

LEGAL RIGHTS -INDEPENDENCE OF THE JUDICIARY

IV. CONCLUDING OBSERVATIONS, CONTINUED

CERD

- Côte d'Ivoire, CERD, A/58/18 (2003) 19 at para. 36.

36. The Committee recommends that the State party continue its efforts to adopt legislation or regulations which define the respective spheres of competence of the National Human Rights Commission and the Ombudsman's Office, spell out the procedure for bringing cases before them and determine whether their decisions are binding. More specifically, the Committee invites the State party to strengthen the guarantees of independence of these bodies so that their activities will be effective and credible, particularly for the purposes of mediation...

- Saudi Arabia, CERD, A/58/18 (2003) 41 at para. 205.

205. The Committee welcomes the dialogue and cooperation of the State party with the United Nations human rights mechanisms, including the Special Rapporteur on the independence of judges and lawyers, as well as with international human rights NGOs.

- Belarus, CERD, A/59/18 (2004) 50 at para. 268.

268. While taking note of the legislative provisions providing for the right to effective protection and remedies in the State party, the Committee reiterates its concern over the lack of specific information and statistics on cases where the relevant provisions of domestic legislation concerning racial discrimination were applied.

...The Committee reminds the State party that the mere absence of complaints and legal action by victims of racial discrimination may be largely an indication of the absence of relevant specific legislation, a lack of awareness of the availability of legal remedies, or insufficient will by the authorities to prosecute. It is therefore essential to provide for the relevant provisions in national legislation and to inform the public of the availability of all legal remedies in the field of racial discrimination. The Committee also encourages the State party to continue its efforts to foster independence of the judiciary in the light of the findings of the special rapporteur on the independence of the judges and lawyers following his mission to Belarus in 2001 (see E/CN.4/2001/65/Add.1).

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- Kazakhstan, CERD, A/59/18 (2004) 54 at para. 295.

295. The Committee notes with concern that, with the exception of the judges of the Supreme Court, all the judges are appointed by the President, who also determines the organization of the work of the courts.

The Committee recommends that the State party strengthen the independence of the judiciary and other State organs in order to provide everyone with effective protection and remedies against any acts of violation of the Convention...

- Iceland, CERD, A/60/18 (2005) 51 at para. 270.

270. The Committee notes with concern that applicants whose asylum applications have been rejected or who are being expelled by the Directorate of Immigration can only appeal that decision to the Minister of Justice as the supervisory authority, whose decision is subject only to a limited court review on procedure rather than substance (art. 6).

The Committee recommends that the State party consider introducing a full review by an independent judicial body of decisions of the Directorate of Immigration and/or the Minister of Justice concerning the rejection of asylum applications or expulsion of asylum-seekers.

- Turkmenistan, CERD, A/60/18 (2005) 61 at para. 327.

327. The Committee notes that, since independence, no case of racial discrimination has been referred to the courts. According to some information, members of national and ethnic minorities who suffer racial discrimination do not complain to courts because they fear reprisals and lack confidence in the police and the judicial authorities, and because of the authorities' lack of impartiality and of sensitivity to cases of racial discrimination (art. 6).

The Committee recommends to the State party that it inform victims of their rights, including remedies available to them, facilitate their access to justice, guarantee their right to just and adequate reparation, and publicize the relevant laws. The State party should ensure that its competent authorities proceed to a prompt and impartial investigation on complaints of racial discrimination, or whenever there are reasonable grounds to believe that racial discrimination has been committed on its territory. Judges and lawyers, as well as law enforcement personnel, should be trained accordingly.

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ICCPR

- Ukraine, ICCPR, A/57/40 vol. I (2002) 32 at para. 74(8).

(8) The Committee is concerned that in the case of a clash between the Covenant rights and domestic laws the latter might prevail. Neither through examination of the report of the State party nor during the discussion with the delegation could the Committee obtain a clear understanding of how potential conflicts between Covenant rights and domestic laws are resolved.

The State party must ensure the effective implementation of all Covenant rights, in accordance with article 2 of the Covenant and including through independent and impartial courts of law operating in compliance with article 14.

- Azerbaijan, ICCPR, A/57/40 vol. I (2002) 47 at para. 77(14).

