

LEGAL RIGHTS - INDEPENDENCE OF THE JUDICIARY

IV. CONCLUDING OBSERVATIONS

CERD

- Sudan, CERD, A/49/18 (1994) 68 at para. 473.

Concern is expressed concerning the effective curtailment of police powers and concerning the independence of the judiciary, including conditions pertaining to the appointment, training and dismissal of magistrates.

- Chad, CERD, A/49/18 (1994) 85 at para. 561.

The paralysis in the administration which affects all sectors of the public service, including the judicial sector, is noted with concern. Concern is also expressed over the attacks on the independence of the judicial authorities.

- Chad, CERD, A/50/18 (1995) 106 at paras. 658 and 666.

Paragraph 658

Concern is expressed over the paralysis of the judiciary, associated with the lack of resources allocated to the courts, the inadequate training given to judges and political interference.

Paragraph 666

It is strongly recommended that the State party make every effort to ensure that the system of justice functions properly, since that is a necessary condition for a return to the rule of law.

- Russian Federation, CERD, A/51/18 (1996) 25 at para. 152.

The State Party should effectively enhance protection against any acts of racial discrimination through the competent national courts, in accordance with article 6 of the Convention, by strengthening the court system, the independence of the judiciary and the confidence of the population therein. The training of judges, lawyers, magistrates, law enforcement personnel and the military in human rights is recommended.

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- Philippines, CERD, A/52/18 (1997) 55 at para. 434.

The State party should ensure protection against any acts of racial discrimination through the competent courts, in accordance with article 6 of the Convention, by, *inter alia*, strengthening the court system, the independence of the judiciary and the confidence of the population therein. It is further recommended that the right to seek just and adequate reparation for victims of acts of racial discrimination be fully guaranteed under the law and in practice.

See also:

- Burundi, CERD, A/52/18 (1997) 73 at para. 589.
 - Cambodia, CERD, A/53/18 (1998) 55 at para. 300.
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- Russian Federation, CERD, A/53/18 (1998) 25 at para. 45.

Efforts aimed at strengthening the court system and the independence of the judiciary should continue.

- Cambodia, CERD, A/53/18 (1998) 55 at paras. 286 and 294.

Paragraph 286

Concern is expressed over the lack of independence of the judiciary as well as the impunity of perpetrators of human rights violations, which in some cases include summary executions and torture. This contributes to the serious undermining of efforts to establish the rule of law, without which the full implementation of the Convention is not possible.

Paragraph 294

The State party should take all appropriate steps, including legal measures, to ensure the independence of the judiciary and to establish the Constitutional Council, with a view to bringing an end to the impunity of perpetrators of racial discrimination. The need to investigate, prosecute and punish those found guilty of such crimes, and to establish confidence in the rule of law is emphasized.

- Rwanda, CERD, A/55/18 (2000) 31 at paras. 152 and 153.

Paragraph 152

Recalling its decisions on Rwanda under its early warning and urgent action procedures, notably its decisions 5 (53) of 19 August 1998 and 3 (54) of 19 March 1999, the Committee is further concerned by reports of the intimidation of judicial authorities seeking to investigate and address human rights

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violations committed since 1994 against ethnic Hutus.

Paragraph 153

The State party is called upon to make additional efforts to investigate allegations of serious ethnic violence and humanitarian law violations that may have been committed and to address these acts through the judicial process, while maintaining full respect for the relevant human rights of accused and detained persons and ensuring that judicial officials are able to conduct their work free from intimidation or other pressure.

- United States of America, CERD, A/56/18 (2001) 64 at para. 396.

It is noted with concern that, according to the Special Rapporteur of the United Nations Commission on Human Rights on extrajudicial, summary or arbitrary executions, there is a disturbing correlation between race, both of the victim and the defendant, and the imposition of the death penalty, particularly in states like Alabama, Florida, Georgia, Louisiana, Mississippi and Texas. The State party is urged to ensure, possibly by imposing a moratorium, that no death penalty is imposed as a result of racial bias on the part of the prosecutors, judges, juries and lawyers or as a result of the economically, socially and educationally disadvantaged position of the convicted persons.

ICCPR

- United Republic of Tanzania, ICCPR, A/48/40 vol. I (1993) 35 at para. 188.

Ongoing and active monitoring should be undertaken to ensure that democratic guarantees which have recently been established in law are observed in practice. To this end, an active and independent judiciary is considered to be indispensable and measures should be taken in this regard to further strengthen it.

- Dominican Republic, ICCPR, A/48/40 vol. I (1993) 95 at paras. 452 and 461.

Paragraph 452

The inadequacy of the current system for appointing members of the judiciary is emphasized, as is the need for an independent judiciary. In its absence, individuals would continue to be denied recourse when their rights were violated. Furthermore, the Dominican Republic needs to establish a truly independent agency for the investigation of complaints regarding human rights abuses.

Paragraph 461

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The powers and independence of the judiciary do not appear to be sufficiently protected. A judicial order for release should be implemented without question.

- Egypt, ICCPR, A/48/40 vol. I (1993) 139 at paras. 690 and 706.

Paragraph 690

Certain powers granted to the President of the Republic under the Emergency Act are of concern, such as the ratification of judgments handed down by state security (emergency) courts, which may influence the independence of the judiciary, or the possibility of referring judicial cases to military courts. In this connection, it is considered necessary to have a clear indication of the human rights affected by the state of emergency and the extent to which they had been affected.

Paragraph 706

The long duration of the state of emergency in Egypt is of concern. Moreover, under the Emergency Act, the President of the Republic is entitled to refer cases to the State security courts, to ratify judgments and to pardon. The President's role as both part of the executive and part of the judiciary system is noted with concern, notwithstanding that in the matter of appeal it would act only to reduce sentences. On the other hand, military courts should not have the faculty to try cases which do not refer to offences committed by members of the armed forces in the course of their duties.

- Romania, ICCPR, A/49/40 vol. I (1994) 28 at paras. 143 and 148.

Paragraph 143

It is of concern that the full independence of the judiciary has not yet been ensured. In this connection, the continuing powers of the Ministry of Justice over judicial decisions and the power to remove judges creates a situation which greatly undermines the independence of the judiciary.

