

# LEGAL RIGHTS - PROPERTY, CIVIL AND CONTRACT RIGHTS

## IV. CONCLUDING OBSERVATIONS

### CERD

- Australia, CERD, A/46/18 (1991) 58 at para. 245.

The situation of the Aboriginal and Torres Strait Islander people requires further affirmative action. Improvements are particularly needed in the areas of education, employment, housing, land rights and health services.

- Canada, CERD, A/49/18 (1994) 47 at para. 325.

The slow speed at which negotiations have been undertaken to define aboriginal rights to land and resources in many parts of the country is of concern.

- Australia, CERD, A/49/18 (1994) 78 at paras. 540 and 544.

#### *Paragraph 540*

The attention paid by the judiciary to the implementation of the Convention is particularly appreciated. The decisions of the High Court of Australia in *Mabo v. Queensland* constitute a very significant development. It is noted with satisfaction that the decision rejected the proposition that Australia was *terra nullius* at the time of colonial settlement and recognized the survival of native title to land where this title had not been validly extinguished.

#### *Paragraph 544*

Legal proceedings for the recognition of native title and for responding to land claims have been protracted. The necessity for claimants to prove that they have maintained their connection with the land and that their title has not been extinguished can be an exigent condition. That persons who identify as Aboriginal, but whose ancestors are predominantly non-Aboriginal, may not qualify as Aboriginal with respect to land rights, may become a further matter of concern. Only a very small percentage of the Aboriginal population will benefit under the Native Title Act.

- Croatia, CERD, A/50/18 (1995) 36 at paras. 171 and 175.

#### *Paragraph 171*

Attention is drawn to the extent of evictions carried out by State authorities against ethnic Serb residents of apartments formerly owned by the Yugoslav National Army. Particular concern is

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expressed concerning evictions which the Government declared to be legal in apparent defiance of decisions of the Constitutional Court. Inaction by the government authorities to prevent or reverse evictions of ethnic Serbs which it itself deems to be illegal is also noted.

### *Paragraph 175*

The State party should ensure that laws and regulations concerning, *inter alia*, naturalization, acquisition of citizenship, determination of refugee status and tenure of rented accommodation be implemented in a transparent non-discriminatory manner in full conformity with the provisions of the Convention. Any victims of a discriminatory application of such rules and regulations in violation of the terms of the Convention should receive redress to the extent that this is possible.

- Romania, CERD, A/50/18 (1995) 53 at para. 272.

While the State party's new legal framework prohibits manifestations of racism, including acts of violence, the propagation of racist speech, and discriminatory employment practices, the extent to which measures are being taken to translate the legal prohibition of such acts into effective prohibition is unclear. Once such acts occur, it is not evident what remedies are available to victims and whether and how it is ensured that the guilty parties are prosecuted in an adequate and timely manner. It is noted in this connection that with regard to the violence on 20 September 1993, which resulted in the death of three members of the Roma and the destruction of the homes of 170 others, victims have yet to receive compensation or have their homes reconstructed.

- Guatemala, CERD, A/50/18 (1995) 58 at para. 310.

Concern is expressed that conditions of extreme poverty and social exclusion are endured, in particular by the indigenous Maya Quiche population. Such conditions adversely affect the enjoyment of the rights guaranteed under article 5 of the Convention, such as the right to own property, the right to work, the right to form and join trade unions, and the right to housing, public health and education.

- Mexico, CERD, A/50/18 (1995) 66 at paras. 386 and 393.

### *Paragraph 386*

Concern continues regarding the serious discrimination indigenous peoples have to face in respect of the enjoyment of their civil, political, economic, social and cultural rights. Particular concern is expressed at the inequitable treatment of indigenous people in the process of land distribution, including restitution, and at the violent and illegal resolution of many land disputes, at the amendment to article 27 of the Constitution, and at the lack of support given to the bilingual-bicultural education system.

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### *Paragraph 393*

It is strongly recommended that the State party find a fair and equitable solution for the distribution, including restitution, of lands. As far as land disputes are concerned, all necessary steps should be taken to ensure that the rule of law is applied without improper interference, in particular by powerful landowners.

- New Zealand, CERD, A/50/18 (1995) 72 at para. 455.

The State party should continue to accord careful consideration to the concerns expressed about proposals to settle Maori grievances and land claims, including their compatibility with respect to the provisions of the Treaty of Waitangi.

- El Salvador, CERD, A/50/18 (1995) 83 at para. 491.

It is regretted that no references to the rights of indigenous persons are made in the Constitution, including their right to participate in decisions affecting their lands, culture, traditions and the allocation of natural resources.

- Nicaragua, CERD, A/50/18 (1995) 89 at paras. 535 and 536.

### *Paragraph 535*

Concern is expressed at the ratio of communal land to private land in the autonomous regions, with particular regard to the mining rights and at inequalities in the sharing of the benefits of the exploitation of natural resources in the autonomous territories between the regional and the central authorities.

### *Paragraph 536*

Further concern is expressed at the lack of adequate consultation with the regional authorities in the decision-making process by the central authorities, thus leading to insufficient participation of the indigenous groups in decisions affecting their land and the allocation of the natural resources of their land, their cultures and their traditions.

- United Republic of Tanzania, CERD, A/50/18 (1995) 98 at para. 580.

Concern is expressed at information about the cases of the expropriation of the lands of members of the Massai and the Barabaig communities, within the framework of the agricultural reforms undertaken by the Government.

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- Colombia, CERD, A/51/18 (1996) 15 at paras. 48 and 55.

### *Paragraph 48*

Structural discriminatory attitudes towards the indigenous and Afro-Colombian communities, appearing at various levels of the political, economic and social life of the country is noted. Those discriminatory attitudes relate to, among other things, the right to life and security of persons, political participation, educational and occupational opportunities, access to basic public services, the right to health, the right to adequate housing, the application of the law, and land ownership and use.

### *Paragraph 55*

A stronger commitment to defending the basic rights of indigenous and Afro-Colombian communities is recommended, as far as the use and ownership of their land is concerned.

- Denmark, CERD, A/51/18 (1996) 17 at para. 72.

Concern is expressed over the delay in compensating members of the indigenous population in Greenland who were relocated to permit the establishment of an air force base in the early 1950s.

- Zimbabwe, CERD, A/51/18 (1996) 20 at paras. 93 and 99.

### *Paragraph 93*

The persisting existence of a dual legal system regulating, *inter alia*, the areas of marriage and inheritance is a serious concern. This situation, in some cases, can lead to unequal treatment between Blacks and Whites. For example, the descendants of Blacks who die intestate inherit according to customary law while Whites inherit according to general law.

### *Paragraph 99*

The dual legal system regulating marriage and inheritance should be revised in an appropriate manner, and if necessary unified, to avoid potential areas of unequal treatment between the races.

- Russian Federation, CERD, A/51/18 (1996) 25 at paras. 139, 143 and 148.

### *Paragraph 139*

The absence of effective measures for the protection and preservation of the traditional ways of life

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and the right to land use of the people of the Northern Territories is of concern.

### *Paragraph 143*

The use of excessive and disproportionate force in suppressing the attempted secession in Chechnya, resulting in unnecessary civilian casualties, is a matter of very grave concern. Reports of arbitrary arrests, ill-treatment of detainees, excessive destruction of civilian property and pillage in Chechnya also give rise to concern.

### *Paragraph 148*

Special attention should be paid to the minority and indigenous groups living in the Northern Territories by taking appropriate and effective measures to promote and protect their rights, especially the rights to use and exploit the land where they are living and to live in their own cultural environment.

- Finland, CERD, A/51/18 (1996) 29 at paras. 177 and 189.

### *Paragraph 177*

As regards the land rights of the Sami people, concern is expressed over the mining and other economic interests of national and international companies which may be threatening the way of life of Samis.

### *Paragraph 189*

The Government should draft and implement a clear policy on Sami land rights in order to better protect and preserve the way of life of this minority group.

- Bolivia, CERD, A/51/18 (1996) 41 at para. 273.

The abolition of the practice of debt imprisonment is welcomed. This practice by definition has affected the poorer sectors of society and consequently has had important racial implications.

- Brazil, CERD, A/51/18 (1996) 45 at paras. 299, 301, 303 and 309.

### *Paragraph 299*

Discriminatory attitudes towards the indigenous, black and mestizo populations persist within Brazilian society and are apparent at a number of levels in the political, economic and social life of the country. These discriminatory attitudes concern, *inter alia*, the right to life and security of the person, political participation, access to education and employment, access to basic public services, the right to health, the right to decent housing, land ownership, land use and law enforcement.

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### *Paragraph 301*

The maintenance of article 6 of the 1916 Civil Code of Brazil, containing a discriminatory restriction on the exercise of civil rights by the indigenous populations, which is contrary to the 1988 Constitution of Brazil, is of concern, although it was explained that this provision has become obsolete.

### *Paragraph 303*

Special concern is expressed about the unfair treatment of the indigenous populations during land demarcation and distribution, the violent and unlawful means used to settle numerous land disputes and the violence and intimidation used against them by private militias and even occasionally by members of the military police. Concern is also expressed about their social protection and the discrimination they suffer in the spheres of health, education, culture, employment, access to public office and housing.

### *Paragraph 309*

The State Party should adopt fair and equitable solutions for the demarcation, distribution and restitution of land. To that end, where land disputes are concerned, everything possible should be done to prevent discrimination against indigenous people, blacks or mestizos by the big landowners.

- Namibia, CERD, A/51/18 (1996) 67 at paras. 496, 497 and 503.

### *Paragraph 496*

Concern is expressed at the fact that despite affirmative measures, black people and mixed race people (coloureds) who comprise 95 per cent of the population, still face serious discrimination in many areas, such as access to property, education, employment, health care or housing.

### *Paragraph 497*

Concern is expressed over the persistence of a dual legal system regulating important aspects of personal status, such as marriage and succession. Serious discrepancies remain in the system applicable to white, coloured and black people under the Administration of Estate Act.

### *Paragraph 503*

Affirmative measures should be adopted to overcome vestiges of the past that still hamper the possibilities for black people, including vulnerable groups among them, to have access to secondary and higher education and to enjoy just and favourable conditions of work in the private sector. Similarly, additional measures should be taken in the field of land redistribution.

- Mauritius, CERD, A/51/18 (1996) 74 at paras. 553 and 557.

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### *Paragraph 553*

Concern is expressed that section 16 of the Constitution, which prohibits laws that are discriminatory by their terms or in their effects, does not apply to laws with respect to marriage, adoption, divorce, succession or other matters regarding private law.

### *Paragraph 557*

The prohibition of discriminatory legislation, found in section 16 of the Constitution, should be extended to all matters of private law.

- Guatemala, CERD, A/52/18 (1997) 14 at paras. 81, 92 and 93.

### *Paragraph 81*

The problems of allocation of land and/or compensation continues, especially with respect to the return of lands to the indigenous peoples after the end of the armed conflict. Of special concern are confrontations arising over the ownership of property, in the course of which indigenous peoples have been detained and threatened.

### *Paragraph 92*

The State party should take measures to ensure a fair and equitable distribution of land, taking into account the needs of the indigenous population, including those persons returning to the territory after the end of the armed conflict.

### *Paragraph 93*

The importance that land holds for indigenous peoples and their spiritual and cultural identity, including the fact that they have a different concept of land use and ownership is stressed. The State party should use the provisions of ILO Convention No. 169 as a guideline for resolving land distribution issues and to consider, in the light of that Convention, the question of compensation for properties that cannot be restituted.

- Bulgaria, CERD, A/52/18 (1997) 39 at para. 282.

Concern is expressed that Roma encounter difficulties in applying for social benefits and that rural Roma are discouraged from claiming land to which they are entitled under the law disbanding agricultural collectives.

- Mexico, CERD, A/52/18 (1997) 42 at paras. 309 and 322.

### *Paragraph 309*

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With respect to the enjoyment of economic, social and cultural rights, it is noted with concern that the members of indigenous groups live in extreme poverty. Another source of concern is the land delimitation and distribution process, which does not seem to have fully respected the land rights of the indigenous populations.

### *Paragraph 322*

The State party should find just and equitable solutions to land delimitation, distribution and restitution problems. Everything possible should be done to protect indigenous inhabitants from all forms of discrimination in such matters.

- Panama, CERD, A/52/18 (1997) 46 at paras. 338 and 350.

### *Paragraph 338*

In the light of article 5 of the Convention, it is noted with concern that the issue of land rights of indigenous people has remained unsolved in a great majority of cases. Those land rights seem also to be threatened by the mining activities that have been undertaken, with the approval of the central authorities, by foreign companies and also by the development of tourism in those regions.

### *Paragraph 350*

It is strongly recommended that the State party actively pursue its current efforts to implement fully the right of indigenous people to own property and land. The State party should investigate and monitor the impact of the work of mining companies, including foreign companies, as well as the impact of the current development of tourism on the enjoyment of basic rights by indigenous peoples.

- Philippines, CERD, A/52/18 (1997) 55 at para. 425.

In connection with article 5 (d) (i) and (v) of the Convention, concern is expressed at reports of forced evictions and displacements of indigenous populations in development zones, as well as at reports that specific groups of indigenous peoples have been denied by force the right to return to some of their ancestral lands.

- Denmark, CERD, A/52/18 (1997) 59 at para. 454.

Concern is expressed over the long delay in resolving the compensation claim of the population of Thule, displaced from their traditional hunting grounds and places of settlement.

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- Argentina, CERD, A/52/18 (1997) 69 at paras. 548 and 553.

### *Paragraph 548*

With regard to the transfer of ancestral lands and property to indigenous communities, it is noted with concern that problems continue to exist in practice and that, in some cases, enormous difficulties, which are often caused by land owners, are delaying these transfers. Concern is expressed that some communities are reported to have been subjected to intimidation and pressures to renounce their claims to such land.

### *Paragraph 553*

With regard to the transfer of land to indigenous communities, the provisions adopted for that purpose should be closely monitored by local and federal authorities, including the judicial authorities, in order to prevent and clarify any misunderstanding of such provisions.

- Israel, CERD, A/53/18 (1998) 30 at paras. 78 and 85.

### *Paragraph 78*

The State party should halt the demolition of Arab properties in East Jerusalem and respect property rights irrespective of the ethnic origin of the owner.

### *Paragraph 85*

The right of many Palestinians to return and possess their homes in Israel is currently denied. The State party should give high priority to remedying this situation. Those who cannot repossess their homes should be entitled to compensation.

- Yugoslavia, CERD, A/53/18 (1998) 45 at para. 200.

Concern is expressed at the limitations imposed on real property transactions between members of different groups and about the fact that the law is being unevenly and arbitrarily implemented, depending on the applicant's ethnicity and place of residence.

- Cambodia, CERD, A/53/18 (1998) 55 at paras. 293 and 299.

### *Paragraph 293*

Concern is expressed about the situation of the indigenous peoples (also referred to as Highland Peoples, Khmer Loeu or Hill Tribes Peoples), and to their lack of legal status, as well as the insufficient legal framework to protect their rights, culture and traditional lands. The rights of

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indigenous peoples have been disregarded in many government decisions, in particular those relating to citizenship, logging concessions and concessions for industrial plantations. The lack of participation of the indigenous people in the management of natural resources and in other activities of concern to them is also a matter of concern.

