a measure of last resort, for the shortest possible time, is authorized by the court, and that persons under 18 are not detained with adults;

...

- 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;

...

(e) There is a serious lack of capacity within the judicial system to provide rapid intervention or trial, as needed, for juvenile offenders.

261. The Committee recommends that the State party:

...

(e) Strengthen the capacity of the juvenile justice system to provide a timely response;

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

- Kazakhstan, CRC, CRC/C/132 (2003) 129 at paras. 647 and 648.

647. The Committee...welcomes the information about two pilot projects on juvenile justice aiming at the establishment of a rights-based approach to juveniles in conflict with the law in full compliance with the Convention, but is concerned at the existing shortcomings in the juvenile justice system, *inter alia*:

...

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(b) The parents or guardians of children kept in pre-trial detention are not immediately informed about such detention (in fact, often only after a lengthy period of time), which can last for 18 months;

...

648. The Committee recommends that the State party:

...

(b) Use detention, including pre-trial detention, only as a measure of last resort, for as short a time as possible;

...

- Rwanda, CRC, CRC/C/140 (2004) 36 at paras. 229-231 and 233.

229. The Committee is extremely concerned that persons below the age of 18 at the time of their alleged war crime have not yet been tried, have been detained in very poor conditions, some for a very long time, and are not provided with appropriate services to promote their rehabilitation. The Committee notes the establishment of *gacaca* courts but is deeply concerned that no specific procedure has been established for those who were under 18 at the time of their alleged crime, as required by article 40, paragraph 3, of the Convention, and are still in what could be considered as pre-trial detention.

230. In the light of articles 37, 40 and 39 of the Convention and other relevant international standards, the Committee recommends that the State party take all necessary measures to complete within six months all pending legal proceedings against persons who were below the age of 18 at the time they allegedly committed war crimes.

231. ...[T]he Committee...is deeply concerned at...overuse and extremely long periods of pre-trial detention, the length of time before the hearing of juvenile cases...

...

233. In addition, the Committee recommends that the State party:

...

(b) Consider deprivation of liberty only as a measure of last resort and for the shortest possible period and limit by law the length of pre-trial detention;

...

- Equatorial Guinea, CRC, CRC/C/143 (2004) 64 at paras. 371 and 372.

371. The Committee is deeply concerned about the lack of a juvenile justice system in the country. In particular, the Committee is concerned about the lack of juvenile courts and about the detention of persons below 18 with adults, in very poor conditions and without access to basic services.

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

...

(b) Limit by law the length of pre-trial detention and ensure that the lawfulness of such detention is reviewed by a judge without delay and regularly;

...

- 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:

...

(e) Excessive length of time before the hearing of cases;

...

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;

...