Paragraph 148

With regard to the independence of the judiciary, steps should be taken to speed up the reform process and end the present monitoring powers of the Ministry of Justice. Further vigorous efforts should be made to encourage a culture of independence among the judiciary itself.

- Cameroon, ICCPR, A/49/40 vol. I (1994) 36 at paras. 196 and 206.

Paragraph 196

The independence of the judiciary is questioned; in particular, the composition of the Supreme Council of Justice does not seem such as to guarantee respect for this principle.

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Paragraph 206

Measures should be taken, if necessary in the form of constitutional reform, to guarantee the independence and impartiality of the judiciary.

- El Salvador, ICCPR, A/49/40 vol. I (1994) 38 at paras. 217 and 223.

Paragraph 217

Concern is expressed over the fact that high officials of the judiciary have been implicated by the Truth Commission in human rights violations. In that connection, it is noted with concern that until serious reform of the judiciary is undertaken, efforts to strengthen the rule of law and to promote respect for human rights will continue to be undermined. The lack of support and protection given by the civilian authorities to the judiciary in the performance of its duties is also noted with concern.

Paragraph 223

A major reform of the judiciary should be undertaken with a view to establishing an independent and impartial judicial system free from political pressure and intimidation that will safeguard human rights and enforce the rule of law without discrimination.

- Italy, ICCPR, A/49/40 vol. I (1994) 47 at para. 286.

The State party should re-examine the possibility of civil liability of judges in the light of the Basic Principles on the Independence of the Judiciary.

- Azerbaijan, ICCPR, A/49/40 vol. I (1994) 50 at paras. 301 and 307.

Paragraph 301

The Committee has doubts regarding the independence and impartiality of the judiciary and the fact that the "Procuratura" still exists is deplored.

Paragraph 307

The judicial system should be amended as quickly as possible and the old "Procuratura" should be abolished.

- Burundi, ICCPR, A/49/40 vol. I (1994) 58 at paras. 362 and 366.

Paragraph 362

The lack of any inquiry into human rights violations is deplored. As a result, the perpetrators have

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remained unpunished and continue to perform, and sometimes to abuse, their functions in the army, police, gendarmerie or security forces. The victims or their families have received no compensation of any kind. The judiciary has shown itself incapable of carrying out its duties independently and impartially and has been unable to initiate the necessary investigations or bring those responsible to trial. Furthermore, the fact that the commissions of inquiry recently set up to identify those responsible for human rights violations consist of individuals belonging to only one of the country's population groups is a source of serious concern and has served only to shake the population's confidence in the authorities and exacerbate strife and violence between the various population groups.

Paragraph 366

It is essential to take urgent measures to reorganize public institutions so as to ensure balanced participation by all population groups in the conduct of public affairs and to permit all citizens, without distinction, to have access to public service, in the administration, the army, the police, the gendarmerie, the security forces and the judiciary. In addition, the army should be brought under the effective control of the civilian authorities. The judiciary and the civil service should also be opened immediately to those groups, so that they can be seen by the population to be impartial and representative of the population as a whole, thus restoring some degree of public confidence in national institutions.

- Argentina, ICCPR, A/50/40 vol. I (1995) 35 at para. 155.

Concern is expressed over the threats to members of the judiciary, which through intimidation seek to compromise the independence of the judiciary as set forth in article 14 of the Covenant.

- Haiti, ICCPR, A/50/40 vol. I (1995) 46 at para. 238.

A major reform of the judiciary should be undertaken with a view to establishing an independent and impartial judicial system which will safeguard human rights and enforce the rule of law.

- United States of America, ICCPR, A/50/40 vol. I (1995) 52 at paras. 288 and 301.

Paragraph 288

The impact which the current system of election of judges may, in a few states, have on the implementation of the rights provided under article 14 of the Covenant is of concern. The adoption of a merit-selection system is welcomed. The fact that in many rural areas justice is administered by unqualified and untrained persons is also of concern.

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Paragraph 301

The current system in a few states in which judges are appointed through elections should be reconsidered with a view to its replacement by a system of appointment on merit by an independent body.

- Ukraine, ICCPR, A/50/40 vol. I (1995) 57 at paras. 319 and 329.

Paragraph 319

It is of concern that the independence of the judiciary has not yet been ensured. The very long delays in the administration of justice, which are not in conformity with the requirements of both articles 9 and 14 of the Covenant are of further concern, and it is noted in that regard that the judicial system in Ukraine cannot be efficient until there is a sufficient number of well-trained and qualified judges and lawyers.

Paragraph 329

In order to ensure the independence and impartiality of the judiciary, as well as the confidence of individuals in the proper administration of justice, further steps should be taken to speed up and complete the reform process. Furthermore, vigorous efforts should also be made to encourage a culture of independence among the judiciary itself and to establish a well-trained and independent legal profession. A first priority should, for instance, be to adopt a law containing all the safeguards set forth in the Covenant.

See also:

- Latvia, ICCPR, A/50/40 vol. I (1995) 62 at para. 347.
- Russian Federation, ICCPR, A/50/40 vol. I (1995) 65 at para. 379.

- Russian Federation, ICCPR, A/50/40 vol. I (1995) 65 at para. 397.

The need for a prompt enactment of the legislation on the judiciary is stressed and it is urged that this legislation fully incorporate the essential guarantees for the independence of the judiciary, including the United Nations Basic Principles on the Independence of the Judiciary. Efforts should be made to make the Covenant and other international human rights norms as widely known as possible, particularly among the authorities invested with the administration of justice, law enforcement and prison officers, but also among the general public. The State party should avail itself of the technical cooperation services of the United Nations Centre for Human Rights.

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- Sri Lanka, ICCPR, A/50/40 vol. I (1995) 75 at paras. 463, 465 and 469.

Paragraph 463

The efforts being undertaken by the Government to establish various mechanisms to promote and protect human rights, including with respect to the National Human Rights Commission, are noted. In this regard, the proliferation of bodies with parallel competences should be avoided and the coordination of such mechanisms should be ensured. The State party should take into account that investigation and prosecution of criminal offences should be carried out by an independent body and that punishment of criminal offences should be carried out by the judiciary.

Paragraph 465

The provisions of the Covenant should be fully respected in the areas where a state of emergency has been proclaimed. The State party should vigorously investigate all violations of human rights - both past and present - through an independent agency, to punish those guilty of such acts and to compensate the victims.