### *Paragraph 299*

The State party should recognize the citizenship of the indigenous peoples, as well as their use of lands, forests and other natural resources, and their distinct and unique identity, culture and way of life. The State party should ensure that no decisions directly relating to the rights and interests of indigenous peoples are taken without their informed consent.

- Croatia, CERD, A/53/18 (1998) 59 at para. 315.

Concern is expressed at the serious difficulties and violence encountered by returnees and displaced persons, in particular ethnic Serbs, in returning to areas of origin, or by refugees when claiming their right to have property restored to them or to receive compensation upon return to their place of origin.

- Peru, CERD, A/54/18 (1999) 21 at paras. 154 and 158.

### *Paragraph 154*

It is noted that the indigenous population, the members of which often have no identity papers and are illiterate, is thus deprived of the possibility of exercising its civic and political rights.

### *Paragraph 158*

Reports that the Constitution no longer totally guarantees that the communal property of indigenous populations is inalienable and unavailable for use is of concern.

- Costa Rica, CERD, A/54/18 (1999) 24 at paras. 194 and 202.

### *Paragraph 194*

The land rights of indigenous peoples in the State party remains a concern. Despite the efforts made, problems relating to the allocation of land and/or compensation persist. Of special concern have been confrontations arising over the ownership of property, in the course of which indigenous people were killed and vandalism occurred.

### *Paragraph 202*

The State party should intensify its efforts to ensure a fair and equitable distribution of land, taking

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into account the needs of the indigenous population. The importance that the land holds for indigenous peoples and their spiritual and cultural identity, including the fact that they have a different concept of land use and ownership, is stressed. In this regard, the approval by the Legislative Assembly of the bill for the autonomous development of indigenous people would be of great importance.

- Iraq, CERD, A/54/18 (1999) 35 at para. 348.

Concern is expressed over allegations that the non-Arab population living in the Kirkuk and Khanaquin areas, especially the Kurds, Turkmen and Assyrians, have been subjected by local authorities to measures, such as forced relocation, denial of equal access to employment and educational opportunities and limitations in the exercise of their rights linked to the ownership of real estate.

- Chile, CERD, A/54/18 (1999) 37 at para. 375.

Concern is expressed over land disputes between the Mapuche population and national and multinational private companies, resulting in tension, violence, clashes with law enforcement officials and arbitrary arrests of members of the indigenous population.

- Uruguay, CERD, A/54/18 (1999) 41 at para. 429.

With respect to employment, education and housing, the State party should take steps to reduce present inequalities and adequately compensate affected groups and persons for earlier evictions from their houses.

- Colombia, CERD, A/54/18 (1999) 44 at paras. 469 and 473.

### *Paragraph 469*

Concern is expressed that development and resource exploration programmes on land, subject to the property rights of indigenous and Afro-Colombian communities, have been pursued without sufficient consultation with the representatives of these communities and without sufficient concern for the environmental and socio-economic impact of these activities.

### *Paragraph 473*

Concern is expressed that few land titles have been allocated under legislative programmes recognizing the property rights of indigenous and Afro-Colombian communities and that bureaucratic

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obstacles appear to have complicated the process.

- Guinea, CERD, A/54/18 (1999) 48 at para. 533.

Concern is expressed about the destruction by the State of more than 10,000 homes belonging mainly to members of the Puhlar ethnic group; the resulting riots which led to the death of eight persons; and the inter-ethnic tension which remains in that area. The lack of compensation for those persons whose property was expropriated is also of concern.

- Australia, CERD, A/55/18 (2000) 17 at paras. 31 and 32.

### *Paragraph 31*

It is noted that the devolution of power to legislate on the “future acts” regime has resulted in the drafting of state and territory legislation to establish detailed “future acts” regimes which contain provisions further reducing the protection of the rights of native title claimants. Noting that the Commonwealth Senate rejected one such regime, it is recommended that close scrutiny be given to any other proposed state and territory legislation to ensure that protection of the rights of indigenous peoples will not be reduced further.

### *Paragraph 32*

Concern is expressed at the unsatisfactory response to the Committee’s decisions 2 (54) (March 1999) and 2 (55) (August 1999) and at the continuing risk of further impairment of the rights of Australia’s indigenous communities. All aspects of decisions 2 (54) and 2 (55) are reaffirmed. The State party should ensure effective participation by indigenous communities in decisions affecting their land rights, as required under article 5 (c) of the Convention and General Recommendation XXIII, which stresses the importance of securing the “informed consent” of indigenous peoples.

- Zimbabwe, CERD, A/55/18 (2000) 38 at para. 200.

While noting the challenges faced by the State party with respect to land redistribution, it is regretted that very little progress has been made in this regard. Concern is expressed that the criteria established for persons to qualify as beneficiaries under the Commercial Farm Settlement Scheme may limit the number of black farmers who qualify. It is recommended that the State party introduce measures to improve access to financial and technical support for black farmers who may not otherwise qualify under the Scheme and in this context consider the possibility of communal access to commercial farmland. The State party is encouraged to continue its study of land reform measures with a view to implementing a comprehensive land reform programme in accordance with due process of law and in a manner that will enhance the economic and social rights of its citizens.

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- Finland, CERD, A/55/18 (2000) 41 at para. 214.

It is regretted that the question of land ownership of the Sami has not yet been resolved and that the State party has not acceded to ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. Furthermore, concern is expressed about activities authorized by State bodies in Sami reindeer-breeding areas which may threaten Sami culture and their traditional way of life. The State party is urged to pursue its efforts, together with the Sami people, towards the adequate resolution of the land dispute, giving due consideration in this respect to General Recommendation XXIII.

- Sweden, CERD, A/55/18 (2000) 57 at para. 338.

Concern is expressed over the issue of land rights of the Sami people, in particular hunting and fishing rights which are threatened by the privatization of traditional Sami lands. It is recommended that the Government introduce legislation recognizing traditional Sami land rights and reflecting the centrality of reindeer husbandry to the way of life of Sweden's indigenous people.

- Argentina, CERD, A/56/18 (2001) 18 at paras. 45 and 51.

### *Paragraph 45*

The measures designed to give greater autonomy to the National Institute of Indigenous Affairs, to build its capacity and to elaborate a national plan for indigenous peoples is welcomed with satisfaction. The progress made thus far by the Institute in the context of the transfer of estate land to the indigenous communities that have traditionally occupied it is noted with interest.

### *Paragraph 51*

It is noted with concern that difficulties arise in some cases of transferring estate land to indigenous peoples. Difficulties arise primarily because of the existence of individual title deeds and because of the conflict of jurisdiction between national and provincial governments. The relevant provisions of General Recommendation XXIII are recalled and it is recommended that the State party take steps to overcome these difficulties.

- Japan, CERD, A/56/18 (2001) 34 at para. 175.

The State party should take steps to further promote the rights of the Ainu as indigenous people. The State party's attention is drawn to General Recommendation XXIII on the rights of indigenous peoples that calls, *inter alia*, for the recognition and protection of land rights as well as restitution

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and compensation for loss. The State party is also encouraged to ratify and or use as guidance ILO Convention No. 169 on Indigenous and Tribal Peoples.

- Sudan, CERD, A/56/18 (2001) 40 at para. 213.

Deep concern is expressed about the forced relocation of civilians from the Nuer and Dinka ethnic groups in the upper Nile region and reports that the relocations involved significant military force resulting in civilian casualties. The State party is urged to uphold the fundamental economic and social rights of the Nuer and Dinka in the upper Nile region including the right to personal security, to housing, food and to just compensation for property confiscated for public use.

- Sri Lanka, CERD, A/56/18 (2001) 56 at para. 335.

The situation of the country's indigenous people, the Veddas, and the creation of a national park on their ancestral forestland is of concern. In this context, attention is drawn to the Committee's general recommendation XXIII calling upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources.

- Ukraine, CERD, A/56/18 (2001) 61 at para. 373.

Reports of the continuing discriminatory treatment of Roma and violence against them and their property are of concern. Immediate and effective steps should be taken to stop these abuses.

- United States of America, CERD, A/56/18 (2001) 64 at para. 400.

It is noted with concern that treaties signed by the Government and Indian tribes, described as "domestic dependent nations" under national law, can be abrogated unilaterally by Congress and that the land they possess or use can be taken without compensation by a decision of the Government. Further concern is expressed with regard to information on plans for expanding mining and nuclear waste storage on Western Shoshone ancestral land, placing their land up for auction for private sale, and other actions affecting the rights of indigenous peoples. The State party should ensure effective participation by indigenous communities in decisions affecting them, including those on their land rights, as required under article 5 (c) of the Convention, and the attention of the State party is drawn to general recommendation XXIII on indigenous peoples which stresses the importance of securing the "informed consent" of indigenous communities and calls, *inter alia*, for recognition and compensation for loss. The State party is also encouraged to use as guidance the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

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### ICCPR

- United Republic of Tanzania, ICCPR, A/48/40 vol. I (1993) 35 at para. 174.

Although there had been some progress towards equality between men and women, there still appears to be a lack of equality, especially with respect to property, inheritance and parental authority, and it was hoped that those forms of discrimination would be prohibited in the future.

- Ireland, ICCPR, A/48/40 vol. I (1993) 119 at para. 606.

Concern is expressed over the use of imprisonment in cases of wilful refusal to obey a court order for payment of money.

- Japan, ICCPR, A/49/40 vol. I (1994) 23 at para. 108.

The discriminatory legal provisions concerning children born out of wedlock is of concern. In particular, provisions and practices regarding the birth registration forms and the family register are contrary to articles 17 and 24 of the Covenant. The discrimination in their right to inherit is not consistent with article 26 of the Covenant.

- Jordan, ICCPR, A/49/40 vol. I (1994) 41 at para. 232.

It is regretted that, although some improvement has been achieved as regards the status of women, the State party has not embarked on all the necessary reforms to combat the factors still impeding equality between men and women. It is noted with concern that the Constitution does not guarantee the principle of non-discrimination on the basis of sex, and that there are still gender disparities in law or practice with regard to such issues as status within the family, inheritance rights, and the right to leave the country, the acquisition of Jordanian nationality, access to work and participation in public life.

- Cyprus, ICCPR, A/49/40 vol. I (1994) 53 at para. 319.

It is of concern that under current law, imprisonment may be imposed for non-payment of civil debt in certain circumstances.

*See also:*

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- Morocco, ICCPR, A/55/40 vol. I (2000) 24 at para. 112.
- Sri Lanka, ICCPR, A/50/40 vol. I (1995) 75 at paras. 456 and 460.

### *Paragraph 456*

The provisions of the Special Presidential Commissions of Inquiry Act which permit the acceptance of evidence otherwise inadmissible in a court of law and which stipulate that any decision adopted by a Commission established under the Act is final and conclusive and may not be called into question by any court and tribunal are matters of serious concern, in view of the fact that the findings of these Commissions can lead to a penalty of civic disability being imposed by Parliament on those subject to an investigation.

### *Paragraph 460*

It is noted that reforms are in place to raise the marriageable age for girls to 18. However, the current legislation permits the marriage of girls from the age of 12 and contains discriminatory provisions with regard to property between men and women, thus preventing women from fully enjoying the rights protected under articles 3 and 23.

- Zambia, ICCPR, A/51/40 vol. I (1996) 29 at paras. 195 and 212.

### *Paragraph 195*

The application of customary laws in matters of personal status, marriage, divorce and inheritance rights reinforces outdated attitudes concerning the role and status of women.

### *Paragraph 212*

Imprisonment for a civil debt should be abolished.

### *See also:*

- Gabon, ICCPR, A/52/40 vol. I (1997) 24 at para. 140.
- Brazil, ICCPR, A/51/40 vol. I (1996) 44 at para. 329.

The Government should consider the establishment of small claims courts and petty offences courts that would help to reduce the backlog of cases pending before the courts.

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- Lebanon, ICCPR, A/52/40 vol. I (1997) 53 at para. 349.

The State party should review its laws, especially those governing the status of women, women's rights and obligations in marriage and civil obligations, make appropriate amendments to them and take appropriate action to ensure full legal and *de facto* equality for women in all aspects of society. Accessible and effective remedies should be available in respect of all forms of discrimination. In addition to the existing laws and procedures governing marriage, civil laws on marriage and divorce available to everyone should be introduced in Lebanon.

- France, ICCPR, A/52/40 vol. I (1997) 62 at para. 412.

All children born out of wedlock should be given the same succession rights as children born in wedlock.

- India, ICCPR, A/52/40 vol. I (1997) 67 at paras. 432, 436 and 442.

### *Paragraph 432*

Concern is expressed over the fact that women in India have not been accorded equality in the enjoyment of their rights and freedoms in accordance with articles 2, paragraph 1, and articles 3 and 26 of the Covenant. Nor have they been freed from discrimination. Women remain underrepresented in public life and at the higher levels of the public service, and are subjected to personal laws which are based on religious norms and which do not accord equality in respect of marriage, divorce and inheritance rights. The enforcement of personal laws based on religion violates the right of women to equality before the law and non-discrimination. Efforts should be strengthened towards ensuring women's enjoyment of their rights without discrimination and personal laws should be enacted which are fully compatible with the Covenant.

### *Paragraph 436*

Concern is expressed over the fact that criminal prosecutions or civil proceedings against members of the security and armed forces, acting under special powers, may not be commenced without the sanction of the central Government. This contributes to a climate of impunity and deprives people of remedies to which they may be entitled in accordance with article 2, paragraph 3, of the Covenant. The requirement of governmental sanction for civil proceedings should be abolished and it should be left to the courts to decide whether proceedings are vexatious or abusive. Judicial inquiries should be mandatory in all cases of death at the hands of the security and armed forces and the judges in such inquiries, including those under the Commission of Enquiry Act of 1952, should be empowered to direct the prosecution of security and armed forces personnel.

### *Paragraph 442*

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The procedure of the courts should be reformed to ensure a speedy trial of those charged with offences, a prompt hearing in civil cases and similar urgency in hearing appeals.

- Senegal, ICCPR, A/53/40 vol. I (1998) 13 at para. 61.

It is regretted that certain traditional cultural attitudes with respect to women are not compatible with their dignity as human beings and continue to hamper their equal enjoyment of rights embodied in the Covenant. The practice of polygamy, which is incompatible with articles 2(1), 3 and 26 of the Covenant, is of particular concern. The persistent custom of female genital mutilation, which violates articles 6 and 7 of the Covenant, and the high rate of maternal mortality which results from that practice, from early child birth and from the strict prohibition of abortion is disturbing. In the light of these concerns, the State party should bring its legislation, including family and inheritance laws, into conformity with articles 2(1), 3, 6, 7, 23 and 26 of the Covenant.

- Iraq, ICCPR, A/53/40 vol. I (1998) 18 at para. 102.

The continued operation of family and inheritance laws which are incompatible with the principle of gender equality under articles 2, paragraph 1, 3, 23 and 26 of the Covenant is of concern. Therefore, steps should be taken to promote and ensure full equality between men and women in the political, economic, social and cultural life of the country, and to eliminate all forms of legal and de facto discrimination against women.

- Lithuania, ICCPR, A/53/40 vol. I (1998) 30 at para. 166.