(14) While appreciating the steps that have been initiated by the State party to reform the judiciary, including Presidential Decree of 17 January 2000 to improve the procedures for the appointment of judges, the Committee is concerned at reports of irregularities during the selection procedure in practice. Furthermore, the Committee is concerned at the lack of security of tenure for judges, and at the fact that decisions concerning the assignment of judges and affecting their seniority appear to be made at the discretion of the administrative authorities, may expose judges to political pressure and jeopardize their independence and impartiality. The Committee considers that the new Law on the Bar may compromise lawyers' free and independent exercise of their functions (article 14 of the Covenant).

The Committee recommends the institution of clear and transparent procedures to be applied in judicial appointments and assignments, in order to ensure full implementation of the legislation in practice and to safeguard the independence and impartiality of the judiciary. The State party should furthermore ensure that the criteria for access to and the conditions of membership in the Bar do not compromise the independence of lawyers...

- Georgia, ICCPR, A/57/40 vol. I (2002) 53 at para. 78(12).

(12) The Committee expresses its concern at the existence of factors which have an adverse effect on the independence of the judiciary, such as delays in the payment of salaries and the lack of adequate security of tenure for judges.

The State party should take the necessary measures to ensure that judges are able to carry out their functions in full independence, and should ensure their security of tenure pursuant

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to article 14 of the Covenant. The State party should also ensure that documented complaints of judicial corruption are investigated by an independent agency and that the appropriate disciplinary or penal measures are taken.

- Viet Nam, ICCPR, A/57/40 vol. I (2002) 67 at paras. 82(9) and 82(10).

(9) The Committee is concerned that the judicial system remains weak owing to the scarcity of qualified, professionally trained lawyers, lack of resources for the judiciary and its susceptibility to political pressure. The Committee is also concerned that the Supreme People's Court is not independent of government influence. It is further concerned that the judiciary seeks the opinion of the National Assembly's Standing Committee in regard to the interpretation of laws and that the Standing Committee is responsible for setting criteria and instructions which are binding for the judiciary.

In order to implement article 14 of the Covenant, the State party should take effective measures to strengthen the judiciary and to guarantee its independence, and ensure that all allegations of undue pressure on the judiciary are dealt with promptly.

(10) The Committee is concerned about the procedures for the selection of judges as well as their lack of security of tenure (appointments of only four years), combined with the possibility, provided by law, of taking disciplinary measures against judges because of errors in judicial decisions. These circumstances expose judges to political pressure and jeopardize their independence and impartiality.

The State party should enact procedures to be applied in appointing and assigning judges in order to safeguard and ensure the independence and impartiality of the judiciary in line with article 14 of the Covenant. It must ensure that judges may not be removed from their posts unless they are found guilty by an independent tribunal of inappropriate conduct.

- Yemen, ICCPR, A/57/40 vol. I (2002) 72 at para. 83(19).

(19) The Committee notes that the independence of the judiciary does not seem to be guaranteed in all circumstances (art. 14).

The State party must free the judiciary of any interference, in accordance with the provisions of the Covenant.

- Republic of Moldova, ICCPR, A/57/40 vol. I (2002) 76 at para. 84(12).

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(12) The Committee is concerned at provisions in the State party's law which raise doubts as to the full independence and impartiality of its judges, as required by article 14, paragraph 1, of the Covenant. In particular, the Committee is concerned at short initial appointments for judges, beyond which they must satisfy certain criteria in order to gain an extension of their term.

The State party should revise its law to ensure that judges' tenure is sufficiently long to ensure their independence, in compliance with the requirements of article 14, paragraph 1. The Committee emphasizes that judges should be removed only in accordance with an objective, independent procedure prescribed by law.

- Egypt, ICCPR, A/58/40 vol. I (2002) 31 at paras. 77(16) and 77(17).

(16) While understanding the security requirements associated with efforts to combat terrorism, the Committee voices concern at their effects on the human rights situation in Egypt, particularly in relation to articles 6, 7, 9 and 14 of the Covenant.

...

(b) The Committee notes with alarm that military courts and State security courts have jurisdiction to try civilians accused of terrorism although there are no guarantees of those courts' independence and their decisions are not subject to appeal before a higher court (article 14 of the Covenant).

...

The State party must ensure that steps taken in the campaign against terrorism are fully in accordance with the Covenant. It should ensure that legitimate action against terrorism does not become a source of violations of the Covenant.

(17) The Committee is concerned about infringements of the right to freedom of religion or belief.