Paragraph 469

The existing procedure relating to the removal of Supreme Court judges and judges of the Courts of Appeal should be reviewed with a view to its amendment as a means of ensuring the greater independence of the judiciary.

- Zambia, ICCPR, A/51/40 vol. I (1996) 29 at para. 202.

The proposals made by the Constitutional Review Committee regarding to appointment of judges of the Supreme Court by the President after their retirement and the removal of Supreme Court judges by the President, subject only to ratification by the National Assembly without any safeguard or inquiry by an independent judicial tribunal, are incompatible with the independence of the judiciary.

- Guatemala, ICCPR, A/51/40 vol. I (1996) 33 at paras. 235 and 247.

Paragraph 235

It is of concern that judges are subjected to supervision of an Executive Branch body which may affect their independence.

Paragraph 247

The independence of the judiciary should be ensured and a law regulating it should be enacted.

- Brazil, ICCPR, A/51/40 vol. I (1996) 44 at para. 316.

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Threats against members of the judiciary compromise its independence and impartiality, which are fundamental to the rights protected under article 14 of the Covenant.

- Peru, ICCPR, A/51/40 vol. I (1996) 48 at paras. 350, 352 and 364.

Paragraph 350

The deepest concern is expressed over the Decree law which contains a very broad definition of terrorism under which innocent persons have been and remain detained. It establishes a system of trial by "faceless judges", in which the defendants do not know who the judges are who are trying them and are denied public trials, and which places serious impediments, in law and in fact, on the possibility for defendants to prepare their defence and communicate with their lawyers. Under Decree Law 25,659, cases of treason are tried by military courts, regardless of whether the defendant is a civilian or a member of the military or security forces. In this connection, it is of deep concern that persons accused of treason are being tried by the same military force that detained and charged them, that the members of the military courts are active duty officers, that most of them have not received any legal training and that there is no provision for sentences to be reviewed by a higher tribunal. Those shortcomings raise serious doubts about the independence and impartiality of the judges of military courts. The Committee emphasizes that trials of non-military persons should be conducted in civilian courts before an independent and impartial judiciary.

Paragraph 352

It is noted with concern that judges retire at the end of seven years and require recertification for reappointment, a practice which tends to affect the independence of the judiciary by denying security of tenure.

Paragraph 364

The requirement for judges to be recertified should be reviewed and replaced by a system of secure tenure and independent judicial supervision. During the reform process being undertaken in the judicial order, every effort should be made to ensure the independence and impartiality of the judiciary.

- Peru, ICCPR, A/52/40 vol. I (1997) 28 at para. 156.

That the State party has extended the system of "faceless judges" which undermines the judicial system and will again lead to the conviction of innocent persons without a proper trial is of profound concern.

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- Germany, ICCPR, A/52/40 vol. I (1997) 32 at para. 187.

The criteria used to evaluate for retaining or dismissing former German Democratic Republic public servants, including judges and teachers, are vague and leave open the possibility for deprivation of employment on the basis of political opinions held or expressed. Therefore, the criteria for dismissing public servants of the former German Democratic Republic should be made more precise so that no public servant will be dismissed on the grounds of political opinions held or expressed by him or her.

- Bolivia, ICCPR, A/52/40 vol. I (1997) 35 at paras. 209 and 224.

Paragraph 209

Concern is expressed over the lack of independence and efficiency of the judiciary and the long delays in the administration of justice which do not conform with the requirements of articles 9 and 14 of the Covenant.

Paragraph 224

The independence of the judiciary should be ensured and a law regulating it should be enacted. The nomination of judges should be based on their competence and not their political affiliation. Responsibility for the judicial police should be transferred from the executive to the judiciary.

- Georgia, ICCPR, A/52/40 vol. I (1997) 40 at paras. 244 and 257.

Paragraph 244

The continuing close relationship between the procurator and the judges is of concern. It is feared that in the absence of any statute enforcing the independence of the judiciary, the impartiality of decisions cannot be guaranteed and the executive may exert pressure on the judiciary.

Paragraph 257

A law should be enacted guaranteeing the independence of the judiciary and providing for its total autonomy *vis-à-vis* the procurator and the executive.

- Colombia, ICCPR, A/52/40 vol. I (1997) 44 at paras. 281-283 and 297.

Paragraph 281

Impunity continues to be a widespread phenomenon. The broadening of the concept of service-related acts by the Higher Adjudication Council to enable the transfer from civilian jurisdiction to military tribunals of many cases involving human rights violations by military and security forces reinforces the institutionalization of impunity in Colombia, since the independence and impartiality of these

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tribunals are doubtful. The military penal system lacks many of the requirements for a fair trial spelled out in article 14, for example the amendments to article 221 of the Constitution allowing active duty officers to sit on military tribunals and the fact that members of the military have the right to invoke as defence the orders of a superior.

Paragraph 282

The military and members of security or other forces allegedly continue to exercise special powers over civilians and civilian authorities, including judicial authorities, granted to them through the establishment of Special Public Order Zones by decrees no longer in force. The Committee is particularly concerned by the fact that the military exercise the functions of investigation, arrest, detention and interrogation.

Paragraph 283

Threats against members of the judiciary compromise the independence and impartiality of the judiciary, which are essential to comply with the rights provided for in article 14 of the Covenant. The length of judicial proceedings creates an unacceptable backlog of cases, including cases of human rights abuses.

Paragraph 297

All necessary steps should be taken to ensure that members of the armed forces and the police accused of human rights abuses are tried by independent civilian courts and suspended from active duty during the period of investigation. To this end, the jurisdiction of the military courts with respect to human rights violations should be transferred to civilian courts and investigations of such cases should be carried out by the Office of the Attorney-General and the Public Prosecutor. The new draft Military Penal Code, if it is to be adopted, should comply in all respects with the requirements of the Covenant. The public forces should not be entitled to rely on the defence of "orders of a superior" in cases of violation of human rights.

- Lebanon, ICCPR, A/52/40 vol. I (1997) 53 at para. 345.

The independence and impartiality of the State party's judiciary is of concern. The State party should review, as a matter of urgency, the procedures governing the appointment of members of the judiciary, with a view to ensuring their full independence.

- Slovakia, ICCPR, A/52/40 vol. I (1997) 58 at para. 379.