The unclear legal status of the Covenant within the domestic legal order and the apparent lack of opportunity for individuals to challenge the application of laws which affect their rights and freedoms under the Covenant in the courts is of concern. The State party should ensure that Covenant rights are not restricted by legislation inconsistent with it and should take all necessary steps to allow individuals to challenge the application of laws which affect their rights and freedoms under the Covenant in the courts.

- Zimbabwe, ICCPR, A/53/40 vol. I (1998) 35 at paras. 214 and 215.

### *Paragraph 214*

The duality of the legal statutory law and customary law, which potentially leads to unequal treatment between individuals, particularly in the area of marriage and inheritance laws, is of concern. Where customary law contravenes the Covenant or the statutory law, the customary law continues to be

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upheld and applied. Continued practices, in violation of various provisions of the Covenant, including articles 3 and 24, such as *kuzvarita* (pledging of girls for economic gain), *kuripa ngozi* (appeasement to the spirits of a murdered person), *lobola* (bride price), female genital mutilation, early marriage, the statutory difference in the minimum age of girls and boys for marriage, and other practices which are incompatible with the Covenant (articles 3, 7, 23, 24 and others) should be prohibited by legislation. The Government is urged to adopt adequate measures to prevent and eliminate prevailing social attitudes and cultural and religious practices hampering the realization of human rights by women.

### *Paragraph 215*

While welcoming the Deceased Estate Succession Act 1997, under which a widow may inherit part of her deceased husband's estate, further information on the steps taken to ensure that widows are made aware of this right and that legal assistance is provided for their benefit would be appreciated.

- Finland, ICCPR, A/53/40 vol. I (1998) 40 at para. 260.

Criminal law may not alone be appropriate to determine appropriate remedies for violations of certain rights and freedoms. Priority should continue to be given to positive measures and to civil processes which are able to determine issues of compensation or other remedies, especially in cases of discrimination.

- Israel, ICCPR, A/53/40 vol. I (1998) 45 at paras. 309, 320, 321 and 325.

### *Paragraph 309*

Palestinians in the occupied territories who remain under the control of Israeli security forces do not enjoy the same rights and freedoms as Jewish settlers in those territories, in particular in regard to planning and building permits and access to land and water. The policies of confiscation of lands and settlement in the occupied territories are of concern. Coordinated and targeted efforts should be made to establish basic standards that are applicable equally to all persons under the jurisdiction of Israel.

### *Paragraph 320*

The demolition of Arab homes as a means of punishment is deplored, as is the practice of demolitions, in part or in whole, of "illegally" constructed Arab homes. The difficulties imposed on Palestinian families seeking to obtain legitimate construction permits are noted with regret. The demolition of homes conflicts directly with the obligation of the State party to ensure without discrimination the right not to be subjected to arbitrary interference with one's home (art. 17), the freedom to choose one's residence (art. 12) and equality of all persons before the law and equal protection of the law (art. 26).

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### *Paragraph 321*

The Israel Lands Administration (ILA), responsible for the management of 93 per cent of land in Israel, includes no Arab members and while the ILA has leased or transferred land for the development of Jewish towns and settlements, few Arab localities have been established in this way until recent years. Urgent steps should be taken to overcome the considerable inequality and discrimination which remain in regard to land and housing.

### *Paragraph 325*

The application of religious law to determine matters of personal status, including marriage and divorce, and the absence of provision for civil marriage effectively deny some persons the right to marry in Israel, and result in inequality between men and women. That the minimum age of marriage for girls, fixed by law at 17, may be reduced by the religious courts, and that no minimum age is fixed for men, is also of concern. The lack of provision for civil burial is also a matter of concern. Early implementation of measures currently under consideration to facilitate civil marriages and civil burial for those who do not belong to a religion is urged. International standards should be taken into account for the age of majority in its current review of the minimum marriageable age for men and women.

- Italy, ICCPR, A/53/40 vol. I (1998) 50 at para. 345.

Despite steps taken to speed up both criminal and civil trials, no result has become apparent. Further measures should be taken to increase the efficiency and promptness of the entire system of justice.

- United Republic of Tanzania, ICCPR, A/53/40 vol. I (1998) 57 at paras. 396, 399, 405 and 406.

### *Paragraph 396*

The discriminatory practices of the application of personal laws which discriminate against women with respect to marriage, divorce, land and inheritance; customary attitudes that discourage women from pursuing their full educational rights and that result in a tendency for women to lack the qualifications needed to reach higher levels of achievement in all aspects of activity, such as the senior judiciary; and the under-representation of women in political spheres are of concern. The State party should put an end to these discriminatory laws and practices. Action should be taken to increase the number of girls' schools, persuasion should be exerted on society to insist on girls' attendance at school, and support should be given to young women who wish to pursue higher education.

### *Paragraph 399*

The Committee deplores the law in force in Zanzibar which allows for the imprisonment of both mother and father in the event of an unmarried woman becoming pregnant, which carries risks to the

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right to life (art. 6) (through resort to illegal abortion) and to the rights of the child (arts. 23 and 24) if born in such circumstances. This law in Zanzibar should be abolished, and noting in this connection that illegal abortion is a major cause of maternal mortality, a national review should be carried out on the restrictions on abortions (arts. 3, 6 and 26).

### *Paragraph 405*

The Committee urges the abolition of imprisonment for inability to pay a debt and a study should be carried out of alternative means of enforcing judgment debts.

### *Paragraph 406*

The large number of election petitions currently before the High Court has so clogged the system that other proceedings, including trials for homicide, have been inordinately delayed. Suitable measures should be adopted to extinguish the backlog of pending cases, and a more expeditious procedure should be adopted to determine electoral disputes.

- Armenia, ICCPR, A/54/40 vol. I (1999) 29 at para. 115.

It is of concern that registration of religions is required and that the number of followers required for registration has been increased. Non-recognized religions are discriminated against in their entitlement to own private property and to receive foreign funds.

- Libyan Arab Jamahiriya, ICCPR, A/54/40 vol. I (1999) 32 at para. 137.

In spite of the Government's efforts, inequality between men and women persists in a number of areas, such as inheritance, freedom of movement, acquisition and transmission of nationality and divorce. Polygamy may still be practised under certain conditions.

- Japan, ICCPR, A/54/40 vol. I (1999) 36 at para. 154.

Continued concern is expressed about discrimination against children born out of wedlock, particularly with regard to the issues of nationality, family registers and inheritance rights. Pursuant to article 26 of the Covenant, all children are entitled to equal protection, and necessary measures should be taken to amend legislation (including article 900, paragraph 4, of the Civil Code).

- Austria, ICCPR, A/54/40 vol. I (1999) 42 at para. 189.

The nature and functions of the autonomous administrative tribunals raise questions in connection

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with the requirements of "due process" under article 14 of the Covenant. The principle of independence of all courts and tribunals should be fully implemented.

- Chile, ICCPR, A/54/40 vol. I (1999) 44 at paras. 212 and 213.

### *Paragraph 212*

All legal provisions that discriminate between men and women in marriage must be abolished. Legal reforms under which married couples may opt out of discriminatory provisions do not abolish the discrimination in the primary legal arrangements, which may only be changed with the consent of the husband.

### *Paragraph 213*

Lack of divorce may amount to a violation of article 23(2). It leaves married women permanently subject to discriminatory property laws, even when a marriage has broken down irretrievably.

- Lesotho, ICCPR, A/54/40 vol. I (1999) 51 at para. 253.

That both common and customary law permit discrimination against women by treating them as minors is of grave concern. Under customary law, inheritance and property rights of women are severely restricted and under customary law, as well as under common law, women may not enter into contracts, open bank accounts, obtain loans or apply for passports without the permission of their husbands. The Committee welcomes the statement of the delegation that these rules are not commonly applied in practice. The State party is nevertheless urged to take measures to repeal or amend these discriminatory laws and eradicate these discriminatory practices, which are in violation of articles 3 and 26 of the Covenant.

- Norway, ICCPR, A/55/40 vol. I (2000) 22 at para. 81.

While legislative reform work in the field of Sami land and resource rights is in progress, traditional Sami means of livelihood, falling under article 27 of the Covenant, do not appear to enjoy full protection in relation to various forms of competing public and private uses of land. Lawsuits by private landowners leading to judicial prohibition of reindeer herding and high legal costs for the Sami are a particular concern in the absence of satisfactory legal aid.

- Morocco, ICCPR, A/55/40 vol. I (2000) 24 at para. 98.

The extent of discrimination against Moroccan women in education, in employment, in public life and

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in criminal and civil laws, including laws dealing with inheritance, marriage, divorce, family relations, including polygamy, repudiation of marriage, grounds for divorce, age of marriage and restrictions on marriage by Muslim women to non-Muslims are of deep concern. Constitutional guarantees of women's equality that extend only to political rights is of concern.

- Cameroon, ICCPR, A/55/40 vol. I (2000) 36 at paras. 191 and 192.

### *Paragraph 191*

The Committee is concerned about the duality of statutory law and customary law, which sometimes results in unequal treatment between men and women, particularly in the areas of marriage and inheritance laws. Also of concern is that where spouses do not agree, customary law incompatible with the Covenant is often applied.

### *Paragraph 192*

Legislation that ensures that the laws applied will in all cases be compatible with the Covenant should be adopted. Law that gives effect to Covenant rights may fulfil an educational function. Educational campaigns should also be included in those areas in which customary practices lead to discrimination against women.

- Congo, ICCPR, A/55/40 vol. I (2000) 43 at para. 284.

The State party should make sure that no one is imprisoned for debt.

- Ireland, ICCPR, A/55/40 vol. I (2000) 61 at para. 430.

The enactment of the Family Law (Divorce) Bill 1996, the Freedom of Information Act of 1997, and the Civil Legal Aid Act of 1995, by which legal services are provided to persons of modest means at little or no cost through legal centres based throughout the country, is noted with satisfaction.

- Kuwait, ICCPR, A/55/40 vol. I (2000) 65 at para. 458.

Discrimination against women limits the enjoyment by women of their rights under the Covenant. In particular, pursuant to the Act on Personal Status, women cannot freely marry before they are 25 years of age, except with the approval of a guardian, who is usually the father or a judge, women's right to marry non-Kuwaiti citizens is restricted, and the age of marriage for men and women is different (17 for men, 15 for women).

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- Australia, ICCPR, A/55/40 vol. I (2000) 71 at paras. 508, 509, 526 and 527.

### *Paragraph 508*

Despite positive developments towards recognizing the land rights of the Aboriginals and Torres Strait Islanders through judicial decisions (*Mabo*, 1992; *Wik*, 1996) and enactment of the Native Title Act of 1993, as well as actual demarcation of considerable areas of land, in many areas native title rights and interests remain unresolved and the Native Title Amendments of 1998 in some respects limit the rights of indigenous persons and communities, in particular in the field of effective participation in all matters affecting land ownership and use, and the effect on their interests in native title lands, particularly pastoral lands.

### *Paragraph 509*

The State party should take further steps in order to secure the rights of its indigenous population under article 27 of the Covenant. In particular, it is recommended that the necessary steps be taken to restore and protect the titles and interests of indigenous persons in their native lands, including by considering amending anew the Native Title Act, taking into account these concerns.

### *Paragraph 526*

The mandatory detention under the Migration Act of "unlawful non-citizens", including asylum-seekers, raises questions of compliance with article 9, paragraph 1, of the Covenant, which provides that no person shall be subjected to arbitrary detention. The State party's policy, in this context of mandatory detention, of not informing the detainees of their right to seek legal advice and of not allowing access of non-governmental human rights organizations to the detainees in order to inform them of this right, is of concern.

### *Paragraph 527*

The State party is urged to reconsider its policy of mandatory detention of "unlawful non-citizens" with a view to instituting alternative mechanisms of maintaining an orderly immigration process. It is recommended that the State party inform all detainees of their legal rights, including their right to seek legal counsel.

- Denmark, ICCPR, A/56/40 vol. I (2001) 34 at para. 73(11).

The delay in resolving the claim for compensation by the members of the Thule community in Greenland in respect of their displacement from their lands and the loss of traditional hunting rights on account of the construction of the military base at Thule is regretted. Reports that the alleged victims in the Thule case were induced to reduce the amount of their claim in order to meet the limitations set in legal-aid requirements are of concern.

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- Gabon, ICCPR, A/56/40 vol. I (2001) 41 at paras. 75(9) and 75(15).

### *Paragraph 75(9)*

There are customs and traditions in the State party, having a bearing on, among other things, equality between men and women, that may hamper the full implementation of some provisions of the Covenant. In particular, the fact that polygamy is still practised in Gabon is deplored and reference is made to general comment No. 28, which states that polygamy is incompatible with equality of treatment with regard to the right to marry. "Polygamy violates the dignity of women. It is an inadmissible discrimination against women" (CCPR/C/21/Rev.1/Add.10, para. 24). Also, a number of legislative provisions in Gabon are not compatible with the Covenant, including article 252 of the Civil Code requiring a woman to be obedient to her husband. Lastly, in the event of her husband's death, a woman inherits only the usufruct of a quarter of the property left by her husband, and only after her children. The State party must review its legislation and practice in order to ensure that women have the same rights as men, including rights of ownership and inheritance. It must take specific action to increase the involvement of women in political, economic and social life and ensure that there is no discrimination based on customary law in matters such as marriage, divorce and inheritance. Polygamy must be abolished and article 252 of the Civil Code repealed.

### *Paragraph 75(15)*

The practice of putting people in prison for civil debts is in breach of article 11 of the Covenant. The State party must abolish imprisonment for debt.

- Venezuela, ICCPR, A/56/40 vol. I (2001) 49 at para. 77(28).

The State party is commended for its constitutional provisions relating to indigenous populations, particularly articles 120 and 123 requiring indigenous communities to be notified and consulted beforehand if the State wished to exploit natural resources in areas they inhabited and enshrining the right of indigenous peoples to pursue and promote their own economic practices. However, the lack of any information regarding the practical implementation of those constitutional provisions is regretted.

- Uzbekistan, ICCPR, A/56/40 vol. I (2001) 59 at para. 79(16).

The information that more than 1300 Tajiks, citizens of Uzbekistan, were resettled from their villages in the mountains to the steppes of the Sherabad region, about 250 miles away, is of deep concern. While the State party explained that the action was taken in order to improve the living conditions of the people concerned, it did not refute the information that the resettlement was enforced by military forces, that the Tajiks had to leave their homes without their belongings, and that their villages were subsequently destroyed. The State party should immediately stop any further action to

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expel people from their homes, in violation of articles 12 and 17 and possibly, in certain situations article 27 of the Covenant. The State party should take steps to compensate the individuals concerned for the loss of their property and their suffering, resulting from their forcible displacement and its aftermath, and to report on their present living conditions.

- Croatia, ICCPR, A/56/40 vol. I (2001) 65 at paras. 80(9) and 80(16).