...

(b) The Committee is also concerned at the pressures applied to the judiciary by extremists claiming to represent Islam, who have even succeeded, in some cases, in imposing on courts their own interpretation of the religion (articles 14, 18 and 19 of the Covenant).

The State party must...reinforce its legislation, in particular Act No. 3 of 1996, to make it consistent with articles 14, 18 and 19 of the Covenant.

- Sri Lanka, ICCPR, A/59/40 vol. I (2003) 30 at para. 66(16)

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(16) The Committee expresses concern that the procedure for the removal of judges of the Supreme Court and the Courts of Appeal set out in article 107 of the Constitution, read together with Standing Orders of Parliament, is incompatible with article 14 of the Covenant, in that it allows Parliament to exercise considerable control over the procedure for removal of judges.

The State party should strengthen the independence of the judiciary by providing for judicial, rather than parliamentary, supervision and discipline of judicial conduct.

- Suriname, ICCPR, A/59/40 vol. I (2004) 43 at para. 69(16).

(16) The Committee regrets that the State party has not provided information, as requested, about the role of military courts, their jurisdiction and composition, and how the State party ensures their independence and impartiality.

The State party should ensure that military courts, if operating, function in accordance with the rights set out in the Covenant, in particular in accordance with the rights laid down in article 14...

- Uganda, ICCPR, A/59/40 vol. I (2004) 47 at para. 70(7).

(7) While acknowledging the important role of the Uganda Human Rights Commission in the promotion and protection of human rights in Uganda, the Committee is concerned about recent attempts to undermine the independence of the Commission. It is also concerned about the frequent lack of implementation by the State party of the Commission's decisions concerning both awards of compensation to victims of human rights violations and the prosecution of human rights offenders in the limited number of cases in which the Commission had recommended such prosecution (art. 2).

The State party should ensure that decisions of the Uganda Human Rights Commission are fully implemented, in particular concerning awards of compensation to victims of human rights violations and prosecution of human rights offenders. It should ensure the full independence of the Commission.

- Liechtenstein, ICCPR, A/59/40 vol. I (2004) 61 at para. 73(12).

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(12) While noting that the constitutional amendments of 2003 sought to clarify the system of appointment and tenure of judges, the Committee is concerned about some elements of the new mechanism which may not be compatible with the principle of the independence of the judiciary (art. 14).

The State party should consider amending the mechanism for the appointment of judges to secure tenure, so as to guarantee fully the principle of the independence of the judiciary. The elements to be reviewed should include: the criteria for the appointment of members to the selecting body, the casting vote of the Princely House and the limited nature of tenure.

- Namibia, ICCPR, A/59/40 vol. I (2004) 64 at para. 74(18).

(18) The Committee expresses its concern about the absence of any mechanism or procedure for the removal of judges for misconduct.

The State party should establish an effective and independent mechanism and provide for a proper procedure for the impeachment and removal of judges found guilty of misconduct.

- Serbia and Montenegro, ICCPR, A/59/40 vol. I (2004) 68 at para. 75(19).

(19) The Committee takes note of efforts undertaken by Serbia to strengthen the independence of the judiciary. However, it is concerned at alleged cases of executive pressure on the judiciary in Serbia, and measures regarding the judiciary undertaken during the state of emergency (art. 14).

The State party should ensure strict observance of the independence of the judiciary.

- Finland, ICCPR, A/60/40 vol. I (2004) 22 at para. 81(13).

(13) The Committee notes with concern the overt attacks made by political authorities (members of the Government and Parliament) on the competence of the judiciary with a view to interfering in certain judicial decisions.

The State party should take action at the highest level to uphold the independence of the judiciary and maintain public trust in the independence of the courts (arts. 2 and 14 of the Covenant).

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- 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, 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 paras. 83(4) and 83(18).

(4) The Committee notes with interest that the trial of judges, registrars and tax collectors charged with misappropriation of court fees has resulted in the imposition of heavy sentences on 63 persons.

...

(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. In this connection, the Committee notes with concern the protests by judges against the outright handing over to the Nigerian authorities of persons and vehicles under court administration and other acts related to the so-called *Hamani* case (articles 2, 13 and 14 of the Covenant).

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. The State party should also ensure that the expulsion of individuals is based solely on a decision taken in conformity with the law and that such individuals are given an opportunity to contest their expulsion.