The present rules governing the appointment of judges by the Government with approval of Parliament could have a negative effect on the independence of the judiciary. Therefore, specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political

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influence through the adoption of laws regulating the appointment, remuneration, tenure, dismissal and disciplining of members of the judiciary, should be adopted as a matter of priority.

- Iraq, ICCPR, A/53/40 vol. I (1998) 18 at para. 104.

It is noted with concern that special courts, which may impose the death penalty, do not provide for all procedural guarantees required by article 14 of the Covenant, and particularly the right of appeal. It is also noted that in addition to the list of offences which are under the jurisdiction of the special courts, the Minister of the Interior and the Office of the President of the Republic have discretionary authority to refer any other cases to these courts. In that regard, courts exercising criminal jurisdiction should not be constituted other than by independent and impartial judges, in accordance with article 14, paragraph 1, of the Covenant. The jurisdiction of such courts should be strictly defined by law and all procedural safeguards protected by article 14, including the right of appeal, should be fully respected.

- Sudan, ICCPR, A/53/40 vol. I (1998) 22 at para. 132.

It is of concern that in appearance as well as in fact the judiciary is not truly independent, that many judges have not been selected primarily on the basis of their legal qualifications, that judges can be subject to pressure through a supervisory authority dominated by the Government, and that very few non-Muslims or women occupy judicial positions at all levels. Measures should be taken to improve the independence and technical competence of the judiciary, including the appointment of qualified judges from among women and members of minorities. Training in human rights law should be given to all judges, law enforcement officers and members of the legal profession.

- Belarus, ICCPR, A/53/40 vol. I (1998) 26 at paras. 149 and 150.

Paragraph 149

Procedures relating to tenure, disciplining and dismissal of judges at all levels do not comply with the principle of independence and impartiality of the judiciary. It is of particular concern that the judges of the Constitutional Court and Supreme Court can be dismissed by the President of the Republic without any safeguards. The allegation that two judges were dismissed by the President of the Republic on the ground that in the discharge of their judicial functions they failed to impose and collect a fine imposed by the executive is also of concern. Furthermore, the failure of the President of the Republic to respect the decisions of the Constitutional Court and to observe the rule of law is of concern.

Paragraph 150

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It is stressed that the independence of the judiciary and the legal profession is essential for a sound administration of justice and for the maintenance of democracy and the rule of law. All appropriate measures, including review of the Constitution and the laws, should be taken in order to ensure that judges and lawyers are independent of any political or other external pressure. The attention of the State party is drawn in this connection to the 1985 Basic Principles on the Independence of the Judiciary and the 1990 Basic Principles on the Role of Lawyers, adopted by the United Nations General Assembly.

- Lithuania, ICCPR, A/53/40 vol. I (1998) 30 at para. 173.

Although there are new provisions aimed at ensuring the independence of the judiciary, concern is expressed over the fact that District Court judges must still undergo a review by the executive after five years of service in order to secure permanent appointment. In this regard, it is recommended that any such review process should be concerned only with judicial competence and should be carried out only by an independent professional body.

- Uruguay, ICCPR, A/53/40 vol. I (1998) 38 at para. 242.

Where the trial judge is the same judge who has supervised and/or ordered investigations, and who subsequently charged the defendant, serious concerns are raised about possible impartiality of the trial. True impartiality should be ensured.

- Algeria, ICCPR, A/53/40 vol. I (1998) 52 at para. 362.

The application of certain executive decrees of 1992 regulating nomination, promotion and dismissal of judges, compromises their independence. The fact that judges enjoy immovability only after 10 years of work is also of concern. Appropriate measures should be taken to ensure the full independence of the judiciary.

- Belgium, ICCPR, A/54/40 vol. I (1999) 26 at para. 71.

Ongoing measures to reform the judicial system undertaken by the State party, in particular those aimed at strengthening the independence of the judiciary through the establishment of a Supreme Judicial Council and a Council of Attorneys-General, are welcomed. The new law on the recruitment of judges and the increase in the number of judges constitute positive developments. Furthermore, penal procedures have been improved with regard to the gathering of information and investigations, and the handling of information by the police. The role of the police and of the investigating judge

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have been better defined.

- Armenia, ICCPR, A/54/40 vol. I (1999) 29 at para. 104.

The election of judges by popular vote for a fixed maximum term of six years does not ensure their independence and impartiality.

- Libyan Arab Jamahiriya, ICCPR, A/54/40 vol. I (1999) 32 at para. 134.

Serious doubts arise as to the independence of the judiciary and the liberty of advocates to exercise their profession freely, without being in the employment of the State, and to provide legal aid services. Measures should be taken to ensure full compliance with article 14 of the Covenant as well as with the United Nations Basic Principles on the Independence of the Judiciary and the Basic Principles on the Role of Lawyers. Training in human rights law should be given to all judges and members of the legal profession.

- Lesotho, ICCPR, A/54/40 vol. I (1999) 51 at para. 264.

The decision to provide permanent and pensionable status for judges should be implemented through appropriate legislation.

- Cambodia, ICCPR, A/54/40 vol. I (1999) 57 at paras. 299 and 300.

Paragraph 299

The justice system remains weak owing to the killing or expulsion of professionally trained lawyers during the conflict, the lack of training and resources for the new judiciary and their susceptibility to bribery and political pressure. It is also of concern that the Supreme Council of the Magistracy is not independent of government influence, and that it has not yet been able to deal with the many allegations of judicial incompetence and unethical behavior.

Paragraph 300

It is of further concern that the judiciary seeks the opinion of the Ministry of Justice in regard to the interpretation of laws and that the Ministry issues circulars which are binding on judges. Urgent measures should be taken to strengthen the judiciary and to guarantee its independence from government influence and to ensure that all allegations of corruption or undue pressure on the judiciary are dealt with promptly.

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- Romania, ICCPR, A/54/40 vol. I (1999) 68 at para. 369.

The powers exercised by the ministry of justice with regard to judicial matters, including the appeal process and its powers of inspection of the courts are of deep concern. A clear demarcation should be established between the competence of the executive and judicial bodies.

- Morocco, ICCPR, A/55/40 vol. I (2000) 24 at para. 116.

Steps should be taken to guarantee the independence and impartiality of the judiciary, and in particular to ensure that there are effective and independent disciplinary mechanisms.