### *Paragraph 80(9)*

Article 17 of the Constitution, dealing with a state of emergency, is not entirely compatible with the requirements of article 4 of the Covenant, in that the Constitutional grounds justifying a derogation are broader than the "threat to the life of the nation" mentioned in article 4; that measures of derogation are not restricted to those strictly required by the exigencies of the situation; and that non-derogable rights do not include the rights under article 8, paragraphs 1 and 2, article 11 and article 16 of the Covenant. Furthermore, article 101 of the Constitution, which allows the President to issue decrees in 'the event of a state of war or an immediate threat to the independence and unity of the State', has been employed so as to derogate *de facto* from Covenant rights in a manner that would seem to circumvent the restrictions in article 17 of the Constitution. The State party should ensure that its constitutional provisions on a state of emergency are compatible with article 4 of the Covenant and that in practice no derogation from rights should be permissible unless the conditions of article 4 have been met.

### *Paragraph 80(16)*

The heavy backlog of cases awaiting hearing before the Croatian courts, particularly in civil matters, is of deep concern. The delays in the administration of justice are apparently compounded by the application of the statute of limitations to suspend or discontinue cases that, for reasons often not attributable to the litigant in question, have not been brought on for hearing. The State party is urged to accelerate its reform of the judicial system, *inter alia* through simplification of procedures, training of judges and court staff in efficient case management techniques.

- The Netherlands (Antilles), ICCPR, A/56/40 vol. I (2001) 76 at para. 82(21).

It is regretted that the distinctions between legitimate and illegitimate children who have not been recognized by their father, and who accordingly suffer disadvantage under inheritance laws, have not been eliminated. The State party should remove all distinctions between legitimate and illegitimate children in compliance with articles 24 and 26 of the Covenant.

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- The Netherlands (Aruba), ICCPR, A/56/40 vol. I (2001) 76 at para. 82(23).

Domestic workers, who are often particularly vulnerable to exploitation as non-Aruban nationals, should have strengthened protection under Aruba's labour laws in order to achieve compliance with the provisions of article 26 of the Covenant. A formal right to sue for breach of contract may well be insufficient in the circumstances of the specific employer-employee relationship. The State party should consider the most appropriate way to ensure adequate legal protection for domestic workers, for example by extending the provisions of the Labour Ordinance to cover this class of workers.

- Czech Republic, ICCPR, A/56/40 vol. I (2001) 83 at para. 83(6).

The apparent absence of procedures for dealing with the implementation of the Views of the Committee under the Optional Protocol is of concern. The position adopted by the State party in the cases of Simunek (516/1992) and Adam (586/1994), regarding the restitution of property or compensation under Act 87/91 is deeply regretted. The State party's response to the Committee's decision that the pre-condition of Czech citizenship to restitution or compensation under Act 87/91 was discriminatory and in violation of article 26 of the Covenant is also regretted. A decision by the Constitutional Court on the constitutionality of the relevant law cannot exonerate the State party from its obligations under the Covenant (article 2; Optional Protocol, articles 1 and 4). The State party should reconsider its present law regarding the right to seek restitution of property or compensation. It should also put in place procedures to deal with Views of the Committee under the Optional Protocol.

- Democratic People's Republic of Korea, ICCPR, A/56/40 vol. I (2001) 98 at para. 86(7).

The discontinuation of administrative internment in the State party is appreciated.

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- Afghanistan, ICESCR, E/1992/23 (1991) 15 at para. 93.

The interpretation of the Islamic law in relation to inheritance might impede full application of Article 3 and prevent full respect for the principle of equality of treatment between the sexes.

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- Panama, ICESCR, E/1992/23 (1991) 24 at para. 135.

Responses to questions concerning both housing rights and evictions were unsatisfactory for the following reasons:

(a) First, the Government's claim that 3,000 persons had been affected by the bombing of El Chorillo differed substantially from all other sources which placed the figure between 12,500 and 20,000 persons.

(b) Secondly, the responses given to questions concerning the current living conditions of residents of El Chorillo made homeless by the bombing differed substantially from other available information. Information was received which pointed to many complaints by the residents who had received alternative accommodation and which concerned the long distance which now had to be travelled to and from places of employment on relatively expensive public transportation and the overall poor quality of the housing in the resettlement sites. Moreover, two years after the invasion, a large number of persons had yet to be rehoused;

(c) Thirdly, the justifications for the actions carried out by the Panamanian and United States forces in Tocumen, San Miguelito and Panama Viejo in early 1990, which affected over 5,000 persons, was unacceptable under the terms of the Covenant as a ground for forcibly removing people from their homes. During the actions concerned, a large number of houses were demolished, in spite of the affected persons having lived in the area for more than two years. Additionally, these evictions had not been accompanied by legal eviction orders. Evictions carried out in this way are not only an infringement upon the right to adequate housing but also on the inhabitants' rights to privacy and security of the home.

- Italy, ICESCR, E/1993/22 (1992) 42 at paras. 192 and 193.

### *Paragraph 192*

The attention of the State party is drawn to the following concerns:

(a) The adoption of Act L359/92 seems likely to aggravate the situation of the most economically disadvantaged tenants. The Act partly goes back on the introduction of the concept of a "fair rent";

(b) It has led to a certain paralysis in the rental market since about 5 million apartments are currently reported to be unoccupied. The scope of the exceptions to the fair-rent rule has widened and freedom to set rents is contributing to rental increases;

(c) Given the shortage of low-income housing, which accounts for about 5 per cent of the total housing stock, and since no housing allowance system has been established or is envisaged, the

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situation of tenants is disturbing. The 10-year low-income housing construction plan, which was partly executed in 1988, has not been amended and remains insufficient;

(d) A further continuing source of concern is the precarious nature of leases, aggravated by the provisions of the Act of August 1992, given the fact that 74 per cent of evictions are based on termination of the lease and, since 1983, one family out of three has been evicted.

### *Paragraph 193*

The importance the Covenant attaches to the right to housing is reiterated, and it is recommended that the Government take all appropriate measures to improve the situation of tenants and to ensure that medium-term solutions are found in order to deal more satisfactorily with housing for the most disadvantaged social categories.

- Canada, ICESCR, E/1994/23 (1993) 28 at paras. 106 and 116.

### *Paragraph 106*

It is of concern that the right to security of tenure is not enjoyed by all tenants in Canada.

### *Paragraph 116*

Security of tenure should be extended to all tenants and the attention of the State party is drawn to its General Comment No. 4 on the Right to Adequate Housing (article 11-1 of the Covenant), in particular paragraph 8.

- Mexico, ICESCR, E/1994/23 (1993) 47 at para. 238.

Steps should be taken urgently to overcome the grave housing crisis in the country. The speedy adoption of policies and measures designed to ensure adequate civic services, security of tenure and the availability of resources to facilitate access by low-income communities to affordable housing is further recommended. The increased construction of rental housing, as well as adoption of other measures to enable Mexico to comply fully with its obligations under article 11 of the Covenant, as dealt with in General Comment No. 4, is recommended.

- Mauritius, ICESCR, E/1995/22 (1994) 37 at para. 173.

Article 6 of the Covenant enshrines the right of everyone to gain his living by work which he freely chooses or accepts. In the light of this provision, the Committee is concerned about certain provisions of the Merchant Shipping Act, No. 28 of 1986, according to which certain breaches of discipline by seamen are punishable by imprisonment (involving an obligation to perform labour), and foreign

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seamen may be forcibly conveyed on board ships to perform their duties. These provisions are a subject of concern also to the ILO Committee of Experts on the Application of Conventions and Recommendations.

- Dominican Republic, ICESCR, E/1995/22 (1994) 59 at paras. 328 and 331.

### *Paragraph 328*

The Government should confer security of tenure on all dwellers lacking such protection at present, with particular reference to areas threatened with forced eviction.

### *Paragraph 331*

The Government should apply existing housing rights provisions in the Constitution and should take measures to facilitate and promote their application. Such measures could include: (a) adoption of comprehensive housing rights legislation; (b) legal recognition of the right of affected communities to information concerning any governmental plans actually or potentially affecting their rights; and (c) adoption of urban reform legislation which recognizes the contribution of civil society in implementing the Covenant and addresses questions of security of tenure and regularization of land-ownership arrangements.

- Mali, ICESCR, E/1995/22 (1994) 64 at para. 344.

The Committee notes that traditional practices as well as existing laws place women at a disadvantage with regard to family and property rights.

- Republic of Korea, ICESCR, E/1996/22 (1995) 24 at para. 83.

Appropriate measures should be taken to guarantee the right to housing and, in particular, to ensure that no evictions are carried out without offers of alternative housing.

- Philippines, ICESCR, E/1996/22 (1995) 30 at paras. 115-117, 130 and 131.

### *Paragraph 115*

Particular concern is expressed at the use of criminal-law provisions to deal with problems arising from the inadequacy of housing. The criminal conviction of squatters and the restrictions on the right of due process in the case of evictees is noted. While the illegal occupation of land or the usurpation of property rights by persons otherwise unable to obtain access to adequate housing is not condoned,

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in the absence of concrete measures to address these problems, the State party should not resort, in the first instance, to measures of criminal law or to demolition.

### *Paragraph 116*

The scale of forced evictions and the manner in which they are carried out are of concern. The Government itself acknowledges that planned forced evictions may affect up to 200,000 families and that the Government has identified only 150,000 relocation sites. If these estimates are correct a very significant number of persons currently threatened with eviction will not receive adequate resettlement. Such a situation would not be compatible with respect for the right to housing.

### *Paragraph 117*

The Government's statement that the Covenant provides no protection from forced eviction is not accepted. The right to housing cannot be interpreted as being silent in relation to such an issue.

### *Paragraph 130*

The reform of tenancy legislation relating to peasants is urged.

### *Paragraph 131*

The Government should ensure that forced evictions are not carried out except in truly exceptional circumstances, following consideration of all possible alternatives and in full respect of the rights of all persons affected. The Government is urged to extend indefinitely the moratorium on summary and illegal forced evictions and demolitions and to ensure that all those under threat in these contexts are entitled to due process. The Government should promote greater security of tenure in relation to housing in accordance with the principles outlined in General Comment No. 4 (1991). When relocating evicted or homeless persons or families, attention should be paid to the availability of job opportunities, schools, hospitals or health centres, and transport facilities in the areas selected.

- Algeria, ICESCR, E/1996/22 (1995) 54 at para. 294.

A husband's absolute right to keep the conjugal home in the case of divorce is a subject of concern.

- Paraguay, ICESCR, E/1997/22 (1996) 22 at paras. 71 and 84.

### *Paragraph 71*

The plight of the indigenous population, as well as the estimated 200,000 landless mestizo peasant families is of concern. The main reason for hunger and malnutrition among the indigenous population and the deprivation of their rights is linked to the severe problem of obtaining access to traditional and ancestral lands. Though recognized by Law 904/81 and other subsequent laws, this right remains

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in abeyance. Eighty documented claims for legalizing indigenous access to traditional land have been pending for a number of years. All indigenous groups in the Chaco were expelled from their traditional land by cattle ranchers or industrial enterprises. The Committee is also concerned about the situation of landless peasant families, of whom 50,000, on 15 March 1996, marched on the capital, Asunción, demanding adoption of legislative measures with respect to the land occupied by them and denouncing the Government's failure to fulfil past promises of agrarian reform. In Paraguay today, 5 per cent of the population owns between 60 and 80 per cent of the national territory, a situation fraught with danger for peace and stability.

### *Paragraph 84*

The Government should pursue policies designed to achieve genuine equality of rights between men and women and eliminate the discriminatory provisions that are still contained in civil, criminal, trade and labour laws, as well as in family law.

- Guatemala, ICESCR, E/1997/22 (1996) 29 at paras. 130, 136 and 137.

### *Paragraph 130*

The issue of land ownership and distribution of land is crucial to addressing economic, social and cultural grievances of a substantial segment of the population.

### *Paragraph 136*

It is stressed that the implementation of the Covenant's provisions cannot be ensured without reform and without adequate implementation of the peace accord, which require above all the just distribution of wealth and of land.

### *Paragraph 137*

The issue of land ownership and redistribution should be closely monitored, in the light of the implementation both of article 14 of the Constitution, which provides for the expropriation of fallow land on private estates, and of the Agreement on Social and Economic Aspects and Agrarian Situation. The establishment of national benchmarks is essential to ensure a systematic review of the progress made towards implementation of these provisions and should be viewed as an essential element for ensuring international cooperation and domestic change. It is therefore recommended that international cooperation be devoted to the goal of implementation of economic, social and cultural rights.

- El Salvador, ICESCR, E/1997/22 (1996) 34 at paras. 159 and 173.

### *Paragraph 159*

Concern is expressed at the sluggishness with which certain clauses of the 1992 Peace Agreement are

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being implemented, including those concerning respect for the economic, social and cultural rights of the population, and more particularly the programme of land redistribution.

### *Paragraph 173*

Every effort should be made to ensure the prompt and full implementation of the 1992 Peace Agreement, including the provisions which relate to land redistribution and economic, social and cultural rights, respect for which is a guarantee of social peace in El Salvador.

- Dominican Republic, ICESCR, E/1997/22 (1996) 44 at para. 231.

The inhuman and archaic prison system is noted with concern, whereby members of the family of an accused person who has run away may be imprisoned without trial in his place as a guarantee for the accused until he surrenders himself to the prison authorities; and whereby prisoners are expected to buy their own meals at weekends, when the prison authorities stop providing them.

- Zimbabwe, ICESCR, E/1998/22 (1997) 24 at paras. 76 and 84.

### *Paragraph 76*

Concern is expressed about the precarious situation of persons living in illegal structures or unauthorized housing. People should not be subjected to forced eviction unless this is done under conditions compatible with the Covenant.

### *Paragraph 84*

Appropriate measures should be taken to guarantee the right to housing and, in particular, to ensure that no forced evictions are carried out without alternative housing being offered.

- Russian Federation, ICESCR, E/1998/22 (1997) 27 at paras. 100, 116 and 123.

### *Paragraph 100*

Reports that the economic rights of indigenous peoples are violated with impunity by oil and gas companies which sign agreements under circumstances which are clearly illegal, and that the State party has not taken adequate steps to protect the indigenous peoples from such exploitation are alarming.

### *Paragraph 116*

Action should be taken to protect the indigenous peoples from exploitation by oil and gas companies, and more generally action should be taken to ensure their access to traditional and other sources of food.

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### *Paragraph 123*

The State party is encouraged to try to resolve problems of legal title to land, the financing of supplies and equipment for farm areas, and transportation to markets as soon as possible to stimulate domestic food production.

- Peru, ICESCR, E/1998/22 (1997) 33 at paras. 155 and 168.

### *Paragraph 155*

Concern is expressed over the great number of forced evictions of people in the Amazon basin, resulting in the destruction of their habitat and way of life.

### *Paragraph 168*

The authorities should take immediate measures to put a stop to the forced eviction of people, especially in the Amazon basin.

- Libyan Arab Jamahiriya, ICESCR, E/1998/22 (1997) 38 at para. 182.

It is noted with concern that despite legislation guaranteeing full equality between men and women and prohibiting any discrimination against women, the State party has advanced certain arguments against the enjoyment by women of certain family and civil rights on the basis of Shari'a law. The Covenant is predicated on the principles of absolute non-discrimination against women and their full enjoyment of all the rights enjoyed by men.

- Dominican Republic, ICESCR, E/1998/22 (1997) 43 at paras. 240 and 241.