- Morocco, ICCPR, A/60/40 vol. I (2004) 35 at para. 84(19).

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(19) The Committee remains concerned that the independence of the judiciary is not fully guaranteed.

The State party should take the necessary steps to guarantee the independence and impartiality of the judiciary (Covenant, art. 14, para. 1).

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

(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. While the Committee appreciates recent Government measures such as the adoption of the Anti-Corruption and Economic Crimes Bill and its implementation, and the establishment of the Kenya Anti-Corruption Commission, which led to the resignation or the suspension of many High Court and Court of Appeal judges, it notes that allegations of judicial corruption persist, a situation that seriously undermines the independence and impartiality of the judiciary (articles 2 and 14 of the Covenant).

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 para. 88(7).

(7) While the Committee welcomes the establishment in April 2001 of the National Human Rights Commission, it notes the Commission's shortcomings in terms of guarantees of independence in appointing and dismissing its members. Furthermore, the Commission does not have its own budget and its investigative powers are restricted. Moreover, it often requests the police to investigate the complaints submitted to it (Covenant, art. 2).

The State party should ensure that the Human Rights Protection Act 1998 establishing this Commission and its practice are in line with the Paris Principles.

- Uzbekistan, ICCPR, A/60/40 vol. I (2005) 56 at para. 89(16).

(16) The Committee remains concerned that the judiciary is not fully independent and that the appointment of judges has to be reviewed by the executive branch every five years (Covenant, art. 14, para. 1).

The State party should guarantee the full independence and impartiality of the judiciary by

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guaranteeing judges' security of tenure.

- Yemen, ICCPR, A/60/40 vol. I (2005) 65 at para. 91(6).

(6) The Committee reiterates its concern about the reported lack of efficiency and independence of the judiciary, despite the existence of constitutional guarantees and the measures taken to reform the judicial branch (arts. 2 and 14).

The State party should ensure that the judiciary is free from any interference, in particular from the executive branch, in law as well as in practice...

- Tajikistan, ICCPR, A/60/40 vol. I (2005) 70 at para. 92(17).

(17) The Committee is concerned about the apparent lack of independence of the judiciary, as reflected in the process of appointment and dismissal of judges as well as in their economic status (art. 14, para. 1).

The State party should guarantee the full independence and impartiality of the judiciary by establishing an independent body charged with the responsibility of appointing, promoting and disciplining judges at all levels and by remunerating judges with due regard for the responsibilities and the nature of their office.

- Syrian Arab Republic, ICCPR, A/60/40 vol. I (2005) 78 at para. 94(8).

(8) The Committee welcomes the information provided by the delegation on the agreement of 5 May 2005 between the Prime Minister of Lebanon and the President of Syria to establish a committee that would meet periodically to further investigate the facts concerning disappearances of Syrian and Lebanese nationals in the two countries. The Committee remains concerned, however, that sufficient information was not provided about concrete steps taken to establish such a committee in Syria, as well as about its envisaged composition and measures to ensure its independence (arts. 2, 6, 7, 9).

The State party should give a particularized account of Lebanese nationals and Syrian nationals, as well as other persons, who were taken into custody or transferred into custody in Syria and who have not heretofore been accounted for. The State party should also take immediate steps to establish an independent and credible commission of inquiry into all disappearances, in line with the recommendations the Committee made in 2001.

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ICESCR

- Republic of Moldova, ICESCR, E/2004/22 (2003) 49 at paras. 302 and 323.

302. The Committee notes with concern that the State party faces serious problems of corruption, which have a negative effect on the full exercise of the rights covered by the Covenant. The Committee is also concerned that low salaries of civil servants and judges may obstruct the effective implementation of measures to combat corruption.

...

323. The Committee urges the State party to strengthen its efforts to combat corruption, including by ensuring the effective functioning of the Anti-Corruption Committee and to work towards ensuring better remuneration for civil servants and judges.

- Democratic People's Republic of Korea, ICESCR, E/2004/22 (2003) 71 at paras. 518 and 537.

518. The Committee on Economic, Social and Cultural Rights is concerned, as is the Human Rights Committee in its own concluding observations,^{29/} about the constitutional and other legislative provisions, particularly article 162 of the Constitution, that seriously compromise the impartiality and independence of the judiciary and have an adverse impact on the protection of all human rights guaranteed under the Covenant.