- Kyrgyzstan, ICCPR, A/55/40 vol. I (2000) 57 at para. 405.

The lack of full independence of the judiciary (art. 14, para. 1) is of concern. In particular, the applicable certification procedure for judges, the requirement of re-evaluation every seven years, the low level of salaries and the uncertain tenure of judges may encourage corruption and bribery.

- Ireland, ICCPR, A/55/40 vol. I (2000) 61 at paras. 434 and 435.

Paragraph 434

While the existence of a mechanism to investigate complaints made against the police force, namely the Garda Complaints Board, is welcomed, it is regretted that the Board is not fully independent, in that investigations of complaints against the Garda are often entrusted to members of the Garda without consultation with the Board. The availability of recourse to the courts to address allegedly unlawful conduct by the police does not displace the need for independent and transparent investigation of allegations of abuse.

Paragraph 435

In the context of its current review of the Garda Complaints Act of 1986, it is recommended that the State party take steps to ensure that the Garda Complaints Board is not dependent on the Garda for the conduct of investigations. In the case of death resulting from action by members of the Garda, the State party should ensure that allegations are investigated by an independent and public process.

- Kuwait, ICCPR, A/55/40 vol. I (2000) 65 at paras. 468 and 469.

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Paragraph 468

Concern is expressed about the number of persons still detained under prison sentences handed down in 1991 by the Martial Law Courts. These trials did not meet the minimum standards set by article 14 of the Covenant, in particular the principles of equality before the courts, impartiality of the tribunal, the presumption of innocence, the right to have adequate time and facilities for the preparation of a defence, and other rights of due process under article 14, paragraphs 3 and 5, of the Covenant.

Paragraph 469

The cases of persons still held under sentences described in the previous paragraph should be reviewed by an independent and impartial body, and compensation should be paid pursuant to articles 9, paragraph 5, and 14, paragraph 6, of the Covenant, where appropriate.

- Argentina, ICCPR, A/56/40 vol. I (2001) 38 at para. 74(6).

The recent reforms enacted to promote the independence of the judiciary, particularly the creation of a competitive selection process for judges, are noted with pleasure.

- Gabon, ICCPR, A/56/40 vol. I (2001) 41 at para. 75(11).

The State Security Court is still in existence even if it is not functioning. The State party is invited to abolish it.

- Peru, ICCPR, A/56/40 vol. I (2001) 45 at paras. 76(10) and 76(12).

Paragraph 76(10)

The reorganization of the judiciary in Peru and the existence of the Executive Judiciary Commission, which has broad powers, leads to interference by the Executive and undermines the independence of the judiciary and the rule of law. One of the consequences of this reorganization is the large number of temporary judges. The dismissal of the three Constitutional Court judges by the Congress in 1997 is of special concern. An impartial and independent system of justice is essential for compliance with a number of articles of the Covenant, notably article 14. The State party must take the necessary measures to regularize the situation of the temporary judges, who may be dismissed peremptorily, and to guarantee their job security. The three Constitutional Court judges must be reinstated to their posts in order to normalize the Court. The State party must establish a mechanism guaranteed by law that ensures the independence and impartiality of judges and eliminates the possibility of the Executive interfering in the Judiciary.

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Paragraph 76(12)

The fact that the military courts continue to have jurisdiction over civilians accused of treason, who are tried without the guarantees provided for in article 14 of the Covenant, is deplored. In this context, reference is made to General Comment No. 13 on article 14 and it is emphasized that the jurisdiction of military courts over civilians is not consistent with the fair, impartial and independent administration of justice.

- Venezuela, ICCPR, A/56/40 vol. I (2001) 49 at paras. 77(13) and 77(14).

Paragraph 77(13)

The situation of the judiciary in Venezuela, which is still undergoing reform, is of particular concern. An extended reform process threatens the independence of the judiciary, given the possibility that judges could be removed as a result of the performance of their duties, thus infringing article 2, paragraph 3, and article 14 of the Covenant. The reform of the judiciary must not continue.

Paragraph 77(14)

Concern about the independence of the judiciary extends to the information, delivered by the delegation, that article 275 of the Constitution empowers the National Ethics Council (*Consejo Moral Republicano*) comprising the Ombudsman, the Attorney-General and the Comptroller-General to issue warnings to judges, even those of the Supreme Court, and impose sanctions if those warnings are not heeded. The State party should carry out a careful review of the enabling bill for article 275 of the Constitution in order to safeguard the independence of the judiciary in accordance with article 2, paragraph 3, and article 14 of the Covenant.

- Uzbekistan, ICCPR, A/56/40 vol. I (2001) 59 at para. 79(14).

The lack of independence of judges contrary to the requirements of article 14, paragraph 1, of the Covenant is of concern. The appointment of judges for a term of 5 years only, in particular if combined with the possibility, provided by law, of taking disciplinary measures against judges because of "incompetent rulings", exposes them to broad political pressure and endangers their independence and impartiality. The State party should amend the relevant domestic legal provisions, as well as the Constitution, in order to ensure full independence of the judiciary.

- Syrian Arab Republic, ICCPR, A/56/40 vol. I (2001) 70 at para. 81(15).

Certain aspects of the appointment of judges, which pose problems with regard to article 14, paragraph 1 of the Covenant, remain of concern. This is the case of the four-year renewable term of the members of the Supreme Constitutional Court (article 141 of the Constitution), which as currently

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formulated, may compromise their independence *vis-à-vis* the executive branch. There is also concern that proceedings may be held *in camera* in circumstances not authorized by article 14, paragraph 1. The State party should take appropriate measures to ensure and protect, at all levels, the independence and impartiality of the judiciary.

- Guatemala, ICCPR, A/56/40 vol. I (2001) 93 at paras. 85(9), 85(16) and 85(21).

Paragraph 85(9)

That the administration of justice has been extended to many municipalities in the country through the appointment of justices of the peace, some of whom are bilingual and who have criminal jurisdiction, is considered positive.

Paragraph 85(16)

Despite the efforts made by the authorities through workshops to raise public awareness, the reports of lynchings of members of the judiciary in breach of articles 6 and 7 of the Covenant and the apparent delay in the State party's reaction to such incidents are of deep concern. The State party has the obligation to ensure the full protection of all authorities, especially their security during the exercise of their judicial functions.