### *Paragraph 240*

It is recommended that the Government's efforts be pursued and intensified in order to fully and effectively address the problems related to housing. In this respect, the following is stressed: the need for increased resources, both for construction and rehabilitation and for the relocation of evicted and displaced communities; for decentralization and greater autonomy of local authorities in this field; and for effective coordination of the activities undertaken by all the competent organs. Attention is also drawn to the need to complete the process of land surveys in order to issue title deeds to regularize the ownership of land by much of the population, in rural as well as urban areas.

### *Paragraph 241*

Steps should be taken without delay to protect the population from forced evictions by private owners and in this respect, General Comment No. 7 (1997) should be duly taken into account.

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- Iraq, ICESCR, E/1998/22 (1997) 50 at paras. 258 and 264.

### *Paragraph 258*

With respect to article 3 of the Covenant, concern is expressed about discrimination against women, in law and in practice, in the areas of inheritance rights, freedom of movement, family law, equal remuneration for equal work, and access to employment.

### *Paragraph 264*

Concern is expressed about reports of discrimination in the enjoyment of the right to adequate housing under article 11 of the Covenant, especially in relation to forced evictions of members of certain minorities (Kurds, Turkomans and Shiite Muslims) and the situation of squatters in urban areas.

- Azerbaijan, ICESCR, E/1998/22 (1997) 61 at para. 352.

Attention is drawn to the importance in monitoring the right to adequate housing, of collecting relevant data relating to the practice of forced evictions and of enacting legislation concerning the rights of tenants to security of tenure.

- Uruguay, ICESCR, E/1998/22 (1997) 67 at para. 374.

Concern is expressed about the shortage of housing, the high levels of rent, and the conditions under which forced evictions may be carried out, particularly in relation to the most vulnerable groups.

- Saint Vincent and The Grenadines, ICESCR, E/1998/22 (1997) 72 at paras. 423 and 431.

### *Paragraph 423*

With respect to article 3 of the Covenant, it is noted that women are accorded low wages, low status and little opportunity for economic development. Moreover, it is noted that obstacles remain for women at the tertiary education level, that occupational segregation in the labour market persists, in particular at the decision-making level and in the public sector, and that women have limited access to credit and land ownership.

### *Paragraph 431*

Reports of forced evictions, in particular a case where 150 persons were forced to leave their traditional homes and land as a result of the construction of a cruise-ship berth, are regretted. Although the persons evicted received some cash compensation, they were not offered alternative accommodation.

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- Sri Lanka, ICESCR, E/1999/22 (1998) 22 at paras. 73 and 74.

### *Paragraph 73*

In statutory law, there is equality of inheritance among siblings while customary law discriminates against married women who, unlike married men, may not inherit family property. In allowing customary law to prevail over statutory law in this regard, the Government is not complying with its obligation to protect the rights of women against discrimination.

### *Paragraph 74*

It is noted with concern that existing legislation discriminates against children born out of wedlock who may inherit only from their mother. This legislation violates the rights set forth in article 10 of the Covenant.

- The Netherlands (Antilles), ICESCR, E/1999/22 (1998) 41 at para. 217.

Concern is expressed at provisions that permit practices in matters of inheritance not governed by the principle of equity so as to benefit all those who have a legal interest in the inheritance.

- Israel, ICESCR, E/1999/22 (1998) 43 at paras. 237, 238, 249, 251 and 268.

### *Paragraph 237*

It is noted with grave concern that the Status Law of 1952 authorizes the World Zionist Organization/Jewish Agency and its subsidiaries, including the Jewish National Fund, to control most of the land in Israel, since these institutions are chartered to benefit Jews exclusively. Despite the fact that the institutions are chartered under private law, the State of Israel nevertheless has a decisive influence on their policies and thus remains responsible for their activities. A State party cannot divest itself of its obligations under the Covenant by privatizing governmental functions. The large-scale and systematic confiscation of Palestinian land and property by the State and the transfer of that property to these agencies constitute an institutionalized form of discrimination because these agencies by definition would deny the use of these properties to non-Jews. Thus, these practices constitute a breach of Israel's obligations under the Covenant.

### *Paragraph 238*

The situation of the Jahalin Bedouin families who were forcibly evicted from their ancestral lands to make way for the expansion of the Ma'aleh Adumim and Keidar settlements is noted with deep concern. The manner in which the Government of Israel has housed these families - in steel container vans in a garbage dump in Abu Dis in subhuman living conditions, is deplorable. It is regretted that instead of providing assurances that this matter will be resolved, the State party has insisted that it

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can only be solved through litigation.

### *Paragraph 249*

The situation of Arab neighborhoods in mixed cities such as Jaffa and Lod, which have deteriorated into virtual slums because of Israel's excessively restrictive system of granting government permits without which it is illegal to undertake any kind of structural repair or renovation, is of concern.

### *Paragraph 251*

Concern is expressed over the plight of an estimated 200,000 uprooted "present absentees", Palestinian Arab citizens of Israel most of whom were forced to leave their villages during the 1948 war on the understanding that they would be allowed by the Government of Israel to return after the war. Although a few have been given back their property, the vast majority continue to be displaced and dispossessed within the State because their lands were confiscated and not returned to them.

### *Paragraph 268*

The State party is encouraged to recognize the existing Arab Bedouin villages, the land rights of the inhabitants and their right to basic services, including water.

- Canada, ICESCR, E/1999/22 (1998) 63 at paras. 393, 404, 426 and 429.

### *Paragraph 393*

The direct connection between aboriginal economic marginalization and the ongoing dispossession of aboriginal people from their lands, as recognized by the Royal Commission on Aboriginal Peoples is of concern. The recommendations of the Commission that policies which violate aboriginal treaty obligations and the extinguishment, conversion or giving up of aboriginal rights and title should on no account be pursued by the State party are endorsed. It is of great concern that the recommendations of the Royal Commission on Aboriginal Peoples have not yet been implemented, in spite of the urgency of the situation.

### *Paragraph 404*

It is noted that aboriginal women living on reserves do not enjoy the same right as women living off reserves to an equal share of matrimonial property at the time of marriage breakdown.

### *Paragraph 426*

The federal, provincial and territorial governments should expand protection in human rights legislation to include social and economic rights and to protect poor people in all jurisdictions from discrimination because of social or economic status. Moreover, enforcement mechanisms provided in human rights legislation need to be reinforced to ensure that all human rights claims not settled through mediation are promptly determined before a competent human rights tribunal, with the

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provision of legal aid to vulnerable groups.

### *Paragraph 429*

A greater proportion of federal, provincial and territorial budgets should be directed specifically to measures to address women's poverty and the poverty of their children, affordable day care, and legal aid for family matters. Measures that will establish adequate support for shelters for battered women, care-giving services and women's non-governmental organizations should also be implemented.

- Tunisia, ICESCR, E/2000/22 (1999) 36 at paras. 165 and 173.

### *Paragraph 165*

It is of particular concern that, according to the laws on inheritance, females are entitled to receive only half of the inheritance of males.

### *Paragraph 173*

It is strongly recommended that all men, women and children of both sexes should be enabled to enjoy the right to inherit on a basis of equality.

- Solomon Islands, ICESCR, E/2000/22 (1999) 40 at para. 203.

Concern is expressed about the Government's plans to privatize communal land with a view to making it accessible for commercial use and urban development. Approximately 90 per cent of the land in the State party is held under customary land tenure, meaning that the land belongs to the community rather than to individuals. Attention is drawn to the fact that the envisaged privatization of land under customary tenure may undermine the foundations of the State party's society and could lead to the dispossession of the majority of people, thereby depriving them of their basic source of income. With regard to the Government's plans to privatize housing completely, concern is expressed that the number of homeless people in the urban areas will increase considerably.

- Argentina, ICESCR, E/2000/22 (1999) 49 at para. 284.

The State party should continue its policy of legalizing deeds of those that have possession of houses. The existing procedures for the eviction of illegal occupants should be reviewed as a matter of priority. Attention is drawn to General Comments No. 4 (1991) and No. 7 (1997) on the right to adequate housing (art. 11, para. 1, of the Covenant) and the Government is urged to ensure that policy, legislation and practice take due account of both general comments.

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- Cameroon, ICESCR, E/2000/22 (1999) 56 at paras. 327, 328 and 355.

### *Paragraph 327*

It is of deep concern that the Government has not yet repealed laws which maintain the unequal legal status of women, particularly in relation to the right to own property and the laws regarding credit and bankruptcy, which restrict women's access to the means of production. These are in flagrant violation of the non-discrimination and equal treatment provisions of the Covenant.

### *Paragraph 328*

The lack of progress made by the Government in combating the continuing discriminatory practices against women and girls which impede the enjoyment of their rights under the Covenant is deplored. Such practices include polygamy, the forced early marriage of girls and discriminatory laws which prevent women from inheriting land.

### *Paragraph 355*

The State party is urged to implement laws and policies to combat the problem of forced evictions, in accordance with General Comments No. 4 (1991) and No. 7 (1997) concerning the right to adequate housing (art. 11, para. 1 of the Covenant).

- Mexico, ICESCR, E/2000/22 (1999) 62 at para. 403.

The State party is urged to increase its efforts to provide adequate housing at affordable prices, particularly to the poorest segments of society. The State party should establish mechanisms that record evictions and their follow-up, and take immediate remedial action against forced evictions.

- Egypt, ICESCR, E/2001/22 (2000) 38 at paras. 164, 173, 175 and 179.

### *Paragraph 164*

Concern is expressed about the massive housing problem faced by the Egyptian population which has been exacerbated by the deregulation of rents and an acute shortage of low-cost housing. Furthermore, forced evictions without alternative housing or compensation being provided have been occurring in poor communities like the potters' village and the "Ayn Hilwan" area in Cairo. Particular concern is expressed that the Cairo people who cannot afford housing are living in cemeteries. Unofficial statistics estimate their numbers to be 500,000 - 1 million.

### *Paragraph 173*

The State party is strongly urged to seek assistance, including international cooperation, in order to collect the statistics and information necessary to formulate effective strategies to address problem areas such as unemployment, poverty, housing and forced evictions.

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### *Paragraph 175*

It is recommended that the Government undertake to review the provisions of the new divorce law with a view to removing all provisions that discriminate against women and place them at a disadvantage.

### *Paragraph 179*

The State party is urged to combat the acute housing shortage by adopting a strategy and a plan of action and by building or providing, low-cost rental housing units, especially for the vulnerable and low income groups. In this connection, the State party is reminded of its obligations under article 11 of the Covenant and General Comments No. 4 on the right to adequate housing and No. 7 on forced evictions to guide the Government's housing policies.

- Congo, ICESCR, E/2001/22 (2000) 43 at para. 202.

Deep concern is expressed about discrimination against women. Marriage and family laws overtly discriminate against women (for instance, adultery is illegal for women but, in certain circumstances, not for men; while the Legal Code provides that 30 per cent of the deceased husband's estate goes to the wife, in practice the wife often loses all rights of inheritance).

- Jordan, ICESCR, E/2001/22 (2000) 49 at paras. 241 and 256.

### *Paragraph 241*

Incidents of forced eviction particularly in the principal urban areas of the country are of concern.

### *Paragraph 256*

In accordance with article 11 of the Covenant, the State party is encouraged to prevent any occurrence of forced eviction. It is recommended that the resettlement procedures and programmes include registration, facilitate comprehensive family rehabilitation and ensure access to basic services. The State party should take due regard of General Comments 7 and 4, concerning forced evictions and the right to housing.

- Australia, ICESCR, E/2001/22 (2000) 66 at paras. 386 and 399.

### *Paragraph 386*

Concern is expressed that the current Residential Tenancies Act 1987 (in New South Wales) does not provide adequate security of tenure and protection against eviction and arbitrary rent increases, and that, consequently, rents in Sydney have increased substantially and forced evictions are reported to have taken place, especially in connection with the forthcoming Olympic Games.

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### *Paragraph 399*

The State party, at the federal level, should develop a housing strategy in keeping with the Committee's General Comments No. 4 and 7, including provisions to protect tenants from forced eviction without reasons and from arbitrary rent increases. In addition, it is recommended that the State party ensure all state and territory governments establish appropriate housing policies in accordance with this strategy.

- Finland, ICESCR, E/2001/22 (2000) 73 at para. 451.

The State party should settle the question of Sami land title as a matter of high priority.

- Morocco, ICESCR, E/2001/22 (2000) 82 at paras. 527, 534 and 551.

### *Paragraph 527*

Despite the measures taken by the State party to advance the status of women, concern is expressed that there are still persisting patterns of discrimination against women in national legislation, particularly in family and personal status law, as well as inheritance law.

### *Paragraph 534*

Persistent discrimination against children born out of wedlock is noted with concern. These children are frequently abandoned by their parents, and their lack of legal protection with regard to personal status and family law is noted with concern.

### *Paragraph 551*

It is strongly recommended that the State party proceed as expeditiously as possible with the adoption and full implementation of the Action Plan for Integrating Women into Development. In particular, the State party is urged to amend existing legislation that institutionalizes discrimination against women, such as provisions of family, inheritance and personal status law, with a view to strengthening the legal status of women.

- Venezuela, ICESCR, E/2002/22 (2001) 29 at para. 85.

The discrimination against indigenous people is deplored, particularly with regard to access to landownership, housing, health services and sanitation, education, work and adequate nutrition.

- Honduras, ICESCR, E/2002/22 (2001) 33 at paras. 121, 130, 150 and 151.

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### *Paragraph 121*

The persisting discrimination against indigenous populations, especially in the fields of employment and the protection of traditional ancestral and agricultural lands, is of concern.

### *Paragraph 130*

Concern is expressed about the occurrence of forced evictions, especially among peasants and indigenous populations and in the areas where mining activities are conducted, without adequate compensation or appropriate relocation measures.

### *Paragraph 150*

The State party should take all appropriate measures to address the problems of forced evictions and homelessness.

### *Paragraph 151*

The State party should review its legislation and adopt all appropriate measures with a view to continuing agrarian reform and land tenure issues, in such a manner as to take account of the needs of the *campesinos* and of the land rights of indigenous populations.

- Hong Kong Special Administrative Region (China), ICESCR, E/2002/22 (2001) 39 at paras. 187 and 206.

### *Paragraph 187*

While acknowledging that progress has been made in relation to housing, deep concern remains that the right to housing of many people remains unfulfilled. Bed-space apartments, or cage homes are an affront to human dignity and roof-top structures constitute a grave risk to the life and health of their inhabitants.

### *Paragraph 206*

Urgent attention should be given to the housing rights of all residents, including squatters and those living in roof-top structures and bed-space apartments or cage homes. It is requested that special attention be given to the impact of current policies on squatters, roof-top structures and bed-space apartments or cage homes, particularly the operation and efficacy of the Bedspace Apartments Ordinance.

- Republic of Korea, ICESCR, E/2002/22 (2001) 45 at paras. 235 and 251.

### *Paragraph 235*

Concern is expressed that victims of private construction projects are not provided with compensation or temporary lodging, unlike private homeowners who are evicted as a result of public projects.

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Moreover, the Committee is concerned about the affordability of housing for lower income groups, especially the vulnerable and marginalized groups; about the use of "vinyl houses" for dwellings, which pose grave risks to their dwellers; and about the increasing number of the homeless.