...

537. The Committee recommends that the constitutional and legislative provisions that may compromise or diminish the independence and impartiality of the judiciary be immediately reviewed in order to guarantee its crucial role in the protection of rights covered by the Covenant.

Notes

...

^{29/} See *Official Records of the General Assembly, Fifty-sixth session, Supplement No. 40 (A/56/40)*, para. 86.

- Ecuador, ICESCR, E/2005/22 (2004) 39 at paras. 276 and 299.

276. The Committee is concerned about the lack of independence of the judiciary and the alleged human rights abuses committed by the judiciary.

...

299. The Committee urges the State party to take immediate and appropriate measures to ensure the independence and integrity of the judiciary...

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- Azerbaijan, ICESCR, E/2005/22 (2004) 59 at paras. 478 and 503.

478. The Committee is concerned about the lack of independence of the judiciary and the persistence and the extent of corruption in the State party, and once again stresses the importance of an independent judiciary for the enjoyment of all human rights, including economic, social and cultural rights, and the availability of effective remedies in case of violation.

...

503. The Committee strongly urges the State party to continue to take all necessary measures to ensure the independence and integrity of the judiciary and to combat corruption.

CEDAW

- Japan, CEDAW, A/58/38 part II (2003) 130 at para. 375.

375. The Committee encourages the State party to continue to consider the ratification of the Optional Protocol to the Convention, while noting the concerns expressed by the State party in its fifth periodic report. The Committee strongly believes that the mechanisms available under the Optional Protocol would strengthen the independence of the judiciary and assist it in understanding discrimination against women.

CAT

- Indonesia, CAT, A/57/44 (2002) 22 at paras. 43 and 45.

43. The Committee is...concerned about:

...

(c) The insufficient level of guarantees of the independence and impartiality of the National Commission on Human Rights (Komnas-HAM) which hinders it in fully carrying out its mandate, which includes sole responsibility under Law 2000/26 for conducting initial investigations relating to gross violations of human rights, including torture, prior to forwarding cases to the Attorney-General for prosecution. Because only the Attorney-General has the authority to decide whether to initiate criminal proceedings, the Committee is further concerned that all the reports of Komnas-HAM on preliminary investigations are not published, and that Komnas-HAM does not have the right to challenge a decision by the Attorney-General not to prosecute a case.

...

45. The Committee recommends that the State party:

...

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(d) Take immediate measures to strengthen the independence, objectivity, effectiveness and public accountability of the National Commission on Human Rights (Komnas-HAM), and ensure that all its reports to the Attorney-General are published in a timely fashion;

...

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

57. The Committee expresses its concern about the following:

...

(c) The fact that judges sit on the newly formed “coordination committees on crime fighting” together with representatives of the Ministry of the Interior, a situation which is contrary to the principle of the separation of powers and may affect the independence of the judiciary;

...

58. The Committee recommends that the State party:

...

(g) Take appropriate measures to ensure the independence of the judiciary and counsel for defence, as well as the objectivity of the Procuracy, in the performance of their duties, in conformity with international standards;

...

- 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. The Committee notes with concern that it is impossible for the civil prosecutor to question military personnel and carry out investigations at military sites in order to collect the evidence required to oblige the military prosecutor's office to take up the case. Also of concern is the insufficient independence of military courts, prosecutors and judges, with the result that few cases are registered to prosecute officials alleged to be responsible for the abuses.

...

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

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(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;

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

...

- Saudi Arabia, CAT, A/57/44 (2002) 48 at para. 101.

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

...

(i) Ensure that the composition of the judiciary fully conforms to the standards imposed by the Basic Principles on the Independence of the Judiciary;

...

- Uzbekistan, CAT, A/57/44 (2002) 54 at paras. 113, 115 and 116.

113. The Committee notes the following positive developments:

...

(d) Assurances from the representative of the State party that the State is determined to establish an independent judiciary;

...

115. The Committee expresses concern about the following:

...

(c) The insufficient level of independence and effectiveness of the procuracy, in particular as the Procurator has the competence to exercise oversight on the appropriateness of the duration of pre-trial detention, which can be extended up to 12 months;

...

(e) The insufficient independence of the judiciary;

...

(i) The absence of transparency in the criminal justice system and the lack of publicly

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available statistics on detainees, complaints about torture, and the number and results of investigations into such complaints...