Paragraph 85(21)

It is of concern that members of various sectors of society, particularly members of the judiciary, lawyers, human rights activists and trade unionists, are being intimidated, threatened with death and even killed; the lawful exercise of their functions is thus being seriously hampered (articles 6, 7 and 9). It is regretted that effective measures to prevent the repetition of such acts have still not been taken. All necessary preventive and protective measures should be taken to ensure that the members of various sectors of society, particularly members of the judiciary, lawyers, human rights activists and trade unionists, can carry out their functions without intimidation of any kind.

- Democratic People's Republic of Korea, ICCPR, A/56/40 vol. I (2001) 98 at para. 86(8).

Constitutional and legislative provisions that seriously endanger the impartiality and independence of the judiciary, notably that the Central Court is accountable to the Supreme People's Assembly under article 162 of the Constitution, remain of concern. Furthermore, article 154 of the Constitution limits the tenure of judges to five years and article 129 of the Criminal Code subjects judges to criminal liability for handing down "unjust judgments". Given the roles assigned to the judiciary under articles 2 and 14, paragraph 1 of the Covenant, these legal provisions have an adverse impact on the protection of human rights guaranteed under the Covenant, and endanger the independence of the judiciary as required by article 14(1) of the Covenant. The State party should take appropriate measures to ensure and protect the independence and impartiality of the judiciary at all levels.

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ICESCR

- Dominican Republic, ICESCR, E/1997/22 (1996) 44 at para. 227.

It is noted with concern that, according to information received from various sources, there is no mechanism for lodging complaints against the arbitrariness or corruption of some judges and that there is no appellate procedure for challenging the discriminatory application of a law, an executive decree or a decree of a court.

- Belarus, ICESCR, E/1997/22 (1996) 51 at para. 279.

It is observed that the establishment of a regime that concentrates power in the presidency at the expense of the independent role of the Parliament and the independence of the judiciary is not consistent with the political environment necessary for the exercise of human rights, including economic, social and cultural rights.

- Dominican Republic, ICESCR, E/1998/22 (1997) 43 at paras. 203 and 228.

Paragraph 203

The independence and effective functioning of the judiciary are necessary elements in the protection of economic, social and cultural rights. The measures taken to combat the problem of corruption of public officials, including judges, and in particular the increase in the salaries of government officials and judges is appreciated. Furthermore, the procedure for nominating judges to the new Supreme Court has been made public and transparent, with the objective of guaranteeing the impartiality of the judiciary and its independence from the executive.

Paragraph 228

Measures to combat the arbitrariness and corruption of some judges and public officials should be pursued.

- Azerbaijan, ICESCR, E/1998/22 (1997) 61 at para. 332.

The importance of an independent judiciary, ensured not only by constitutional declaration, but by guarantees accorded to magistrates, in order to ensure the exercise of all human rights, in particular economic, social and cultural rights, and the availability of effective remedies in case of violation is stressed.

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- Tunisia, ICESCR, E/2000/22 (1999) 36 at paras. 164 and 176.

Paragraph 164

The State organs for the promotion and protection of human rights are concentrated within the executive branch of government and are not empowered to review complaints of violations of the rights provided for in the Covenant. It is of concern that this compromises the independence of these institutions, including that of the judiciary, and the justiciability of economic, social and cultural rights.

Paragraph 176

With respect to the general framework within which human rights are protected and promoted, an independent judiciary is considered to be an essential instrument for the protection of economic, social and cultural rights.

- Sudan, ICESCR, E/2001/22 (2000) 57 at paras. 306 and 317.

Paragraph 306

Despite the Constitutional provisions proclaiming the independence of the judiciary, concern is expressed that the judiciary still lacks the necessary degree of independence to guarantee the implementation and protection of economic, social and cultural rights.

Paragraph 317

It is recommended that the constitutional guarantee of the independence of the judiciary be fully implemented in practice, and that the State party safeguard the conditions that contribute to the real independence of judges.

- Kyrgyzstan, ICESCR, E/2001/22 (2000) 62 at paras. 340 and 341.

Paragraph 340

The independence of the judiciary may be impaired in cases where the designation of high court judges is effected without full participation of the legislature. The Committee is particularly concerned to learn about cases of criminal prosecution of human rights activists, and the dissolution of the Kyrgyz Committee for Human Rights, which now operates in exile.

Paragraph 341

It is noted with concern that the "tribunals of eminent persons", convened informally to discuss issues of law and order in local communities, often take upon themselves the functions of the judiciary, including recommendations on the death penalty.

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- Bolivia, ICESCR, E/2002/22 (2001) 52 at para. 267.

Allegations of corruption against certain Supreme Court judges are of concern.

CAT

- Cameroon, CAT, A/47/44 (1992) 47 at para. 283.

Specific areas causing concern in respect of the implementation of the Convention include the duration of police custody permissible by law and the need to provide persons in police custody with further guarantees of protection against abuse of power or ill-treatment; the need to guarantee the same rights to a person in administrative detention as to a person who has been deprived of his freedom according to judicial proceedings; the need to improve the provisions of training and information to civilian or military law enforcement personnel, public officials, policemen and prison staff and to improve the independence of the judiciary and the supervision of conditions of detention in prisons; and the need to investigate alleged cases of torture or ill-treatment.

- Egypt, CAT, A/49/44 (1994) 14 at para. 88.

The functioning of special courts, such as the military courts, suggest that they are subordinate to the head of the executive branch, since the President of the Republic is authorized to refer cases to the State security courts and to approve the decisions handed down.

- Ecuador, CAT, A/49/44 (1994) 16 at paras. 103 and 105.

Paragraph 103

The limitations that appear to be placed on the powers of the courts and the existence of officials referred to as "judges" who are empowered to try cases without belonging to the judiciary, and who consequently do not provide safeguards of independence is of concern.

Paragraph 105

The State party is encouraged to implement legislative reforms to place the criminal justice system (from the investigation of offences to the serving of sentences) under the direct supervision of independent members of the judiciary and ensure that they can quickly investigate reported or suspected cases of torture or ill-treatment.

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- Peru, CAT, A/50/44 (1995) 11 at para. 73.