### *Paragraph 251*

A focal point should be established within the Government for dealing with complaints or appeals for assistance on housing matters. Protection should be provided, such as compensation and temporary housing, to victims of forced evictions resulting from private development projects. The State party should also ensure that adequate housing is available to members of vulnerable or marginalized groups. Moreover, the State party should take immediate measures to assist all those who are homeless or living in exceptionally sub-standard conditions, such as "vinyl houses".

- Bolivia, ICESCR, E/2002/22 (2001) 52 at paras. 275, 276, 295 and 296.

### *Paragraph 275*

Concern is expressed that Land Reform is not a top priority on the Government agenda, and that the Government does not provide legal counseling for farm workers with regard to the establishment of title of their lands.

### *Paragraph 276*

The large housing shortage, the incidence of forced evictions with respect to peasants and indigenous populations in favour of mining and lumber concessions, and the absence of effective measures to provide social housing for low income, vulnerable and marginalised groups are matters of concern.

### *Paragraph 295*

The State party is urged to pursue land reform as a priority in its agenda, to provide the economic and human resources needed for its implementation and to proceed without delay with the title establishment procedures.

### *Paragraph 296*

It is recommended that the State party address the problems of the large housing shortage, the high incidence of forced evictions and the lack of social housing for low income, vulnerable and marginalised groups.

- Togo, ICESCR, E/2002/22 (2001) 57 at para. 315.

The position of women in Togolese society is of concern. Despite a constitutional declaration of equality under the law, women continue to experience wide-spread discrimination, especially in relation to the rights to education, to social security (in particular pension benefits), family protection

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(particularly family law regulation of inheritance), and in relation to traditional law practices.

- Senegal, ICESCR, E/2002/22 (2001) 61 at paras. 341, 356-358, 364, 365 and 377-379.

### *Paragraph 341*

Concern is expressed about the *de jure* and *de facto* inequality that exists between men and women in society. For example, article 152 of the Family Code discriminates against women, notably in the fields of taxation, allocation of seeds and family allowances. There is particular concern about the lack of progress made by the State party in eradicating the enduring discriminatory practices against women and girls. Such practices include polygamy, restricted access to land, property, housing and credit facilities, and the inability to inherit land.

### *Paragraph 356*

The acute shortage of housing and the new policy of not building any more social housing units for low income, disadvantaged and marginalized groups are matters of concern. There is also concern about the high interest rate on housing credit, which seriously restricts access to adequate housing for a large number of people.

### *Paragraph 357*

The reportedly growing number of forced evictions, especially in Dakar, is of concern. In particular, there is concern about the plight of some 450 households in the Diamaguène district and some 5,000 inhabitants of the Baraka slum who, in spite of having occupied their dwellings for a long time, are threatened with eviction.

### *Paragraph 358*

There is concern about the situation of small farmers who are unable to repay their debts and are denied credit facilities at reasonable rates so that they cannot earn a living for themselves and their family.

### *Paragraph 364*

The State party is called upon to take remedial action to address the inequality of and discrimination against women and girls, both in law and in practice. In particular, the State party is urged to consider repealing article 152 of the Family Code.

### *Paragraph 365*

The State party is urged to enact or enforce legislation prohibiting customary practices, such as polygamy, female genital mutilation, restricted access by women to land, property, housing and credit facilities and the inability to inherit land, and to take measures to combat such practices by all means, including national education programmes.

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### *Paragraph 377*

The State party is urged to review its current housing policies and, in particular, to reintroduce a programme of social housing, especially for the disadvantaged and marginalized groups, and to ensure reasonable access to housing credit for those from lower income groups.

### *Paragraph 378*

The State party should undertake a systematic and comprehensive review of the relevant legislation, administrative policies and procedures to ensure that they comply with the guidelines specified in General Comments No. 4 (1991) on the right to adequate housing (art. 11, para. 1, of the Covenant) and No. 7 (1997) on forced evictions.

### *Paragraph 379*

The State party is called upon to provide credit facilities to small farmers at reasonably low rates so that they may carry out their activities and earn a living for themselves and their families.

- Syrian Arab Republic, ICESCR, E/2002/22 (2001) 67 at paras. 404, 413 and 421.

### *Paragraph 404*

Concern is expressed about the persisting discrimination in the political, social and economic spheres of life against women in society, which is particularly reflected in limited participation by women in the political and economic decision-making process, a low legal age of marriage for girls, more severe punishment of women for adultery and "honour crimes", and unequal treatment insofar as personal property and social security laws are concerned. It is regretted that the State party has not adopted any significant legislative or administrative measures to eliminate this discrimination, nor ratified the Convention on the Elimination of All Forms of Discrimination against Women.

### *Paragraph 413*

There is concern about the disparity in the provision of social benefits and accident compensation to Syrian nationals, refugees and stateless persons.

### *Paragraph 421*

Effective measures should be taken to incorporate a gender equality perspective in both legislation and in governmental policies and administrative programmes, with a view to ensuring equality of men and women and addressing, in particular, the problems of the low legal age of marriage for girls, the more severe punishment of women for adultery and "honour crimes", and the unequal treatment of women insofar as personal, property, succession and social security laws are concerned. The State party is also encouraged to ratify the Convention on the Elimination of All Forms of Discrimination against Women.

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- Panama, ICESCR, E/2002/22 (2001) 73 at paras. 450, 453 and 466.

### *Paragraph 450*

Notwithstanding the absence of legal discrimination and the rights granted to indigenous communities by the Constitution, there is deep concern about the persisting disadvantage faced in practice by members of indigenous communities and, in particular, about the marked disparities in the levels of poverty, literacy, access to water, employment, health, education and other basic social services. It is also of concern that the issue of land rights of indigenous peoples has not been resolved in many cases and that their land rights are threatened by mining and cattle ranching activities which have been undertaken with the approval of the State party and have resulted in the displacement of indigenous peoples from their traditional ancestral and agricultural lands.

### *Paragraph 453*

Concern is expressed about the lack of a sufficient number of labour inspectors and the reported widespread use of "blank" contracts and temporary work contracts, which avoid the protection and benefits that the law requires for persons employed under longer-term contracts. Legislation that sets excessively high requirements for the establishment of employer organizations and trade unions or their branches is also of concern.

### *Paragraph 466*

The State party should consider ratifying the ILO Convention No. 169 (1989) concerning indigenous and tribal peoples in independent countries. Particular attention should be paid to improving poverty and literacy rates and access to water, employment, health, education and other basic social services for indigenous peoples. It is recommended that the issue of land rights of indigenous peoples be fully resolved so as to avoid their coming under threat by mining and cattle ranching activities that result in their displacement from their traditional ancestral and agricultural lands.

- Ukraine, ICESCR, E/2002/22 (2001) 78 at para. 504.

The State party is called upon to take all effective legal measures to prohibit gender discrimination in all fields of civil, political, economic, social and cultural life.

- Nepal, ICESCR, E/2002/22 (2001) 83 at para. 533, 537, 544, 558, 559, 564 and 569.

### *Paragraph 533*

The legal inequalities between women and men in the field of inheritance, the regime of shared assets in marriage, divorce, child custody in case of divorce and remarriage, and the conferring of nationality to children on equal terms are noted with concern. Concern is also expressed about the *de facto* inequality that exists between men and women in the Nepalese society, despite legislative guarantees

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of equality.

### *Paragraph 537*

It is noted with concern that land and agrarian reforms have still not been addressed properly and that tenants therefore have not obtained security of tenure, and that a great number of peasants do not yet possess any land.

### *Paragraph 544*

There is concern about the occurrence of forced evictions, such as in the cases of the people displaced by the Kulekhani and Marshyangdi hydropower projects, without adequate compensation or appropriate relocation measures.

### *Paragraph 558*

Existing legislation on gender equality should be implemented more vigorously, and a gender equality perspective should be incorporated in legislation, with a view to ensuring greater equality of men and women, especially in the areas of family, employment, labour conditions and representation in public services and administration.

### *Paragraph 559*

The State party is urged to enact or enforce legislation prohibiting customary practices, such as polygamy, dowry, *deuki* and prostitution among the Badi caste, and restricted ownership by women of land and family property, which violate the rights of women and girl children and to take measures to combat such practices by all means, including national educational programmes.

### *Paragraph 564*

The State party should review its legislation and adopt all appropriate measures with a view to continuing agrarian reform and resolving land tenure issues.

### *Paragraph 569*

Adequate compensation and appropriate relocation measures should be provided to those who are forcibly evicted because of development projects, such as in the cases of the Kulekhani and Marshyangdi hydropower projects, in line with General Comments No. 4 (1991) on the right to adequate housing (art. 11, para. 1, of the Covenant) and No. 7 (1997) on forcible evictions.

- Japan, ICESCR, E/2002/22 (2001) 90 at paras. 593, 607, 609, 620, 634 and 636.

### *Paragraph 593*

The persisting legal, social and institutional discrimination against children born out of wedlock is of concern, particularly as regards the curtailment of their inheritance and nationality rights.

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### *Paragraph 607*

It is noted with concern that the poorer sections of the population in the Hanshin-Awaji areas affected by the earthquake are finding it increasingly difficult to finance their building reconstruction. Some were forced to sell their property in order to pay off their existing mortgages without being able to rebuild their houses.

### *Paragraph 609*

There is concern about forced evictions, especially of the homeless from their temporary abodes and those who have occupied houses for a long time in the Utoro district. In this regard, there is particular concern about the summary procedure whereby provisional eviction orders are granted by the courts without any reasons being given, under the court order for a provisional disposition procedure, without being subject to a stay of execution, thus rendering any right of appeal meaningless and in effect transforming provisional eviction orders into permanent ones, in breach of the guidelines established in General Comments No. 4 (1991) on the right to adequate housing (art. 11, para. 1, of the Covenant) and No. 7 (1997) on forced evictions.

### *Paragraph 620*

The concept of "illegitimate children", which is unacceptable in a modern society, should be removed from legislation and practice. Urgent legislative and administrative measures should be taken to eliminate all forms of discrimination against children born out of wedlock, and further to restore the Covenant rights of persons so affected (art. 2, para. 2, and art. 10).

### *Paragraph 634*

In line with its obligations under article 11 of the Covenant, effective measures should be taken quickly to assist poorer earthquake victims in meeting their financial obligations to public housing funds or banks, undertaken to reconstruct their destroyed houses, in order to help them avoid having to sell their properties to meet continuing mortgage payments.

### *Paragraph 636*

Remedial action should be taken to ensure that all eviction orders and, in particular, the court order for a provisional disposition procedure, conform to the guidelines specified in General Comments No. 4 (1991) on the right to adequate housing (art. 11, para. 1, of the Covenant) and No. 7 (1997) on forcible evictions.

- Germany, ICESCR, E/2002/22 (2001) 97 at paras. 654 and 672.

### *Paragraph 654*

While the recent establishment of the German Institute of Human Rights is welcomed, it is noted that the Institute's functions appear to be limited to research, education and the provision of policy advice, and that it does not enjoy the powers often associated with national human rights institutions, such

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as the power to investigate complaints, conduct national inquiries and formulate recommendations for employers and other actors. These limitations are especially regrettable because economic, social and cultural rights receive less attention and enjoy fewer safeguards than civil and political rights in the State party.

### *Paragraph 672*

Given the limited functions and powers of the German Institute for Human Rights, it is recommended that steps be taken either to extend the Institute's functions and powers or to establish a separate national human rights institution with broad functions and powers, such as the power to investigate complaints, conduct national inquiries and formulate recommendations for employers and other actors. In the meantime, it is recommended that the Institute, consistent with its existing functions and powers: devote the same attention to economic, social and cultural rights as to civil and political rights; organize programmes to raise awareness of economic, social and cultural rights, especially among public officials, lawyers and the judiciary; give particular attention to the relationship between human rights and international cooperation; and be responsible for preparing a comprehensive plan of action in full conformity with paragraph 71 of the Vienna Declaration and Programme of Action.

- Israel, ICESCR, E/2002/22 (2001) 103 at para. 705.

It is of continuing concern that the State party's Law of Return denies indigenous Palestinian refugees the right to return to their homes and properties.

### **CEDAW**

- Madagascar, CEDAW, A/49/38 (1994) 45 at para. 240.

The law on inheritance needs urgent review to ensure that a woman's right to inherit is equal to that of a man.

- Chile, CEDAW, A/50/38 (1995) 35 at para. 155.

The State party should introduce legislation opening up the rights to legal divorce.

- Uganda, CEDAW, A/50/38 (1995) 61 at paras. 332 and 341.

### *Paragraph 332*

Concern is expressed over the prevalent religious and cultural practices that perpetuate domestic

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violence and discriminate against women in the field of inheritance.

### *Paragraph 341*

Legal measures should be taken against all religious and customary practices that discriminate against women. Furthermore, awareness programmes must be put in place to change mentality and attitudes. Laws should also be amended to empower women in matters of inheritance and succession.

- Paraguay, CEDAW, A/51/38 (1996) 16 at para. 132.

Efforts to guarantee equality in land distribution and ownership and in all aspects of its productive use should be increased.

- Rwanda, CEDAW, A/51/38 (1996) 36 at para. 329.

Legal provisions that would advance women's reproductive and sexual rights, land titles to women and the right of women to be their children's legal guardian must be put into place.

- Turkey, CEDAW, A/52/38/Rev.1 part I (1997) 24 at para. 196.

The requirement of spousal consent for abortion should be reviewed.

- Namibia, CEDAW, A/52/38/Rev.1 part II (1997) 82 at paras. 102 and 123.

### *Paragraph 102*

Concern is expressed over the fact that women, in particular those in the rural areas, were unable to own land.

### *Paragraph 123*

The Government should endeavour to bring about legal change with regard to land ownership by women, especially in rural areas.

- Israel, CEDAW, A/52/38/Rev.1 part II (1997) 87 at para. 173.

In order to guarantee the same rights in marriage and family relations in Israel, the Government should complete the secularization of the relevant legislation and place it under the jurisdiction of the civil courts.

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- Italy, CEDAW, A/52/38/Rev.1 part II (1997) 106 at para. 363.

The State party should ensure that all women have an adequate income and that husbands and fathers are obliged to provide financial support. The Government should also introduce measures to enforce payment of alimony and of a fair share of the matrimonial assets, including measures which would enable the courts to set aside provisions intended to or having the effect of concealing assets and income and thereby depriving women of their entitlements.

- Australia, CEDAW, A/52/38/Rev.1 part II (1997) 111 at para. 405.

The necessary legislative and policy measures should be developed to ensure women's equal access to individual ownership of native land.

- Bangladesh, CEDAW, A/52/38/Rev.1 part II (1997) 117 at para. 453.

In view of the impact of globalization on rural economics, the Government should give high priority to the issues and problems of rural women, especially their ownership of land and access to credit, loans and skills training in new agricultural technologies, with a view to strengthening their productive and employment capacity.

- Indonesia, CEDAW, A/53/38/Rev.1 part I (1998) 24 at paras. 284, 286 and 307.

### *Paragraph 284*

Concern is expressed at the existence of laws that are not in accordance with the provisions of the Convention. Discrimination against women exists in laws regarding:

- (a) Family and marriage, including polygamy; age for marriage; divorce and the requirement that a wife obtain her husband's consent for a passport;
- (b) Economic rights, including ownership and inheritance of land; access to loans and credits; entitlement to social, health and other benefits in the labour sector and the requirement that a wife obtain her husband's consent for night employment;
- (c) Health, including the requirement that the wife obtain her husband's consent with regard to sterilization or abortion, even when her life is in danger.