...

116. The Committee recommends that the State party:

...

(b) Take urgent and effective steps: (i) to establish a fully independent complaints mechanism, outside the procuracy, for persons who are held in official custody; and (ii) to ensure prompt, impartial and full investigations into the many allegations of torture reported to the authorities, and the prosecution and punishment, as appropriate, of perpetrators;

...

(e) Take measures to establish and ensure the independence of the judiciary in the performance of their duties in conformity with international standards, notably the Basic Principles on the Independence of the Judiciary;

...

(g) Improve conditions in prisons and pre-trial detention centres and establish a system allowing for unannounced inspections of those places by credible impartial investigators, whose findings should be made public. The State party should also take steps to shorten the current pre-trial detention period and provide independent judicial oversight of the period and conditions of pre-trial detention. Furthermore, the order for an arrest should be made only by a court;

...

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

88. The Committee is concerned about:

...

(e) The apparent lack of independence of the judiciary despite the new legislation;

...

(o) Reports that, in many instances, judges refuse to deal with visible evidence of torture and ill-treatment of detainees and do not order independent medical examinations or return cases for further investigation.

89. The Committee recommends that the State party:

...

(e) Fully ensure the independence of the judiciary, in accordance with the Basic Principles on the Independence of the Judiciary;

...

(j) Intensify efforts to educate and train police, prison staff, law enforcement personnel, judges and doctors on their obligations to protect from torture and ill-treatment all individuals who are in State custody...

...

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(n) Ensure that prompt, impartial and full investigations into all allegations of torture and ill-treatment are carried out and establish an independent body with the authority to receive and investigate all complaints of torture and other ill-treatment by officials. The State party should also ensure that the Presidential Decree of 10 March 2000 is implemented in this respect;

...

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

98. The Committee is concerned about the following:

...

(e) The allegations of widespread corruption amongst public officials in the criminal justice system;

(f) The absence of an independent body competent to deal with complaints against the police;

(g) The ineffective functioning of the criminal justice system, in particular the lack of independence of the judiciary as well as its inefficiency;

...

99. The Committee recommends that the State party:

...

(b) Take effective measures to establish and ensure a fully independent and professional judiciary in conformity with international standards, notably the Basic Principles on the Independence of the Judiciary, if necessary by calling for international cooperation;

...

(d) Establish an independent body competent to deal with complaints against the police and other law enforcement personnel;

...

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

129. The Committee is concerned about:

...

(g) The reform on 23 April 2003 of the rules governing the exercise of universal jurisdiction by Belgian courts in cases involving serious violations of international humanitarian law, authorizing the Minister of Justice in some circumstances to remove a Belgian judge from

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a case;

...

131. The Committee recommends that the State party:

...

(f) Ensure respect for the principle of the independence of Belgian courts from the executive branch, in particular where the exercise of universal jurisdiction in relation to serious violations of international humanitarian law is concerned;

...

- Republic of Moldova, CAT, A/58/44 (2003) 53 at paras. 138 and 139.

138. The Committee expresses concern about:

...

(h) Allegations of a dysfunctional criminal justice system, apparently caused in part by a lack of independence of the procuracy and the judiciary;

...

139. The Committee recommends that the State party:

...

(f) Take effective measures to ensure a fully independent procuracy and an independent judiciary in conformity with the United Nations Basic Principles on the Independence of the Judiciary, if necessary by calling for international cooperation;

...

- Colombia, CAT, A/59/44 (2003) 33 at paras. 68 and 69.

68. The Committee...expresses its concern at:

...

(c) The judicial reform bill, should it be approved, would reportedly provide for constitutional limitation of *amparo* proceedings and reduce the powers of the Constitutional Court, particularly with respect to the review of declarations of states of emergency. Similarly, the Committee expresses its concern at the "alternative penalties" bill, which, if approved, would, even if they had committed torture or other serious breaches of international humanitarian law, grant conditional suspension of their sentences to members of armed groups who voluntarily laid down their arms;

(d) The allegations and information indicating:

...

(iii) The fact that the military courts are allegedly still, despite the promulgation of the new Military Penal Code and the Constitutional Court's decision of 1997 that crimes against humanity did not fall within the jurisdiction of the military courts,

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investigating offences that are totally excluded from their competence, such as torture, genocide and forced disappearance in which members of the police or armed forces are suspected of having been involved;

(iv) The widespread, serious attacks on human rights defenders, who are playing an essential role in reporting torture and ill-treatment; in addition, the repeated attacks on members of the judiciary, threatening their independence and physical integrity;

....