The procedure relating to terrorist offences should be reviewed for the purpose of establishing a prosecution system which is effective but which preserves the independence and impartiality of the courts and the right of defence, with the elimination of so-called "faceless trials" and the holding of detainees incommunicado. The military courts should be regulated to prevent them from trying civilians and to restrict their jurisdiction to military offences by introducing the appropriate legal and constitutional changes.

- Morocco, CAT, A/50/44 (1995) 17 at para. 109.

Allegations concerning torture and ill treatment, said to be practised in various places of detention, in particular in police stations, are of concern. Shortcomings relating to the effectiveness of the preventive measures taken to combat torture, in particular the half-heartedness displayed in pursuing inquiries and bringing the authors of acts of torture before the courts, whose independence must be preserved, are of concern. This situation creates the impression that such offences can be committed with relative impunity, an impunity prejudicial to the application of the provisions of the Convention.

- China, CAT, A/51/44 (1996) 22 at para. 150.

An independent judiciary, as defined in international instruments, is important for ensuring the objectives of the Convention against Torture. The autonomy/independence of the judiciary should be ensured.

- Croatia, CAT, A/51/44 (1996) 25 at para. 162.

The following is recommended:

Croatia should ensure that all allegations of torture or cruel, inhuman or degrading treatment or punishment arising out of the events of 1995 and its aftermath, be rigorously investigated by an impartial, independent commission;

Individual claims of violations of the constitutional rights of defendants in pre-trial detention should be justiciable by an effective judicial authority.

- Algeria, CAT, A/52/44 (1997) 14 at para. 80.

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While aware of the difficulties posed by terrorist groups, torture is not warranted in any exceptional circumstances. In that light, it is recommended that:

Consideration should be given to making the judiciary more independent and ensuring the effective exercise of its internationally recognized powers;

Steps should be taken to ensure that only a judicial authority can make decisions restricting individual liberty.

- Ukraine, CAT, A/52/44 (1997) 23 at para. 132.

The State party lacks a sufficiently effective system of independent bodies capable of successfully investigating complaints and allegations of the use of torture, preventing and putting an end to torture and ensuring that the perpetrators of such acts are held fully responsible for them.

- Cuba, CAT, A/53/44 (1998) 12 at para. 118.

Revision of the rules to the organization of the judicial system in accordance with international instruments on the subject is recommended, namely the United Nations Guidelines on the Independence Of the Judiciary.

- Guatemala, CAT, A/53/44 (1998) 17 at para. 163.

The application of the Convention is being hindered by the repeated instances of intimidation of judges, prosecutors, witnesses, victims and their relations, human rights activists and journalists, which largely account for the absence of decisive action by the bodies that should investigate and try crimes and for the continuance of impunity. Article 13 of the Convention makes States responsible for the protection of victims and witnesses.

- Peru, CAT, A/53/44 (1998) 21 at paras. 202-204.

Paragraph 202

The following is of concern:

The maintenance of the competence of military courts to try civilians;

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Laws passed between 1995 and 1998, which seem designed as a challenge to the independence of the judiciary.

Paragraph 203

While noting and welcoming the new measures that have been taken or announced, including some which are in the spirit of the recommendations made during the consideration of Peru's initial report, the Committee reiterates those recommendations and calls upon the State party to expedite reforms designed to establish a State genuinely founded upon the rule of law.

Paragraph 204

The State party should consider repealing laws which may undermine the independence of the judiciary, and take account of the fact that, in this area, the competent authority with regard to the selection and careers of judges should be independent of the Government and the administration. To guarantee such independence, measures should be taken to ensure that the members of that authority are appointed by the judiciary and that the authority itself decides on its rules of procedure.

See also:

- Peru, CAT, A/55/44 (2000) 13 at para. 60.
- Sri Lanka, CAT, A/53/44 (1998) 24 at para. 255.

The following is recommended:

The State party should ensure that all allegations of torture - past, present and future - are promptly, independently and effectively investigated and the recommendations implemented without any delay;

The Human Rights Commission and other mechanisms dealing with torture prevention and investigation should be strengthened and provided with all means necessary to ensure their impartiality and effectiveness.

- Yugoslavia, CAT, A/54/44 (1999) 6 at para. 51.

In order to diminish the recurrence of torture, the State party should legally and practically ensure the independence of the judiciary, unrestricted access to counsel immediately after arrest, shortening of the length of police custody to a maximum period of 48 hours, shortening of the period of pre-trial post-indictment detention, strict exclusion of all evidence directly or indirectly derived from torture, effective civil redress and a vigorous criminal prosecution in all cases of torture and breaches of article 16 of the Convention.

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- Peru, CAT, A/55/44 (2000) 13 at para. 59.

The lack of "independence" of those members of the judiciary who have no security of tenure is of concern.

- Azerbaijan, CAT, A/55/44 (2000) 16 at paras. 68 and 69.

Paragraph 68

The absence of guarantees for independence of the legal profession, particularly members of judiciary, who are appointed for a limited renewable term is of concern.

Paragraph 69

The State party should consider repealing laws which may undermine the independence of the judiciary, such as the provisions relating to renewable term appointments.

- Kyrgyzstan, CAT, A/55/44 (2000) 17 at para. 75.

The State party should continue its reforms in the police, prosecution and judicial institutions to ensure that each is sensitive to their obligations under the Convention; in particular, urgent steps should be taken to ensure the centrality and independence of the judiciary in the penal system, particularly with reference to limited renewable-term appointments, so as to bring them into line with the 1985 Basic Principles on the Independence of the Judiciary and the 1990 Guidelines on the Role of Prosecutors.

- Uzbekistan, CAT, A/55/44 (2000) 19 at paras. 80 and 81.

Paragraph 80

The establishment of a regime of criminal liability applicable to law-enforcement officials (policemen, procurators, judges, etc.) who wrongly prosecute or convict, which could tend to undermine the judiciary or weaken the will to prosecute and punish and is of concern.

Paragraph 81

It is recommended that the State party revise the judiciary regulations to bring them into conformity with the relevant international legal instruments, in particular (i) the Basic Principles on the Independence of the Judiciary, adopted in 1985, and (ii) the Guidelines on the Role of Prosecutors, adopted in 1990.

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- Armenia, CAT, A/56/44 (2001) 17 at paras. 37 and 39.