### *Paragraph 286*

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The eradication of discrimination at the *de jure* level in a number of areas, including inheritance, is noted but concern remains about how equal the situation actually is in practice and how many women benefit from the application of civil law.

### *Paragraph 307*

Immediate steps should be taken to eradicate the practice of polygamy and to change the other discriminatory laws identified in paragraph 284 above.

- Dominican Republic, CEDAW, A/53/38/Rev.1 part I (1998) 28 at para. 332.

Concern is expressed over the fact that, notwithstanding legislative achievements, discriminatory provisions continue to exist, including in the civil code, the nationality law and marriage and family laws, especially in areas such as the administration of marital property. Discriminatory provisions regarding unmarried women, as well as single mothers, persist in social security provisions and in land inheritance rights under the agrarian reform law.

- South Africa, CEDAW, A/53/38/Rev.1 part II (1998) 58 at para. 118.

The adoption of legislation should be completed as a matter of priority and its effective implementation should be ensured in order that women's *de jure* and *de facto* equality will be guaranteed. A uniform family code in conformity with the Convention should be prepared in which unequal inheritance rights, land rights and polygamy are addressed, with the aim of abolishing them.

- Nigeria, CEDAW, A/53/38/Rev.1 part II (1998) 61 at para. 157.

Effective measures should be taken to change laws and cultural norms which allow such practices as polygamy, one-sided repudiation, unequal subsistence rights and shares, as well as preventing women to travel without the permission of a male relative.

- United Republic of Tanzania, CEDAW, A/53/38/Rev.1 part II (1998) 66 at paras. 235 and 236.

### *Paragraph 235*

Customary and religious laws are practised and accepted more widely in rural areas and, *inter alia*, often prevent women from inheriting and owning land and property.

### *Paragraph 236*

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Laws of inheritance and succession should be formulated so as to guarantee rural women their rights of inheritance and ownership of land and property.

### *See also:*

- Guinea, CEDAW, A/56/38 part II (2001) 55 at para. 138.
  
- New Zealand, CEDAW, A/53/38/Rev.1 part II (1998) 68 at paras. 277 and 278.

### *Paragraph 277*

Concern is expressed over the bills introduced in parliament which differentiate between the rights of married women in the division of property upon the death of a husband or following divorce, and the rights of women upon separation from a de facto partner. Concern is also expressed over the bill that does not take into consideration future earnings of a husband with regard to property divisions in divorce settlements.

### *Paragraph 278*

Consideration should be given to bringing the content of the De Facto Relationships (Property) Bill in line with the Matrimonial Property Amendment Bill, especially since de facto relationships are more common among the M ori population and are growing among the population in general.

- Algeria, CEDAW, A/54/38/Rev.1 part I (1999) 12 at paras. 81, 82 and 91.

### *Paragraph 81*

The situation of wives of disappeared persons who can neither legally prove that their husbands are dead, owing to the length and difficulty of the procedure, nor enjoy their status as married women is a concern. This results in human and material injuries to these women and their children.

### *Paragraph 82*

The Government should help this group of women and their families by simplifying, even on a temporary basis, the legal procedure for certification of death so that they can clarify their status, obtain custody of their children and legally dispose of property to which they are entitled.

### *Paragraph 91*

Serious concern is expressed over the fact that the Family Code still contains many discriminatory provisions which deny Algerian women their basic rights, such as free consent to marriage, equal rights to divorce, sharing of family and child-rearing responsibilities, shared child custody rights with fathers, the right to dignity and self-respect and, above all, the elimination of polygamy.

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- Thailand, CEDAW, A/54/38/Rev.1 part I (1999) 24 at para. 247.

That the current Name Law and other laws operate so as to restrict women's access to credit and land ownership when they marry foreigners is a concern.

- China, CEDAW, A/54/38/Rev.1 part I (1999) 26 at para. 303.

All government policy and planning for rural areas, including micro-credit, small enterprise development and other income-generating projects, should be developed with the full and active participation of rural women. The Government is urged to ensure that women have equal enjoyment of land rights independent of their marital status.

- Belize, CEDAW, A/54/38/Rev.1 part II (1999) 49 at para. 63.

The differential treatment of married, common-law, and “visiting” spouses under common law with regard to the distribution of matrimonial property following the break-up of the relationship is a concern.

- Nepal, CEDAW, A/54/38/Rev.1 part II (1999) 57 at para. 139.

The Government is urged to amend, as a matter of priority, discriminatory laws on property and inheritance, the laws on marriage, nationality and birth registration, the Bonus Act, and discriminatory criminal laws, including the new law on abortion.

- Chile, CEDAW, A/54/38/Rev.1 part II (1999) 64 at para. 222.

The Government is urged to introduce and support vigorously legislation which permits divorce, allows women to remarry after divorce, and grants women and men the same rights to administer property during marriage and equal rights to property on divorce. Women should also be granted the right to initiate divorce on the same terms as men.

- India, CEDAW, A/55/38 part I (2000) 7 at paras. 49, 60-62, 82 and 83.

### *Paragraph 49*

The State party's assurance that 30 to 40 per cent coverage will be provided for women in

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programmes that give access to credit, is welcomed.

### *Paragraph 60*

Steps have not been taken to reform the personal laws of different religious and ethnic groups, in consultation with them, so as to conform with the Convention. The Government's policy of non-intervention perpetuates sexual stereotypes, son preference and discrimination against women.

### *Paragraph 61*

The Government is urged to withdraw its declaration to article 16 (1) of the Convention and to work with and support women's groups as members of the community in reviewing and reforming personal laws of different religious and ethnic groups. The Government should follow the directive principles in the Constitution and Supreme Court decisions and enact a uniform civil code which different ethnic and religious groups may adopt.

### *Paragraph 62*

A comprehensive and compulsory system of registration of births and marriages has not yet been established. Inability to prove those important events by documentation prevents effective implementation of laws that protect girls from sexual exploitation and trafficking, child labour and forced or early marriage. The failure to register marriages may also prejudice the inheritance rights of women.

### *Paragraph 82*

Significant disparities in economic activity rates for men and women are of concern. The practice of debt bondage and the denial of inheritance rights in land result in gross exploitation of women's labour and their impoverishment.

### *Paragraph 83*

The Government should enforce laws on bonded labour and provide women with self-employment opportunities and minimum wages in home-based production and the non-formal sector. The Government is called upon to review laws on inheritance urgently and to ensure that rural women obtain access to land and credit.

- Myanmar, CEDAW, A/55/38 part I (2000) 12 at para. 106.

That in Myanmar women have the same rights as men to acquire, administer and dispose of property and that a wife has the right to transfer half of the marital property into her name upon divorce is noted with satisfaction.

- Jordan, CEDAW, A/55/38 part I (2000) 16 at paras. 172-175.

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### *Paragraph 172*

It is of concern that Jordanian nationality law prevents a Jordanian woman from passing on her nationality to her children if her husband is not Jordanian. This is an anachronistic situation at a time when Jordan is making major strides in its economic and democratic development and when marriage between persons of different nationalities is increasingly common. That Jordanian law prohibits women from concluding contracts in their own name, from travelling alone and from choosing their place of residence is also noted with concern. These limitations on the rights of women are inconsistent with the legal status of women under the Jordanian Constitution and the Convention.

### *Paragraph 173*

The State party is called upon to revoke these laws and to withdraw its reservations to articles 9.2 and 15.4 of the Convention.

### *Paragraph 174*

It is noted that a woman's right to choose a family name, a profession or occupation, rights upon divorce and rights and responsibilities as a parent are not recognized in the Personal Status Code. It is also noted with concern that Jordanian law recognizes the practice of polygamy.

### *Paragraph 175*

The Government is called upon to amend the Personal Status Code to recognize women's rights to choice of family name, occupation, as well as their rights upon divorce and with regard to their responsibilities as parents. The Government is called upon to reconsider the law and policy on polygamy with a view to eliminating this practice in line with the Convention, the Constitution and evolving social relations in the country.

- Democratic Republic of the Congo, CEDAW, A/55/38 part I (2000) 21 at para. 230.

Customs and beliefs are most broadly accepted and followed in rural areas, preventing women from inheriting or gaining ownership of land and property.

- Burkina Faso, CEDAW, A/55/38 part I (2000) 25 at paras. 256, 259, 277 and 278.

### *Paragraph 256*

It is noted with satisfaction that the Individual and Family Code restores to women their fundamental rights and establishes the principles of equal consent to marriage choice of residence of the spouses during the marriage and the right to succession for the surviving spouse. The Code also regulates the marriageable age and establishes monogamy as the legal form of marital union.

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### *Paragraph 259*

It is noted that the law on agrarian and land reorganization has accorded women the same rights and conditions of access to land as men.

### *Paragraph 277*

It is of concern that, despite the law on agrarian and land reform, which establishes equality between men and women with regard to land, prejudices and customary rights are once again hindering the implementation of this law.

### *Paragraph 278*

The State party should encourage the services concerned to take into account the rights of women to property and to provide them with the necessary credit.

- Luxembourg, CEDAW, A/55/38 part I (2000) 38 at paras. 406 and 407.

### *Paragraph 406*

Concern is expressed over certain laws, for example, the waiting period of 300 days before a widow or divorced woman can remarry, and the legislation governing abortions, which appear anachronistic in a country like Luxembourg. It is of particular concern that the Government appears to lack the commitment to review and adapt this legislation to changing attitudes and developments in the European region.

### *Paragraph 407*

The Government should provide the necessary leadership and develop a comprehensive legislative agenda to amend such laws.

- Cameroon, CEDAW, A/55/38 part II (2000) 53 at para. 62.

The Government should ensure that rural women are able to participate, on an equal basis, in the adoption of decisions to guarantee them access to literacy, health services, drinking water and credit.

- Cuba, CEDAW, A/55/38 part II (2000) 73 at paras. 267 and 268.

### *Paragraph 267*

While the introduction of the option of divorce by consent constitutes a viable alternative to a court-supervised divorce, it may involve inherent risks of disadvantage for women.

### *Paragraph 268*

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The implementation of divorce by consent should be monitored carefully, and in particular any negative impact this option might have for women with regard to issues such as alimony payments, custody and maintenance of children and distribution of property.

- Romania, CEDAW, A/55/38 part II (2000) 77 at paras. 318 and 319.

### *Paragraph 318*

Concern is expressed over the different age of marriage established in the Family Code for boys and girls, and the fact that marriages of girl children can be legalized in contravention of article 16 of the Convention. It is also of concern that despite the decrease in marriages and a growing incidence of cohabitation, the rights of women in cohabitation are not protected by the legal system.

### *Paragraph 319*

Legislation on the marriage age for women and men should be brought into full conformity with the Convention, taking into consideration general recommendation 21. The State Party should also consider how women's rights, including with regard to alimony and child custody, can be protected following dissolution of domestic partnerships.

- Kazakhstan, CEDAW, A/56/38 part I (2001) 10 at para. 82.

The measures taken by the Government to provide credit to women entrepreneurs are noted with appreciation.

- Jamaica, CEDAW, A/56/38 part I (2001) 22 at para. 212.

The Constitution should be amended to allow women to have access to constitutional remedies of redress. The Government is urged to make the necessary legislative reforms to the Constitution in order to create an appropriate legal framework to ensure that the law is consistent with the provisions of the Convention. The Government should reform existing legislation and create new legislation to protect the equal rights of women and men in regard to labour, social, family and property.

- Egypt, CEDAW, A/56/38 part I (2001) 33 at paras. 328 and 329.

### *Paragraph 328*

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That women who seek divorce by unilateral termination of their marriage contract under Law No. 1 of 2000 (khul) must in all cases forego their rights to financial provision, including the dower, is of concern.

### *Paragraph 329*

A revision of Law No. 1 of 2000 should be considered in order to eliminate the financial discrimination against women.

- Guinea, CEDAW, A/56/38 part II (2001) 55 at paras. 122, 123 and 139.

### *Paragraph 122*

It is of concern that despite prohibitions in statutory law, there is wide social acceptance and lack of sanctions for such practices as female genital mutilation, polygamy and forced marriage, including *levirate* and *sororate*, and discrimination with regard to child custody and inheritance. Concern is expressed that the Civil Code contains provisions in family law that discriminate against women and that reinforce discriminatory social practices. The Government's use of social practices and customs to justify the non-enforcement of the Civil Code is also of concern.

### *Paragraph 123*

An action plan should be developed, including a public-awareness campaign targeted at both women and men, with the support of civil society and social partners, to eliminate the gap between statutory law and social customs and practices, especially with regard to family law. The State party should work with relevant ministries and non-governmental organizations, including lawyers' associations and women's groups, to create an enabling environment for legal reform and effective law enforcement. The Government is called upon to ensure women's awareness of their rights and to explore and apply innovative methods to reach illiterate women.

### *Paragraph 139*

The greatest attention should be paid to the needs of rural women and to ensure that they benefit from policies and programmes adopted in all spheres, that they participate in decision-making and have full access to health services and credit facilities. The elimination of discrimination with respect to the ownership and inheritance of land is also urged.

- Guyana, CEDAW, A/56/38 part II (2001) 60 at paras. 162, 163, 166 and 167.

### *Paragraph 162*

Concern is expressed that the Constitution does not as yet provide for a complaints procedure to enforce the guarantees on gender equality and fundamental human rights.

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### *Paragraph 163*

Priority should be given to constitutional and legislative reform to address these gaps and strengthen law enforcement so as to ensure that women's *de jure* and *de facto* equality will be realized. In particular, the strengthening of civil remedies so that women can enforce their rights through litigation is recommended. Constitutional commissions should be established as soon as possible.

### *Paragraph 166*

It is of concern that women do not seek legal redress when they suffer discrimination in employment because they are deterred by the delays in litigation caused by the enormous backlog of civil cases.

### *Paragraph 167*

Employment arbitration should be provided as an option and measures taken to prevent delays in litigation. Measures should be taken to increase women's awareness and understanding of their rights and legal aid facilities provided, where possible, in cooperation with non-governmental organizations.

- Viet Nam, CEDAW, A/56/38 part II (2001) 68 at paras. 268 and 269.

### *Paragraph 268*

Noting that 80 per cent of women in Viet Nam live in rural areas, it is of concern that they have limited access to health-care services, education and income-generating activities.

### *Paragraph 269*

Greater attention should be paid to the situation of rural women and special policies and programmes aimed at their economic empowerment should be developed, ensuring their access to credit, health-care services, educational and social opportunities and productive resources.

## **CAT**

- Guatemala, CAT, A/51/44 (1996) 10 at paras. 52 and 57.

### *Paragraph 52*

The right of the citizens to carry fire-arms may be regarded as a potential obstacle to a full implementation of the Convention.

### *Paragraph 57*

Reducing the authorization to carry fire-arms to the minimum strictly indispensable is recommended.

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- Paraguay, CAT, A/52/44 (1997) 30 at para. 201.

Reports that paramilitary groups in the service of major landholders have been evicting people from land they have occupied for many years and that this activity appears to be tolerated by the State is of concern.