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:

...

(iii) The judicial reform bill, so as to provide full protection for *amparo* proceedings and respect and promote the role of the Constitutional Court in defending the rule of law;

...

(g) Respect the provisions of the Military Penal Code that exclude cases of torture from the jurisdiction of the military courts and ensure that those provisions are respected in practice;

(h) Take effective measures to protect human rights defenders against harassment, threats and other attacks and report on any judicial decisions and any other measures taken in that regard. The Committee also recommends the adoption of effective measures for the protection of the physical integrity and independence of members of the judiciary;

...

- 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;

...

(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;

...

146. The Committee recommends that the State party:

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...

(e) Take immediate steps to ensure that arrests and detention are carried out under independent and impartial judicial supervision;

...

(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;

...

- Greece, CAT, A/60/44 (2004) 20 at paras. 47 and 48.

47. The Committee notes that many of the concerns it expressed during the consideration of the third periodic report (A/56/44, para. 87) have not been adequately addressed, and will be reiterated in the present concluding observations. Consequently, the Committee expresses its concern at:

...

(e) The lack of an effective independent system to investigate complaints and reports that allegations of torture and ill-treatment are not investigated promptly and impartially;

...

48. The Committee recommends that the State party:

...

(f) Take necessary measures to establish an effective, reliable and independent complaints system to undertake prompt and impartial investigations, including immediate forensic medical investigation, into allegations of ill-treatment or torture by police and other public officials, and to punish the offenders. The Committee stresses that while the State party recognizes the independence of the judiciary, it has a responsibility to ensure its effective functioning;

...

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

83. The Committee expresses concern:

...

(e) About allegations of lack of independence of the judiciary;

...

84. The Committee recommends that the State party:

...

(e) Take all appropriate measures to strengthen the independence of the judiciary and to

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provide adequate training on the prohibition of torture to judges and prosecutors;

...

- Bahrain, CAT, A/60/44 (2005) 44 at paras. 107 and 109.

107. The Committee notes the following positive developments:

(a) The extensive political, legal and social reforms on which the State party has embarked, including:

...

(v) Decree No. 19 of 2000 giving effect to the new constitutional provision establishing the Higher Judicial Council, drawing a clear dividing line between the executive branch and the judiciary and thereby reinforcing a separation of powers stipulated in the Constitution;

...

109. The Committee recommends that the State party:

...

(h) Fully ensure the independence of the judiciary and include female judicial officials in its judicial system;

...

CRC

- Switzerland, CRC, CRC/C/118 (2002) 78 at paras. 310 and 311.

310. The Committee is concerned at the reservations made by the State party to articles 5, 7, 10, 37 and the four reservations made with regard to article 40, but welcomes the information that the State party is considering the withdrawal of most of these reservations thanks to recent and current revisions of the Constitution and other relevant laws, following a tentative timetable presented during the dialogue. Despite this information, the Committee remains concerned at the rather slow pace of this withdrawal process and even more at the fact that some reservations may not be withdrawn at all, or only in the distant future.

311. In light of the 1993 Vienna Declaration and Programme of Action, the Committee recommends that the State party:

...

(e) Reconsider the reservation made with regard to the possibility of having the same juvenile judge as an investigating and a sentencing judge since the requirement of an independent and impartial authority or judicial body (article 40(2)(b)(iii)) does not

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necessarily and under all circumstances mean that investigating and sentencing juvenile judges cannot be the same person;

...

- Democratic People's Republic of Korea, CRC, CRC/C/140 (2004) 111 at paras. 575 and 576.

575. The Committee takes note that most persons under the age of 17 in conflict with the law are dealt with without resorting to judicial proceedings, but the Committee remains unclear on how the safeguards enshrined in the Convention, especially in articles 37 and 40, are fully respected in this regard. In particular, it is concerned about the independence and impartiality of the authority taking the sentencing decisions...

576. The Committee recommends that the State party:

(a) Review its legislation and policies to ensure that the treatment of all persons in conflict with the law under the age of 18 conforms entirely to international juvenile justice standards and, in particular, articles 37, 40 and 39 of the Convention, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), and ensure its full implementation;

...