Paragraph 37

The existence of a regime of criminal responsibility for judges who commit errors in their sentences on conviction, since it might weaken the judiciary is of concern.

Paragraph 39

The following is recommended:

The State party is invited to bring the regime of criminal responsibility for judges into line with the relevant international instruments, including the Basic Principles on the Independence of the Judiciary adopted in 1985 and the Guidelines on the Role of Prosecutors adopted in 1990.

- Belarus, CAT, A/56/44 (2001) 19 at paras. 45 and 46.

Paragraph 45

The following is of concern:

The lack of an independent judiciary, with the President of the State party maintaining the sole power to appoint and dismiss from office most judges, who must also pass through a probationary initial term, and whose tenure lacks certain necessary safeguards.

Presidential Decree No. 12 which restricts the independence of lawyers, subordinating them to the control of the Ministry of Justice, by introducing obligatory membership in a state-controlled Collegium of Advocates, in direct contravention with the UN Basic Principles on the Role of Lawyers.

Paragraph 46

Measures should be taken, including the review of the Constitution, laws and decrees, to establish and ensure the independence of the judiciary and lawyers in the performance of their duties, in conformity with international standards.

See also:

- Kazakhstan, CAT, A/56/44 (2001) 52 at para. 129.
- Canada, CAT, A/56/44 (2001) 24 at para. 58.

Concern is expressed about the public danger risk assessment, without interview or transparency, is carried out prior to the refugee determination procedure, and, if a person is considered a security risk,

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this person is not eligible to have his case examined in-depth under the normal refugee determination procedure. In addition, it is noted that at present both the review of security risk and the review of the existence of humanitarian and compassionate grounds are determined by the same governmental body. The alleged lack of independence of decision-makers, as well as the possibility that a person can be removed while an application for humanitarian review is underway, may constitute obstacles to the effectiveness of the remedies to protect the rights in article 3(1) of the Convention.

- Georgia, CAT, A/56/44 (2001) 35 at paras. 81 and 82.

Paragraph 81

It is of concern that certain powers of the procuracy and the problems created by its methods of functioning, which raises serious concerns regarding the existence of an independent mechanism to hear complaints; as well as doubts as to the objectivity of the procuracy, and the objectivity of the courts and medical experts.

Paragraph 82

Concrete measures should be taken to reform the procuracy in line with the reform of the judicial system and to ensure the full implementation of the legal provisions safeguarding human rights in practice.

- Slovakia, CAT, A/56/44 (2001) 43 at para. 105.

Effective steps should be taken to guarantee the independence of the judiciary, so as to strengthen the rule of law and democratic governance, essential for implementation of the Convention.

- Kazakhstan, CAT, A/56/44 (2001) 52 at para. 129.

Independent judicial oversight of the period and conditions of pre-trial detention should be provided.

CRC

- Ukraine, CRC, CRC/C/46 (1995) 11 at para. 77.

Particular attention should be paid to the prevention of juvenile delinquency, the protection of the rights of children deprived of liberty, respect for fundamental rights and legal safeguards in all aspects

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of the juvenile justice system and the full independence and impartiality of juvenile judges. Training programmes on the relevant international standards should be organized for all those professionals involved with the system of juvenile justice, in particular judges, law enforcement officials, correctional officers and social workers.

See also:

- Republic of Korea, CRC, CRC/C/50 (1996) 26 at para. 180.
- Mongolia, CRC, CRC/C/50 (1996) 13 at para. 77.

In the field of the administration of juvenile justice, legal reform should be pursued and take fully into account the Convention on the Rights of the Child, in particular articles 37, 39 and 40, and other relevant international standards in this field, such as the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. Particular attention should be paid to the prevention of juvenile delinquency, the protection of the rights of children deprived of their liberty, respect for fundamental rights and legal safeguards in all aspects of the juvenile justice system and full independence and impartiality of the judiciary dealing with juveniles.

See also:

- Nepal, CRC, CRC/C/54 (1996) 25 at para. 187.
- Guatemala, CRC, CRC/C/54 (1996) 31 at para. 214.

The lack of specialized training of professionals working in the field of juvenile justice, which hampers efforts to ensure the independence of the judiciary and the capacity of the system to effectively investigate crimes committed against children and undermines measures to eradicate impunity is a concern.

- Myanmar, CRC, CRC/C/62 (1997) 25 at para. 180.

A comprehensive reform of the juvenile justice system should be envisaged. Particular attention should be paid to using deprivation of liberty only as a measure of last resort and for the shortest possible period of time; to ensuring humane conditions of detention, taking into account the specific needs of children including, separation from adult detainees; to the rights of the child to legal assistance and judicial review; to due process of law; and to the full independence and impartiality of the judiciary. Training programmes on the relevant international standards should be organized for

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all those professionals involved with the system of juvenile justice. An independent monitoring mechanism, national and/or international, should guarantee the full implementation of the rights. Finally, international assistance in the area of the administration of juvenile justice from the High Commissioner/Centre for Human Rights and the Crime Prevention and Criminal Justice Division of the Secretariat should be considered.

See also:

- Libyan Arab Jamahiriya, CRC, CRC/C/73 (1998) 9 at para. 59.
- Lao People's Democratic Republic, CRC, CRC/C/69 (1997) 8 at para. 80.

Legal reforms should be pursued in the field of the administration of juvenile justice. Particular attention should be paid to the prevention of juvenile delinquency, the protection of the rights of children deprived of their liberty, respect for fundamental rights and legal safeguards in all aspects of the juvenile justice system and full independence and impartiality of the judiciary dealing with juveniles. Technical assistance programmes of the Office of the High Commissioner for Human Rights and the Crime Prevention and Criminal Justice Division of the United Nations should be sought.

- Colombia, CRC, CRC/C/100 (2000) 64 at paras. 341 and 342.

Paragraph 341

Both judicial and administrative functions related to children's issues, including the appointment of judges and defenders for children's and family affairs, depend upon the Colombian Institute for Family Well-Being (ICBF) and this situation is a violation of the well-established international standard of independence of the judiciary and contrary to the principles and provisions of the Convention.

Paragraph 342

Greater emphasis should be placed on strengthening the prevention and protection programmes of ICBF. Consideration should be paid to maintaining a clear and very strict separation between judicial and administrative decisions regarding children's rights issues.