### CRC

- Croatia, CRC, CRC/C/50 (1996) 31 at paras. 196 and 207.

#### *Paragraph 196*

Concern is expressed about the Law on Temporary Possession, according to which property may be occupied by temporary settlers in the absence of the property owners. Families affected by this law will face problems if they should return before the present occupiers have found alternative shelter.

#### *Paragraph 207*

Special efforts should be made to resolve the problem of property owners returning to their homes before their occupiers have been able to find alternative shelter in the light of the best interests of the child and, when necessary, in the framework of international cooperation.

- Nepal, CRC, CRC/C/54 (1996) 25 at para. 159.

Concern is expressed about the inadequate measures adopted to ensure that national legislation fully conforms with the principles and provisions of the Convention. In particular, the lack of conformity of legislative provisions concerning non-discrimination including in relation to marriage, inheritance and parental property, torture and corporal punishment is noted.

- Japan, CRC, CRC/C/79 (1998) 25 at para. 160.

The legal provisions explicitly permitting discrimination, such as article 900 (4) of the Civil Code which prescribes that the right to inheritance of a child born out of wedlock shall be half that of a child born within a marriage, and mention of birth out of wedlock in official documents are matters of concern.

- Maldives, CRC, CRC/C/79 (1998) 31 at para. 210.

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The situation of children born out of wedlock, especially with regard to their right to inheritance, is of concern.

- Kuwait, CRC, CRC/C/80 (1998) 28 at para. 135.

All appropriate measures should be taken to guarantee that girls are systematically treated equally, especially with regard to the right to inheritance.

- Austria, CRC, CRC/C/84 (1999) 7 at para. 45.

Existing legislation should be reviewed so as to make the sterilization of mentally disabled children require the intervention of the courts, and care and counselling services should be provided to ensure that this intervention is in accordance with the provisions of the Convention.

- Sierra Leone, CRC, CRC/C/94 (2000) 24 at para. 148.

Recognizing the many different ways in which direct or indirect discrimination affects girls, and that discrimination against women, involving such issues as inheritance rights, can have a major impact on their capacity to provide for the needs of their children, the State party is urged to give particular attention to addressing discrimination against both girls and women, *inter alia* by reviewing domestic legislation so as to ensure that discriminatory provisions are removed and that adequate protection from discrimination is provided.

- Grenada, CRC, CRC/C/94 (2000) 72 at para. 400.

Concern is expressed about the apparent lack of legal protection with respect to the rights, including maintenance and inheritance rights, of children born out of wedlock in “visiting” or “common law” relationships. The State party should take all necessary measures, including those of a legal nature, to ensure that the rights of children born of “visiting” and “common law” relationships are protected.

***See also:***

- United Kingdom of Great Britain and Northern Ireland (Overseas Territories), CRC, CRC/C/100 (2000) 40 at paras. 237 and 238.

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- Islamic Republic of Iran, CRC, CRC/C/97 (2000) 8 at paras. 52 and 53.

### *Paragraph 52*

Respect for the views of the child remains limited owing to traditional attitudes towards children in schools, the courts, and especially within the family. That a child's view may only be represented in judicial proceedings affecting him or her through the father, paternal grandfather or other appointed guardian and not directly by the child is a concern. Article 1041 of the Civil Code providing that the marriage of a minor is valid if the father or legal guardian has given his consent, notwithstanding the views of the child, is incompatible with the Convention.

### *Paragraph 53*

The State party is encouraged to promote and facilitate within the family, the school, the courts and administrative bodies respect for the views of children and their participation in all matters affecting them in accordance with article 12 of the Convention. In this regard, it is recommended that the State party develop skills-training programmes in community settings for teachers, social workers and local officials to enable them to assist children to express their informed decisions and take these views into consideration. The State party should take all necessary measures to halt early and forced marriages, including public education campaigns, particularly in rural areas.

- Georgia, CRC, CRC/C/97 (2000) 18 at paras. 104 and 105.

### *Paragraph 104*

Note is taken of the State party's efforts to encourage respect for the views of the child in court and administrative proceedings as well as within the school environment through, *inter alia*, the establishment of school councils where students are represented and allowed to promote the views of their peers. However, concern is expressed that the views of children are still not adequately respected within the family and in society generally.

### *Paragraph 105*

It is recommended that the State party develop a systematic approach to increasing public awareness of the participatory rights of children and encourage respect for the views of the child within the family, communities, and care and other institutions.

- Kyrgyzstan, CRC, CRC/C/97 (2000) 51 at paras. 320 and 321.

### *Paragraph 320*

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Concern is expressed about the situation of refugee and asylum-seeking children in Kyrgyzstan. The existing system of refugee status determination is inefficient and subject to substantial delays. Moreover, eligibility criteria, such as the three-day deadline for filing refugee status claims, and the safe third country rule, as applied, may arbitrarily deny *de facto* refugee children protection to which they are entitled to under the Convention and relevant international refugee instruments. That the issue of documentation is a serious problem for non-nationals, especially asylum-seekers, is a concern. It is noted that refugee documentation is provided only to the head of household, and that this causes problems for “undocumented” children when encountering the militia, who constantly harass these children and subject them to fines and detention. For example, note is taken of the difficult situation of rejected refugee claimants who are denied refugee documentation yet whose illegal residence is tolerated, most notably Afghans.

### *Paragraph 321*

**Asylum determination policy should be reviewed and it should be ensured that it complies with international standards. The State party should undertake effective public education campaigns to inform asylum-seekers, especially those newly arrived, about asylum procedures and the importance of children having documentation; provide practical assistance in obtaining birth certificates for every child and adequate procedures for the replacement of lost identity and travel documentation; and establish a system allowing refugee and asylum-seeking children to have their own documentation. The payment of fines for non-possession of documentation should be made only to a court or officials not involved in the citation; issuance of receipts should be mandatory; and those detained should not be required to pay the costs of their detention.**

- Malta, CRC, CRC/C/97 (2000) 75 at paras. 420 and 421.

### *Paragraph 420*

Concern is expressed at the use of the terms “illegitimate child” or “natural child”, especially with regard to the succession rights of such children.

### *Paragraph 421*

The State party should continue reviewing its domestic legislation with a view to eliminating the use of the terms “illegitimate child” and “natural child”.

- Finland, CRC, CRC/C/100 (2000) 8 at paras. 53 and 54.

### *Paragraph 53*

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Concern is expressed that the views of children, in particular those below 12 years of age, are not always taken into full consideration, especially in child custody cases and access disputes taken to court.

### *Paragraph 54*

The views of children under 12 years of age who are affected by a judicial proceeding should always be heard, if they are considered to be mature enough, and this should take place in a child-friendly environment. The State party should undertake a regular review of the extent to which children's views are taken into consideration and of their impact on policy-making and court decisions, programme implementation and on children themselves.

- Burundi, CRC, CRC/C/100 (2000) 17 at paras. 131-134.

### *Paragraph 131*

The strong bias in favour of fathers in the context of child custody disputes is also a concern.

### *Paragraph 132*

It should be ensured that in granting one parent custody of a child, the decision is made in accordance with the best interests of the child, with the child's participation and with consideration for the emotional needs of the child.

### *Paragraph 133*

The Committee joins the State party in expressing concern at acts of cruelty, ill-treatment, abuse, including sexual abuse, and neglect and practices such as the seizure of property belonging to orphans which are committed against children in the context of the family, including the extended family.

### *Paragraph 134*

In light of article 19, steps should be taken to establish effective mechanisms for the timely reporting of and response to domestic violence and abuse against or affecting children, to prosecute individuals who violate criminal law and to protect children from cruelty and other harmful acts such as the seizure of property from orphans. Furthermore, it is recommended that the State party take measures to offer both physical and psychological care to those who have suffered, including assisting child victims through court and other proceedings and avoiding the risk of secondary victimization, and these measures should be implemented in accordance with article 39 of the Convention.

- Central African Republic, CRC, CRC/C/100 (2000) 77 at paras. 425 and 426.

### *Paragraph 425*

## LEGAL RIGHTS - PROPERTY, CIVIL AND CONTRACT RIGHTS

Concern is expressed that there is extensive discrimination against girls with regard, in particular, to access to education and inheritance rights.

### *Paragraph 426*

Action should be taken to end discrimination including, in particular, discrimination against girls, discriminatory customary practices and discrimination against children with disabilities and children from minority groups. The State party should address discrimination through improved implementation of national legislation prohibiting discrimination and through the sensitization of the population.

- Comoros, CRC, CRC/C/100 (2000) 110 at para. 621.

The State party is urged to give particular attention to addressing discrimination against both girls and women by reviewing domestic legislation so as to ensure that discriminatory provisions, including those affecting inheritance rights, are removed and that adequate protection from discrimination is provided.

- Ethiopia, CRC, CRC/C/103 (2001) 24 at paras. 164 and 165.

### *Paragraph 164*

While noting the very positive changes made to the Family Code, which establish fathers and mothers on a more equal legal base in the context of family separation than was previously the case, concerns remain that traditional and discriminatory practices may continue in spite of the new legislation.

### *Paragraph 165*

The State party should make every effort to ensure that the provisions of the new Family Code are known by the population and respected and implemented in practice, and that structures are put in place to empower parents and children to claim child maintenance payments.

- Lesotho, CRC, CRC/C/103 (2001) 57 at paras. 335, 336, 345 and 346.

### *Paragraph 335*

It is noted that the principle of non-discrimination (art. 2) is reflected in the Constitution of Lesotho as well as in other domestic legislation. Nonetheless, concerns remain that serious discrimination exists in the State party. This has a negative impact on respect for children's rights and particularly on the rights of girls. It is of concern that married women have the legal status of minors and this situation can, in certain circumstances, negatively affect respect for the rights of their children.

## **LEGAL RIGHTS - PROPERTY, CIVIL AND CONTRACT RIGHTS**

Concern is also expressed about the difficulties and humiliation faced by mothers of children born out of wedlock in obtaining travel documents for their children.

### *Paragraph 336*

The State party is urged to strengthen its efforts to ensure full implementation of the principle of non-discrimination by amending domestic legislation and increasing awareness among the population. Particular attention should be given to ending discrimination against girls and women - in so far as this affects respect for the rights of children - in legislation, customary law and in practice. It should be ensured that children born out of wedlock can obtain travel documents as easily and quickly as all other children.

### *Paragraph 345*

Concern is expressed that the principle of the best interests of children is not respected by families or customary and civil courts in the course of family breakdown and that children in such situations are more likely to be abandoned or forced to live on the streets. Difficulties experienced by single parents, in particular single mothers, with regard to the enforcement of child maintenance payment orders and the growing number of child-headed households, linked to the spread of HIV/AIDS are matters of concern.

### *Paragraph 346*

The State party should clarify, strengthen and ensure the implementation of its policies and legislation in relation to family breakdown. The enforcement of maintenance orders should be strengthened and special attention should be paid to providing families in need with adequate support, including training and the empowerment of parents, in order to prevent the abandonment of children.

- Saudi Arabia, CRC, CRC/C/103 (2001) 71 at paras. 397 and 398.

### *Paragraph 397*

The persistence of discrimination is of concern. In particular, the Committee finds that direct and indirect discrimination against girls and children born out of wedlock, including in areas relating to civil status (e.g. lack of identity cards for females) and personal status (e.g. inheritance, custody and guardianship), is incompatible with article 2. It is noted with concern that the nationality law does not grant equal citizenship status to children of Saudi women married to non-nationals.

### *Paragraph 398*

In accordance with article 2 of the Convention, effective measures should be taken, including enacting or rescinding civil and criminal legislation where necessary, to prevent and eliminate discrimination on the grounds of sex and birth in all fields of civil, economic, political, social and cultural life. The practice of other States that have been successful in reconciling fundamental rights with Islamic texts should be considered.

## LEGAL RIGHTS - PROPERTY, CIVIL AND CONTRACT RIGHTS

- Palau, CRC, CRC/C/103 (2001) 79 at paras. 458 and 459.

### *Paragraph 458*

It is noted with concern that the law regarding inter-country adoptions does not allow the adopting parents to transfer their nationality to non-Palauan adopted children. Additionally, concern is expressed that children in inter-country adoptions are generally not eligible for a Palauan passport; and may not own or inherit land or benefit from health, education and social service subsidies.

### *Paragraph 459*

All appropriate measures, including legal and administrative ones, should be taken to ensure the effective regulation of inter-country adoptions and to protect the rights of children in this regard.

- Democratic Republic of the Congo, CRC, CRC/C/108 (2001) 31 at paras. 191 and 192.

### *Paragraph 191*

It is of concern that fathers are favoured by courts when determining which parent should have the care of children, that financial security is often the only criterion referred to by judges in such decisions, and that the best interests of the child are not a primary consideration.

### *Paragraph 192*

Steps should be taken to guarantee that child custody decisions are made on the basis of the best interests of the child and take due account of a child's views while also ensuring respect for a child's right to maintain contact with parents.

- Côte d'Ivoire, CRC, CRC/C/108 (2001) 59 at paras. 319 and 320.

### *Paragraph 319*

While domestic legislation includes provision for maintenance allowance (Marriage Act and Divorce Act), the lack of implementation of these provisions is of concern, due mainly to widespread ignorance of the law.

### *Paragraph 320*

## LEGAL RIGHTS - PROPERTY, CIVIL AND CONTRACT RIGHTS

The State party should make widely known the provisions of domestic legislation concerning maintenance allowance, notably to women who are illiterate, and it should ensure that professional groups dealing with this issue are adequately trained and that the courts are stricter regarding the recovery of allowances from solvent parents who refuse to pay.

### *See also:*

- Mauritania, CRC, CRC/C/111 (2001) 8 at paras. 62 and 63.
  
- United Republic of Tanzania, CRC, CRC/C/108 (2001) 71 at paras. 378, 379 and 381.

### *Paragraph 378*

The principle of non-discrimination is not adequately implemented with respect to certain vulnerable groups of children, especially girls (including their inheritance rights), children born out of wedlock (including their maintenance and inheritance rights), young mothers (particularly those belonging to Islamic communities and those living in Zanzibar, including their right to inherit and own property), children with disabilities, children of economically disadvantaged families; children in conflict with the law, children living in institutions, children living and/or working on the streets; child victims of abuse, refugee and asylum seeking children, children belonging to ethnic minorities, children living in rural areas, and those belonging to pastoralist communities.

### *Paragraph 379*

All effective measures should be taken to implement laws, policies and programmes to guarantee the principle of non-discrimination and full compliance with article 2 of the Convention, particularly as it relates to vulnerable groups of children.

### *Paragraph 381*

All appropriate measures should be taken to ensure that the general principle of the best interests of the child is appropriately integrated in all legislation, as well as judicial and administrative decisions and in projects, programmes and services which have an impact on children, especially those relating to marriage, custody, maintenance and inheritance rights.

- Monaco, CRC, CRC/C/108 (2001) 97 at paras. 507 and 508.

### *Paragraph 507*

There is concern that children born out of wedlock continue to face discrimination with regard to inheritance rights.

### *Paragraph 508*

## **LEGAL RIGHTS - PROPERTY, CIVIL AND CONTRACT RIGHTS**

The State party should pursue its efforts to ensure that children born out of wedlock benefit from the same rights as children born within marriage.